

Michael Blankenship Discusses E&P Bankruptcies and Their Midstream Partners with *Hart Energy*

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As the number of expected bankruptcies and reorganizations ramps up in the third and fourth quarters for distressed E&Ps, what does this mean for midstream partners and their agreements? Can their contracts be rejected?

In 2016, a court ruled that Sabine Oil and Gas Corp. could reject its agreements because they did not include covenants that “run with the land” as defined by Texas bankruptcy law. Many viewed this decision as a game-changer, but industry experts say the situation is not so cut-and-dry.

Winston & Strawn Partner Mike Blankenship said, “while the opposite holdings in Badlands and Alta Mesa do add a certain level of comfort for midstream operators in these regions, the reality is that these determinations are fact-specific so every new case going forward will have its own singular set of facts and potential challenges in establishing that their agreements are real property covenants.”

Rejection of agreements might be a logical courtroom strategy, but an E&P hoping to continue operations has to consider the reality of how that work will get done.

Handling these issues effectively is particularly critical in a cyclical and relationship-driven business such as oil and gas. “Operators don’t forget service providers who were unwilling to work with them during tough times,” said an associate at Winston & Strawn who worked as a landman for an E&P before joining the firm.

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