



Financial Institutions: Managing Distressed Oil and Gas Assets

Dorsey's Oil and Gas Team has the tools to help banks and other lenders evaluate alternatives to address the emerging oil and gas crisis.

The COVID-19 pandemic, and the resulting drop in the price of oil, have brought unprecedented challenges to the oil and gas sector. Many independent oil and gas companies are heavily leveraged and in serious financial distress. This will present numerous issues for the distressed companies' lenders to consider and manage.

Unique Oil & Gas Challenges. Because of the diminished value of oil and gas assets under current market conditions, it is important for financial institutions to understand issues related to ownership and operation of these assets to protect against loss of the underlying leasehold and acreage positions. Analyzing options to maximize value until the market rebounds is crucial to the creditor's approach – whether through bankruptcy, foreclosure or receivership.

By their very nature, oil and gas properties are dynamic. Provisions in lease agreements that are unique to oil and gas (e.g., continuous production requirements) can trigger lease expirations – which are often undetected until divestiture of the assets occurred. (That problem surfaced frequently in the oil and gas downturn of the 1980s.) Leasehold obligations are one of the many traps for the unwary in managing oil and gas assets.

Dorsey's Dual-Industry Focus. The Dorsey team members have a long history of serving both lenders and borrowers in the oil and gas sector, and we understand the complex legal issues associated with ownership and operation of these assets as they apply in workout and insolvency situations. Our oil and gas experience, combined with the depth of our Banking & Financial Institutions Industry Group, gives us a well-rounded perspective in advising financial institutions navigating the challenges associated with this extraordinary situation. Dorsey's oil and gas sector experience goes beyond development and extraction and into ancillary and support service businesses such as transportation and other oil field services.

Office and Expertise Location. Dorsey's team works from offices in key energy and oil and gas markets. The result is that we are in the center of the action in terms of experience, with the ability to shift work to lower cost markets when appropriate to provide additional value. These include:

- **Dallas.** Our Texas team has members with decades of experience in oil and gas transactions of every kind including finance, bankruptcy and other distressed asset situations, and M&A.
- **Rocky Mountain Region.** Dorsey's Salt Lake City and Denver offices serve energy clients extensively on regulatory matters, finance and distressed asset situations. Our team advises clients with operations in the major oil and gas producing regions, including Colorado, New Mexico, North Dakota, Texas, Wyoming, Montana, Utah, and Alaska.
- **East and West Coast.** Our bankruptcy and workout teams located in Delaware, New York and California have essential experience in key bankruptcy courts located in those jurisdictions, as well other distressed asset transactions (such as ABCs).
- **Midwest.** Dorsey's Minneapolis office is home to dozens of creditor-side lending and bankruptcy/workout attorneys.

- **Alaska, Washington D.C. and Others.** Dorsey's Anchorage and Washington D.C. offices are additional hubs for our energy practice, along with related expertise in each of our 19 locations.

Financial Considerations

DISTRESSED OIL AND GAS ASSET FORECLOSURE AND DIVESTITURE

Our goal is to help our bank and other lender clients understand and evaluate the pitfalls associated with distress asset foreclosure, acquisition and divestiture. The Dorsey team assists financial institutions with a project management approach that includes:

- The acquisition (by foreclosure or otherwise) of producing and non-producing oil and gas assets for federal, state, private and Indian lands;
- The maintenance of the valuation of those acquired assets; and
- The eventual sale of those assets to new investor groups.

Our attorneys have helped financial institutions understand how state law and other logistical considerations affect the decision on whether to accept or reject certain contracts, including joint operating agreements and midstream agreements. We have counseled clients and represented banks when dealing with ongoing litigation and administrative proceedings before and during bankruptcy proceedings, both as an operator and non-operator.

BANKRUPTCY AND FINANCIAL RESTRUCTURING

Dorsey's bankruptcy and restructuring attorneys have significant experience representing lenders in resolving and collecting on defaulted loans for businesses involved in the exploration, production, and storage of energy. We advise clients with all aspects of local and national restructurings, bankruptcies, workouts and corporate reorganizations, both in and out of court.

Our work includes representing financial institutions, including as indenture trustees and as agents or participants in syndicated defaulted credits, in the following scenarios:

- Loan defaults and out-of-court workouts;
- Purchase or sale of assets in distressed situations;
- Bankruptcy cases, receivership proceedings, and assignments for the benefit of creditors;
- Foreclosure and collection issues ; and
- Bankruptcy-related litigation.

Ownership and Operating Considerations

OWNING AND OPERATING OIL AND GAS ASSETS

Dorsey's Oil and Gas Group has helped numerous oil and gas companies acquire, develop, operate, and divest oil and gas assets throughout the U.S. We have advised clients on issues associated with oil and gas leasing, joint operating agreements, farmout agreements, spacing and force pooling, communitization agreements, unit agreements, overriding royalties, production payments, and net profits interests. We understand how state and federal law and regulations affect the operation of such agreements.

We have represented oil and gas companies in a variety of oil and gas administrative proceedings and in litigation. Dorsey has helped companies understand and protect their rights in challenges brought by the federal government and private landowners.

OIL & GAS REGULATORY

Dorsey's long-standing experience working with the state and federal regulatory agencies that oversee the oil and gas sector has resulted in an in-depth understanding of the complex framework of laws that govern oil and gas. This knowledge base allows us to counsel financial institutions regarding a host of regulatory issues within the jurisdiction of state and federal administrative agencies. Our work includes assisting clients with spacing, force-pooling, unitization, communitization, seismic permitting, flaring, bonding-on for surface access, approval of secondary recovery projects, injection wells and oilfield waste processing and disposal facilities.

TITLE EXAMINATION AND DUE DILIGENCE

One of the biggest questions that financial institutions will likely have after acquiring a distressed asset is "What do we own?" Dorsey's team of title attorneys and paralegals have several decades of experience in title examination and the preparation of acquisition, drilling, division order, and financing opinions for federal, state, and Indian lands, allowing us to confirm title and resolve ownership disputes and title defects. We have conducted title due diligence to help several large oil and gas companies audit and quantify their ownership for complex chains of title across a variety of states.

PUBLIC LANDS

Dorsey attorneys understand the laws and regulations governing oil and gas activities on public lands and the unique property rights and operational requirements for development on public lands, including federal and state leasing, access rights, applications for permits to drill, unitization, bonding and payment of royalties.

Key Contacts



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Joseph has a broad base of bankruptcy, corporate restructuring and commercial litigation experience, having worked at national and international law firms for most of his career. During his 21+ years as a lawyer, he has been involved in some of the largest and most complex restructurings and litigation projects in the United States. He has taken lead roles in successfully representing debtors, banks, financing companies, distressed companies, committees, trustees, individuals, landlords, asset purchasers, retailers, and commercial creditors in all types of proceedings, including bankruptcy proceedings, federal and state lawsuits, arbitrations, and appeals.



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Mark advises clients on oil and gas development. He helps oil and gas clients acquire, develop, operate, and finance large-scale oil and gas projects on private, federal, state, and Indian lands. Mark has extensive experience representing clients on surface and mineral leasing, land transactions, federal, state, and local permitting, due diligence, and financing. He has more than a decade of experience coordinating project development with various federal, state, and local agencies. He also represents oil and gas clients in litigation involving operator and ownership disputes, access rights, condemnation, and lease and contract interpretation.



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Monica is a partner in Dorsey's Finance and Restructuring Group, and is a Co-Chair of the Bankruptcy Practice Group. Monica helps clients navigate complex bankruptcy proceedings. She regularly represents financial institutions, creditors, unsecured creditors' committees, and equipment lessors in local and national bankruptcy cases. Her practice also includes bankruptcy appellate representation.