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CD corporate disputes

DISPUTES IN THE ENERGY SECTOR

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MINI-ROUNDTABLE

DISPUTES IN THE ENERGY SECTOR

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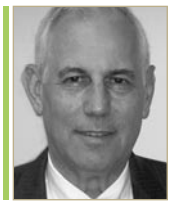

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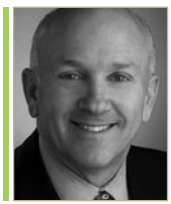
John P. Warren, Jr. is the Senior Legal Counsel and Corporate Secretary for Petrobras America Inc. and its subsidiaries. He is responsible for legal matters related to the United States subsidiary of Petrolio Brasiliero, one of the largest NYSE listed oil and gas companies in the world. Petrobras America operates the first FPSO in the Gulf of Mexico in ultra-deep water and a refinery in Pasadena, Texas. This requires knowledge of upstream, downstream, trading, commercial, and all related activities. In addition, all corporate governance and compliance matters are under his supervision for Petrobras America and its subsidiaries.



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Michael Emmert, a CPA, has spent over 38 years assisting clients in the resolution of hundreds of complex business litigation and regulatory matters as a consulting and testifying expert. He has been qualified as an expert witness in federal and state courts, arbitrations (international and domestic) and federal and state regulatory hearings. Industries in which Mr Emmert has been qualified as an expert include utilities (electric, gas, etc.), construction, oil & gas (pipelines), industrial products, insurance, environmental, manufacturing, mining and consumer products.

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Marco Tulio Venegas is a partner at Von Wobeser y Sierra. His area of practice includes constitutional and administrative proceedings; commercial litigation; industrial and intellectual property; national and international commercial arbitration; and tax advice and litigation. His expertise includes two of the largest commercial arbitrations in Mexican history, worth more than $1.7bn, as well as the most important construction and infrastructure disputes ever with governmental entities. He has litigated extensively throughout this time in several fields of Law before Mexican Courts and Arbitral Tribunals. Mr Venegas is fluent in Spanish, English and French.

CD: Have you seen an increase in disputes involving energy and natural resources companies over the last 12-18 months? What broad trends are evident?

Droog: Generally, we have not seen an overall increase. There continues to be an increase generally in the volume of disputes related to environmental issues and incidents. But commercial litigation and arbitration does not seem to be increasing or decreasing. The amount of capital projects, acquisitions and divestments and other transactions continues to increase. This has driven some increase in disputes but nothing that could be considered a trend and, in fact, it appears as though the recent round of transactional activity is less prone to create disputes than prior rounds. It may be too early to tell.

Venegas: We have seen an increase in two types of disputes in the Mexican market. The first wave refers to disputes regarding the adjustment of costs in favour of the contractor, arising because of causes attributable to the owner of the project – which in Mexico is always the Federal Commission of Electricity (CFE) or PEMEX. The second wave refers to problems in achieving the goals set for the production of electricity in some plants. These problems have a multiple sources. Defective planning, unexpected delays and some defective materials have all joined to produce disputes in these projects. Most of these disputes have been settled, however others may be subject to arbitration, which is likely to take one or two years to be resolved.

Emmert: Many of the US unconventional oil and gas resources currently being developed face substantial challenges since they are located in new and different geographic regions than conventional oil and gas production. These regions have insufficient infrastructure and lack experience in operating, regulating, and litigating oil, gas and energy business issues. Since 2009, we have reported quarterly trends in unconventional oil and gas disputes. In calendar 2012, the number of federal and state cases peaked based on a surge of filings in the second half of 2012. However, the number of unconventional oil and gas cases filed in state and federal courts in 2013 decreased by 23 percent and 29 percent respectively, from 2012. Land and lease rights disputes were the most common type of unconventional litigations filed in 2013, accounting for 30 percent, followed by other breach of contract at 25 percent and royalty disputes at 25 percent. By state, Texas had the largest number of cases filed in 2012 and 2013, with 42 percent in 2013. Texas was followed by Oklahoma, Pennsylvania, Louisiana, Ohio and California as the states with the most unconventional litigation activity between the second half of 2011 and the first half of 2013. The percentage of cases filed in Oklahoma and California

both doubled in that time. Although not significantly changed over the last 12 to 18 months, conventional oil and gas production has continued to experience disputes regarding environmental regulation, state and federal permitting, breach of contract, and class actions involving commodity pricing and shareholder issues. Lastly, the railroad industry has seen an increase in regulatory, environmental, and commercial disputes relating to the industry's significant increase in transporting oil from the Bakken, Eagle Ford and other production areas currently experiencing insufficient pipeline service.

Warren: The number and types of disputes seem to have increased over the past 12-18 months, with most being resolved in arbitration but many larger cases still being brought in the courts. They involve disputes between partners, operators and non-operators, operators and suppliers, as well as operators and insurers. There have also been some disputes over warranty and delays created by faulty products.

CD: In your experience, what are some of the common causes of dispute in the energy sector? Could you comment on any significant cases from recent months?

Emmert: Developing and commercialising US oil and gas resources requires substantial investment in infrastructure, access to capital, legislative support, regulatory oversight, available land rights and economical end-markets – all of which can give rise to disagreements between invested parties. In addition, market dynamics will impact whether the substantial investments in oil and gas assets prove to be worth the price paid, leading to potential stakeholder disputes. Royalty, leasehold and land rights disputes continue to develop across a wide number of issues. Examples include contractual obligations to purchase leaseholds even after market price declines, accounting for post-production costs, flaring of natural gas, implied covenants, dormant minerals, pooling of leases and allocation of royalties, water rights and subsurface trespass actions, among others. With respect to royalty disputes, individual as well as class action cases are filed against producers for failing to pay the full royalty amounts owed to lease owners. In 2013, such a case was filed against Chevron Corporation in California and is pending in California Superior County Court. A 2013 class action suit alleged that QEP Energy Company underpaid royalties. Subsequently, QEP settled the case and agreed to change its royalty payment policies. Chesapeake Appalachia settled a Pennsylvania royalty dispute with leaseholders over the deduction of post-production costs, based in part on the 2013 passage of an expanded state law requiring operators to disclose royalty payment deductions. Antitrust cases related to market price manipulation continue to be brought against various energy companies. As

an example, a case in the Southern District of New York alleges British Petroleum, Shell, Morgan Stanley and others allegedly attempted to fix the price of Brent crude oil for over a decade. The plaintiff class action case was filed after a European Union price manipulation investigation. The defendants recently filed to dismiss the suit. In another example, Chesapeake Energy was dismissed from antitrust charges that allegedly stemmed from attempting to collude to drive down land lease prices in the Antrim shale area; however, other collusion charges were not dismissed and the case is still pending.

Warren: In the last 18 months we have seen a dramatic increase in the number and types of disputes involving the use of Integrated Project Team (IPT) costs. There have always been questions raised in audits about whether specific costs are appropriate and properly applied or should be included in overhead. More recently, as larger units are formed to spread costs among fields in ultra-deep water, issues have more commonly arisen over proper allocation by block or unit. Part of the increase in these disputes may be attributable to the dramatic increase in IPT costs into the hundreds of millions with unitised platforms costing in the billions of dollars. In some cases these can be resolved by negotiations, but another complexity is that the same companies often have interests in most or all of the blocks and thus the allocation of percentages to the blocks may create competing interests that are irreconcilable. All of the recent contracts require arbitrations and are thus covered by confidentiality, but the issues discussed above address the general types of disputes.

Venegas: Similar causes of dispute surface regularly. They are almost always tied to bad planning from the owner, delays in the works attributable to the contractor but also due to some social uprising in certain zones of the country which impede execution of the works. In the energy sector, there were also more complex disputes arising from the clash between public and commercial laws in the regulation of public work contracts. In Mexico, just before the recent reform of the energy sector, the government had a monopoly for the exploitation of oil and other natural resources. This situation led to disputes in which the public entities, PEMEX and CFE, had the authority to act as sovereign entities of the Mexican States in rescinding the contracts, but at the same time acted as private contractor in certain instances. This dichotomy has produced some undesirable effects in some internationally renowned cases, such as *Commisa vs. PEP* and *Conproca vs. PEMEX*, which have caused some uncertainty about the Mexican legal framework for private investors. Notwithstanding the above, it is important to point out that the recent energy reform enacted by the government in August 2014 has eliminate this dichotomy in favour of a simpler and clearer regime. Now, all the contracts in which

PEMEX and CFE may enter with private foreign and national contractors will be exclusively subjected to commercial laws, putting aside any public law or principle which may alter the contractual framework agreed by the parties.

Droog: Common causes include many things, such as contractual disagreements that may have never been fully vetted, changes in economics that cause one partner to change strategy in a way that may cause a dispute, changes in regimes or laws in foreign sovereigns, operational performance issues, escalating costs, incidents, growing environmental concerns, increased government and regulatory enforcement efforts.

CD: Are there unique challenges faced by the energy sector which give rise to disputes? For example, are environmental issues causing an uptick in disputes?

Warren: Activities in the US Gulf of Mexico usually involve ultra-deep water. This is a very challenging environment with high pressures, varying reservoir and well characteristics at locations difficult to reach. The magnitude of the risk can best be illustrated by the $40bn that BP has allocated to the failure of the Macondo Well in what should have been a relatively routine well completion. The roles and exposures for non-operators and service contractors have shifted significantly. This has resulted in changes to operating agreements to better protect the operators in the event of environmental or personal injury claims. The insurance markets have also taken notice and have entered the current litigation to better define their responsibility. Finally, the regulators have reorganised and redefined their roles with greater emphasis on safety of the operations and environmental protection in the event of a spill. As a result of all this, the cost to drill a well has doubled and well completions are up 50 percent.

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> *Daniel D. Droog, Chevron*

Droog: Environmental concerns and the high risk of energy activities, including environmental risk but also economic and safety risk, create a dispute challenge. For example, there has been an effort

to address large-scale environmental issues such as global warming or land use and damage issues through disputes targeting the energy sector.

Emmert: The regulatory oversight by a variety of specialised agencies across local, state and federal levels continues to add layers of disputes with producers, even before new production has started. The potential impact of hydraulic fracturing and horizontal drilling on air emissions, soil, water or other natural phenomena like earthquakes has been raised by media, environmental advocates and concerned citizens. The race to find enormous quantities of water necessary for hydraulic fracturing operations has generated increased regulation of water use and new disputes over water rights. Local municipalities, state legislatures, and regulators struggle to implement new ordinances, regulation and laws to keep up with the fast-paced development of unconventional resources. In 2013, lawsuits were filed seeking compensation and restoration of the state of Louisiana's coastline due to claimed erosion caused by oil and gas industry operations. In areas faced with increased earthquake activity, such as Oklahoma, Arkansas, Kansas, Pennsylvania and Ohio, lawsuits have been filed and tighter production well regulations have been implemented. For example, in April 2014, Ohio announced stronger permit conditions for drilling near fault lines. Many lawsuit claims of ground water contamination, airborne pollution and other wastes from oil and gas drilling sites from Wyoming to Arkansas, and Pennsylvania to Texas have been filed and have often resulted in cash settlements or property buyouts. In 2013, California passed a bill that created a regulatory framework for hydraulic fracturing and developed regulations to meet the requirements of the bill.

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Michael P. Emmert, Navigant Consulting

After the bill passed, several major cities within California passed moratoria on drilling within their borders. Litigation regarding the legality of such moratoria remains pending. However, a recent government report appears to clear the way for California oil and gas leasing for unconventional production to resume. A 2013 Illinois law requires, in part, that companies disclose chemicals used in the fracturing process to state regulators in permit

filings as well as production reports. This and other Illinois law provisions are stricter than the laws of other states and may be of a concern to companies apprehensive about disclosing trade secrets. In December 2013, the Pennsylvania Supreme Court ruled unconstitutional a zoning law that limited municipalities' bans on hydraulic fracturing. The Pennsylvania environmental regulators recently released a comprehensive study of water well contamination from natural gas drilling since 2007 showing reduced contaminations in the past few years. The state of New York was sued in December 2013 for allegedly not having met its obligation to review the health and environmental impacts of fracking in a timely manner. In early 2014, a group of landowners filed another lawsuit to force the state to complete the unfinished studies called for by New York regulations. Numerous other states, Colorado, Ohio and Oklahoma, continue to develop and refine their regulatory and environmental standards for conventional as well as unconventional production.

CD: Are there emerging market or regulatory developments that are causing more disputes?

Venegas: The possibility of using the fracking technique in Mexico has not been well received by NGOs, universities and social organisations. Although no project of this nature has been implemented as yet, it is foreseeable that this kind of project will lead to many disputes. In similar terms, some other projects exploiting renewable energies have suffered from opposition in states such as Oaxaca, due to a perceived ecological component that may affect the landscape and environment of certain regions.

Droog: Interestingly, markets both domestic and foreign where energy activity is new or renewed tend to have an uptick in disputes. Some of the disputes are minor and are likely the result of a lack of familiarity with the industry, laws and regulations. But some of the disputes go to more fundamental issues as to whether localities have or have not developed sufficient regulations and laws to deal with the activities – for example, the continued evolution of the policy, legal and public opinion debate regarding fracking.

Warren: One of the most promising and controversial emerging technologies is the use of hydraulic fracturing, both land based and deep water. Local, state and country bans on the use of hydraulic fracturing to develop oil and gas shale are well known. Although the technology has been in use for decades, it is the recent improvements to the technology that have made it commercially feasible for widespread use that has made its introduction the subject of environmental, safety, personal injury and commercial litigation. The environmental and transportation concerns surrounding shale development have also plagued the Canadian Oil

Sands that have fuelled greenhouse gas issues and stalled the Keystone Pipeline project. Even in Canada, the prospect of a pipeline to the west coast has raised environmental concerns despite its economic benefit. Many oil shale and Canadian oil sands projects in the early 1980s went dormant when the prices dropped precipitously in the mid-1980s and all of these activities could be in jeopardy again if prices drop or other concerns make it uneconomical to use this technique.

CD: Has there been any recent amendment or addition to the law of your county which may impact the manner in which the disputes in the energy sector are handled?

Droog: Laws regarding arbitration, ADR and foreign judgments continue to evolve in the US. This trend has been and will continue to be prominent within the energy sector because of the multinational nature of the business and the need for transparent, credible and global systems for resolving disputes.

Warren: Although there have been numerous modifications related to safety and environmental matters that have created additional disputes, there has been no major new federal legislation in the US. Some states and a number of local jurisdictions have enacted legislation and ordinances banning hydraulic fracturing many have adopted new fluid disclosure requirements. The US Environmental Protection Agency has issued new regulations on greenhouse gases that will dramatically impact electric generations' plants, the coal industry and refineries. The US Bureau of Safety and Environmental Enforcement has reinterpreted its safety role to include contractors as well as operators.

Venegas: As part of the energy reform in Mexico, a complete new legal framework has been put in place. Now it is possible to arbitrate, without any restrictions, all the contracts that the state owned oil company PEMEX and the state owned electricity company CFE may execute with private contractors. In this context, the restriction to arbitrate the rescission of these types of contracts has been removed. Moreover, these disputes will be subjected to commercial laws. In addition, if the contract is performed abroad, PEMEX and CFE could be subjected to foreign laws and foreign courts. Notwithstanding the above, and although now it is possible to assign contracts for the exploration and drilling of oil to private national and foreign companies, their rescission may not be subjected to arbitration. In the case of a rescission, the area assigned in the contract will immediately return to the Mexican State, together with all the assets necessary for its exploitation. These effects and the validity of the rescission could not be subjected to arbitration. However, all

the other contractual claims arising from these types of contracts could be subjected to arbitration between the assignee and the National Commission of Hydrocarbons. Unfortunately, we believe that this kind of regulation would produce uncertainty for the contractor, since it may lead to parallel litigation involving an arbitration dispute and a case before Mexican Courts in connection with interconnected contractual causes. Such procedural nightmares have already created problems in the past, and will surely continue creating problems in the future if the law is not amended.

CD: To what extent are energy companies at risk of becoming embroiled in a corruption related dispute with authorities? What advice can you offer if an investigation materialises?

Emmert: All complex, regulated industries with significant investments and thousands of employees are potentially subject to investigations from regulators, legislators, government authorities and adversarial parties in disputes. Also, changing or new regulations may pose new, unforeseen challenges

to which companies must quickly respond – with only limited internal resources – prior to a regulatory review that could impact resource development or output. As an example, the debate over the use of non-GAAP metrics in oil and gas companies' financial reporting is an area that may see increased investigative activity in the very near future. In 2013, the SEC established the Financial Reporting and Audit Task Force that has as one of its tasks, investigating the use of non-GAAP metrics in company financial statements. This is especially relevant to the energy industry given the increased use of Master Limited Partnerships (MLPs) in the industry as a favourable business structure to minimise tax liability. However, MLP partnership values are established using non-GAAP financial measures. As an example, distributable cash flow does not have a standard definition across the industry and may change from time to time, based on certain other financial reporting metrics. The inconsistent application of such non-GAAP measures may ultimately be challenged by regulators, investors, lenders and others. If faced with an investigation initiated by regulators, stakeholders, the board of directors or others, the timely retention of experienced outside counsel is the necessary first step. Experienced counsel, working with company personnel, advisers and others will bring the experience of working with the investigating party, the venue of the investigation and other important factors to bear on the resolution of the investigation as quickly and efficiently as possible.

"Whenever a market is opened for private investors in a country, the risk exists that some companies or governmental officials may engage in corrupt practices."

Marco Tulio Venegas, Von Wobeser y Sierra

Venegas: Whenever a market is opened for private investors in a country, the risk exists that some companies or governmental officials may engage in corrupt practices. Our recommendation would be to have complete awareness of the risks that such practices may produce – not only in Mexico but also abroad – and avoid them. The best way to avoid them is always to contact high level government officers and make them aware of the improper conduct of subordinates, if they are the ones responsible of the corruption. In any event, if the situation involves high level offices, our recommendation would always be to denounce this situation before the competent authorities. If an investigation materialises and the company was in

some fashion involved in the facts, it is important to immediately assess the situation and identify the improper acts and who within the company was responsible for them. We would always suggest being proactive and cooperating with the authorities to help them clear up any situation or confusion they may have. In our experience, being cooperative and transparent is always the best way to deal with this kind of investigation.

Warren: With the increase in the number of countries that are enacting anti-corruption laws and many others that are strengthening existing regimes, energy companies are much more likely to become embroiled in corruption related disputes with authorities. This is especially true for energy companies operating in areas that have long histories of treating bribery as a normal method of doing business. Hopefully, the company already has a policy and procedures for internal reporting, and training in place. The first step should be to do an assessment of the allegations. Does this involve company personnel, suppliers or an industry wide investigation? Unless the company can be certain that it is not involved or the threat can be contained, an outside adviser will usually be required to conduct a thorough investigation and speak with the enforcement agencies. There will also be a need to protect the image of the company during this time so the corporate communications department will need to be involved. Unless a specific corporate compliance department exists, coordination through the general counsel's office is advisable.

Droog: Anytime a company operates globally or does business with or at the request or approval of a government, compliance and avoidance of improper conduct are essential. Many energy companies are world class in compliance and have led the way in training and enforcing significant compliance programs. Investigations need to be handled thoroughly and swiftly with true independence.

CD: In your opinion, and in general terms, what key considerations should energy firms make when trying to resolve a dispute?

Warren: The first consideration should always be to find a way to resolve the dispute without resorting to arbitration or litigation. Aside from the time consumed and cost, most of the players in the energy industry will need to work together in the future as partners or suppliers. At this point the matter should be elevated to the highest levels with the authority to resolve the matter. If resolution at that level is not possible, then try to narrow the dispute so that it can be resolved more efficiently and expeditiously. Particularly, when major energy players are involved it is very important that the parties act in a professional manner so that the relationship is not irreparably damaged. Finally,

it must be recognised that the best result is a negotiated settlement that leaves the parties with the belief that the matter has been resolved fairly and this can occur at any time in process.

Venegas: A company must evaluate the cost of the litigation and the damage that it may cause, not only with the client but also within the social community. In addition, it is always advisable to have a conscious and critical approach to the claims, and evaluate their strengths or weaknesses. Arguing a weak case will constitute a bad precedent for future cases and projects. Before bringing a dispute, it is advisable to have at least two law firms analysing the matters in dispute, and also to have at least one technical expert evaluating it with fresh eyes. If, after this analysis, the pros outweigh the cons, it would be advisable to file the corresponding complaint. Finally, the timing for bringing the dispute and any settlement scenario will also need to be carefully evaluated before initiating a case.

Droog: Companies need to do the right thing the right way, learn from when they don't, and know the business. If you do these things, you will avoid most disputes and prevail in many.

CD: How important to a successful outcome is the chosen method of dispute resolution? To what extent are firms choosing ADR as a means of resolving disputes?

Venegas: Selecting the dispute resolution method, when possible, is essential. Arbitration and other ADR methods are the better ways to handle energy disputes, since in almost 99 percent of the cases deal with complex factual political and legal issues. Local courts are simple not very well prepare and do not have sufficient time and resources to handle them properly. For this reason, it is advisable to have tailored ADR agreed beforehand in the contract. The parties must make a conscious effort to choose the best ADR for the type of project. For instance, in large and expensive energy projects lasting more than two years, it is advisable to agree on a dispute board. In disputes involving exclusively technical issues, resolution by a technical expert may be the best solution. In general, a company must approach ADR experts at the time of the execution of the contract and seek their advice on the best ADR method for the specific case.

Droog: This depends greatly on the dispute. Many countries have legal systems that can efficiently and effectively resolve disputes and in such cases litigation may be the best means. But a multi-tiered approach of mediation and binding arbitration with the results enforceable in court has and will continue to be the preferred mechanism because it is widely

applicable, can be confidential, customable, and, frankly, the dispute may require a particular expertise that demands a private system of resolution.

Warren: The relationship of the parties and the definition of a successful outcome will have a huge impact on the method chosen to resolve a dispute. A failure in the supply chain may have to be resolved in litigation as there may be no contract mechanism to resolve the dispute through arbitration. But even in this context, mediation is always available and is often a good way to resolve the dispute short of the need for court intervention. In addition, the parties can always agree to binding arbitration even if they do not have a contract or the contract provides for court resolution. Recognising that litigation is very public, and may be precedent setting, is dependent on the strength of the local court system, and usually very slow, energy companies are generally including some type of alternative dispute resolution provision in their contract. This may include a step process of negotiation, mediation and binding arbitration or going directly to binding arbitration. This may be accomplished using one of the recognised arbitration institutions or ad hoc using the UNCITRAL Rules.

CD: What trends are you seeing with regard to settlements in energy and resources disputes? Are today's firms more likely to reach a settlement out of court?

Droog: I do not see any noticeable trends in whether settlements are or are not achieved. Legitimate disputes where it makes economic, reputational, business and legal sense to settle will get settled if parties are reasonable. Occasionally, even reasonable parties cannot reach settlement or need the issue resolved by a third party court or tribunal. There seems to be a trend towards decoupling the management of the dispute from the management of negotiations and settlement. Outside firms are being retained for more specific roles and to execute on a strategy. While the

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development of the strategy, including any effort to resolve the dispute, are more likely to be managed internally.

Warren: It is always difficult to determine settlement trends as they are confidential by their nature. That said, settlements are being reached whenever possible, but it appears that as the amounts in dispute are growing larger, the parties are either unwilling or unable to settle. For instance, even though the amount in dispute may represent only a small percentage of total project costs, the amount may still be in the tens of millions of dollars and neither party can justify a settlement to its management. The approval process for settlement has become so difficult that it is often easier to simply accept the award of a panel of arbitrators or a court decision than try to justify a settlement to the board of directors. Furthermore, internal or external auditors may put management at risk by questioning the settlement years after the settlement.

Venegas: Considering all the factors involved in energy disputes, the parties tend to settle cases instead of getting involved in expensive and time consuming litigation. In most of these cases, both parties are more interested in not damaging their relationship and enhancing the opportunity for future collaboration and business. For this reason, settlement of disputes in this sector has increased.

CD: The energy sector is often on the receiving end of negative media attention and public opinion. What advice can you give to firms on managing the reputational risk attached to disputes?

Emmert: Legal and media experts are best suited to provide advice on managing the reputational risk associated with specific disputes. Generally, negative media attention should be counteracted with positive media coverage. One underutilised method is to demonstrate the positive contribution these companies in the energy industries make to the local and national economy. This has been particularly impactful over the past few years as economic activity in the oil and gas sector, notably unconventional shale production, has strongly contributed to the country's avoidance of an even deeper economic recession.

Venegas: First, companies undertake due diligence on the potential social and environmental issues that a specific project may produce. Once this is done, a specific plan to approach potentially affected parties must be designed in order to clearly communicate the benefits of the project and resolve any concern that they may have. Understanding the cultural and social context is very important and, to that end, it is recommended to hire local experts who may be more aware of the manner to deal

with these kinds of issues. Finally, it is also advisable to have an open approach toward environmental authorities and to assess the potential risks of the project and the communication strategy as it concerns the community who may be affected.

Warren: There is very little that a company can do to prevent negative publicity in litigation as all court filings are public. It is clear that BP made many mistakes in the comments released early in the Macondo incident. Since then, they have crafted a strong public relations campaign related to restoration of the Gulf Coast and the many benefits they provide through their Alaska operations by emphasising job creation throughout the United States. Media training and good corporate communications policies go a long way to avoiding early misstatements. On the other hand, one of the principal benefits of ADR is its confidentiality so that negative publicity can be avoided. One caution is to be certain that the contract contain a confidentiality provision in the contract to maintain strict confidentiality throughout the ADR process.

Droog: Contemporaneous but thoughtful response is often necessary. Not every unfair or negative comment requires a response. But the public is sophisticated, understands the fundamental value of many energy companies and, if given both sides or often all sides of an issue, they are willing to be fair. Additionally, having an affirmative and positive image and messaging program in place that is not reactionary helps build a solid foundation for when you need to communicate in a difficult situation or in response to a crisis. To stay up on this task takes preplanning and investing in media related resources. There must be a true partnership between legal, the executive level and the policy and public affairs group. When there is, the company benefits greatly and I think the public does as well. CD

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Von Wobeser y Sierra, S.C. was founded in 1986 with the purpose of providing high quality, integrated services to both domestic and international clients. With this vision, throughout the life of the firm we have successfully advised clients not only from a legal point of view but also from a business perspective. The firm has developed its Civil & Commercial Litigation area very effectively in the face of the growing demand for specialised services in high level litigation involving claims for significant amounts in damages and lost profits, arising from contractual breaches or wrongful acts in general.

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