Not-So-Endless Post-Confirmation Jurisdiction: Lessons from Recent Decisions

Annual NCBJ Conference

Sponsored by the Litigation Subcommittee of the Business Bankruptcy Committee of the ABA Business Law Section

October 7–10, 2026

Elizabeth L. Gunn, U.S. Bankruptcy Judge, District of Columbia

- Hon. Elizabeth L. Gunn was appointed as a bankruptcy judge for the District of Columbia on September 4, 2020. In 2017, she was recognized by the ABI as a member of its inaugural class of 40 Under 40. Judge Gunn serves as an Associate Editor for the American Bankruptcy Law Journal and is a Coordinating and Associate Editor of the ABI Law Review. Judge Gunn sits on the boards of the Federal Bar Association Bankruptcy Section, International Women's Insolvency and Restructuring Confederation, ABA National Conference of Federal Trial Judges, the Chesapeake Chapter of the Turnaround Management Association, and is the host of the popular ABA Business Law Section Podcast "Bad Boys of Bankruptcy."

Craig T. Goldblatt, U.S. Bankruptcy Judge, District of Delaware

- Hon. Craig T. Goldblatt is a judge on the United States Bankruptcy Court for the District of Delaware, where he has served since his appointment in April 2021. Prior to his appointment, Judge Goldblatt was a bankruptcy litigator in the Washington, D.C., office of WilmerHale, where his practice primarily involved the representation of financial institutions and other commercial creditors in complex bankruptcy litigation and appeals. Judge Goldblatt is a Conferee in the National Bankruptcy Conference and a fellow in the American College of Bankruptcy. He has also been active in the Business Bankruptcy Committee of the American Bar Association's Business Law Section.

Dennis L. Jenkins, Willkie Farr & Gallagher LLP

- Dennis Jenkins is a partner in Willkie's Restructuring Department. He represents debtors, creditors' committees, ad hoc bondholder groups, individual creditors, and other interested parties in major domestic and international corporate and debt restructurings, exchanges, distressed mergers and acquisitions, and bankruptcy cases. Dennis also has extensive experience in debt finance, counterparty risk, distressed corporate transactions, derivatives, securities transactions, and other domestic and international financial transactions. He has been named to the 2025 and 2026 Lawdragon 500 Leading Global Bankruptcy & Restructuring Lawyers, a guide to the top restructuring practitioners worldwide.

John E. Lucian, Blank Rome LLP

- John Lucian is a Partner in Blank Rome’s Finance, Restructuring and Bankruptcy practice group who represents a wide range of secured and unsecured creditor-side clients in bankruptcy cases, receiverships, workouts, and restructurings. He leads the firm’s bankruptcy litigation practice and regularly appears in bankruptcy courts nationwide, handling disputes involving DIP financing and cash collateral, contested sale and confirmation proceedings, and post-confirmation trust litigation (including D&O, lender liability, and fraudulent transfer matters). He also litigates financial services and commercial disputes in federal and state courts, and previously served as a trial attorney with the U.S. Department of Justice’s Office of the United States Trustee.

Matthew E. Kaslow, Blank Rome LLP — Program/Materials Coordinator

- Matthew E. Kaslow concentrates his practice on corporate finance, restructuring, and bankruptcy matters, and related litigation for Blank Rome. He represents secured and unsecured creditors, creditors' committees, liquidating trustees, and chapter 11 debtors. He also represents borrowers, banks, and other institutional lenders in a wide range of financing transactions. Prior to joining Blank Rome, Matt served as a law clerk to the Honorable Ashely M. Chan of the U.S. Bankruptcy Court of the Eastern District of Pennsylvania. Matt is a Vice Chair of the Litigation Subcommittee of the Business Bankruptcy Committee of the ABA Business Law Section. Matt also served four years on the Executive Committee for the Eastern District of Pennsylvania Bankruptcy Conference, most recently as Chair for the 2025–2026 year.

Bankruptcy Court Jurisdiction: Core Matters

- Bankruptcy courts have subject-matter jurisdiction to hear matters by referral from the district court under 28 U.S.C. §§ 1334 and 157(a).

- Under section 157, bankruptcy courts have jurisdiction over "core" matters and "non-core" matters.

- "Core" matters are (1) cases under title 11, (2) proceedings arising under title 11, and (3) proceedings arising in a case under title 11.

- Non-exhaustive examples of core matters are set forth in 28 U.S.C. § 157(b)(2), including matters concerning the administration of the estate; the claims administration process; financing matters; turnover matters; avoidance actions; the discharge; lien determinations; the plan confirmation process; and the sale, use, or lease of estate property.

Bankruptcy Court Jurisdiction: Non-Core Matters

- Matters within a bankruptcy court's "non-core" jurisdiction are proceedings "related to" a case under title 11.

- Under 28 U.S.C. § 157(c), bankruptcy judges may submit proposed findings of fact and conclusions of law on "related to" matters to the district court—or the district court, with the consent of the parties, may refer "related to" matters to the bankruptcy court to enter final orders and judgments.

- Before confirmation of a chapter 11 plan, the test for "related to" jurisdiction is less stringent: could the proceeding's outcome conceivably have any effect on the estate? Thus, for example, bankruptcy courts do not have jurisdiction to decide disputes solely between third parties that will not affect the estate.

Bankruptcy Court Jurisdiction: Post-Confirmation

- After confirmation of a chapter 11 plan, there is no longer a bankruptcy estate that can be affected—thus, the "conceivable effects" test cannot be applied literally—and the test for "related to" jurisdiction becomes more stringent.

- Although bankruptcy courts may be allowed to "retain" jurisdiction over certain matters post-confirmation, parties cannot create or expand bankruptcy jurisdiction by a chapter 11 plan or agreement. The scope of bankruptcy court jurisdiction is established by statute (title 28).

- Examples of post-confirmation matters potentially within (or which parties may dispute are within) a bankruptcy court's "related to" jurisdiction include disputes concerning:

    - The interpretation and enforcement of the bankruptcy court's orders;

    - Disputes arising under post-confirmation litigation or settlement trusts; and

    - Post-confirmation tort or contract claims.

Bankruptcy Court Jurisdiction: The Close Nexus Test

- Several circuits have adopted the "close nexus" test—articulated by the Third Circuit in *Binder v. Price Waterhouse & Co., LLP (In re Resorts International, Inc.)*, 372 F.3d 154 (3d Cir. 2004)—for determining whether a matter falls within a bankruptcy court's post-confirmation jurisdiction.

- Under the *Resorts* close nexus test, bankruptcy courts have post-confirmation jurisdiction over matters that "affect the ***interpretation, implementation, consummation, execution, or administration*** of the confirmed plan" or otherwise implicate an "***integral aspect*** of the bankruptcy process." (Emphasis added.)

- The fundamental purpose that *Resorts* addressed was to ensure that bankruptcy court jurisdiction "be confined within appropriate limits and . . . not extend indefinitely, particularly after the confirmation of a plan and the closing of a case."

Nu Ride Inc. v. Certain Underwriters at Lloyd's, London (In re Nu Ride Inc.), No. 23-10831, 2025 WL 1600566 (Bankr. D. Del. June 5, 2025) (Walrath, J.)

- In 2021, securities lawsuits were filed by shareholders against the Debtors, and former directors and officers of the Debtors. The SEC and DOJ also commenced investigations into the Debtors.

- The Debtors filed chapter 11 in March 2023 and confirmed a plan of reorganization in March 2024.

- The Reorganized Debtor sought coverage from Certain Underwriters at Lloyd's, London ("Defendants") for the Debtors' and the Reorganized Debtor's defense costs in connection with the securities lawsuits and investigations under a prepetition D&O policy. Defendants denied coverage, citing a policy exception.

- In October 2024, the Reorganized Debtor sued Defendants for declaratory judgment that Defendants were obligated under the policy to cover the defense costs.

Nu Ride: The Reorganized Debtor's Arguments

1. The coverage action had a close nexus to the estate and creditors:

    a. Recoveries under the Plan were premised, in large part, on recoveries under the policies;

    b. The plan limited recoveries on account of any indemnification obligations of the Reorganized Debtor (i.e., to its Directors and Officers) to available insurance;

    c. The plan obligated claim holders to exhaust remedies with respect to applicable insurance policies before their claims are paid by the estate;

    d. The promise of insurance recoveries induced certain parties to settle during plan negotiations, led to the withdrawal of certain claims against the estate, and provided a path to confirmation;

    e. The preservation of insurance was a condition precedent to the plan's effectiveness; and

    f. Claims to dispute the denial of coverage were Retained Causes of Action.

2. The bankruptcy court expressly retained jurisdiction over the coverage dispute.

Nu Ride: Relevant Plan and Confirmation Order Provisions

- **Confirmation Order ¶ 101:** General retention of jurisdiction over "all matters arising from or related to" the plan, the chapter 11 cases, and section 1142 of the Bankruptcy Code.

- **Plan Art. XII.10, .27:** Court retains jurisdiction to hear "any rights, Claims or Causes of Action," including those "identified on the Schedule of Retained Causes of Action," including adversary proceedings relating to any Retained Cause of Action.

- **Plan Art. I.A.160 (definition):** "Retained Causes of Action" include "any Cause of Action based in whole or in part upon any and all insurance contracts[or] insurance policies" to which any Debtor has rights.

- **Schedule of Retained Causes of Action:** Expressly reserved all Causes of Action based on "insurance contracts, insurance policies . . . and similar agreements . . . regardless of whether such contract or policy is specifically identified in the Plan," or any supplements or amendments thereto, "including, Causes of Action against current or former . . . Underwriters . . . relating to coverage . . . or any other matters."

Nu Ride: Defendants' Arguments

1. The coverage dispute was not a core matter—or a "related to" matter because it was not an "essential feature" and therefore had no close nexus:

   a. Creditors did not consider its effects when voting,

   b. The litigation trust agreement did not mention the dispute,

   c. The plan did not require that the action be asserted,

   d. The plan only assumed the policy for the benefit of the Reorganized Debtor, not creditors, and

   e. The disclosure statement warned creditors that Defendants denied coverage.

2. The bankruptcy court did not retain jurisdiction because the plan did not specifically describe the causes of action asserted in the complaint.

Nu Ride: The Holding

- The plan did retain the causes of action, but the court did not have "related to" jurisdiction under the close nexus test. Mere retention did not establish that the claims were a "lynchpin" of the plan:
    - ***First***, just because recoveries would fund additional distributions to creditors did not mean they affected the plan's interpretation, implementation, consummation, execution, or administration.
    - ***Second***, many other insurance-related matters were also retained and other Retained Causes of Action were described in "much greater detail," including adversary names and claim descriptions.
    - ***Third***, among Retained Causes of Action the plan described "generally" rather than "specifically," insurance claims were only one of eight categories.
- Although the bankruptcy court stated it would not have had jurisdiction "even if this lawsuit was explicitly described in the Plan and Disclosure Statement," it later stated, "[i]f this lawsuit were so crucial to the Debtors' Plan, it would have been given a more prominent place and description in the Plan and Disclosure Statement."

Nu Ride: Implications and Key Takeaways

1. The *Nu Ride* decision reinforces a strict approach to post-confirmation "related to" jurisdiction. The decision signals that bankruptcy courts (at least in Delaware) will look beyond plan language to the substance and centrality of a claim—asking not, "did the plan retain the claim," but "how essential is the claim to the plan?"

2. Did *Nu Ride* limit the import of the statement in *Resorts* that, "if there is jurisdiction, we will give effect to retention of jurisdiction provisions"? Or did it show the limits of a retention provision?

3. Would it have helped if the claims were defined as assets specifically intended to be distributed to creditors? Should it have been sufficient that the plan would have specifically distributed a portion of the coverage proceeds to creditors in Class 10? Or did Defendants sufficiently distinguish *In re LGI, Inc.* and *AstroPower*?

4. Should estate professionals view *Nu Ride* as a cautionary tale, or are there other ways to potentially distinguish the decision?

Nu Ride: Implications and Key Takeaways

5. If certain estate causes of action are key sources of distributions under a plan and it is important that the bankruptcy court retain jurisdiction over those claims, how can estate professionals draft around *Nu Ride's* outcome?

    a. Specifically (not generally or categorically) identify the claims in the disclosure statement, the plan's jurisdiction retention provision, and the schedule of retained causes of action.

    b. Provide as much detail regarding the claims as possible, e.g., the parties, the facts and circumstances giving rise to the claims, how the claims contributed to the filing of the chapter 11 case, etc.

    c. Do not wait until drafting the disclosure statement to apprise the bankruptcy court and creditors of these claims. If possible, discuss the claims in the first day declaration and other papers and at related hearings.

    d. The plan should not merely preserve the claims, but require that they will be prosecuted after confirmation and tie the proceeds directly to a distribution mechanism to specific classes of creditors.

    e. Create a record in the disclosure statement and at the hearings to approve the disclosure statement and confirm the plan showing that creditors considered the treatment of the claims and the distribution of their proceeds is essential.

Carnero G&P, L.L.C. v. SN EF Maverick, L.L.C. (In re Sanchez Energy Corp.), 159 F.4th 309 (5th Cir. 2025) (Jones, J.)

A

Debtors and Parties W and X

Debtors seek to assume Contract A but need price concessions, and Parties W and X claim prepetition unpaid amounts. The parties agree to settle the cure claim and assume the contract on amended terms. Parties Y and Z believe the amendments breach Contract B.

B

Debtors and Parties Y and Z

Bankruptcy Court Jurisdiction: The Fifth Circuit's *GenOn* Test

- The Fifth Circuit has articulated a test similar to (but more limited than) the Third Circuit's "close nexus" test:
    - Whereas the close nexus test for "related to" jurisdiction asks whether a matter "affect[s] the ***interpretation, implementation, consummation, execution, or administration*** of the confirmed plan" (emphasis added) . . .
    - . . . the Fifth Circuit asks only whether the matter "pertain[s] to the ***implementation or execution***" of the plan (emphasis added).
- The Fifth Circuit's post-confirmation test was recently applied in *Carnero G&P, L.L.C. v. SN EF Maverick, L.L.C. (In re Sanchez Energy Corp.)*, 159 F.4th 309 (5th Cir. 2025) (Jones, J.).

Bankruptcy Court Jurisdiction: The Fifth Circuit's *GenOn* Test

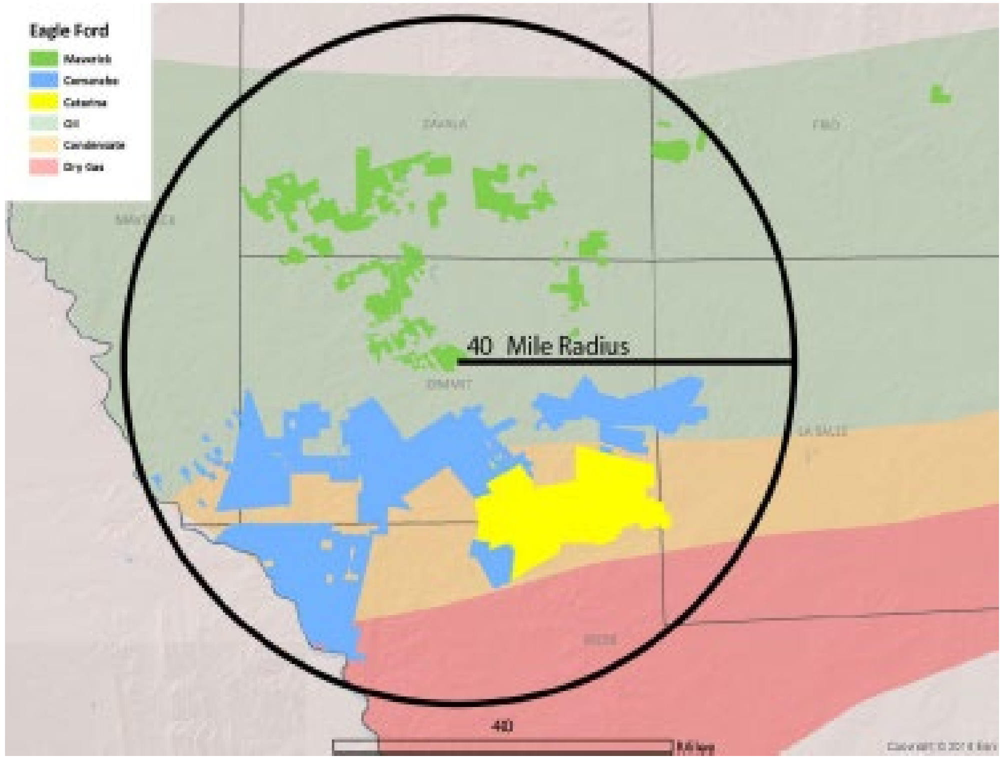
***Sanchez Energy Corp.*, 159 F.4th at 317–18:**

In general, "related-to" jurisdiction includes "any litigation" that "could alter, positively or negatively, the debtor's rights, liabilities, options, or freedom of action or could influence the administration of the bankrupt estate." *Collins v. Sidharthan (In re KSRP, Ltd.)*, 809 F.3d 263, 266 (5th Cir. 2015) (quotation omitted). . . . The scope of a bankruptcy court's related-to jurisdiction narrows, however, after a reorganization plan is confirmed, and the reorganized debtor is re-vested with its property and operates outside of bankruptcy court superintendence. *GenOn*, 42 F.4th at 534. As this court's seminal case observed, "bankruptcy court jurisdiction does not last forever." *In re Craig's Stores*, 266 F.3d at 389.

Sanchez Energy: The Company and Its Filing

- In 2019, Debtors Sanchez Energy, SN EF Maverick, and their affiliates filed chapter 11.

- The Debtors comprised an independent exploration and production company with approximately 472,000 gross leaseholder acres in the Texas Eagle Ford Shale.



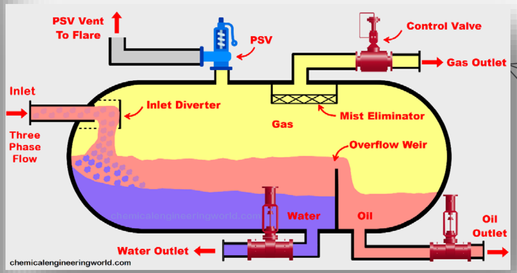
Sanchez Energy: The Business and Maverick Operatorship

Wellheads

Existing Commitments

Gathering,
Processing,
Transportation, and
Marketing

Ownership Working Interests/Royalty



Oil

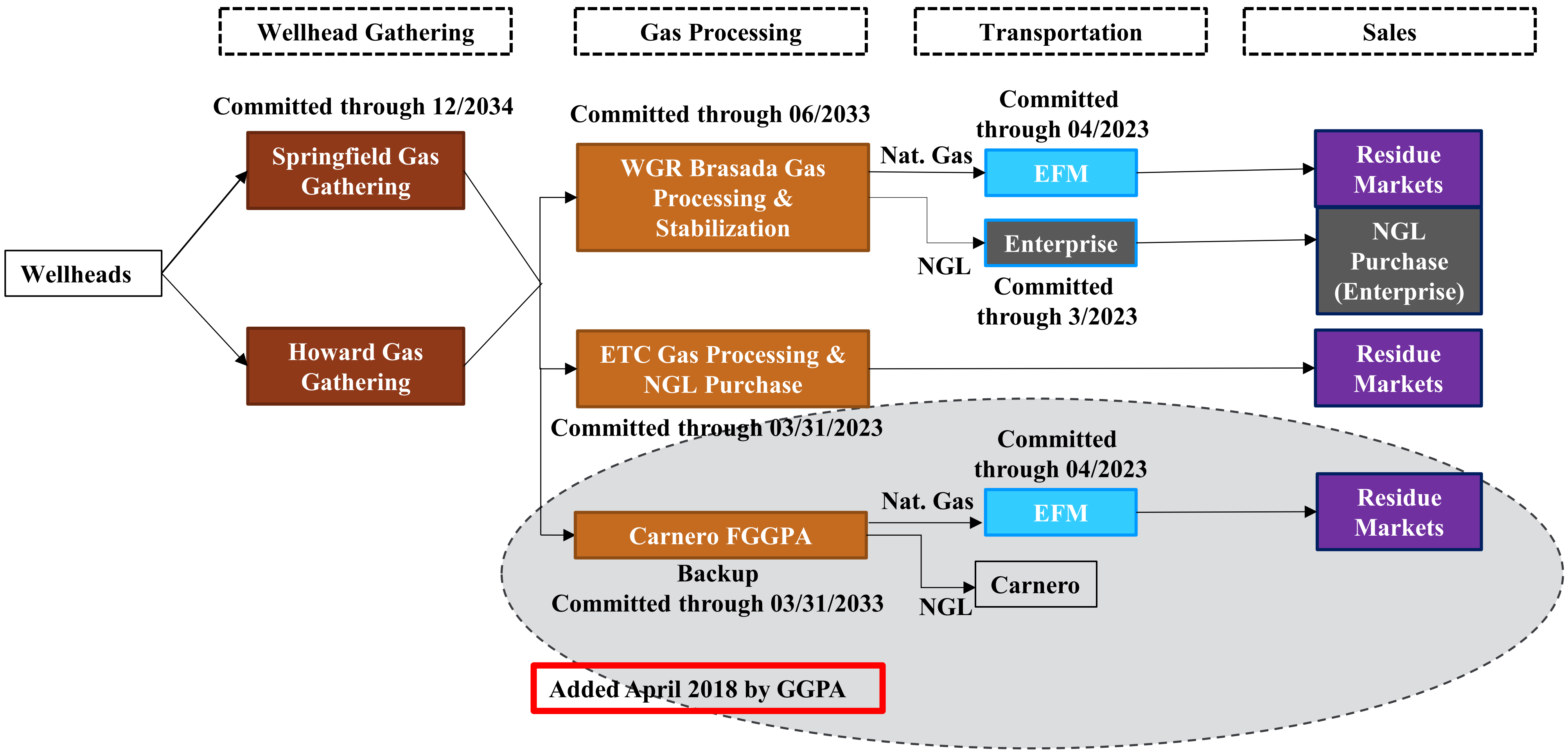
Gas

Condensate

Revenues $$$

Admin, Operating, Investment Costs?

Sanchez Energy: Comanche Gas Midstream with GGPA in Place (2018)



Sanchez Energy: "Unorthodox" COVID Plan/Confirm. Order (April 30, 2020)

- Reorganized debtors could assume, amend, or reject executory contracts and unexpired leases *after* the Effective Date, each "deemed effective as of the Effective Date."
- Assumed "Executory Contracts" defined to include "all modifications, amendments, supplements, restatements or other agreements that in any manner affect such Executory Contracts or Unexpired Leases related thereto," and modifications, amendments, supplements, restatements or other agreements "shall not be deemed to alter the[ir] prepetition nature."
- Vesting occurred only upon assumption, and assumption deemed a full release of all Claims or defaults, subject to satisfaction of Cure Claims.
- Confirmation Order deemed an assumption/rejection approval order.
- Two-month delay before Effective Date—Carnero Rejection Settlement Plan.
- The counterparties to the Existing Commitments (the "Oxy Plaintiffs") commenced adversary proceedings (collectively, the "Oxy Adversary") objecting to the rejection of their commitments.

Sanchez Energy: The Midstream Restructuring Process

- Mesquite (the Reorganized Debtor) terminated the Carnero settlement on June 24, 2021, and began negotiating with Oxy Plaintiffs.

- Carnero filed action in Texas state court on July 31, 2021. Mesquite removed, and Carnero sought remand in October 2021.

- At a status conference in October 2021, Mesquite announced that it was close to a settlement of the Oxy Adversary and a hearing was scheduled to consider it on December 8 (later moved to December 21).

- At a hearing on the motion to remand on December 7, 2021, the court indicated it was likely to deny motion, but Carnero was given until December 10 to amend its complaint, with a hearing to be held jointly on its motion and the settlement on December 21.

- Carnero dismissed/withdrew its complaint, and Maverick entered into a **Master Settlement Agreement** (“MSA”).

- December 2021—bankruptcy court “approval.”

Sanchez Energy: The MSA — Maintaining Same Flow w/Improved Economics

- The MSA contained:
  - 971 pages
  - 17-plus different parties (3 Reorganized Debtors + 1 Acquired Entity)
  - 21 Exhibits
  - 18 Assumed Agreements (7 with amendments)
  - 6 Rejected Agreements
  - 1 Terminated Agreement
  - 6 "Third-Party" Agreements
  - $51.8 million in Agreed "Cure" Payments
  - $161 million Allowed Unsecured Claims

MSA INTEGRATION CLAUSE

10.11. ***Prior Negotiations; Entire Agreement***. This Agreement, including all Exhibits (except as otherwise provided in this Agreement with respect to such Exhibit after the Effective Date), constitutes the entire agreement and understanding of the Parties and supersedes all other prior negotiations, agreements, or understandings, in each case with respect to the subject matter hereof.

Sanchez Energy: Second State Court Filing & Removal

April 2020 – November 2025

Filing *Hearing* *Decision/Order*

April 30, 2020 — DECISION / ORDER
Plan Confirmation—June 30, 2020, Effective Date

Jan 21, 2022 — FILING
Second Carnero Action filed in Harris County State Court

Feb 28, 2022 — FILING
Defendants remove case to U.S. Bankruptcy Court (S.D. Tex.)

May 23, 2022 — HEARING
Bankruptcy court hears/denies Motion to Remand

Oct 5, 2022 — HEARING
Bankruptcy court hears Motion for Judgment on the Pleadings

Feb 2, 2023 — DECISION / ORDER
Bankruptcy court enters JUDGMENT for Defendants

Feb 22, 2024 — DECISION / ORDER
District Court AFFIRMS bankruptcy court's rulings

Nov 13, 2025 — DECISION / ORDER
Fifth Circuit REVERSES and REMANDS to state court

Sanchez Energy: Carnero's "State Law" Complaint

- **11 Claims:** Amendments or changes included in the MSA and its suite of attached agreements comprised "schemes" that breached the GGPA.

- **3 Claims:** Working interest partners breached the GGPA by their participation in the MSA and its suite of agreements

- **1 Claim:** Breach of implied duty to cooperate

- **1 Claim:** Equitable relief from the plan

Sanchez Energy: Framing the Issues

- Whether the bankruptcy court's exercise of post-confirmation "related-to" jurisdiction under 28 U.S.C. § 1334(b) was authorized—which turned on two subsidiary questions:

- **Issue I:** Whether the MSA's Midstream Restructuring Agreement embodies contracts that were properly treated as "Executory Contracts" under the Plan.

  Held - The MSA and Midstream Restructuring Agreement are **not** "Executory Contracts" under the Plan. The bankruptcy court therefore lacked "related-to" jurisdiction.

- **Issue II:** Whether Carnero was barred by the Plan or its litigation strategy from challenging the MSA and Midstream Restructuring Agreement.

  Held - Carnero was **not** barred by the Plan or its litigation strategy from raising its state law claims in state court.

Sanchez Energy: What the Basic Logic Reveals

- ***Major Premise:*** Post-confirmation "related-to" jurisdiction exists only where the dispute pertains to the Plan's implementation or execution.

- ***Minor Premise:*** The bankruptcy court's jurisdiction here depends on whether the MSA and Midstream Restructuring Agreement are "Executory Contracts" under the Plan.

- ***Conclusion:*** If those agreements are not Executory Contracts under the Plan, the dispute does not pertain to the Plan's implementation—and no jurisdiction exists.

Sanchez Energy: The Reasoning

1. Temporal fiction theory—hinges on MSA and Midstream Restructuring Agreement qualifying as "Executory Contracts" under the Plan.

2. The MSA did not exist until pre-confirmation, involved non-debtor parties, and represented material revision of pre-existing relationships. The "in any manner affect" clause in Article V.F was limited.

3. Because the MSA was not an Executory Contract, it was never "assumed" under the Plan.

4. Carnero never agreed to be bound by future post-confirmation agreements it could not foresee.

5. There is a difference between a plan that *enshrines* a specific transaction (like the settlement term sheet in *GenOn*, whose frustration would prevent plan completion) and a plan that merely *authorizes* the reorganized debtor to transact generally.

6. Because the MSA was not enshrined in the Plan, the dispute did not pertain to the Plan's "implementation or execution," and *Craig's Stores* required remand to state court.

Sanchez Energy: Conclusion — Linkage and Drawing Lines

Oliver Wendell Holmes:

"When he has discovered that a difference is a difference of degree, that distinguished extremes have between them a penumbra in which one gradually shades into the other, a [novice] thinks to puzzle you by asking where you are going to draw the line, and an advocate of more experience will show the arbitrariness of the line proposed by putting cases very near to it on one side or the other. But the theory of the law is that such lines exist, because the theory of the law as to any possible conduct is that it is either lawful or unlawful. As that difference has no gradation about it, when applied to shades of conduct that are very near each other it has an arbitrary look. We like to disguise the arbitrariness, we like to save ourselves the trouble of nice and doubtful discriminations."

- Oliver Wendell Holmes, *Law in Science and Science in Law*, 12 Harv. L. Rev. 443, 457 (1898–1899).

Mountain Meadow Mushroom Farms, Inc. v. Smallhold, Inc. (In re Smallhold, Inc.), 675 B.R. 313 (Bankr. D. Del. 2025) (Goldblatt, J.)

- In February 2024, the Debtor (a specialty mushroom farming company) filed a petition under chapter 11, subchapter V of the Bankruptcy Code.
- During the case, but prior to confirmation, Mountain Meadow (a mushroom supplier) entered into a six-year contract to supply mushrooms to the Debtor.
- In August 2024, the Debtor confirmed a plan of reorganization, under which the Reorganized Debtor succeeded to the Debtor's rights and obligations under the Mountain Meadow contract.
- In October 2024, the Debtor allegedly stopped placing orders for the mushrooms it agreed to purchase under the contract.
- In December 2024, Mountain Meadow sued the Debtor, its parent, and its CEO ("Defendants") in California state court for breach of contract and related claims.

Smallhold: Removal to the Bankruptcy Court

- In January 2025, the Debtor and other Defendants removed the state court action to the bankruptcy court, asserting that the bankruptcy court had “related to” and “arising under” jurisdiction.

- Mountain Meadow moved to remand, arguing that the bankruptcy court lacked subject-matter jurisdiction over its purely state law claims.

- During oral argument, Mountain Meadow stated that it would only pursue its claims that arose after the effective date of the Debtor’s plan.

- The bankruptcy court separated Mountain Meadow’s claims into the following groups: (1) breach of contract claims against the Debtor, (2) fraudulent inducement claims against the Debtor, and (3) claims against third parties.

Smallhold: The Court's Holdings

- **Breach of Contract Claims:** The bankruptcy court distinguished *Mallinckrodt's* holding that claims for breach of a prepetition contract are prepetition claims:
  - Mountain Meadow's contract was executory as of the plan effective date (the *Mallinckrodt* contract was not executory as of the petition date).
  - Thus, Mountain Meadow's breach of contract claims arose after the plan effective date against the Reorganized Debtor and could not affect the estate. The bankruptcy court therefore remanded the claims for lack of subject-matter jurisdiction.
- **Fraudulent Inducement Claims:** The bankruptcy court held Mountain Meadow's claims against the Debtor for fraudulent inducement would be entitled to administrative priority if valid and therefore were within its jurisdiction under the conceivable effects test.
- **Third Party Claims:** The bankruptcy court held that it lacked jurisdiction, rejecting Defendants' attempt to use the plan's third-party release and injunction to establish the claims "arise under" the plan because they require the court to interpret and enforce the plan.

Smallhold: Implications and Key Takeaways

1. Because a class of impaired creditors voted against the Debtor's subchapter V plan, the Debtor was not entitled to a discharge until it made all plan payments due within the first three years. How, if at all, should bankruptcy courts consider the possibility that claims may threaten a reorganized debtor's ability to make plan payments when determining whether to exercise post-confirmation jurisdiction?

2. How should bankruptcy courts weigh the fact that under a plan the reorganized debtor succeeds to contracts the debtor entered into during the case when determining whether to exercise post-confirmation jurisdiction?

3. Would the Debtor's parent and CEO have had a better argument for "related to" jurisdiction over the claims against them if they had filed an action for declaratory judgment that the plan released and enjoined those claims, rather than arguing their affirmative defenses based on the release and injunction supported "arising under" jurisdiction?

Smallhold: Non-Consensual Subchapter V Plans

- The bankruptcy court noted, with respect to non-consensual plans confirmed under section 1186, the estate includes property "that the debtor acquires after the date of the commencement of the case but before the case is closed, dismissed, or converted . . . whichever occurs first."

- The Debtor argued this supported post-confirmation, related-to jurisdiction, citing *In re Chesney*, No. 22-40109, 2023 WL 8855242 (Bankr. W.D.N.C. Dec. 21, 2023).

- The bankruptcy court observed that the Debtor's argument mirrors the debate about the nature of chapter 13 estates, and that the answer in both contexts could be the same given presumptive statutory revesting under sections 1141(b) and 1327(b).

- However, the bankruptcy court concluded that "the confirmation order in this case makes clear that upon the effective date, pursuant to [section] 1141, all property of the estate vested in the reorganized debtor," thus Debtor's arguments were largely rhetorical.

Smallhold: Bonus Implications and Key Takeaways

1. If the Debtor's estate had not revested upon confirmation under its plan, should the bankruptcy court have had jurisdiction over any claims against the Reorganized Debtor? Over the course of 3- to 5-year plans, does that implicate concerns regarding "unending" jurisdiction?

2. Does it make sense for greater jurisdiction to exist in the non-consensual context than vice versa? In non-consensual subchapter V plans, would creditors sometimes prefer extended post-confirmation jurisdiction to retain the ability to seek relief from the bankruptcy court?

3. The bankruptcy court distinguished authorities from other jurisdictions holding that property of the estate does not revest in subchapter V until case closure, dismissal, or conversion. Assuming *arguendo* the bankruptcy court still would have had jurisdiction over the contract claims under the conceivable effects test if Delaware followed the same approach, would there be an argument to similarly eschew narrowing post-confirmation jurisdiction in <u>liquidating</u> chapter 11 cases?

4. Plan or confirmation order revesting (or non-revesting) terms can control outcomes. Practitioners should draft these provisions deliberately and with jurisdictional consequences in mind.

Questions & Answers