

INSIGHTS

## Insurance for the Energy Industry: Smoothies With Will Marsh, Former Chief Legal Officer at Baker Hughes

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In the inaugural episode of Bracewell Covered, hosts [Vince Morgan](#) and Claire Cahoon talk all things insurance law with Will Marsh, including his leadership in the Baker Hughes legal department prior to joining Bracewell. Will discusses his experience working with different types of insurance, how his team handled D&O issues and captive insurance.

Will joined Bracewell in April 2021 after 20 years at Baker Hughes, where he held various roles, including as general counsel and more recently chief legal officer.

### **What are the kinds of insurance that crossed your desk more than any other kinds?**

D&O policies are where I spent most of my time as board members are always concerned and always want to know what are the D&O policies in place. At one time, there were some board members who were covered by three separate policies because when we closed our transaction with GE, we bought a tail coverage that covered everything before the transaction closed. We had a lot of claims around product liability damages that the product failures may cover, potential environmental losses or damages, so I would spend a fair amount of time looking at those policies and trying to understand coverages we may have for certain occasions. I'd say, fortunately, we didn't have to use that insurance much, but it obviously was a big part of our planning for potential events.

### **How did you allocate risks?**

That's your decision as a company, and it's based on your risk tolerance and your appetite for budget and insurance premiums and that kind of thing. Sometimes it depends on market leverage and other factors, but all we really care about is that you think it through. This is on the spectrum of "I want no risk" — which isn't really possible — to "I want less risk" or "I'm willing to take more risk."

Wherever a company wants to end up, we're happy to help them try to drive things there, but our concern really is that it just be thought through and considered, as opposed to just trying to figure it out after an incident happened. That raises a good point from the general counsel and the inside perspective. Not only is it important that you or the general counsel understand the insurance coverage, but you want to make sure that the board and management understand it

because we've never had a gap in insurance, but we've had a gap in what management and the board thought we had in insurance and what we really had.

**Did you ever have your outside counsel come and talk to the board about D&O issues, or did you have a broker come and present?**

We had a pretty sophisticated risk management team. So, I would say the general rule was we would meet directly with the board, but we would bring in outside counsel when we had unique issues. Some of those issues around the D&O policies where we had to get tail coverage — and there were questions of which policy was going to cover which claim — we did bring in outside counsel to meet with the board and to have that discussion. I think there is real value in having an outside lawyer there to support the general counsel and having those discussions about the risks you're taking under your contracts. In the oilfield services area right now, if you have a Macondo, hopefully you've got the protections in place that you can survive that financially, but that's a severe hit.

**Did you have a captive at Baker Hughes, and how did you use it?**

We did have a captive, and I think it was successful for the purposes that we set it up for. But obviously it doesn't replace some of the higher limit towers and those sorts of things. The other place where the captives provided a benefit was it was always hard on our business lines if you had a \$5 million claim, but that \$5 million claim was at or below the deductible. The business still took a hit for that, and so you had lumpy results in businesses because they would have an insurance hit one year and it would look like the business was taking a big hit. So, we started using the captive for basically dollar one coverage on these claims that the business units were having. The captive would pick up the first, I think, usually \$20 million of a claim, and then we had a tower behind that would pick up anything over the \$20 million, but generally 95 percent of the claims, if not more, were under \$20 million, so the captive was running that.

Interested in learning more about these any other insurance-related topics? Email your inquiries to [Vince Morgan](#) or [Claire Cahoon](#).

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