

# Bankruptcy Issues in the Oil & Gas Industry

## PANEL:

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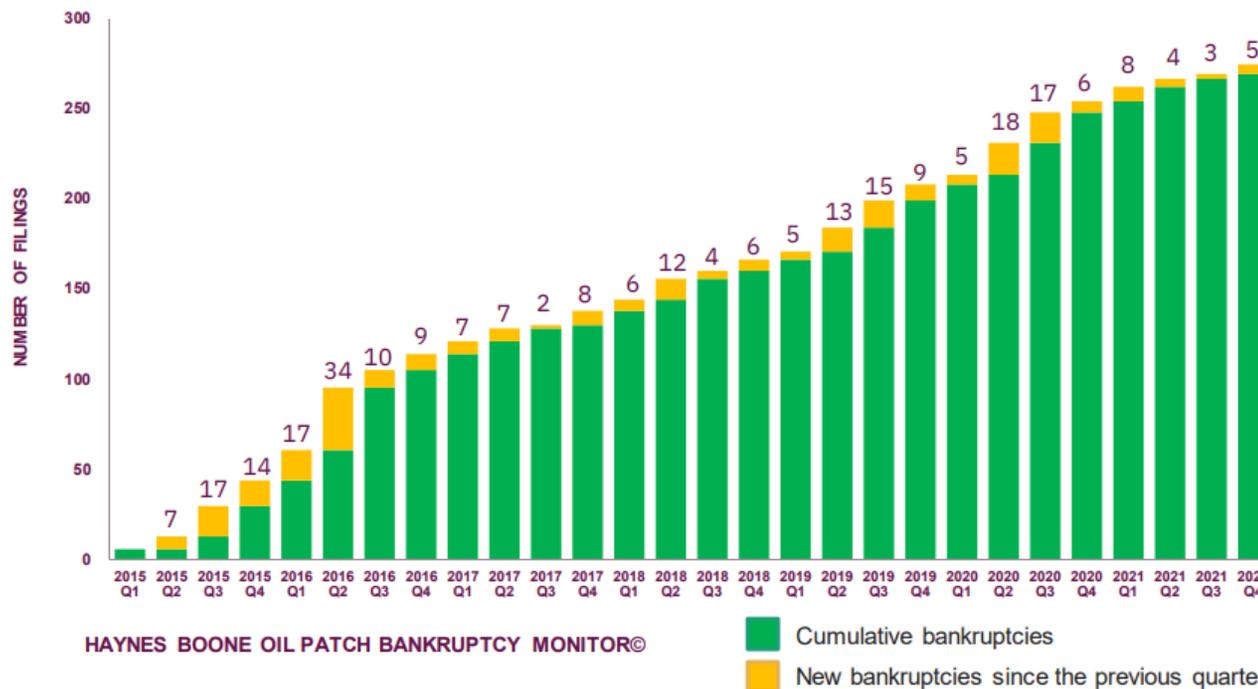
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# Discussion Outline

- Bankruptcy Overview
- Oil & Gas Bankruptcy Filings: Lessons Learned
- State Statutory Mineral Liens
- Bonding Issues
- Questions

# 2015 – 2021 Cumulative E&P Bankruptcy Filings

## 2015-2021 CUMULATIVE NORTH AMERICAN E&P BANKRUPTCY FILINGS

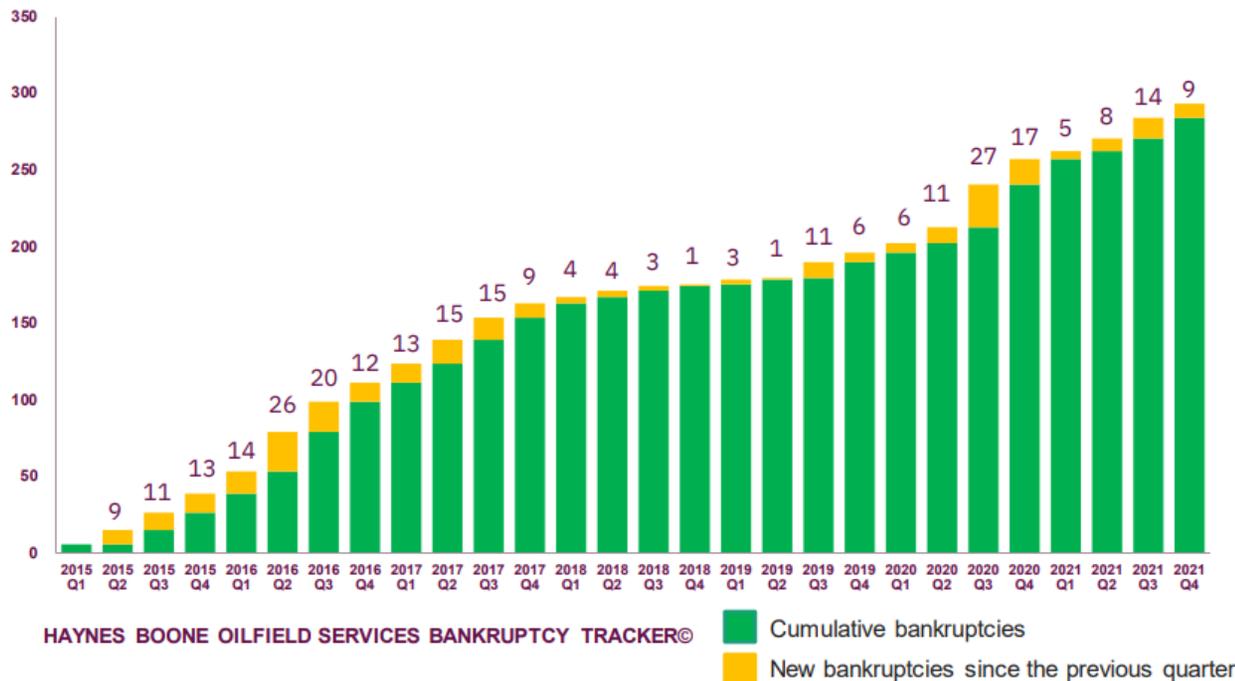


### Summary

- 2015 – 38 filings
- 2016 – 70 filings
- 2017 – 24 filings
- 2018 – 28 filings
- 2019 – 42 filings
- 2020 – 46 filings
- 2021 – 20 filings

# 2015 – 2021 Cumulative Oilfield Services Bankruptcy Filings

## 2015–2021 CUMULATIVE NORTH AMERICAN OILFIELD SERVICES BANKRUPTCY FILINGS



### Summary

- 2015 – 33 filings
- 2016 – 72 filings
- 2017 – 52 filings
- 2018 – 12 filings
- 2019 – 21 filings
- 2020 – 61 filings
- 2021 – 36 filings

# COVID-19 Bankruptcy Impacts

- Early chapter 11 cases likely unrelated to COVID-19
- Fewer filings
  - 2020 – Filings were down 30% as compared to 2019
  - 2021 – Filings were down 24% as compared to 2020
- Bankruptcy Courts remained Open for Business
  - New Standing Orders to address COVID-19 court closures
  - Telephonic Hearings
  - Bench trials – Zoom
  - Establishing Protocols for Examining Witnesses by Videoconference

# COVID-19 Bankruptcy Impacts on Oil & Gas Industry

- Lockdowns and Stay-at-home Orders
  - Sharp decline in consumption – oversupply of oil
  - Precipitous decline in oil price (May 2020 WTI futures plummeted from \$18 a barrel to around -\$37 a barrel)
- Increase in Bankruptcy Filings in 2d and 3d Quarters of 2020
  - Chesapeake, Fieldwood, Arena, Ultra Petroleum, Denbury, etc...
- Summer 2020 oil prices began to rebound
- Emerging Trends
  - Volatile services industry with tight labor market
  - Energy transition
  - Environmental, social, and governance (ESG) requirements

# Oil & Gas Bankruptcy Filings: Lessons Learned

- Fieldwood Energy
  - Second chapter 11 filing (filed prepackaged chapter 11 in February 2018)
  - Filed on August 3, 2020
  - Listed \$1.8 billion in secured debt and \$160 million in unsecured debt
- Plan of Reorganization
  - Lenders acquire deepwater and shelf assets for \$1 billion (credit bid of debt and \$185 million in cash)
  - Texas Two-Step – Fieldwood breaks into multiple entities
  - Fieldwood Energy I, LLC – takes former Apache properties; abandons certain leases
  - Numerous objections regarding environmental and regulatory liabilities; releases
  - Plan confirmed on June 25, 2021

# Oil & Gas Bankruptcy Filings: “Practical” Lessons Learned

- Engage with Land/Legal Departments as early in the process as possible (and continuously)
- Anticipate the worst and be prepared (predecessor liability is not for the faint of heart)
- Good recordkeeping is key (or perpetuity or at least through completed P&A)
- Appropriate security for decommissioning obligations in asset divestitures is critical (but they all have pro and cons)
- Relationships matter (because the bankruptcy court is probably not going to offer the solution you prefer)

# Oil & Gas Bankruptcy Filings: Lessons Learned

- Atlantic Maritime Lien Enforcement
  - Atlantic performed drilling services for Fieldwood in 2020
  - In July 2020, Atlantic filed statements of privilege under LOWLA
  - November 2020 – Atlantic files suit in EDLA requesting writ of sequestration seeking to seize working interests other than Fieldwood
  - Fieldwood files adversary proceeding seeking an extension of the automatic stay
  - Atlantic moves to dismiss adversary proceeding and Fieldwood filed for summary judgment

# LOWLA: A refresher and bankruptcy issues

- Louisiana Oil Well Lien Act, La. R.S. § 9:4861 et seq.
  - Grants a lien and privilege to certain parties to secure the cost of providing goods and services to a well site

<u>PARTY</u>	<u>SCOPE OF LIEN AND PRIVILEGE</u>
Contractor	(i) Price of contract for operations; and (ii) Price of contract for providing services or facilities to persons performing labor or service on a well site.
Laborer or Employee of Contractor/Operator	Price of labor performed at a well site.
Trucking/Towing/Barging/Other Transportation Services	Price of transporting movables to the well site.
Transporter of Persons to/from Well Site	Price of transporting the persons.
Seller of Movable that is: <ul style="list-style-type: none"><li>• Incorporated into well site or facility on well site;</li><li>• Consumed in operations; or</li><li>• Consumed at the well site by persons working on a well site.</li></ul>	Price of the movable(s)
Lessor of Movable to Operator/Contractor	Rent that accrues during use of leased movable on the well site.

# LOWLA: A refresher and bankruptcy issues

- Timelines are important
  - Statement of Privilege: 180 days from last date services/goods provided
  - Operator Notice: 180 days from last date of services/goods provided
  - Filing suit: 1 year from filing Statement of Privilege to file suit to recognize and enforce LOWLA lien
  - Notice of Lis Pendens: 30 days after filing suit to file Notice of Lis Pendens
- LOWLA liens are of equal rank
- LOWLA outranks all other privileges, security interests or mortgages
- Importance of Record Keeping
  - Invoices must designate well site
  - Time period considerations
  - Investigate other working interest owners

# LOWLA: A refresher and bankruptcy issues

- Operator's Bankruptcy – Statement of Privilege Filed
  - File a Notice of Perfection in the bankruptcy case pursuant to section 546(b) of the Bankruptcy Code
  - Must seek relief from the automatic stay to institute litigation to enforce LOWLA privilege
- Operator's Bankruptcy – NO Statement of Privilege Filed
  - May still file Statement of Privilege within the pertinent time period and may send notice of the lien to the Operator (see 11 U.S.C. § 362(b)(3))
  - File a Notice of Perfection in the bankruptcy case pursuant to section 546(b) of the Bankruptcy Code
  - Must seek relief from the automatic stay to institute litigation to enforce LOWLA privilege
- Lis Pendens Filing Requirement

# Oil & Gas Bankruptcy Filings: Lessons Learned

- Enforcement against non-debtor working interest owners during a bankruptcy case and after confirmation
- Back to why record keeping is IMPORTANT, especially when lien priority is in question
- Preservation of lien rights during cash collateral and DIP processes

# Oil & Gas Bankruptcy Filings: Bonding Issues

- BOEM/BSEE Requirements for future decommissioning obligations
- Predecessor-in-Title liability issues surface
- Be prepared to negotiate a deal you don't like
- Access to bond funds not a straightforward process

# Bonding Issues: Falcon V Bankruptcy

- Argonaut v. Falcon – Falcon V filed for bankruptcy in MDLA in May 2019
  - Bonding program with Argonaut - \$10.5 million
  - Two small bonds issued to governmental lessors – not at issue
  - 97% of bonds issued in favor Chevron and Hilcorp pursuant to asset purchase agreements
  - Bonds partially collateralized – approx. \$3 million
  - Falcon receives Court approval to continue and maintain bonding program
  - Argonaut files proof of claim – contingent, unliquidated claims; financial accommodations
  - Falcon confirms plan in October 2019 – no objection or appeal by Argonaut
  - Plan states that all executory contracts shall be deemed assumed to the extent assumable
  - February 2020 – Argonaut demand that bonds be fully collateralized and Falcon refuses
  - Argonaut files motion seeking order that Bond Program was assumed

# Bonding Issues: Falcon V Bankruptcy

- Executory Contracts in Bankruptcy – can be complicated
- Bankruptcy Court applies Countryman Definition
  - a contract is executory if ‘performance remains due to some extent on both sides’ and if at the time of the bankruptcy filing, the failure of either party to complete performance would constitute a material breach of the contract
  - Argonaut owes no further performance – bonds are posted and irrevocable
  - Bond program is not executory – financial accommodation under Section 365(c)(2)
  - Unsecured claim is disallowed pursuant to Section 502(e)(1)(B)
- District Court also applied the Countryman Definition
  - Bonding program is not assumable – did not address if the bond program was a financial accommodation
- Fifth Circuit Briefs filed – Surety & Fidelity Association of America file Amicus Brief

# Bonding Issues: Falcon V Bankruptcy

- Amicus Argument
  - Ruling results in substantial negative impact on surety industry
  - Surety contract is a tripartite agreement – Countryman must be rewritten to acknowledge unperformed obligations on behalf of third parties
  - Financial accommodations may be assumed with the consent of the creditor
- Argonaut Argument
  - Bond program is executory – Countryman not well-suited for multilateral contracts
  - Argonaut has on-going obligations to maintain its license and other statutory and regulatory capital, surplus, and reserve requirements
  - Financial accommodations may be assumed with consent
  - Even if no assumption – the bond program passed through and remains enforceable
- Falcon Argument
  - Countryman applies – debtor paid premiums; bonds were posted and are irrevocable
  - Contingent indemnity claims are subject to disallowance
  - No exception of consenting creditor to assume financial accommodations
  - Bonding program could not pass through because it is not executory

Thank You for Participating

**QUESTIONS**