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SMU Power Plays Conference: Drilling into Geothermal Energy Applications

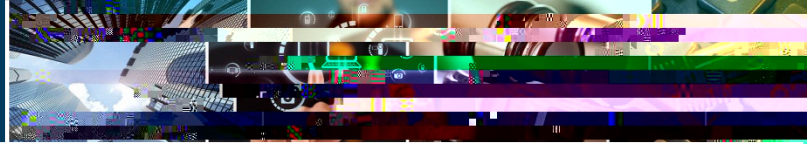
Purchasing Oil and Gas Assets in Bankruptcy

Presented by:

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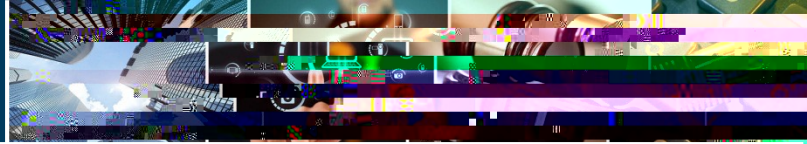


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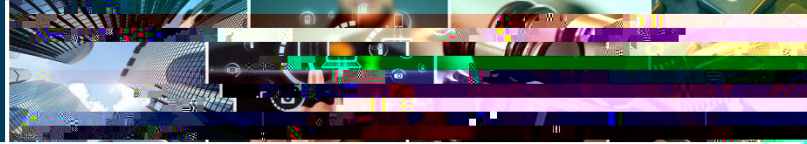
Presenter

- † Camisha L. Simmons is the managing member and founder of Simmons Legal PLLC, a certified woman-



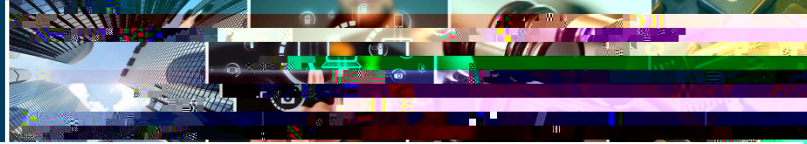
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Introduction

- † Current State of the Oil and Gas Market
 - ⑩ 100s of bankruptcies in last few years
 - ✦ Moderate recent price increases
 - ✦



Examples of Assets Saleable in Bankruptcy

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Section 363 Sale Process

⑩ Section 363 of the Bankruptcy Code

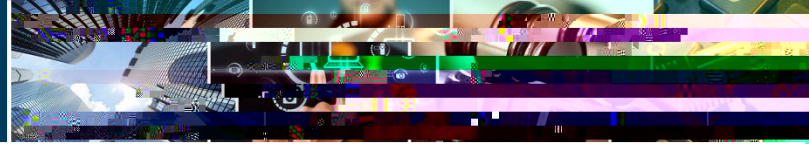
- ✦ Authorizes debtor or trustee to sell some or substantially all of the company's or individual's assets *outside the ordinary course of business*
- ✦ Note: Outside of ordinary course of business: debtor in bankruptcy may conduct business as usual, so, for instance, an E&P company's selling of oil and gas through regular operations would not need court approval under section 363
- ✦ Assets sold free and clear of liens, claims and encumbrances, with a few exceptions
 - Ownership obligations continue
 - Plugging and abandonment, site restoration and environmental liability attached to assets continue
 - Generally, obtain assignment of contracts free of non-assignability clauses



Section 363 Sale Process

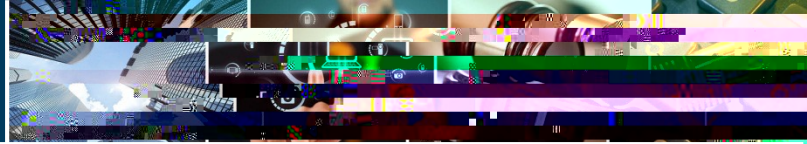
⑩ Section 363 Sales are by Motion

- ✦ Debtor or trustee files a motion to obtain court approval of the sale and procedure for obtaining bids from prospective purchasers on the assets being sold
- ✦ Creditors and other parties in interest must receive notice of the sale and an opportunity to request a hearing on the motion
- ✦ In determining whether to approve an asset sale, the court will defer to the debtor's or trustee's business judgment and, generally, will approve the sale if (i) all Bankruptcy Code section 363 provisions are followed; (ii) the winning bid is considered fair; and (iii) the sale is in the best interests of the bankruptcy estate and creditors of the bankruptcy estate
- ✦ Obtaining sale approval by motion is faster than the rigorous plan approval process



Sales Under a Chapter 11 Plan

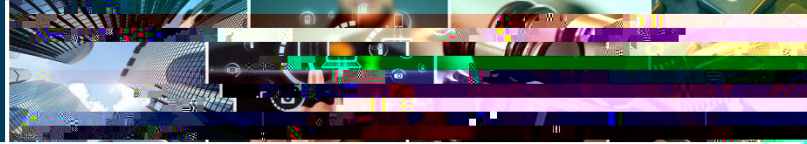
- ⑩ If the debtor is selling substantially all of its assets, some courts will not allow the debtor to sell the assets under a section 363 motion process and instead will require disposal of the assets under a chapter 11 plan pursuant to sections 1123 and 1129 of the Bankruptcy Code
- ⑩ Plan process more time consuming and rigorous than section 363 motion process
 - ✦ May shorten process by negotiating the sale and plan before the bankruptcy filing
- ⑩ If the debtor is selling substantially all of its assets in bankruptcy, the debtor will, most likely, still need to conduct a marketing and bidding process to obtain the highest and best bid



Sales Under a Chapter 11 Plan

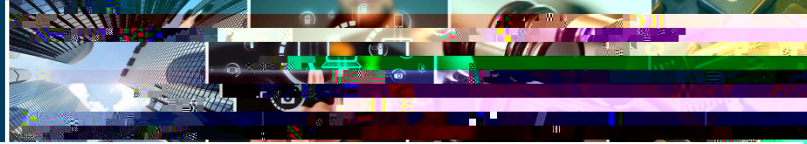
- ⑩ Differs from section 363 sales process: plan must comply with all requirements of section 1129 of the Bankruptcy Code and creditors may vote to accept or reject the plan





Special Considerations

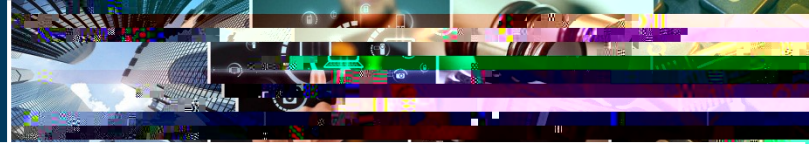
- ⑩ Purchaser should ensure that protective provisions are included in the Court's sale order, purchase agreement and other transaction documents to minimize successor liability risk
- ⑩ Consider having debtor share or cover any known environmental liability costs
- ⑩ For geothermal operations, determine if you need to purchase oil and gas lease interest
- ⑩ Will you need a separate lease for geothermal lease operations given oil and gas lease may not cover exploration and drilling for geothermal energy purposes?
- ⑩ Do you need to purchase intellectual property related to technologies used in exploration and production operations?



Special Considerations

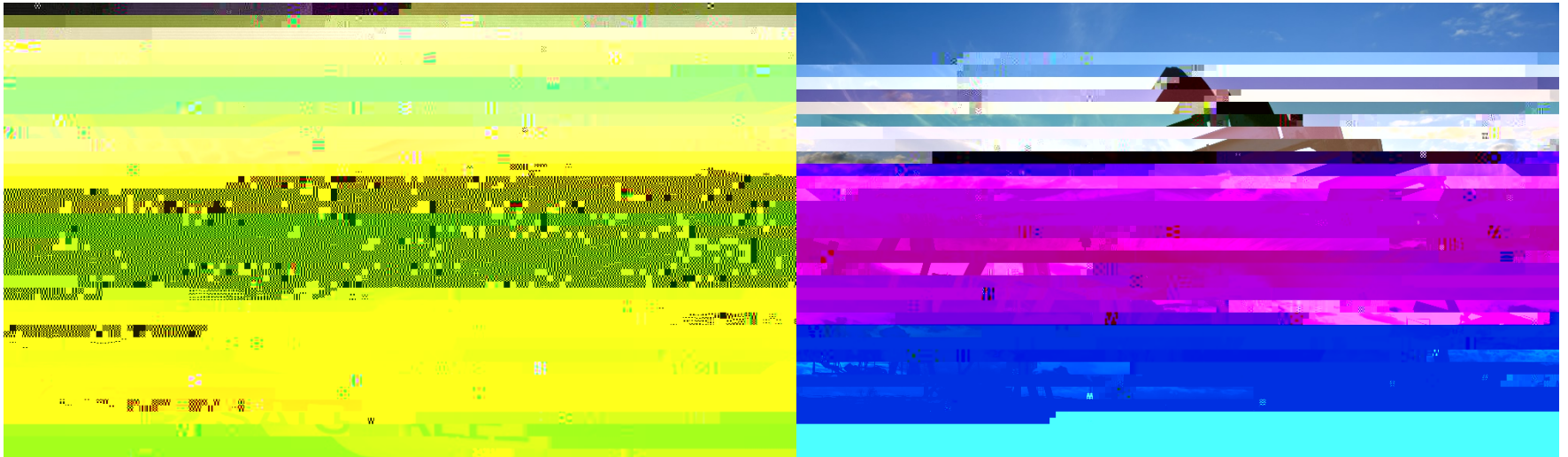
- ⑩ Section 365 of the Bankruptcy Code allows a debtor to assume and assign or reject executory contracts and unexpired leases
 - ✦ A legal analysis of the nature of an oil and gas lease and other agreements must be conducted to determine if assumption and assignment is required
 - ✦ If assumption and assignment is required, debtor must cure existing defaults under the agreement and provide the counterparty adequate assurance of future performance

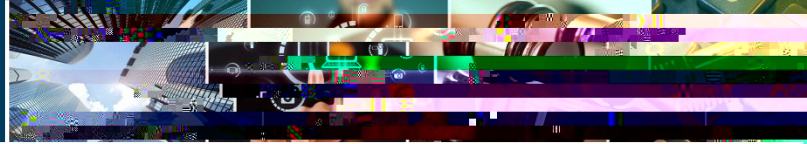
 - ⑩ May face issues with regulatory bodies during sale process
 - ✦ Consent to assignment of leases may be required
 - ✦ Federal government may intervene if federal land and leases are involved
 - ✦ Government agencies responsible for environmental liabilities may intervene
 - ✦ Intervention of other state and federal regulatory bodies, such as Texas Railroad Commission
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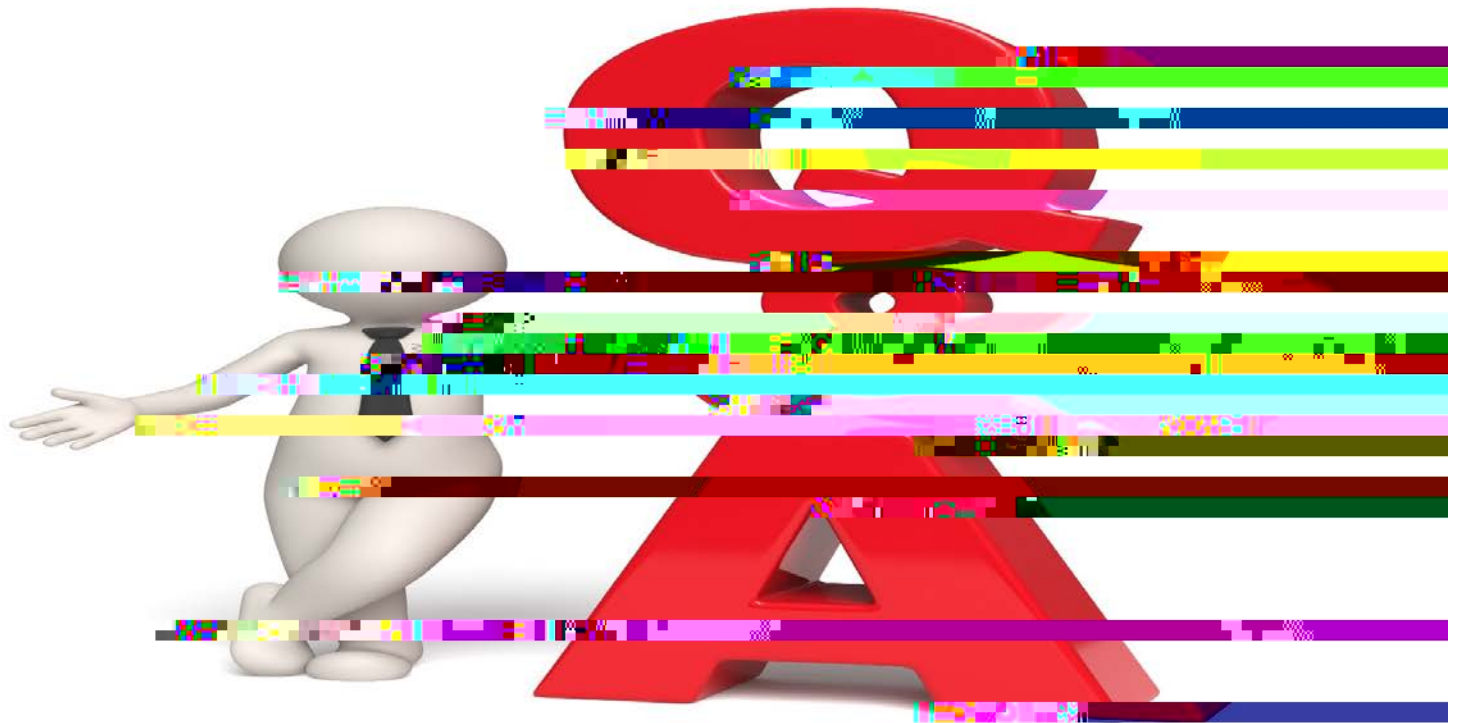
How to Find Purchase Opportunities

- † Make friends with investment bankers and financial advisors that assist distressed oil and gas companies, such as Houston based Simmons & Company International (acquired by Piper Jaffray & Co.)
- † Subscribe to a newsletter service that provides links to bankruptcy news articles and lists of recent bankruptcy filings, such as The Daily Bankruptcy News service





Questions?



Contact Me



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