



## Energy Client Alert

### Revenue Maximization and Risk Mitigation Are Vital in a Challenging Business Environment

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By Craig M. Regens

Industry participants face an unprecedented situation: a massive supply overhang and a demand shock are occurring simultaneously. On March 9th, [oil opened down 25%](#), eventually reaching \$27. The current West Texas Intermediate spot price is \$30.95. Many analysts predict that WTI will average in the low \$30s for 2020. A series of known problems, oversupply being the most critical, have driven a decline in price during 2020. What already looked to be a challenging March due to the combination of less access to new sources of financing and redeterminations of existing reserve-based loans has been compounded by new challenges, including the impact of the coronavirus, which will cause demand-side pressures, and the decisions by Russia and Saudi Arabia to no longer be bound by the production limits of OPEC+. In this environment, energy industry participants must proactively maximize revenue, mitigate counterparty risk, and in some instances, will benefit from a workout, restructuring, or reorganization.

Value preservation and mitigation of counterparty risk work hand in hand. The centerpiece is an aggressive strategy to obtain and quickly enforce lien rights. In this environment, it is especially critical to be first in time and first in right. All participants in the energy industry potentially have enforceable lien rights. For example, operators have lien rights to ensure the payment of JIBs. Non-operating working interest owners may have contractual lien rights that become enforceable when an operator fails to keep the contract area free and clear of vendors' liens. Similarly, vendors have statutory lien rights to ensure payment for services rendered and equipment provided. Relatedly, outside of bankruptcy, Oklahoma law impresses certain funds payable to and received by an operator with a trust character. GableGotwals has extensive experience advising industry participants concerning these issues and can assist with developing and implementing revenue maximization and risk mitigation strategies.

It has been said that bankruptcy "is the most dreaded word in the world of commerce."<sup>1</sup> In a market environment in which all industry participants will be impacted to some degree by bankruptcies, it is critical to make advance preparations to mitigate counterparty risks. For companies impacted by counterparty bankruptcies, GableGotwals can assist with aggressive

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<sup>1</sup> Charles Jordan Tabb, [The Law of Bankruptcy](#) (2<sup>nd</sup> ed.), at 1.

enforcement of lien rights and rights to payment of production revenues, as well as the defense against actions to avoid preferential transfers made to creditors in satisfaction of trade debts shortly before the bankruptcy case.

The same advance planning will be necessary for companies that can benefit from restructuring or reorganization. GableGotwals has extensive experience with [bankruptcy, workouts and creditor's rights](#). Currently, GableGotwals serves as co-counsel to White Star Petroleum Holdings, LLC and its affiliates in their chapter 11 liquidations. GableGotwals is also active in many significant bankruptcies filed in Oklahoma, Texas, and Delaware, representing exploration and production companies, midstream companies, secured lenders, and other interested parties. GableGotwals is "Highly Recommended" by *Benchmark Litigation* and *Chambers & Partners* ranks GableGotwals as a leading law firm in Energy & Natural Resources. In addition to leading energy, litigation, and transactional attorneys, the GableGotwals team includes:

- 2 Fellows of the American Bankruptcy College (only 7 attorneys in the State of Oklahoma have been inducted as Fellows);
- 7 attorneys selected as *Best Lawyers* in America for bankruptcy and/or creditor's rights; and
- a bankruptcy practice group with an energy industry-specific focus, the depth to achieve objectives quickly, and the experience and acumen to help clients thrive in a complex and challenging environment.



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