

Bankruptcy in Texas: From the Alamo to the Texas Two-Step and Beyond

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Texas History

1541-1901: THE ROAD TO BANKRUPTCY PRACTICE IN TEXAS

1541

Coronado explores Texas.

1600s-1800s

Comanches form Empire of the Summer Moon.

1700s

San Antonio Missions built.

1821

Stephen F. Austin comes to Texas.

1821-1836

Immigrants arrive; primarily from the United States.

1836

Texas Revolution. Republic of Texas created.

1845

Texas enters the Union by Treaty.

1901

Spindletop Oil Discovery.



1541: Coronado Explores Texas

- Francisco Vázquez de Coronado explores Texas looking for the mythical Seven Cities of Gold.
- He found no gold, but he observed bison, vast plains, and Native Americans.
- He left Texas with no gold but left behind many horses.
- Coronado criss-crossed Permian Basin in West Texas.



1600s–1850s: Empire of the Summer Moon



- Comanches with Spanish horses form Empire of Summer Moon from Texas to Canadian border.
- Sole Native American tribe not conquered by the Spanish.



1720 – Mission San Jose y San Miguel de Aguayo

- First mission established in 1720.
- Other San Antonio missions quickly followed, including the Alamo.
- Alamo established in 1724.



1821: The Arrival of Stephen F. Austin to Texas and Immigration

- 1821 – Stephen F. Austin secures real estate pact with Mexican government providing for colonization of 1,200 families into Texas.
- He was an *empresario* and land speculator.
- Immigrants from the United States arrive; many to avoid creditors in the United States, leaving a note saying GTT on their door.
- Popular song among immigrants was Green Grow the Lilacs leading to Spanish population to refer to the new arrivals as gringos.

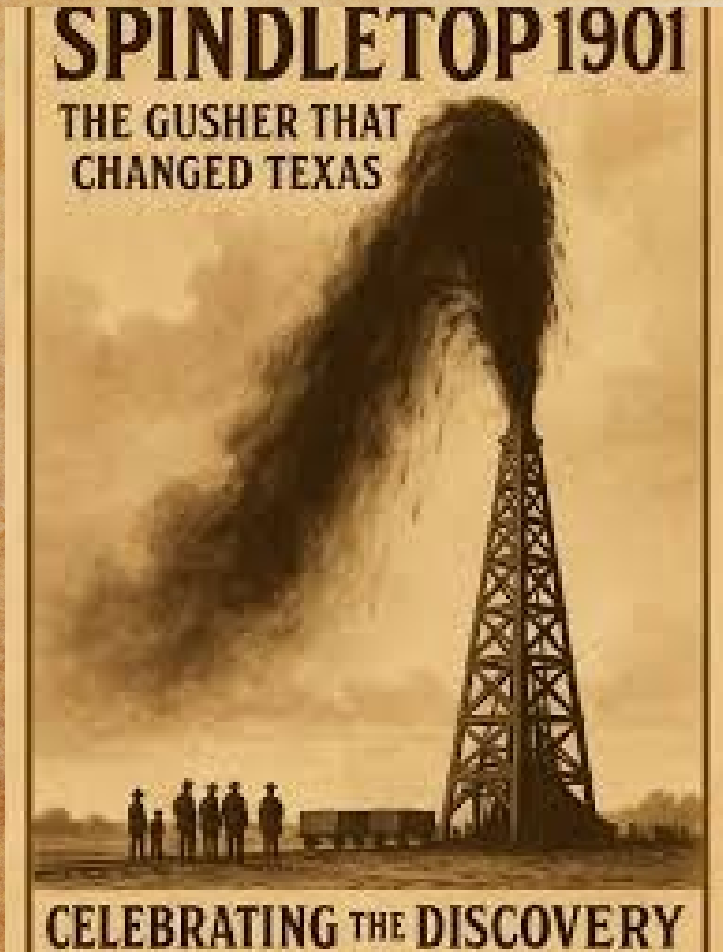


1836: Texas Independence



- 1836 – Remember the Alamo.
- 1839 – Republic of Texas Constitution creates generous homestead exemptions.
- 1845 – Texas becomes the 28th state and state constitution continues generous homestead exemptions.
- 1876 – State of Texas Constitution adopted – continues generous homestead exemptions, which are still in place today:
 - Urban homestead up to 10 acres of land.
 - Rural homestead up to 200 acres of land.
 - No cap on value of real property.

1901: Discovery of Oil in Spindletop



- Spindletop oilfield discovered in Beaumont, Texas.
- Leads to decades of boom and bust for Texas economy.



Bankruptcy History in Texas 1925-1980

1925

Charles Ponzi comes to Galveston.

1937

San Antonio Post Office and Courthouse completed.

1960s

Billie Sol Estes.

1968

Texas World HemisFair in San Antonio.

1978

Corco files Chapter 11 in San Antonio.

Bankruptcy Code enacted.

Dallas premieres on CBS.

1980s

Oil and Gas Bust and Bank Failures.

Who shot J.R.?

Ewing Oil restructured and sold out of Court.

Mar. 1986: Oil drops to \$10.25/barrel.



1925: Charles Ponzi Comes to Texas

- Ponzi comes to Galveston to avoid federal authorities in Massachusetts.
- Arrested by Harris County Sheriff.
- August 1926 – Houston court ordered Ponzi's return to Massachusetts.



1937: San Antonio Post Office and Courthouse



- Bankruptcy Court for Western District of Texas now in the building.
- North wall of the Alamo ran through the middle of what is the Bankruptcy Court today.

1960s: Billie Sol Estes

- Texas businessmen known for involvement in business swindling/fraud scandal.
- Complicated ties to LBJ.
- Served several stints in prison for fraud.



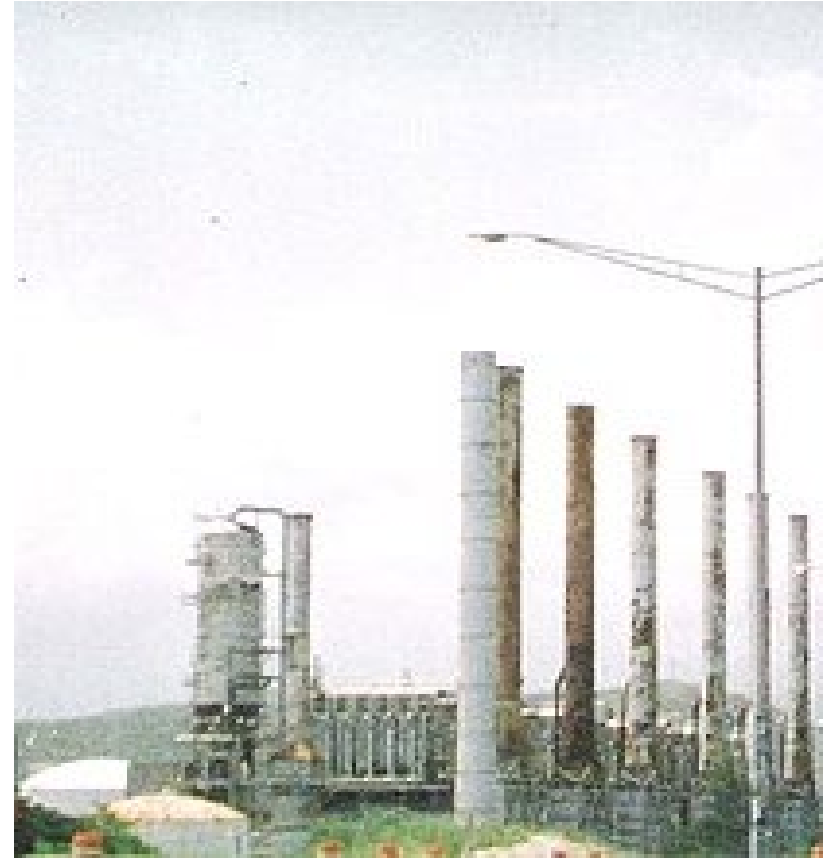
1968: World HemisFair in San Antonio

- Lady Bird Johnson scheduled to cut the ribbon to open the River Walk, but the weather had other plans.
- For various reasons, she did not want to stand out in the rain.
- Bert Thompson, longtime LBJ crony and Bankruptcy Referee (later became a Bankruptcy Judge) was her stand-in.



1978: The Venue Wars Begin

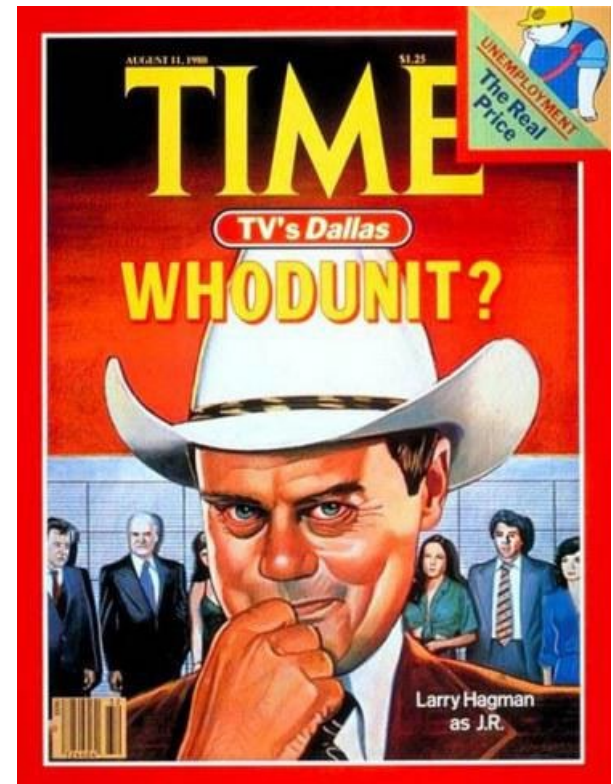
- March 2, 1978: *Commonwealth Oil Refining Co. (Corco)* files Chapter 11 in San Antonio.
 - Government of Puerto Rico objected to venue.
 - Bankruptcy Court ruled that San Antonio was the proper venue.
 - The Fifth Circuit affirmed the Bankruptcy Court.
- United States Bankruptcy Code enacted on November 6, 1978.



CORCO refinery in Puerto Rico.

1980s: Oil and Gas Bust and Bank Failures

- Oil crash of early 1980s – systemic financial crisis that collapsed banks and destabilized communities across Texas.
- Failure of First National Bank of Midland in 1983 exposed aggressive lending; unrealistic assumptions about oil prices worsened fallout. Approximately 425 banks closed in Texas between 1980 and 1989, including 9 of the 10 largest banks.
- Over 225 Savings and Loans institutions in Texas also closed.
- Training ground for young bankruptcy professionals.
- Instilled practical, relationship-based mindset that continues to influence modern bankruptcy and restructuring practice.



Bankruptcy History in Texas 1983-1990

<p>Weil Gotshal opens Houston office.</p>	<p><i>Global Marine</i> files Chapter 11 in Houston.</p> <p><i>Matter of Little Creek Development Co.</i>, 779 F.2d 1068 (1986).</p> <p><i>Placid Oil</i> files Chapter 11 in Dallas.</p>	<p><i>In re Timbers of Inwood Forest Associates, Ltd.</i>, 808 F.2d 363, 370- 74 (5th Cir. 1987).</p> <p>Texaco files Chapter 11 in White Plains, NY.</p>	<p><i>United Sav. Ass'n of Texas v. Timbers of Inwood Forest Associates Ltd</i>, 484 U.S. 365, 376 (1988).</p>	<p><i>Continental Airlines II</i> files Chapter 11 in Delaware.</p>	
1983	1985	1986	1987	1988	1990



1983: *Braniff* and *Continental I*



- *In re Braniff Airways, Inc.*, 700 F.2d 935 (5th Cir. 1983) (establishing that a 363 sale cannot change plan priorities). Filed in Dallas.
 - *Sub rosa* concept first appears in *Braniff*. “The debtor and the bankruptcy court should not be able to short circuit the requirements of Chapter 11 for confirmation of a reorganization plan by establishing the terms of the plan *sub rosa* in connection with a sale of assets.” *Id.* at 940.
- *Continental I* files Chapter 11 in Houston in September 1983.
 - Emerges in September 1986.
 - Case closed in 1991.

1986: *Matter of Little Creek*, Global Marine

- *Global Marine* filed Chapter 11 in Houston in January 1986.
 - Emerged February 1989.
- *Matter of Little Creek Development Co.*, 779 F.2d 1068, 1071-72 (5th Cir. 1986) – opinion by Judge Edith Jones.
 - Holding: Chapter 11 must be filed in good faith.
- *Placid Oil* filed Chapter 11 in Dallas in August 1986.
 - 1988 Settlement: Hunt brothers offered \$663.5 million in cash, significantly reducing their fortune.



1987-1988: *Timbers of Inwood Forest Associates*



- Fifth Circuit – no interest to undersecured creditors, and propose and confirm plan promptly.
- SCOTUS – affirms Fifth Circuit, stating that there must be “a reasonable possibility of a successful reorganization within a reasonable time.”

1987: Texaco Goes to New York

- April 12, 1987: Texaco filed Chapter 11 in White Plains, New York.
- Texas jury found Texaco liable for tortious interference, awarding Pennzoil \$7.53 billion in actual damages and \$3 billion in punitive damages.
- Filed Chapter 11 to halt collection of judgment, not because it was insolvent.
- Texaco and Pennzoil settled in December 1987, and Texaco emerged from Chapter 11 in 1988.



1989: The Texas-Two Step

- Texas Divisive Merger (a/k/a Texas Two-Step) Statute enacted.
 - Step 1: Divisive Merger
 - Step 2: Liability Assignment and Bankruptcy



Bankruptcy History in Texas 2001-Present

Enron files
Chapter 11
in NY.

Complex
Rules
implemented
in SDTX.

In re Chrysler,
576 F. 3d 108
(2nd Cir. 2009).

Multiple oil
and gas
bankruptcies
file Chapter
11 in SDTX.

*Czyzewski v.
Jevic Holding
Corp.*, 580 U.S.
451 (2017).

Significant
increase in
Chapter 11
filings.

Ultra
Petroleum files
Chapter 11 in
SDTX.

*Serta
Simmons
Bedding* files
Chapter 11 in
SDTX.

2001

2002

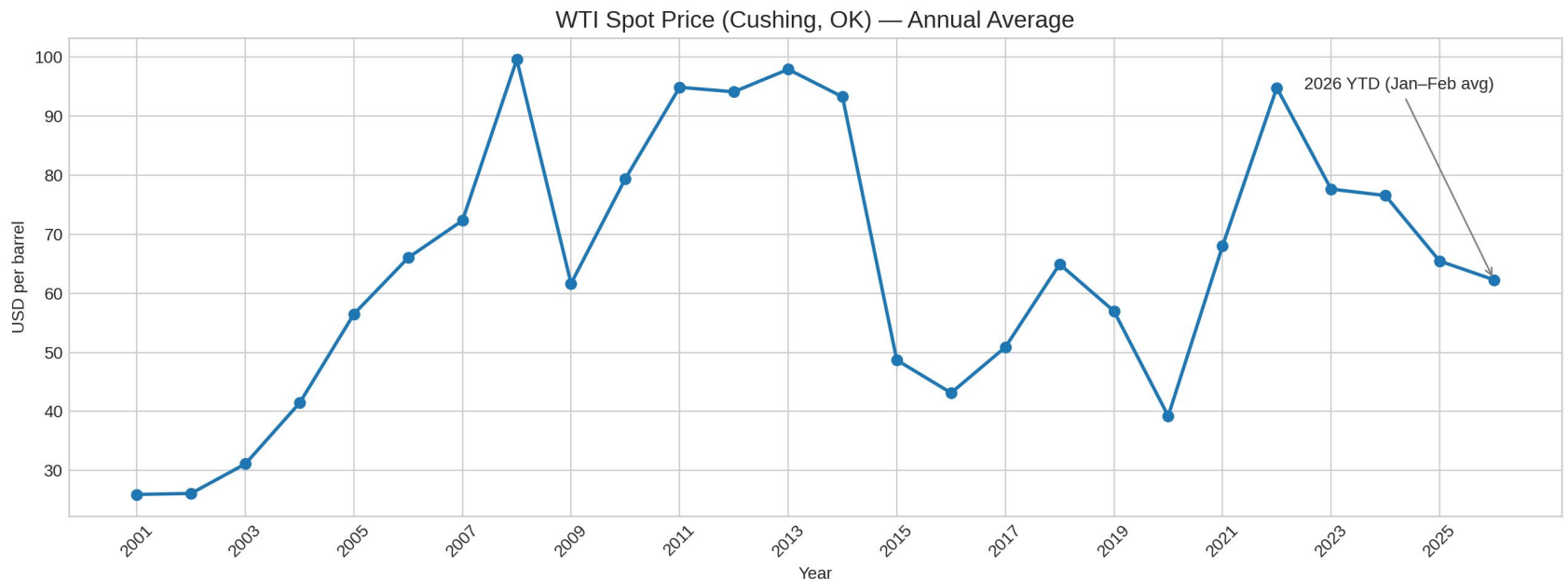
2009

2015+

2017

2020

2023



2001: Enron



- Enron Corporation, a Houston-based energy company, filed Chapter 11 in New York City.
- Then largest corporate bankruptcy in history.
- Massive accounting fraud and failure.
- Executives convicted for fraud and conspiracy.
- Claimed over \$60 billion in assets at time of filing.
- Led to numerous congressional investigations and hearings.

2002: The Complex Rules

- SDTX implemented Complex Rules in 2002.
- Followed by other Districts.



2009: Chrysler

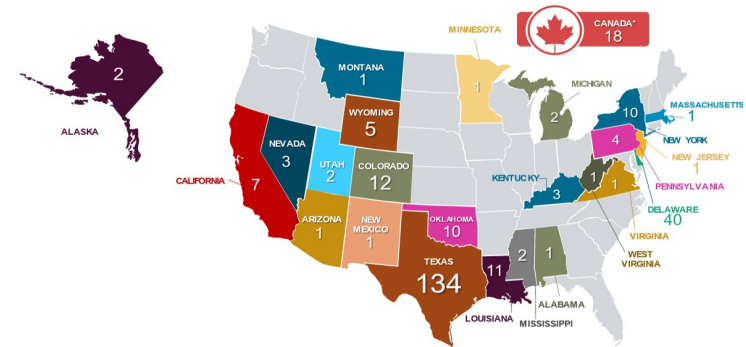
- *In re Chrysler*, 576 F. 3d 108 (2nd Cir. 2009).
- Second Circuit applied Fifth Circuit *Braniff* decision to analyze whether to approve the sale of substantially all of Chrysler's assets.



2015+: Texas Leads the Pack in Oil Patch Chapter 11 Filings

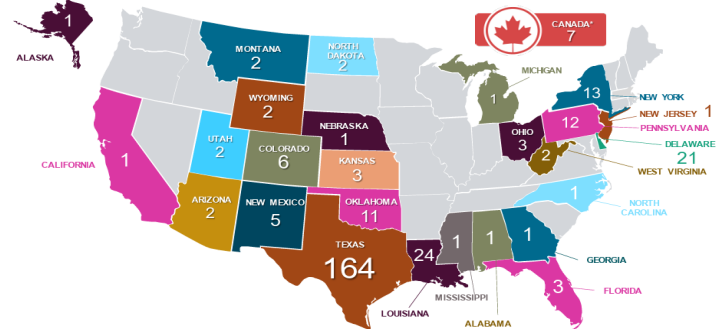
- Exploration and Production Companies (2015-2021)
 - **\$117,362,830,541** in secured and unsecured debt in Texas Chapter 11 filings.
 - **134** Chapter 11 filings in Texas.
- Oilfield Services Companies (2015-2021)
 - **\$79,419,905,849** in secured and unsecured debt in Texas Chapter 11 filings.
 - **164** Chapter 11 filings in Texas.

2015-2021 E&P BANKRUPTCY FILINGS BY LOCATION



HAYNES BOONE OIL PATCH BANKRUPTCY MONITOR®

2015-2021 NORTH AMERICAN OILFIELD SERVICES BANKRUPTCY FILINGS BY LOCATION



HAYNES BOONE OILFIELD SERVICES BANKRUPTCY TRACKER®

HAYNES BOONE

*Canada is not tracked post-2016. (As of December 31, 2021)

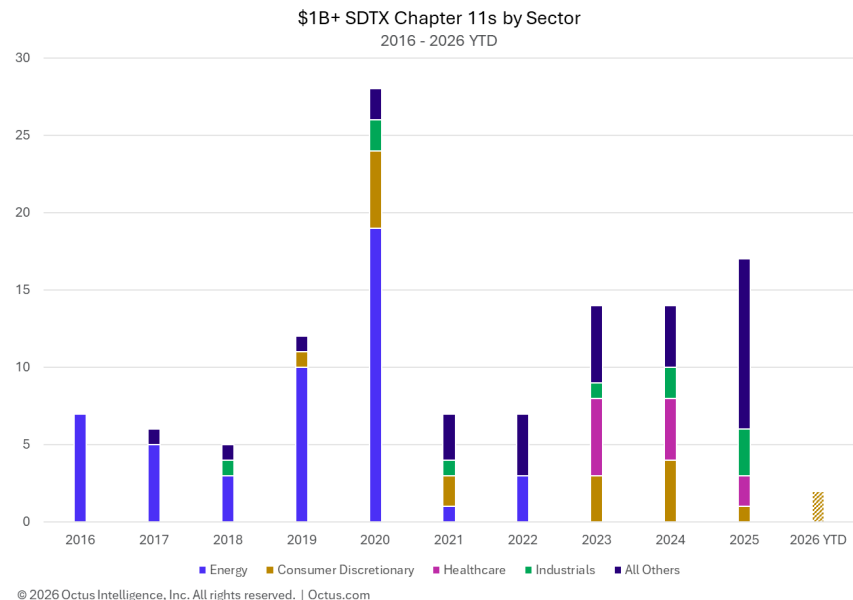
2017: *Czyzewski v. Jevic*

- *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451 (2017).
- SCOTUS applied *Braniff* to disapprove structured dismissal because it changed distribution priority.



2020: Covid

- Covid shutdown leads to remote hearings, including First Days.
- SDTX – 602 debtors filed for Chapter 11 in 2020.
- WDTX – 33% increase in business bankruptcies.
- NDTX – 19% increase in Chapter 11 filings in first half of 2020.



2020: *Ultra Petroleum Corp.*



- May 14, 2020: *Ultra Petroleum Corp.* (“UPC”) files Chapter 11 in SDTX.
- UPC’s second Chapter 11 filing in 4 years.
- Filed with approximately \$2 billion of debt.
- *Ultra Petroleum Corp. v. Ad Hoc Comm. of OpCo Unsecured Creditors (In re Ultra Petroleum Corp.)*, 51 F.4th 138 (5th Cir. 2022).
 - *Issues*: (1) whether the make-whole amount constituted disallowed unmatured interest (or its economic equivalent) under 11 U.S.C. § 502(b)(2); (2) whether the solvent-debtor exception survived the enactment of the Bankruptcy Code and applied in the context of § 502(b)(2); and (3) whether postpetition interest should be calculated at the contractual rate or Federal Judgment Rate.

2023: Serta Simmons Bedding

- Serta Simmons Bedding filed Chapter 11 in the Southern District of Texas.
- Fifth Circuit later ruled that uptier transaction in *Serta* did not constitute “open market purchase” and violated the credit agreement.



2026: First ACB Texas Meeting

