

MANAGING DEBT IN TROUBLED TIMES - SURVIVING 2016

Independent Petroleum Association of America

April 21, 2016

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- Low prices = low cash flow
- Industry-wide belt tightening = low cash flow
- RBL borrowing base redeterminations
- Covenant challenges/defaults in loan agreements
- Roll off of hedges
- Vendor issues
- Customer issues
- Litigation
- ***Current commodity prices have placed a severe strain on oilfield service companies, mid-stream and E&P companies***

COMPLETE LIST OF NORTH AMERICAN BANKRUPTCIES 2015-2016
2015 BANKRUPTCIES

	FILING DATE	COURT	CASE NUMBER	DEBTOR	SECURED	UNSECURED	TOTAL
1	1/3/2015	W.D. Tex.	15-10004	WBH ENERGY PARTNERS	\$ 48,947,377.62	\$ 3,275.00	\$ 48,950,652.62
2	2/20/2015	Canada		IVANHOE ENERGY INC.	\$ 17,236,442.95	\$ 60,218,069.25	\$ 77,454,512.21
3	3/8/2015	W.D. Tex.	15-10336	DUNE ENERGY INC.	\$ 107,981,306.07	\$ -	\$ 107,981,306.07
4	3/9/2015	S.D. Tex.	15-60016	BPZ RESOURCES, INC.	\$ -	\$ 238,571,858.05	\$ 238,571,858.05
5	3/17/2015	D. Del.	15-10585	QUICKSILVER RESOURCES	\$ 1,098,174,135.00	\$ 976,022,953.04	\$ 2,074,197,088.04
6	3/30/2015	Canada		LARICINA ENERGY	\$ 122,113,986.46	\$ 11,261,947.01	\$ 133,375,933.47
7	4/13/2015	Canada		*SHORELINE ENERGY	\$ -	\$ 17,388,039.52	\$ 17,388,039.52
8	4/30/2015	N.D. Tex.	15-31858	ERG RESOURCES, LLC	\$ 400,000,000.00	\$ 1,624,304.00	\$ 401,624,304.00
9	5/8/2015	Colo.	15-15073	AMERICAN EAGLE ENERGY CORP.	\$ 181,517,589.33	\$ 12,086,524.22	\$ 193,604,113.55
10	5/15/2015	N.D. Tex.	15-41961	DUER WAGNER OIL & GAS	\$ 120,071,039.11	\$ 2,171,700.32	\$ 122,242,739.43
11	5/21/2015	Colo.	15-15610	SUN RIVER ENERGY	\$ 10,412,000.00	\$ 1,240,160.00	\$ 11,652,160.00
12	6/3/2015	W.D. Tex.	15-51396	PRIMERA ENERGY	\$ 975,082.31	\$ 6,226,930.80	\$ 7,202,013.11
13	6/18/2015	W.D. La.	15-50748	SARATOGA RESOURCES (HARVEST OIL & GAS)	\$ 199,207,911.48	\$ 6,872,096.64	\$ 206,080,008.12
14	7/8/2015	Colo.	15-17608	**SEFTON RESOURCES	\$ -	\$ -	\$ -
15	7/10/2015	W.D. Tex.	15-70098	ARABELLA PETROLEUM	\$ -	\$ 18,225,398.06	\$ 18,225,398.06
16	7/15/2015	D. Del.	15-11520	MILAGRO OIL & GAS, INC.	\$ 417,508,106.16	\$ 655,226,617.00	\$ 1,072,734,723.16
17	7/15/2015	S.D.N.Y.	15-11835	SABINE OIL & GAS	\$ 1,659,821,675.00	\$ 1,201,384,671.27	\$ 2,861,206,346.27
18	8/3/2015	W.D. Tex.	15-70104	AMERICAN STANDARD ENERGY CORP. A DELAWARE CORP.	\$ 38,363,937.99	\$ 136,000.00	\$ 38,499,937.99
19	8/6/2015	S.D. Tex.	15-34221	LUCA INTERNATIONAL GROUP LLC	\$ 16,331.26	\$ 2,828,437.18	\$ 2,844,768.44
20	8/10/2015	W.D. La.	15-50986	SAMCO OIL, LLC	\$ 536,189.71	\$ 393,315.25	\$ 929,504.96
21	8/11/2015	S.D. Tex.	15-34287	BLACK ELK ENERGY OFFSHORE	\$ 68,567,000.00	\$ 76,166,488.88	\$ 144,733,488.88
22	8/14/2015	Canada		*WALDRON ENERGY	\$ 5,818,501.13	\$ -	\$ 5,818,501.13
23	8/25/2015	Canada		WINDFIRE RESOURCES	\$ 5667,954.89	\$ 601,421.54	\$ 1,269,376.43
24	8/28/2015	N.D. Tex.	15-33460	SABLE OPERATING COMPANY	\$ 13,522,258.05	\$ 3,014,953.69	\$ 16,537,211.74
25	8/28/2015	Canada		*COGI LIMITED PARTNERSHIP	\$ 25,480,464.96	\$ -	\$ 25,480,464.96
26	8/31/2015	E.D. La.	15-12229	AMERICAN NATURAL ENERGY CORPORATION	\$ 3,663,925.01	\$ 19,047,525.30	\$ 22,711,450.31
27	8/31/2015	E.D. Tex.	15-41561	ARMADA OIL INC.	\$ 1,265,351.87	\$ 1,840,991.94	\$ 3,106,343.81
28	9/1/2015	D. Mass.	15-13441	BUCKINGHAM OIL INTERESTS, INC.	\$ 2,963,267.07	\$ 615,008.88	\$ 3,578,275.95
29	9/2/2015	E.D. Tex.	15-41607	CONTINENTAL EXPLORATION, LLC	\$ 1,692,770.12	\$ 2,646,979.55	\$ 4,339,749.67
30	9/16/2015	D. Del.	15-11934	SAMSON RESOURCES CORPORATION	\$ 1,953,122,364.15	\$ 2,378,653,125.00	\$ 4,331,775,489.15
31	10/1/2015	Alaska	15-00236	MILLER ENERGY RESOURCES, INC.	\$ 192,725,976.00	\$ 22,821,740.56	\$ 215,547,716.56
32	10/22/2015	N.D. Tex.	15-34245	AIX ENERGY INC.	\$ 23,097,666.67	\$ 11,733,596.08	\$ 34,831,262.75
33	10/26/2015	S.D. Tex.	15-35615	RAAM GLOBAL ENERGY COMPANY	\$ 304,135,336.00	\$ -	\$ 304,135,336.00
34	10/31/2015	W.D. Tex.	15-52637	REPUBLIC RESOURCES, LLC	\$ 725,844.61	\$ 10,489,383.83	\$ 11,215,228.44
35	11/5/2015	D. Colo.	15-22395	ESCALERA RESOURCES CO.	\$ 39,575,049.63	\$ 3,306,459.33	\$ 42,881,508.96
36	11/9/2015	D. Del.	15-12263	PARALLEL ENERGY LP	\$ 163,522,337.10	\$ 5,425,930.86	\$ 168,948,267.96
37	12/7/2015	N.D. Tex.	15-44931	ENERGY & EXPLORATION PARTNERS, INC.	\$ 776,515,825.00	\$ 412,848,397.00	\$ 1,189,364,222.00
38	12/8/2015	N.D. Tex.	15-34956	TRANSCOASTAL CORPORATION	\$ 21,506,821.00	\$ 481,150.00	\$ 21,987,971.00
39	12/11/2015	D. Del.	15-12500	CUBIC ENERGY, INC.	\$ 96,550,562.84	\$ 22,558,725.16	\$ 119,109,288.00
40	12/15/2015	D. Del.	15-12533	MAGNUM HUNTER RESOURCES CORPORATION	\$ 419,291,752.87	\$ 680,208,902.81	\$ 1,099,500,655.68
41	12/17/2015	D. Del.	15-12566	NEW GULF RESOURCES, LLC	\$ 418,000,000.00	\$ 167,722,583.81	\$ 585,722,583.81
42	12/31/2015	D. Del.	15-12670	SWIFT ENERGY COMPANY	\$ 324,900,000.00	\$ 908,122,421.78	\$ 1,233,022,421.78
TOTAL 2015					\$ 9,280,194,139.43	\$ 7,940,188,082.61	\$ 17,220,382,222.04

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2016 BANKRUPTCIES

	FILING DATE	COURT	CASE NUMBER	DEBTOR	SECURED	UNSECURED	TOTAL
43	1/11/2016	S.D. Tex.	16-30218	AURORA OPERATING, LLC	\$ -	\$ 2,353,102.84	\$ 2,353,102.84
44	1/18/2016	S.D. Tex.	16-50010	MOG PRODUCING, LP	\$ 3,331,924.00	\$ 961,648.00	\$ 4,293,572.00
45	1/25/2016	N.D. Tex.	16-30308	ANTERO ENERGY PARTNERS, LLC	\$ 24,290,000.00	\$ 1,164,894.00	\$ 25,454,894.00
46	2/3/2016	N.D. Tex.	16-30548	EMKEY RESOURCES, LLC	\$ 16,687,218.00	\$ 5,664,547.09	\$ 22,351,765.09
47	2/3/2016	W.D. Okl.	16-10308	OSAGE EXPLORATION AND DEVELOPMENT, INC.	\$ 31,991,829.14	\$ 7,472,849.50	\$ 39,464,678.64
48	2/4/2016	S.D. Tex.	16-30678	GINGER OIL COMPANY	\$ 3,231,238.02	\$ 3,246,485.35	\$ 6,477,723.37
49	2/17/2016	S.D. Tex.	16-30822	PRIMROSE LA SARA, LLC	\$ 892,888.12	\$ 3,430,928.63	\$ 4,323,816.75
50	2/17/2016	Canada		*ARGENT ENERGY TRUST	\$ -	\$ 153,440,000.00	\$ 153,440,000.00
51	2/17/2016	S.D. Tex.	16- 20061	*ARGENT ENERY (U.S.) HOLDINGS, INC.	\$ 51,900,000.00	\$ -	\$ 51,900,000.00
52	3/1/2016	D. Colo.	16-11767	D.J. SIMMONS, INC.	\$ 9,156,050.00	\$ 1,746,278.42	\$ 10,902,328.42
53	3/8/2016	N.D. Tex.	16-30988	RMR OPERATING, LLC	\$ 2,193,523.60	\$ 1,369,121.17	\$ 3,562,644.77
54	3/15/2016	D. Del.	16-10642	NEW SOURCE ENERGY PARTNERS, LP	\$ 49,000,000.00	\$ 2,176,315.74	\$ 51,176,315.74
55	3/18/2016	D. Del.	16-10655	*VENOCO, INC.	\$ 339,140,000.00	\$ 612,963,371.00	\$ 952,103,371.00
56	3/22/2016	D. Del.	16-10704	*EMERALD OIL, INC.	\$ 111,000,000.00	\$ 226,000,000.00	\$ 337,000,000.00
57	3/24/2016	E. D. La.	16-10661	*WHISTLER ENERGY II, LLC	\$ 130,000,000.00	\$ 25,000,000.00	\$ 155,000,000.00
58	3/31/2016	N. D. Tex.	16-41274	*7711 OPERATING COMPANY, LLC	\$ -	\$ 407,972.28	\$ 407,972.28
59	4/1/2016	W. D. Okl.	16-11230	POSTROCK ENERGY CORPORATION	\$ 65,000,000.00	\$ 34,189,805.77	\$ 99,189,805.77
60	4/13/2016	S.D. Tex.	16-31895	**AZTEC OIL & GAS, INC.	\$ -	\$ -	\$ 500,000.00
61	4/13/2016	S.D. Tex.	16-31922	*HYDROCARB ENERGY CORPORATION	\$ 6,751,086.00	\$ 7,560,824.00	\$ 14,311,910.00
62	4/14/2016	S.D. Tex.	16-31928	*ENERGY XXI LTD	\$ 1,549,000,000.00	\$ 1,309,290,000.00	\$ 2,858,290,000.00
63	4/14/2016	S.D. Tex.	16-31975	*GOODRICH PETROLEUM CORPORATION	\$ 215,250,000	\$ 291,808,000.00	\$ 507,058,000.00
TOTAL 2016					\$ 2,608,815,756.88	\$ 2,690,246,143.79	\$ 5,299,561,900.67
TOTAL 2015-2016					\$ 11,889,009,896.31	\$ 10,630,434,226.40	\$ 22,519,944,122.71

*Debts estimated based on First Day Declarations or other filings; schedules not yet available

**Estimate of secured vs. unsecured debt not yet available; total debt estimate derived from petition

***Involuntary Chapter 11 filing; debt information is estimated

(As of April 15, 2016)



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OIL PATCH BANKRUPTCY MONITOR

- Asset Sales – In Court v. Out of Court
- Oil and Gas Lease Characterization
- Mechanic & Materialmen Liens
- Other Interest Holders
- Plugging and Abandonment Issues
- Gas Processing and Transportation Agreements

- Out of court: Evaluate and consider initiating operational and financial actions with the goal of improving liquidity. Typical initiatives include:
 - Issuance of second lien or unsecured notes to pay down existing debt obligations and add liquidity
 - Revise budgets
 - Reduce capital expenditures
 - Reduce field level operating costs
 - Suspend dividends
 - Explore exchange offer opportunities
 - Begin discussions with financial investors regarding potential out-of-court third-party financing or refinancing transactions
 - Enter into forbearance agreements
 - Negotiate with the first lien and second lien lenders for temporary relief from financial covenants
- In court:
 - Chapter 7 or Chapter 11
 - Voluntary or involuntary proceeding
 - State law remedies (i.e., litigation, receivers, injunctions, etc.)

Pros	Cons
<ul style="list-style-type: none"> • Speed • Less expensive (administrative costs, attorneys' fees) • Not necessarily in the public record • Less oversight • Potentially more flexible structures • Extensive representations and warranties 	<ul style="list-style-type: none"> • Future bankruptcy risks (fraudulent transfer litigation—will buyer close without a court order?) • No ability to discharge claims • No central forum for disputes • Cannot reject burdensome agreements or leases • May require additional due diligence (e.g. title search—No Court order)

- A debtor can sell free and clear of “interests” in property of the estate
 - Includes liens, claims and certain encumbrances
 - Generally cannot sell free and clear of easements or covenants that run with the land
- Purchaser can pick and choose which contracts and leases to “assume” or “reject”
- Assumption of contract requires payment of “cure” costs
- Contract “rejection” claims are prepetition, unsecured claims against the debtor’s estate (i.e., not against purchaser)
- Purchasers should not expect extensive representations and warranties from debtor/trustee – Sales are usually “as is, where is”

§ 363 Sale	Plan Confirmation
<ul style="list-style-type: none"> • Marketing process to identify buyers and negotiation of Asset Purchase Agreement • Bid procedures order (including approval of stalking horse bidder) and breakup fee protection • Auction process • Sale hearing • Sale order 	<ul style="list-style-type: none"> • Marketing and sale process is similar to § 363 sale • Preparation of plan of reorganization and disclosure statement • Approval of disclosure statement • Solicitation of creditor votes • Confirmation hearing • Confirmation order

§ 363 Sale	Plan Confirmation
<p style="text-align: center;"><u>Pros</u></p> <ul style="list-style-type: none"> • Faster process • Handles discrete issues • Lower administrative expenses/fees • Easier burden of proof – exercise of good business judgment 	<p style="text-align: center;"><u>Pros</u></p> <ul style="list-style-type: none"> • More flexibility • Broader protections available • Safe harbor protections available to capitalize company
<p style="text-align: center;"><u>Cons</u></p> <ul style="list-style-type: none"> • Potential objection if selling substantially all of debtor’s assets • How does the debtor conclude the case – Plan of Liquidation or Chapter 7? 	<p style="text-align: center;"><u>Cons</u></p> <ul style="list-style-type: none"> • Higher burden of proof – must satisfy confirmation requirements of § 1129 • Creditor vote and court approval required • Sale may be one of many objectionable issues

- Automatic stay — halts all litigation and actions against the debtor, including demands for payment of amounts owed under the leases and executory contracts
- Counter-parties are required to perform under executory contracts prior to assumption/rejection
 - Counter-party is arguably entitled to reasonable value of services, may not be contract rate
- Debtor is not required to perform post-bankruptcy filing

- Ownership interest in property vs. contract or license
 - Texas, Oklahoma, New Mexico and others: oil and gas leases convey to the lessee an ownership interest in real property. Not executory
 - Louisiana: controversial and undecided issue
 - Kansas, Ohio: oil and gas leases convey contract rights only
 - Outer Continental Shelf: Undecided issue. The United States asserts that an OCS lease is a true lease under Section 365, rather than an interest in real property

- Many states protect the rights of service providers by granting them statutory M&M liens to secure payment for their services
 - TEX. PROP. CODE ANN. Chapter 56
 - LA. REV. STAT. ANN. § 9:4860 *et seq.* (Louisiana Oil Well Lien Act)
 - 42 Okla. Stat. § 144

- Various interest holders
 - Owner’s royalty reserved in the original oil and gas lease
 - Overriding royalties, which are carved out of the lessee/operator’s working interest
 - Production Payments
 - Net Profits Interests
- TEX. BUS. & COM. CODE § 9.343 provides interest holders a security interest in oil and gas production and the proceeds therefrom
 - Broad enough to protect royalty holders and possibly holders of ORRIs and production payments. *In re Tri-Union Dev. Corp.*, 253 B.R. 808, 812-13 (Bankr. S.D. Tex. 2000)
 - Provides for automatic perfection but may be subject to the law of the state of incorporation. *In re Semcrude, L.P.*, No. 14-CV-357 (SLR), 2015 WL 4594516 at *10 (D. Del. July 30, 2015)

- First day orders to pay interest holders, M&M lienholders and lease operating expenses have become commonplace
 - Cover both pre- and post-petition amounts owed
 - Effectively limit trade claims and leave the fight for value between the 1st and 2nd lienholders and unsecured bondholders
 - Service companies usually don't have this issue

- Texas
 - Commencement of drilling operations triggers duty to P&A well
 - Must begin within one year from date drilling or operations cease
- Offshore
 - Federal law requires decommissioning when wells and facilities are “no longer useful for operations” - Wells must be P&A'd one year after lease termination (includes removal of all equipment and facilities)
 - Joint and several liability of lessees and owners of operating rights (i.e., predecessor liability continues)
- Bankruptcy
 - Can the debtor abandon leases? *ATP Oil & Gas Corp.*, 2013 WL 3157567 (Bankr. S.D. Tex. June 19, 2013)
 - Administrative claims? *Am. Coastal Energy, Inc.*, 399 B.R. 805 (Bankr. S.D. Tex. 2009)
 - What are the consequences if an operator party files for bankruptcy? Impact on bonds, co-owners, predecessors in title

- Commitment and dedication may be designated as covenants running with the land (“CRWTL”)
- A sale under the Bankruptcy Code may not be free and clear of a covenant that runs with the land
- What is a covenant that runs with the land?
 - Must be analyzed under applicable state law

- In Texas, a covenant runs with the land when:
 - Covenant “touches and concerns” the land
 - Covenant must relate to a “thing in existence” or specifically bind the parties and their assigns
 - Covenant is “intended” by the original parties to run with the land
 - The successor to the burden has notice (e.g. recordation)
 - Privity of estate between the parties (i) vertical - privity between producer and third party buyer of leases and (ii) horizontal – between the original parties to the conveyance and requires either shared ownership or control in the leases or assignment of leases
- *Energystec* (5th Cir.) – questioned requirement for horizontal privity
- Issue: If a contract contains a covenant running with the land, is it inferior to the prior perfected liens of secured creditors?

➤ *Sabine* (SDNY)

- Court approved rejection of gathering agreement based on business judgment
- Non-binding ruling on CRWTL issues
 - Nordheim and HPIP had dedications in their agreements
 - Dedication does not equal conveyance to meet privity test
 - Burden via dedication was as to severed minerals, thus no touching and concerning “land” in any event
 - *Orion* 2nd Circuit ruling mandates filing of an adversary proceeding to determine an interest in property

➤ *Quicksilver* (Del.)

- Purchaser required rejection of gas gathering agreements as condition to closing
- Debtor argued that § 363(f) allows sale of assets free and clear of any interests including “servitudes”, “restrictive covenants” and “any dedication”
- Court took matter under advisement
- Settled before decision