BRACEWELL &GIULIANI

BY EVAN D. FLASCHEN
AND CHELSEA DAL CORSO

- *basis-points.com*
- *bgllp.com/flaschen*
- *bgllp.com/dalcorso*

Do You Have the Energy? Low Oil Prices Fueling Energy Chapter 11 Filings

More than three dozen US energy industry companies (E&Ps) filed for chapter 11 this year, with three more – New Gulf Resources LLC, Magnum Hunter Resources Corp., and Cubic Energy Inc. – filing just this third week of December. According to BloombergBriefs.com, even before these most recent filings. energy sector filings accounted for 26% of all chapter 11 filings in 2015, which is the largest share of filings for any sector. Just when the industry thought oil prices could not go any lower, they have.

Other notable industry chapter 11s in 2015 include Energy & Exploration Partners, Escalera Resources, RAAM Global Energy, Miller Energy Resources, and Parallel Energy. From the oilfields of Alaska to the Marcellus Shale in Pennsylvania, and just about everywhere in between. Many of the filers are Texas based companies but, although approximately 45% of the chapter 11s have been commenced in Texas, Delaware remains the "big case venue of choice," accounting for close to 60% of the total debt in energy cases even though only 10% or so of the cases have busied the Amtrak rails between New York and Wilmington.

The larger E&Ps, who have enough leverage to withstand this drop in oil prices have capitalized on market conditions and are buying up smaller players, which may explain why, despite low oil prices, a significant share of M&A activity in 2015 was attributable to oil & gas mergers. Approximately 32% of these E&Ps have proposed or effectuated a sale of substantially all of their assets in "363 sales" (a provision of chapter 11 which permits the early sale of a business), and many others have indicated that they filed bankruptcy only after numerous unsuccessful attempts to sell their assets outside of a formal chapter 11 process.

And then there are the Canadian tar sands, yielding another six insolvency filings in 2015, with even Spain getting into the act when on December 15 the Spanish insolvency court opened proceedings for Abengoa, one of the world's largest renewable energy and engineering firms. Did we mention the Vantage Drilling Company liquidation proceedings in the Cayman Islands, to accompany the chapter 11 filings for Vantage's US subsidiaries? And then there is dry bulk shipping – who needs coal when oil is so cheap?
So industry Christmas stockings are overflowing with coal this year, bah humbug! Not so for restructuring professionals, of course – the famine of others is a feast for them. And "them" includes us, of course, given our energy and restructuring practices in Houston, New York, London and Dubai, but we take no pleasure in watching our clients sink in the oil muck like the dinosaurs at La Brea. But unlike the dinosaurs, the industry will return, just as it returned from prior cycles that were more volatile than an electric spark generator.

So when will this trend run out of gas and the power be turned back on? No time soon in our view, even if the price of oil does start to recover soon. E&P borrower loan facilities typically require updated reserves valuations twice a year, and with the latest round of revaluations in the Fall, more facilities have been breached, more restructuring companies are barely clinging on, and more secured lenders are faced with the prospect of becoming the "fortunate" owners of these assets in debt-for-equity conversions. Even the bellwether high-yield bond investment fund Third Avenue Focused Credit Fund sent a shock into the market when it suspended distributions from what was supposed to be a daily liquidity fund, due in large part to soured crude oil bets. But if you can't sell energy junk bonds, you can't provide liquidity. Et tu, the King of Value Investing?

There seems to be a consensus that the price of oil will rise again. Of course it will, *eventually*, but likely no time soon – even Jed Clampett has loaded up the truck and moved *out* of Beverly Hills. And one industry's nightmare is another industry's dream, as airline and cruise line profits have soared on the substantially lower cost of fuel and VLCC's (very large crude carriers) are carrying cheap oil from the Middle East to Asia as charter rates not seen since the record times of 2008. Mining and minerals, on the other hand, continue to dive faster than a Nautilus submarine as lower Chinese demand continues to cripple the industry.

Speaking of which, one is reminded of the supposed Chinese curse, "May you live in interesting times." But the attribution of that curse to China is as apocryphal as most sayings attributed to Yogi Berra, who did say, in fact, "I really didn't say everything I said." Still, these continue to be interesting times in the energy industry, so (switching to Bette Davis in *All About Eve*), "Fasten your seatbelts, it's going to be a bumpy night."