



# Bankruptcy Primer

For Creditors and Contract Counterparties in the Gas and Power Industry

The University of Texas School of Law

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## MAXIM'S TO GUIDE THE DISCUSSION

1. **Bankruptcy is NOT a spectator sport!** – If your contract counterparty is in bankruptcy your rights can and almost certainly will be affected and you must be mindful of key deadlines. Discussion of current trends and Bankruptcy Process.
2. **Many Energy Assets are Creatures of Contract** – Mineral Leases, Operating Agreements, Accounting Procedures, PHAs, ORRIs, Transportation and/Gathering Agreements, Marketing Agreements, and SWAP Agreements may all be affected by bankruptcy. Primer on treatment of "Executory Contracts" in Bankruptcy.
3. **Four P's** – Participation in the **P**rocess may determine **P**riority of **P**ayment.

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# Overview of Current Chapter 11 Trends

1. Very Few “Stand Alone” Reorganizations
  - Most of the “early” cases in this cycle are “Debt to Equity Conversion” Plans or Liquidations.
2. “Plan” Acquisitions – Conversion of Debt to Equity
  - Balance Sheet Recapitalization through Plan
  - Pre-Petition Creditor (or Creditor Class) Converts to New Equity
  - Secured Debt – Assumed, Restructured, Replaced, Retired
  - Pay Administrative / Priority Claims
  - Special Treatment
    - Trade Debt
    - Contract Assumption
    - NOLs
    - Future Capital Needs

	Pre-Petition Balance Sheet	Post Confirmation Balance Sheet
Assets:	\$250,000,000	\$250,000,000
Liabilities:		
- Secured	\$60,000,000	\$50,000,000
- Bond	\$150,000,000	-
- Trade	\$25,000,000	\$25,000,000
- Other	\$20,000,000	\$20,000,000*
- Tax	\$10,000,000	\$10,000,000*
Total Liabilities	\$265,000,000	\$105,000,000
<b>NEW WORTH</b>	<b>(\$15,000,000)</b>	<b>\$145,000,000</b>

\*Payment of secured, priority, and trade debt may be “financed” through plan process

### 3. Bankruptcy Liquidations

- Big Gap on “bid” vs. “ask” early in this cycle
- Sale Motion / Order
  - Bid Procedures
  - Form APA – Asset Lists
  - “Stalking Horse” Protections
  - Bid Qualifications
  - Timing – Bids / Auction
  - Shortened Notice on Assumed Executory Contracts and Cure Notice
  - Sale Order / Plan Requirement (Braniff concerns)
- “Ugly” fights over process and sale proceeds
- Sale/Liquidation proceeds distributed to creditors in priority waterfall

## **“Bankruptcy is Not a Spectator Sport” Bankruptcy Process Management**

1. Automatic Stay, Exceptions, and the “Twilight Zone”
2. First Day Motions / Orders - Shape Case on a Rocket Docket
  - DIP Financing / Cash Collateral Orders Impair 3<sup>rd</sup> Party Rights
  - Critical Vendor Status
  - Budget
  - 503(b)(9) - Reclamation and Other Rights
3. File Proof of Claim
  - BAR DATE / File Early
  - Evaluate Administrative Claim Status
  - Proof of Claim form and content
4. Plan Treatment, Confirmation & Distribution
5. Preference, Fraudulent Transfer, D&O Litigation & Other “Chapter 5” Litigation

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## Title search: A Bankruptcy Primer for Creditors and Contract Counterparties in the Gas and Power Industry

Also available as part of the eCourse

[2016 Gas and Power eConference](#)

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"A Bankruptcy Primer for Creditors and Contract Counterparties in the Gas and Power Industry"