

Eli Columbus in S&P Global Market Intelligence: 'Bankruptcy Courts Clash Over Letting Oil, Gas Firms Reject Midstream Contracts'

November 24, 2020 Eli Columbus

Haynes Boone Partner [Eli Columbus](#) talked with *S&P Global Market Intelligence* about how more oil and gas drillers may consider filing Chapter 11 bankruptcy in Delaware since the bankruptcy court there allowed two producers to reject contracts with midstream providers.

Below is an excerpt:

Midstream gathering and processing agreements are often written as real property interests, which are tied to the property and cannot be rejected in bankruptcy. The U.S. Bankruptcy Court for the District of Delaware, however, views some of those agreements as executory contracts that can be thrown out.

"Now I think it's very clear that you have a venue in Delaware that's going to be viewing these types of arrangements as executory contracts that can be rejected," Haynes Boone's Eli Columbus said in an interview. "The question is, are we going to start seeing some venue shopping from [exploration and production] companies who would like to get out of burdensome midstream agreements."

Judge Owens' opinion in favor of Southland Royalty also noted the "developing split between bankruptcy courts regarding the enforceability of gas gathering agreements in whole or in part as real property covenants."

CreditSights analyst Charles Johnston said in an interview that the Delaware court decisions "create more uncertainty in the space" for pipeline companies, while Haynes Boone's Columbus added that he thinks midstream firms "view in certain jurisdictions ... their contracts are at risk."

The debate among FERC and bankruptcy courts regarding interstate pipeline contracts will also play out during Gulfport Energy Corp.'s Chapter 11 proceedings. After Gulfport issued its going concern warning, the agency declared it would have concurrent jurisdiction with the bankruptcy court over transportation agreements with Rockies Express Pipeline LLC, Rover Pipeline LLC and several TC Energy Corp. units in the event of a bankruptcy filing. Since filing for Chapter 11 on Nov. 13, Gulfport has asked the U.S. Bankruptcy Court for the Southern District of Texas to reject those contracts and block FERC actions that might "usurp" the court's role.

For Columbus, the real surprise during this upstream bankruptcy cycle is how many midstream contract disputes have been settled by court decisions.

"What's been interesting to me is that they have all gone to litigation all the way to a ruling by the bankruptcy court rather than the parties reaching some type of consensual commercial resolution," he said.

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