

Wildcatter 101 – Oil and Gas Basics for Bankruptcy Professionals

35th Annual Jay L. Westbrook Bankruptcy Conference
Austin, TX

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Executory Contracts



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Oil and Gas Leases

A lease is a lease, of course, of course,
And no one can say otherwise of course.
That is, of course, unless the lease is
. . . a conveyance of a real property interest.



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Oil and Gas Leases

- Why does it matter?
- Bankruptcy Code Section 365(d)(4):
 - 120-day period to assume or reject unexpired leases
 - Deadline can be extended for up to an additional 90 days by court order
 - Any extension beyond 210 days requires consent of lessor
 - If unexpired lease is not assumed within applicable time period, lease is deemed rejected and debtor shall immediately surrender property to the lessor
- Assumption requires cure



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Oil and Gas Leases

- Real property interests under Texas, Oklahoma, and New Mexico law
 - Not subject to assumption or rejection under Section 365
 - Can be sold free and clear of liens and claims under Section 363
- Real property interests under North Dakota law
 - *Great Plains Royalty Corp.*, affirmed real property interest
 - No determination on Section 365



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Oil and Gas Leases

- Less clear and unsettled in other states, particularly where there is not long history of oil and gas production
 - Louisiana
 - Pennsylvania
- Executory Contracts Subject to Section 365 in:
 - Kansas
 - Ohio
 - New York
- Federal law
 - May be executory contracts, subject to assumption or rejection
 - Transfer of leases requires DOI approval



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