

## Reviewing 2018 Oil and Gas DIP Financing Trends

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In 2018, approximately 40 companies in the oil and gas industry filed bankruptcy in the United States, including companies engaged in exploration and production, oilfield services, and midstream services. Of the companies that filed cases seeking to reorganize under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), many of them were able to fund their Chapter 11 cases using cash on hand, while providing protection to secured creditors with liens on such “cash collateral.” The significant number of cases funded with cash collateral suggests that many companies in the oil and gas industry that filed bankruptcy in 2018 were not facing liquidity crises at the time of filing.

Nonetheless, many companies in the oil and gas industry that filed bankruptcy in 2018 required debtor-in-possession (“DIP”) financing to fund their bankruptcy cases. A review of the DIP financing facilities approved in Chapter 11 bankruptcy cases in 2018 reveals certain notable trends in distressed oil and gas financing. Of the approximately 40 companies in the oil and gas industry that filed bankruptcy in 2018, 10 companies filed cases under Chapter 11 of the Bankruptcy Code with prepetition secured debt more than \$10 million and sought approval of DIP financing facilities. The following are notable features of the DIP financing facilities in these 10 cases.

### Roll-Up of Prepetition Obligations

Half of the 2018 DIP financing facilities included a “roll-up” (refinancing) of some or all of the debtor’s prepetition secured obligations. Three of the DIP financing facilities provided for a roll-up of the full amount of the obligations under a prepetition secured credit facility, and in each case, the prepetition obligations and the DIP facility were sizeable. In *Exco Resources, Inc.* (Case No. 18-30155, Bankr. S.D. Tex. Jan. 15, 2018), the DIP financing facility provided a new money loan of \$100,000,000 and a refinancing loan of \$150,000,000. Similarly, in *R.E. Gas Development, LLC* (Case No. 18-22032, Bankr. W.D. Pa. May 18, 2018), the DIP facility provided for a new money loan of \$100,000,000 and a refinancing loan of \$311,315,322. In *Gastar Exploration Inc.* (Case No. 18-36057, Bankr. S.D. Tex. Oct. 31, 2018), the DIP financing facility provided for a new money loan of \$100,000,000 and a refinancing loan of \$283,900,000.

Notably, certain companies who filed Chapter 11 in 2018 entered into DIP financing facilities that stopped short of a full roll-up of prepetition secured obligations but nonetheless provided for a roll-up of certain incremental amounts advanced as bridge financing to fund the debtor’s liquidity needs in the weeks leading up to the bankruptcy filing. In *Geokinetics Inc.* (Case No. 18-33410, Bankr. S.D. Tex. June 26, 2018), the DIP financing facility provided for the refinancing of up to \$2,166,000 in prepetition bridge financing, and in *Fairway Energy, LP* (Case No. 18-12684, Bankr. D. Del. Nov. 26, 2018), the DIP financing facility provided for the refinancing of \$1,375,000 of prepetition bridge financing.

### DIP Make Whole Premiums

While premiums charged to a borrower for early repayment of loans (known as “make whole” premiums) have long been a feature of non-distressed lending, make whole premiums customarily

have not been a feature of DIP financing facilities. In late 2018, Gstar Exploration Inc. sought approval of a DIP financing facility that included a make whole premium that was payable in the event the DIP facility was repaid prior to its maturity, other than repayment with proceeds of an asset sale or pursuant to an acceptable plan of reorganization. The debtor estimated the make whole premium would be approximately \$50.5 million. In another case, although it did not contain a make whole premium for early repayment of the DIP, R.E. Gas Development, LLC's DIP financing facility provided for a roll-up of a prepetition make whole premium of up to \$50 million.

## DIP Financing Facility Fees

Many of the 2018 DIP financing facilities required payment of certain “upfront fees” or “commitment fees” calculated as a percentage of the DIP lenders' commitments, with the percentages ranging from 1 percent to 3.75 percent of the aggregate amount loaned. The following DIP financing facilities featured such fees: *Exco Resources, Inc.* (Case No. 18-30155, Bankr. S.D. Tex. Jan. 15, 2018); *Lockwood Holdings, Inc.* (Case No. 18-30197, Bankr. S.D. Tex. Jan. 18, 2018); *Fieldwood Energy LLC* (Case No. 18-30648, Bankr. S.D. Tex. Feb. 15, 2018); *R.E. Gas Development, LLC* (Case No. 18-22032, Bankr. W.D. Pa. May 18, 2018); *Nichols Brothers, Inc.* (Case No. 18-11123, Bankr. N.D. Okla. June 1, 2018); *Geokinetics Inc.* (Case No. 18-33410, Bankr. S.D. Tex. June 26, 2018); *Fairway Energy, LP* (Case No. 18-12684, Bankr. D. Del. Nov. 26, 2018); *Gstar Exploration Inc.* (Case No. 18-36057, Bankr. S.D. Tex. Oct. 31, 2018).

In addition, two of the DIP financing facilities provided for payment of an “exit fee,” which was payable upon repayment of the DIP loan. Unlike make whole premiums, such fees typically are payable upon repayment of the loan, regardless of the timing of such repayment. In *Lockwood Holdings, Inc.*, the exit fee was \$750,000, which equated to 3.75 percent of the \$20 million DIP facility. In *Geokinetics Inc.*, the DIP facility provided for payment of an undisclosed exit fee, which was payable upon termination or repayment of the DIP facility.

## Other Notable Features

In addition to the standard adequate protection provided to prepetition secured creditors, including replacement liens on collateral and “superpriority” administrative expense claims, many of the 2018 DIP financing facilities provided for adequate protection payments to certain prepetition secured creditors, typically in the form of payment of monthly interest at the non-default rate. These cases included *Exco Resources, Inc.*, *Fieldwood Energy LLC*, *R.E. Gas Development, LLC*, and *Fairway Energy, LP*. In *Nichols Brothers, Inc.*, the DIP facility provided for payment of a flat amount of \$75,000 per month as adequate protection for the prepetition secured creditors. In addition, in *Gstar Exploration Inc.*, the DIP facility provided for the accrual of postpetition interest at the non-default rate under the prepetition secured credit facility but did not require cash payment of interest during the bankruptcy case.

Lastly, almost all of the DIP financing facilities in 2018 included milestones by which the debtor had to meet certain obligations related to either the sale of its assets or the confirmation of a plan of reorganization. Half of the DIP financing facilities required the debtor to consummate a sale within a certain period after the petition date (ranging from 40 days to 150 days): *Exco Resources, Inc.*, *Nichols Brothers, Inc.*, *Geokinetics Inc.*, *Red Fork (USA) Investments, Inc.* (Case No. 18-70116, Bankr. W.D. Tex. Aug. 7, 2018), *Fairway Energy, LP*. Three of the DIP facilities included milestones for the confirmation of a plan of reorganization, ranging from 60 days after the Petition Date to 180 days after entry of the Final Order approving the DIP facility: *Lockwood Holdings, Inc.*, *Fieldwood Energy LLC*, *Gstar Exploration Inc.* The DIP facility for R.E. Gas Development included milestones

for both a sale process and confirmation of a plan of reorganization, requiring the debtor to either consummate a sale or confirm a plan of reorganization within 170 days after the Petition Date.