

UNUSUAL DYNAMICS OF UPSTREAM DISTRESS

Environmental Law Seminar
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WHAT'S NEW?

- **Spate of upstream bankruptcies continues**

- Market dynamic: Sustained low commodity prices precipitating upstream distress
 - Decommissioning is being accelerating at many sites
 - Unintended consequences:
 - » Sudden transfers of operational responsibility to predecessors
 - » Accelerated decommissioning
 - » Strain on sureties (and cost of bonding)
- Regulatory dynamic: Obama-led movement at BOEM and BSEE to strengthen financial assurance through Supplemental Bonding. President Trump pressed pause.
 - Michael Celata, BOEM GOM Regional Director – said in March 2017 that BOEM will continue to press offshore drillers to ensure taxpayers aren't left holding the bag, but BOEM will pursue a solution in closer conjunction with industry

WHAT'S NEXT?

- **Key Challenges**

- (1) Unanticipated transfers of operational responsibility
- (2) Discrepancy between financial assurance in place and decommissioning costs

- **What to Watch For**

- White House signals of support for offshore E&P
- How BK courts treat P&A liabilities:
 - Administrative expense priority
 - » *Midlantic* – BK abandonment rights vs. public health and safety
 - Key questions: (1) imminent and identifiable harm, (2) state public health and safety statute/reg violated, (3) statute/reg was “reasonably designed” to protect health/safety, and (4) preventing abandonment would not be so onerous as to disrupt BK proceedings
 - Addressed in *ATP* but never resolved – might be resolved in *Venoco* or *Shoreline*

KEY TAKEAWAYS

- **Predecessors** – federal law says BOEM/BSEE can pursue predecessors (current/prior record title owners) for fulfilling decomm obligations
 - Agency can pursue in any order – need not be *seriatim*
- *Midlantic* – case law is inconsistent on whether environmental cleanup expenses will be treated with administrative expense priority
 - Also unclear whether financial assurance programs will cause courts to distinguish decomm expenses from cleanup expenses
- **Key takeaway** – As Venoco and Shoreline cases unfold in BK courts, surety markets and regulators will respond
 - **Could affect future costs of financial assurance. States grappling with this too.**

THANK YOU!



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