Prepare for Bankruptcies Sparked by Oil Price Battle

Companies facing bankruptcy can still make smart moves
Creditors should consider asserting liens before it’s too late
Legal fees may be covered for some unsecured creditors

Oil prices took an historic nosedive Monday as Saudi Arabia and Russia announced plans that would flood a market already crippled by the coronavirus. How long this price war will continue is unclear but Brent and US crude have already lost half their value this year. Notably, the US energy sector saw a record number of bankruptcies filed last year and many expected that trend to continue into 2020. That grim projection seems all the more likely today, making the need for well-thought-out legal strategies critical for companies in the sector on either side of the debt.

There may be hope for some companies already teetering on the precipice. The Federal Reserve took steps Monday to keep short-term funding markets operating. Still, without much larger shifts many companies trying to fend off bankruptcy will
not succeed. That said, there are several smart plays you can make now that will enable you to weather a time period of distress. Those include analyzing current contracts and business terms to determine what should be renewed and what should be allowed to lapse; hiring a turnaround consultant to provide professionals that have experience managing distressed companies; and beginning a dialogue or negotiations with existing creditors for a potential out of court workout plan, if necessary.

On the flipside, unsecured creditors should also be taking action now to best position themselves should their customers and/or partners file for bankruptcy.

For example, now is the perfect time to review open contracts and unpaid amounts to assess whether you should use a lien claim to recover unpaid balances. Our team can help you make that decision by evaluating whether you should assert a lien claim to secure your debt under the applicable lien statutes. We can also help companies burdened by debt determine how best to shield collateral and property from lien claims.

It’s also important to note that once a company has filed for bankruptcy the court will establish an unsecured creditors committee. One advantage to a creditor that is chosen to sit on a creditors committee is that the legal fees of the creditors committee are paid by the bankruptcy estate, rather than by the individual creditors that are members. Womble Bond Dickinson has represented several unsecured creditor committees in the energy sector including Greenfield Energy Services, Inc. and Global Energy.

There are few wiser mantras in business than “Hope for the best, plan for the worst.” A thundering rebound of the market in the next week or so would certainly change the bankruptcy outlook, but by how much? We intend to keep a watchful eye on the matter and to ensure our energy sector clients are prepared.

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