# In The News

## Energy Industry Bankruptcies Will Accelerate in Coming Months: A Q&A With Munsch Hardt's John D. Cornwell

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*Texas Lawyer*

John D. Cornwell is a shareholder and member of the bankruptcy, insolvency and restructuring practice group at the law firm of Munsch Hardt Kopf & Harr.

He spoke recently with Texas Lawyer about the future of the energy industry, which has been rocked recently by marketplace volatility, a foreign price war, overleveraged debt, COVID-19 and a global shift to rebuilding lower carbon economies.

Bankruptcies will no doubt accelerate over the next few months, leaving many oil and gas executives desperate to stave off the inevitable, Cornwell predicts.

**Tell me about the current state of the energy industry nationally and in Texas, specifically?**

John D. Cornwell: It is widely known that the combination of COVID-19 restrictions and the Saudi-Russia oil price war has had a devastating impact on the O&G industry. Companies have shut down wells; mostly ceased new exploration activities; furloughed employees, instituted wide-scale reductions-in-force, and implemented hiring freezes; and generally suffer from liquidity problems. Texas, obviously having a significant presence in the O&G industry, has been impacted disproportionately compared to other states, particularly as it relates to off-shore and high-cost exploration plays.

**What does this mean for attorneys in the bankruptcy practice area?**

Bankruptcy filings are up, and prevailing opinion is that the trend is only beginning. O&G-related bankruptcies represent a sizeable portion of the Chapter 11 filings in Texas, but retail bankruptcies and service-industry bankruptcies are hot on their heels. Houston, and the Southern District of Texas in particular, has become one of the hottest destinations for complex Chapter 11 filings in the nation.

**First, what should energy companies do to survive this economy and what should bankruptcy attorneys be doing to position themselves to capitalize?**

Cash is truly king in today's uncertain world. While commodity prices have made significant recoveries, prices still remain below generally prevailing "break-even" thresholds. COVID-19 restrictions—both relating to energy consumption and company workforce variables (and, likely in the near future, requisite insurance and litigation costs from the economic fallout)—make liquidity forecasting for troubled, but surviving companies, very difficult. And while access to new capital may still exist, the terms of such capital are materially different today than three months ago. In a word, companies should spend wisely. They should also do their homework. It is important to consider the health of contractual counter-parties. Contract terms can be modified to provide protections against bankruptcy and "avoidance action" exposure, if your counter-party ultimately files for bankruptcy. Conversely, don't be afraid to do business with bankruptcy debtors. In many instances, postbankruptcy dealings with a reorganizing bankruptcy debtor is the most protected, certain transaction available because the Bankruptcy Code affords unique protections to persons willing to do/continue doing business with a debtor (e.g., administrative claim priority treatment; standing orders for payment of post-petition trade payables, etc.).

There is no single strategy for bankruptcy business development. Marketing success generally follows effort, particularly in this economy where demand outpaces supply. The stigma of bankruptcy is waning, but it still exists, including within the legal community and law firms. In addition to fostering relationships, assist your corporate and transactional colleagues in discussing the dreaded “B” word with their clients and contacts.

### What types of bankruptcies are likely to occur in the coming months?

In short, all types. With respect to larger Chapter 11 filings, the trend has been to file “prepackaged” or pre-negotiated Chapter 11 cases, which significantly truncates a bankruptcy proceeding. For obvious reasons, more and more prospective bankruptcy debtors often have less time and resources for such filings. Accordingly, we expect to see the gamut of filings—top-level financial restructurings, full-scale restructurings with limited unsecured creditor payouts, asset sale plans, and “Subchapter V” small business filings. Of course, particularly with growing unemployment concerns, individual Chapter 7 and Chapter 13 filings are expected to maintain an upward trajectory.

### What should we anticipate about the near- and long-term health of the energy industry?

This isn’t the energy industries first rodeo. Unquestionably, like with every significant commodity price drop, there will be fewer surviving business when prices recover. And, with increasing alternative energies and potential consumption reduction based on electronic commerce and general work-from-home comfort, the recovery could be slower than in the past. However, most experts remain very confident that the long-term health of the industry fares well. Near-term health is, frankly, too uncertain to prognosticate. Partial oil price recovery is encouraging, and a COVID-19 vaccine would be a game-changer. But the visible road appears quite bumpy.

### How do you see the energy industry, especially in Texas playing out?

Texans are energy experts, and we will remain a worldwide leader in the industry.

### What does this market do for renewables?

Renewable energy market growth has been trending up for several years in a very big way, and it will continue to grow for many, many years to come. It stands to reason that some combination of commodity pricing uncertainty, growing concerns for foreign dependency (whether valid or perceived), and political pressures/changes will speed the growth. However, in a macro sense, my guess is that renewables growth is not recognizably impacted by the current economic conditions.

The full article can also be accessed here.

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