

Covenants Running With the Land: What's All the Uproar About *Sabine*?

Fifth Circuit Bankruptcy Bench & Bar Conference
Oil and Gas — Hot Issues and Recent Cases
February 25, 2016

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Covenants in Bankruptcy

- Covenants running with the land survive rejection
- Determined in accordance with state law
- Leading Fifth Circuit bankruptcy case *In re Energytec, Inc.*, 739 F.3d 215 (5th Cir. 2013)

Requirements for Covenant to Run With the Land (Texas)

- Privity of estate between parties when covenant made
- Touch and concerns land
- Relates to a thing in existence or binds assignees
- Intended by parties to be a covenant running with the land
- Successors-in-interest have notice

“Touch and Concern”

- Affects:
 - nature
 - quality
 - value, or
 - mode of enjoyment

302 F.3d 343 (5th Cir. Tex. 2002)

Sabine

- Sabine seeks to reject gathering agreement with Nordheim
- Sabine asserts lack of privity and does not “touch and concern” land
- Nordheim argues language of agreement intending to make a covenant running with the land *and* recordation in real property records
- Judge Chapman inclined to hold it is rejectable because gathering relates to production (*i.e.*, personal property) rather than the minerals (*i.e.*, a real property interest)



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