Distressed Energy Acquisitions: Avoiding the Sinkhole of Successor Liability

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Introduction

Given the current economic and regulatory environment, many distressed energy assets are likely to be on the market in the near future. This presents great opportunities for the stronger players in the energy sector, but potential buyers need to be conscious of the risk that they will acquire liabilities as well as assets when they pursue these opportunities. They also need to be aware of the various options for structuring acquisitions to avoid acquiring unwanted liabilities.

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Energy Assets

- Power Generation Assets
- Power Transmission Assets
- Oil and Gas Properties
- Pipelines
- Refineries

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Liability Risks Associated with Acquisitions

1. Liens and Encumbrances; Title Issues
   - General Rule: Assets sold (other than inventory) remain subject to all liens and encumbrances. *See* UCC §§ 9-315, 9-320(a).
   - Foreclosing lien-holder sells assets free and clear of its lien and junior liens. *See* UCC § 9-617(a).
   - Sales free and clear of liens:
     - Bankruptcy.
     - Sales by a receiver or an assignee for the benefit of creditors ("ABC") under state law.

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Liability Risks Associated with Acquisitions

1. Liens and Encumbrances; Oil and Gas Properties
   - What are you buying?
     - Landowner interest– surface owner.
     - Leaseholder interest – lessee.
     - Mineral estate owner (vs. surface owner).
     - Working interest owner.
       - Operating working interest.
       - Non-operating working interest.
   - What is it subject to:
     - Lessor's/surface owners royalty interest.
     - Overriding royalty interest.
     - Net profits/revenue interest.
     - Interest in production payments.
     - Farmout agreements (farmee).

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Liability Risks Associated with Acquisitions

1. Liens and Encumbrances; Power Generation and Transmission Assets
   - Co-ownership interests.
     - Owner can only sell what it owns.
     - But there are tools in bankruptcy that can address or ameliorate the effects of these interests on transferability.

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Liability Risks Associated with Acquisitions (cont'd)

2. Liability Associated with Employees and Retirees; ERISA
   - Federal courts have held that purchasers of assets outside of bankruptcy are liable for a seller's delinquent ERISA contributions when there is a substantial continuity of operations between the buyer and the seller and the buyer had notice of the delinquent obligations. *Upholsterers' Int'l Union Pension Fund v. Artistic Furniture of Pontiac*, 920 F.2d 1323 (7th Cir.1990); *Teamsters Pension Trust Fund of Phila. & Vicinity v. Littlejohn*, 155 F.3d 206, 208–10 (3d Cir.1998); *Einhorn v. M.L. Ruberton Const. Co*., 632 F.3d 89, 99 (3d Cir. 2011); *Haw. Carpenters Trust Funds v. Waiola Carpenter Shop, Inc*., 823 F.2d 289 (9th Cir. 1987).
   - In bankruptcy, the case law is split. *See In re Ormet Corp.*, No. 13-10334, 2014 WL 3542133 (Bankr. D. Del. July 17, 2014); but see *Tsareff v. ManWeb Servs., Inc.*, No. 14-1618 (7th Cir. 2015).

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Liability Risks Associated with Acquisitions (cont'd)

2. Liability Associated with Employees and Retirees; Collective Bargaining Agreement Issues

   - Under the National Labor Relations Act, a purchaser is obligated to bargain with a union if it is a "successor employer," which means it has purchased "substantial assets of its predecessor" and continued, "without interruption or substantial change" the predecessor's business. *Fall River Dyeing & Finishing Corp. v. N.L.R.B.,* 482 U.S. 27, 43 (1987). A successor employer generally has an obligation to bargain with a union, but it can set its own initial terms on rehiring employees so long as it does not discriminate against union employees in rehiring. *Id.* at 40.
   - In bankruptcy, collective bargaining agreements must be rejected pursuant to Sections 1113 and 1114 of the Bankruptcy Code, which then determines successor's liability. Unless collective bargaining agreements have been rejected, a purchaser at a Section 363 sale may be a successor employer.

Liability Risks Associated with Acquisitions (cont'd)

2. Liability Associated with Employees and Retirees; Fair Labor Standards Act Claims

   - Federal courts have held that purchasers of assets outside of bankruptcy are liable for a seller's delinquent FLSA claims when there is a substantial continuity of operations between the buyer and the seller and the buyer had notice of the delinquent obligations. *Teed v. Thomas & Betts Power Solutions*, 711 F.3d 763, 765–67 (7th Cir.2013); *Steinbach v. Hubbard*, 51 F.3d 843, 845 (9th Cir.1995).
   - *See Teed v. Thomas & Betts*, 711 F.3d 763 (7th Cir. 2013) (suggesting that FLSA claims cannot be extinguished under section 363(f)).

Liability Risks Associated with Acquisitions (cont'd)

2. Liability Associated with Employees and Retirees; Welfare Benefits (e.g., Medical, Dental, Life Insurance, Disability, Etc.)
   - These liabilities are covered by ERISA. Purchasers of assets outside of bankruptcy are liable for seller's obligations when there is a substantial continuity of operations between the buyer and the seller and the buyer had notice of the delinquent obligations.
   - There are also industry-specific statutes.
     - Coal Act obligations: Coal Act requires companies to provide health care contributions for certain retired workers through current employer health plans and premiums to the UMWA 1992 Benefit Plan and the UMWA Combined Benefit Fund. The Fourth Circuit has held that assets can be sold free and clear of these obligations under section 363(f). *See In re Leckie Smokeless Coal Co.*, 99 F.3d 573 (4th Cir. 1996).

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Liability Risks Associated with Acquisitions (cont'd)

2. Liability Associated with Employees and Retirees; Employment Discrimination Claims
   - For claims under federal law, outside of bankruptcy, the same successor liability rule applies as for ERISA and FLSA. *See, EEOC v. G–K–G, Inc.*, 39 F.3d 740, 747–48 (7th Cir.1994); *Johns v. Harborage I, Ltd*., 664 N.W.2d 291, 299 (Minn. 2003).
   - For claims under state law, the result varies by state. There is no liability in Minnesota. *See* Minn. Stat. § 302A.661, subd. 4; *Johns*, 664 N.W.2d at 297. Under Utah law, the rule for general successor liability governs. *Decius v. Action Collection Serv., Inc.*, 2004 UT App 484, ¶ 8; *see also Tabor v. Metal Ware Corp.*, 2007 UT 71, ¶ 11.
   - *See In re TransWorld Airlines, Inc*., 322 F.3d 283, 292 (3d Cir. 2003) (holding that a sale of assets under Section 363 was free and clear of successor liability claims for employment and sex discrimination).

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Liability Risks Associated with Acquisitions (cont'd)

3. Regulatory and Energy-Industry Specific Issues; Regulatory Obligations (e.g., Obligations to Federal and State Regulatory Bodies)
   - Electricity Sector.
     - FERC/State PUC consents/filings (pre-approval and post-closing).
   - Oil and Gas Sector.
     - Mineral rights (federal leases; state approvals for private mineral rights).
     - Rights and obligations under "take-or-pay" contracts for crude oil, refined petroleum products, or natural gas.
     - Rights and obligations under "throughput and deficiency" agreements or other agreements for transportation of oil or gas.
     - For pipeline assets, federal or state regulatory limits on rates for common carrier lines.

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Liability Risks Associated with Acquisitions (cont'd)

3. Regulatory and Energy-Industry Specific Issues; Oil and Gas Property
   - Oil and gas properties are frequently divided into numerous different types of interests. A buyer will only acquire the interest of its seller, and that interest will likely be subject to other interests.
   - Bankruptcy may affect their interests
     - Is a working interest an "executory contract" or "unexpired lease," subject to assumption and assignment or rejection under Section 365 or is the working interest a different type of property interest that is not subject to Section 365? This question is important to answer prior to acquisition because executory contracts and unexpired leases must be assumed and assigned under Section 365 to transfer the interest. A general sale order transferring assets under Section 363 will not suffice.

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Liability Risks Associated with Acquisitions (cont'd)

3. Regulatory and Energy-Specific Issues; Oil and Gas Property
   - Bankruptcy may affect their interests (cont'd)
     - A working interest is subject to assumption or rejection under 365 if, under state law, it qualifies as a "lease." *Matter of Topco, Inc.*, 894 F.2d 727, 740 (5th Cir. 1990). In *Topco*, the Fifth Circuit stated: "Several [courts] have concluded that oil and gas leases considered to be freehold estates by the governing state law do not constitute 'unexpired leases' under the Bankruptcy Code and therefore Section 365 does not govern their assumption or rejection. . . . However, in states where oil and gas leases constitute leasehold interests rather than freehold interests, Section 365 does govern their disposition." *Id. See also In re Aurora Oil & Gas Corp.*, 439 B.R. 674, 677 (Bankr. W.D. Mich. 2010); *In re Clark Res., Inc.*, 68 B.R. 358, 358 (Bankr. N.D. Okla. 1986).
     - Most courts have held that a working interest does not qualify as an executory contract under the Countryman definition. *See*, *e.g.*, *In re Biron, Inc.*, 23 B.R. 241, 242 (Bankr. S.D. Ohio 1982); *In re Foothills Texas*, 476 B.R. at 153; *In re Clark Resources, Inc.*, 68 B.R. 358, 359-60 (Bankr. N. D. Okla. 1986); *K & D Energy v. KY USA Energy, Inc.* (*In re KY USA Energy, Inc.*), 444 B.R. 734, 737 (Bankr. W.D. Ky. 2011).

Liability Risks Associated with Acquisitions (cont'd)

3. Regulatory and Energy-Industry Specific Issues; Surety Bond Requirements
   - Purchases of energy assets will need to comply with numerous surety bond/insurance requirements. For example:
     - *E.g.*, 30 CFR § 256.52 - oil and gas properties.
     - Environmental bonds/insurance.
     - State regulatory requirements.

Liability Risks Associated with Acquisitions (cont'd)

4. Environmental Liability and Cleanup
   - The Comprehensive Environmental Response, Compensation and Liability Act (CERLCA or Superfund law) gives EPA broad powers to identify parties responsible for the release or threatened release of hazardous substances. The agency can seek to impose liability and require cleanup measures.
   - CERCLA liens can be imposed on an owner or operator of a facility where hazardous materials were disposed of (regardless of fault). CERCLA also allows for a maritime lien in the event the release or threatened release of hazardous substances from a vessel, and a "windfall" lien if a property owner benefitted from a cleanup and the government shows that there were unrecovered response costs that enhanced the fair market value of the property.

Liability Risks Associated with Acquisitions (cont'd)

4. Environmental Liability and Cleanup (cont'd)
   - A CERCLA lien can be obtained when the government incurs costs for corrective actions and provides notice of potential liability to the owner of the affected property. The lien attaches at the later of (i) the time corrective action costs are incurred, or (ii) the time the notice is provided.
   - A CERCLA lien is subordinate to existing perfected liens under state law. However, if the EPA files a notice of a CERCLA lien, the lien has priority over subsequent filers, judgment lien creditors who have not perfected their interests, and potential purchasers of the property.

Liability Risks Associated with Acquisitions (cont'd)

4. Environmental Liability and Cleanup (cont'd)
   - The issue of whether federal common law or state law governs successor liability under CERCLA is unsettled. CERCLA does not address the issue, the Supreme Court has not ruled on the question, and the federal courts of appeals are split.
   - If federal common law applies, the test is similar to the test for general liabilities described below.
   - The general rule that has developed in bankruptcy is that if the environmental problem creates a public health and safety issue, courts will bend over backwards when considering whether to approve a sale to make sure the liability is satisfied either through funds held back by the seller or assumption of liabilities by the buyer.

Liability Risks Associated with Acquisitions (cont'd)

4. Environmental Liability and Cleanup (cont'd)
   - Similar provisions are included in state statutes.
   - Plugging and abandonment liabilities. *See, e.g.,* Tex. Nat. Res. Code Ann. § 89.011g.

Liability Risks Associated with Acquisitions (cont'd)

5. General Liabilities

- The general law on successor liability varies from jurisdiction to jurisdiction. Under the traditional rule of successor non-liability, there are four exceptions:
  - the acquisition is accompanied by an agreement for successor to assume such liability;
  - the acquisition is a fraudulent conveyance to escape liability for the debtors of the predecessor;

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Liability Risks Associated with Acquisitions (cont'd)

5. General Liabilities (cont'd)

- the transaction constitutes a consolidation or merger with the predecessor, or
- the acquisition results in successor becoming a continuation of the predecessor.

See Niccum v. Hydra Tool Corp., 438 N.W.2d 96 (Minn. 1989); *Tabor v. Metal Ware Corp.*, 168 P.3d 814, 816 (Utah 2007).

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Liability Risks Associated with Acquisitions (cont'd)

5. General Liabilities (con't)
   - A continuation occurs when the following five elements are present:
     - transfer of corporate assets;
     - for less than adequate consideration;
     - to another corporation which continued the business operation of the transferor;
     - when both corporations had at least one common officer or director who was in fact instrumental in the transfer; and
     - the transfer rendered the transferor incapable of paying its creditors' claims because it was dissolved in either fact or law.

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Liability Risks Associated with Acquisitions (cont'd)

5. General Liabilities (con't)
   - A continuation under Utah law generally demands "a common identity of stock, directors, and stockholders and the existence of only one corporation at the completion of the transfer." *Decius v. Action Collection Service, Inc.*, 105 P.3d 956 (Utah App. 2004). This is a conservative approach to the continuation doctrine.
   - There is no de facto merger (i.e., continuation) doctrine in Minnesota. In 2006, the Minnesota Legislature abolished the common law doctrine of de facto merger. Minn. Stat. § 302A.661, subd. 4. Nearly identical language was also added to the statute governing successor liability for LLCs. *See* Minn. Stat. § 322B.77, subd. 4. The comments to the amendments emphasize that the new language was added to "confirm elimination of any common law exceptions [to successor liability], such as those employed under the rubrics of de facto merger or continuation of the transferor theories." *See id.*, Reporter's Notes 2006. Further, the additions clarify "that a purchaser of all or substantially all of a corporation's assets is not a de facto merger and that the buyer is not liable for the seller's obligations solely because the buyer is deemed to be a continuation of the seller." *Id.*

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Structuring Options for Addressing Successor Liability Risks

1. Entity Sales
   - Generally involves assumption of all of the entity's liabilities.
   - Can be alleviated with reps and warranties, indemnities (if there is a solvent seller), holdbacks, and insurance.
   - Not generally the best structure when acquiring distressed assets. If acquiring the entity has particular value, an acquisition under a Chapter 11 plan can address liability concerns.

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Structuring Options for Addressing Successor Liability Risks (cont'd)

2. Asset Sales
   - General rule – a buyer of assets does not assume the seller's liabilities unless it agrees to do so.
   - General exceptions described above.
   - Exceptions for specific types of liabilities described above.
   - An asset sale is generally a better option than an entity sale when acquiring distressed assets. Due diligence on the assets to be acquired becomes of paramount importance in a distressed asset acquisition.

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Structuring Options for Addressing Successor Liability Risks (cont'd)

3. Bankruptcy Sales
   - Section 363 sales and sales under plans of reorganization.
     - Section 363 sales are asset sales rather than entity sales (unless the asset being sold is the equity interest in a subsidiary). Plan sales can be either.
     - Free and clear of liens and encumbrances to the extent provided in the plan/orders.
     - Not subject to general successor liability rules.
     - Exceptions for specific types of liabilities discussed above.
     - Sales by a Chapter 7 trustee are governed by Section 363.
     - In some circumstances, sales under a plan of reorganization are preferable to Section 363 sales when purchasing distressed operating assets.

Structuring Options for Addressing Successor Liability Risks (cont'd)

4. Alternatives to Bankruptcy; Receiverships and ABCs
   - Sales free and clear in Minnesota.
     - *See* Minn Stat. § 576.46 subd. 1: The court may order that a general receiver's sale of receivership property is free and clear of all liens, except any lien for unpaid real estate taxes or assessments and liens arising under federal law, and may be free of the rights of redemption of the respondent if the rights of redemption are receivership property and the rights of redemption of the holders of any liens, regardless of whether the sale will generate proceeds sufficient to fully satisfy all liens on the property:

Structuring Options for Addressing Successor Liability Risks (cont'd)

4. Alternatives to Bankruptcy; Receiverships and ABCs (cont'd)
   - Sales Free and Clear in Minnesota
     - Exceptions:
       1) the property is (i) real property classified as agricultural land under section 273.13, subdivision 23, or the property is a homestead under section 510.01; and (ii) each of the owners of the property has not consented to the sale following the time of appointment; or
       2) any owner of the property or holder of a lien on the property serves and files a timely objection, and the court determines that the amount likely to be realized from the sale by the objecting person is less than the objecting person would realize within a reasonable time in the absence of this sale.

Structuring Options for Addressing Successor Liability Risks (cont'd)

4. Alternatives to Bankruptcy; Receiverships and ABCs (cont'd)
   - Sales Free and Clear in Utah
     - Utah courts may order a receiver to sell property free and clear of the interests of lienholders. *Chapman v. Schiller*, 95 Utah 514, 83 P.2d 249, 251 (1938). Utah receiverships are equity receiverships, with the terms of the receivership governed by the order appointing the receiver and establishing the receivership. Thus, the terms of the receivership order are critical.

Structuring Options for Addressing Successor Liability Risks (cont'd)

4. Alternatives to Bankruptcy; Receiverships and ABCs (cont'd)
   - The rights of state court receivers to sell property free and clear of liens and claims will differ from state to state. ABCs generally cannot sell free and clear of liens, although there are exceptions (e.g., Minnesota). State court receivers and ABCs generally cannot sell property free and clean of liens arising under federal law. *See* Minn. Stat. § 576.46 subd. 1. *See also Whelco Industrial, Ltd. v. United States*, 503 F.Supp 2d 906, 909 (N.D. Ohio 2007) (holding that federal common law, rather than Ohio law, applied to determine whether successor corporation that had acquired assets of predecessor corporation was liable for several federal tax liens filed by Internal Revenue Service (IRS) against those assets).

Transfers of Licenses, Contracts, Etc.

1. Federal and State Requirements for Entity Sales and Asset Transfers
   - Depending on the asset and buyer, FERC and/or the state regulatory Commission may need to approve the transfer of an entity or its assets.
   - Factors impacting prior-approval jurisdiction may include:
     - Federal/state jurisdiction over buyer and seller.
     - Regulatory approval may also be required for sales of assets, assignment of contracts, mortgaging of assets, issuances of evidence of indebtedness, corporate restructuring, and the like.
     - Potential waivers and exemptions that may apply to the seller, the buyer, and or the asset. For instance, sales of certain qualifying power facilities may not require prior approval from FERC.

Transfers of Licenses, Contracts, Etc. (cont'd)

2. Asset Sales
   - In a non-judicial asset sale, the transferability of a license or contract is subject to the terms of the license or contract and to applicable law.
   - Consents frequently must be obtained.
   - Exception for foreclosure sales if consents to collateral assignment obtained at the time of financing.

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Transfers of Licenses, Contracts, Etc. (cont'd)

3. Bankruptcy Sales
   - Section 365 of the Bankruptcy Code allows for the assumption and assignment of contracts or licenses that might not otherwise be transferable under the terms of the license or contract. A court order approving the sale can take the place of individual consents that might otherwise be necessary for the transfer of licenses and contracts. It is critical that the motion to sell assets be noticed to counterparties to all licenses or contracts that are intended to be transferred.
   - Licenses from governmental agencies present particular problems. In many cases, the consents required for the transfer of both state and federal licenses will not be eliminated by a Section 363 sale in bankruptcy. However, a sale under a confirmed plan of reorganization may allow some relief from certain license transfer requirements through preemption.

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Transfers of Licenses, Contracts, Etc. (cont'd)

4. Alternatives to Bankruptcy; Receiverships and ABCs
   - Power to transfer contracts in Minnesota.
     - Minn. Stat. § 516.45: For good cause, the court may authorize a receiver to assign and delegate an executory contract to a third party under the same circumstances and under the same conditions as the respondent was permitted to do so pursuant to the terms of the executory contract and applicable law immediately before the time of appointment.

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Regulatory Approvals

1. Approvals Required for Entity and Asset Sales Outside of Bankruptcy
   - General Rule: Buyer of assets or entities must obtain necessary regulatory approvals to operate acquired assets.
   - Approvals to transfer ownership of an entity or an asset are the same as those described above.

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Regulatory Approvals (cont'd)

2. Bankruptcy Pre-emption

- If regulatory approvals are an issue in the acquisition of distressed assets, an option to address a problem may be a Chapter 11 bankruptcy case. Sales made under plans of reorganization in Chapter 11 cases may provide opportunities for bankruptcy preemption of state law regulations, in particular. As such, the majority of the cases address preemption in confirmation of a Chapter 11 plan. *See In re Public Service Co. of New Hampshire*, 108 B.R. 854 (Bankr. N.H. 1999) (vacated as moot). The Court in *Pacific Gas and Electric Company v. California ex rel. California Dept. of Toxic Substances Control*, 350 F.3d 932 (9th Cir. 2003) stated that section 1123(a)(5) preempts applicable non-bankruptcy law only insofar as such law relates to a debtor's financial condition. However, other courts have disagreed with that finding. See *In re Federal-Mogul Global Inc.*, 385 B.R. 560, 576 (Bankr. Del. 2008) (holding that the Bankruptcy Code preempts any anti-assignment contractual provisions and applicable state law.) Even in a plan setting, the acquiring entity may be subject to regulatory oversight as the new operator/owner of the assets. This fact must also be considered in working out regulatory approval issues.

Regulatory Approvals (cont'd)

2. Bankruptcy Pre-emption (cont'd)

- Generally 363 sales are subject to regulatory approval; even to the extent the debtor-seller is not, the purchaser of the assets may be subject to regulatory approval. Pre-emption in a 363 sales context is more difficult than under a plan of reorganization. The 9th Circuit has suggested that "federal bankruptcy preemption is more likely (1) where a state statute facially or purposefully carves an exception out of the Bankruptcy Code, or (2) where a state statute is concerned with economic regulation rather than with protecting the public health and safety." *Baker & Drake, Inc. v. Public Serv. Comm. Of Nevada*, 35 F.3d 1348, 1353 (9th Cir. 1994) (holding that the Bankruptcy Code did not preempt Nevada's ban on taxi leasing). *See also In re P.K.R. Convalescent Centers, Inc.,* 189 B.R. 89 (Bankr. E.D. Va. 1995) (holding that the bankruptcy code preempted Virginia statute requiring repayment of reimbursable depreciation on sale or transfer of a nursing home).

Regulatory Approvals (cont'd)

3. Rates (11 U.S.C. Section 1129(a)(6))
   - The ability of a regulatory agency to set rates will not be preempted by bankruptcy law. Section 1129(a)(6) provides that a court may confirm a chapter 11 plan of reorganization only if, among other requirements, "[a]ny governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval." However, the regulatory agency setting rates may change from state to federal or vice versa as a result of the terms of the acquisition under a plan of reorganization.

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Regulatory Approvals (cont'd)

4. Contracts Subject to FERC Jurisdiction
   - Federal district courts have original jurisdiction over all bankruptcy cases, but these cases are generally referred to the bankruptcy courts. In cases where "resolution of the proceeding requires consideration of both [the Bankruptcy Code] and other laws of the United States regulating organizations or activities affecting interstate commerce," the district court is to withdraw the reference and decide the case itself. 18 U.S.C. § 157(d). *In re Mirant Corp.*, 378 F.3d 511, 517 (5th Cir. 2004); *In re Calpine Corp.*, 337 B.R. 27, 31 (S.D.N.Y. 2006).
   - The courts are split about a bankruptcy court's authority to reject an executory contract regulated by FERC. The Fifth Circuit in *In re Mirant Corp*. held that the ordinary understanding of rejection as a breach of contract applied in the context of a filed rate contract. 378 F.3d at 519. The District Court in *Calpine* concluded that the bankruptcy court's authority cannot be exercised so as to interfere with the jurisdiction of a federal agency acting in its regulatory capacity. 337 B.R. at 35.

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Representations, Warranties, Covenants and Indemnities; Due Diligence; Insurance Products

1. Representations, Warranties and Indemnities from an Insolvent Seller have Little Value
   - Except as conditions to closing.
   - Unless there is an escrow holdback and/or insurance behind them.
2. Due Diligence
   - Liabilities tied to the assets.
   - Ownership issues.
   - Assignability issues.

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Representations, Warranties, Covenants and Indemnities; Due Diligence; Insurance Products

3. Insurance Products
   - Transactional risk insurance comprises a suite of insurance products designed to facilitate mergers and acquisitions (M&A) and other sale transactions by protecting deal participants from risks that arise in due diligence or during transaction negotiations that may prevent a transaction from closing. The three principal transactional risk insurance products utilized by both private equity firms and corporate buyers and sellers are:
     - representations and warranties insurance;
     - tax indemnity insurance; and
     - contingent liability insurance.

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