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Executory Contracts and Leases in Bankruptcy: Strategies for Non-Debtors

Anticipating Insolvency; Drafting and Transactional Issues;
Pre- and Post-Petition Options; Maximizing Section 365 Protections

TUESDAY, APRIL 2, 2019

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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Executory Contracts and Unexpired Leases in Bankruptcy: Strategies for Non-Debtors

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April 2, 2019

Introduction

- Pursuant to § 365 of the Bankruptcy Code, subject to its exercise of reasonable business judgment and court approval, a Debtor can decide whether it wants to assume (keep) or reject (get rid of) of its executory contracts and unexpired leases.
- Regardless of what the contract or lease says about termination, the Debtor, after getting court approval, can reject an ongoing contract or an unexpired lease, regardless of the remaining contract term.
- On the other hand, if a contract or lease is favorable, the Debtor can assume the contract even if the other party does not consent, subject to certain exceptions, and may be able to assign the contract to another party without the non-Debtor's consent, so long as the Debtor cures any defaults and provides assurances that in the future, it or its assignee will perform the contract.

Introduction (cont'd)

- Thus, the Debtor can realize the value of advantageous contracts or leases, either by assuming them or by selling them to third parties.
- Similarly, the Debtor can enhance the value of its estate by rejecting burdensome contracts that may be prohibitive to future operations or to prospective buyers' willingness to bid on the Debtor's assets.
- Rejection accelerates all remaining amounts due under the contract and enables a creditor to assert a general unsecured claim for breach of contract as of the date immediately preceding the Petition Date.
 - A creditor may also be entitled to an administrative expense claim (entitled to 100% payment under a plan of reorganization or liquidation) for goods or services provided to a Debtor postpetition but pre-rejection, assuming it can meet the burden for such a claim under section 503(b) of the Bankruptcy Code.
- If assumed, the Debtor/Reorganized Debtor/Buyer must cure any prepetition and postpetition breaches or provide adequate assurance of future performance.

Introduction (cont'd)

- **Assumption and Assignment:**

- Subject to certain exceptions, section 365 also allows for the assumption of executory contracts and unexpired leases by the Debtor and assignment to a third party notwithstanding restrictions on assignments in the contract.
- Both the Debtor and the third party assignee need to provide “adequate assurance of future performance.”

- **Cure Disputes:**

- Disputes regarding the proper amount that must be paid to cure any defaults before a proposed assumption can lead to mini trials to determine the amount necessary to cure defaults under a contract.
 - However, these disputes are often worked out consensually by the parties.
- Accordingly, cure disputes are often carved out of confirmation orders and sale orders, and are typically addressed post-closing.

What is An Executory Contract?

- Most courts have adopted the following definition of an executory contract originally proposed by Harvard Law Professor Vern Countryman: “a contract under which the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing the performance of the other.”
- Under this definition, most contracts can be classified as executory.
- Most courts agree that a contract is executory when each party to the contract still has some obligations under it at the time the bankruptcy is filed.
- But the obligations generally need not be significant for the contract to be deemed executory:
 - Fully paid-up license may be executory because of ongoing nondisclosure and defense obligations.
 - Continuing obligation to indemnify.

Non-Assumable/Assignable Contracts and Leases

- If non-bankruptcy law prohibits the assignment of a contract or lease, then the Bankruptcy Code does not allow assignment and in some instances assumption absent counterparty consent.
- Personal service contracts are not assignable.
- Government contracts are not assignable.
- Non-exclusive patent licenses are not assignable, nor assumable in some jurisdictions.
- A contract to make a loan, or provide another kind of financial accommodation, is not assumable.
- Agreement that expired or was terminated prior to Petition Date.

Other Limits To Assumption

- Non-monetary defaults
 - Non-monetary defaults in commercial leases may be cured by compensation for the pecuniary loss-2005 Code Amendments.
- Non-curable defaults
 - Presumption that non-curable defaults irrevocably prevent assumption.
- IP Licenses – Actual v. Hypothetical Test
 - Assumption of IP licenses may depend on rights to assign the rights under applicable law

Limits To Rejection

- **Right to Stay In Possession of Real Property:**

- Debtor/lessor's rejection of a lease doesn't deprive the non-Debtor lessee of the right to remain in possession.
 - Pursuant to section 365(h)(1)(A), the non-Debtor lessee can decide whether to treat the lease as terminated by the rejection or, if the term of the lease has commenced, may elect to retain its rights under the lease for the balance of the term of the lease and for any renewal or extension of such rights to the extent that such rights are enforceable under applicable nonbankruptcy law.
 - For purposes of this section, "lessee" includes any successor, assign or mortgagee permitted under the terms of the lease.

- **Right by Non-Debtor Party to Continue Using Licensed IP:**

- If the debtor is the licensor and rejects its license of intellectual property, the licensee may continue to use the IP for the term of the license, assuming continued payment of royalties.
- Exception for Nonexclusive Trademark and Patent Licenses.

Why Executory Contracts Matter

- **Not an executory contract:** The creditor gets an unsecured claim – a pro-rata share of the remainder of the Debtor’s estate provided to similarly situated creditors after paying more senior creditors – while the Debtor keeps the subject goods or rights (subject to the potential ability to exercise reclamation rights discussed below).
- **Executory contract:**
 - **Rejection:** If the Debtor rejects the contract, then the creditor’s claim is unsecured because the breach is deemed to have occurred immediately prior to the bankruptcy filing. As an unsecured claim, the creditor will be treated as indicated above.
 - **Assumption:** If the Debtor assumes the contract, then the creditor’s claim is paid in full because § 365 requires that the Debtor cure any existing defaults and pay any amounts currently owed under the contract in order to assume it.
 - Payment of such cure costs effectively transforms what might otherwise be a general unsecured claim entitled to cents on the dollar into a claim that would be paid in full.

Timing Issues

- Pending assumption or rejection, the non-debtor party is obligated to perform unless the court orders otherwise.
 - However, as discussed below, the non-debtor party can move to condition future performance upon its receipt of adequate protection from the debtor, or can move to compel the debtor to assume or reject the contract.
- The deadline for a debtor to assume or reject depends on the type of contract or lease at issue.
- In addition, the Reorganized Debtor or Buyer is typically entitled to remove a contract or lease from its assumption list within a finite period (e.g. within 30 days of the order) if a cure dispute that has not been resolved prior to the entry of the sale or confirmation order is determined in a manner that it determines to be unacceptable.

Timing Issues (cont'd)

- **Contracts/Non-Residential Real Property Leases:**

- Unless an earlier date is ordered by the court, a debtor in a chapter 11 case can assume or reject an executory contract or unexpired lease of residential real property or of personal property at any time before confirmation of a plan.
 - Purpose is to give a debtor breathing room to decide what contracts and leases are and are not beneficial to it moving forward.
- In recent cases, courts have approved plans and sale orders that give debtors additional time post-order (e.g. 60 days) to designate contracts for assumption/rejection.
- Pending assumption or rejection, the tenant must continue to pay rent without further court order.

Timing Issues (cont'd)

- **Non-Residential Real Property Leases:**

- Debtor has until the earlier of 120 days after the petition date or the date of entry of an order confirming a plan to decide whether to assume or reject unexpired leases of nonresidential real property under which it is the lessee, debtors often resist making those decisions early in the case.
- The Bankruptcy Court may extend this period for an additional 90 days for cause if the Debtor moves for such relief before the expiration of the original 120 day period.
- If the Bankruptcy Court grants an extension of the statutory period, it may only grant a subsequent extension upon the prior written consent of the lessor.

Rejection Damages

- Subject to certain exceptions, rejection damages are generally uncapped by the Bankruptcy Code and include any amounts that would be recoverable under the contract arising from the Debtor's breach of the contract.
 - The contract counterparty must file a proof of claim in the bankruptcy case to assert a rejection damages claim (typically within 30 days from the date of rejection).
- Exceptions:
 - **Real Property Lease Rejection Damages** – capped at (A) the greater of (i) one year of rent due under the lease, without acceleration, or (ii) 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of the Petition Date and the date on which the lessor repossessed or the lessee surrendered the leased property; PLUS (B) any unpaid rent due under the lease, without acceleration, on the earlier of such dates.
 - **Employment Contract Rejection Damages** – capped at (A) the compensation provided under the contract, without acceleration, for one year following the earlier of the Petition Date and the date of termination; PLUS (B) any unpaid compensation due under the contract, without acceleration, on the earlier of such dates.

Intellectual Property

- **The Insolvent Licensor**

- If a licensor of intellectual property (other than a trademark license) is a debtor:
 - the non-Debtor licensee can elect either to terminate the license, if allowed under the terms of the license; or
 - continue to use the IP under the provisions of the license for the term of the license and any extensions that are at the election of the non-debtor licensee
 - Licensee must continue to pay royalties
 - Non-debtor licensee cannot force specific performance by the debtor licensor of any affirmative obligations under the license agreement
- If the property at issue is a trademark license and the licensor commences a bankruptcy case, there is no protection for the non-Debtor licensee in the event that the debtor licensor rejects the trademark license
 - Trademarks require a different analysis from patents and copyrights, because there is an affirmative duty to control the trademark

Intellectual Property (cont'd)

- **Insolvent Licensee**

- If a licensee of intellectual property (other than a nonexclusive trademark license) is a debtor:
 - The debtor licensee cannot assign the intellectual property to a third party without the consent of the licensor
 - Some courts have held that the debtor licensee cannot continue to use the intellectual property during the course of the bankruptcy or thereafter, even if the license is not assigned to a third party
- If the license is for a trademark license:
 - Most courts have held that a nonexclusive trademark license is treated the same as other intellectual property – *i.e.*, the licensor's consent is required to assign
 - However, if the trademark license is for an exclusive trademark license, courts have held that the exclusive license is a property interest, and the debtor licensee can assume and assign the license without the licensor's consent.

Intellectual Property (cont'd)

- **Problems With the Statutory Framework**

- Licenses that Authorize Use of More than One Type of Intellectual Property
- Payment of Royalties
- Bundled Rights – Different Legal Results

Creditor Strategies Pending Assumption or Assignment

- The goal of every creditor in a bankruptcy case is to maximize its recovery and, if possible, to get paid in full. However, it can be challenging and expensive for a creditor to do so.
- In general, and subject to certain exceptions, attempts by a creditor to collect on prepetition debts owed by a Debtor are barred by the automatic stay imposed by section 362 of the Bankruptcy Code.
- In addition, as discussed above, contract counterparty creditors are subject to additional constraints due to the fact that they are required to continue to perform under the contract or lease pending assumption, rejection or other order of the Bankruptcy Court.
- Fortunately, in addition to requesting that a Debtor assume a creditor's contract, there are several strategies that contract counterparty creditors can employ to maximize their negotiating leverage and, thereby, their recoveries.

Request to Be Paid as a Critical Vendor

- In most chapter 11 cases, the Debtor files a motion or motions to pay prepetition claims of certain creditors under the doctrine of necessity because they are critical to its ongoing operations in chapter 11 and its ability to effectively sell itself or reorganize. These motions are frequently referred to as motions to pay “critical vendors.”
- However, in many cases, the Debtor, the Creditors’ Committee and/or the U.S. Trustee seek to limit critical vendor status to creditors who do not have contracts with the Debtor because contract creditors are obligated to continue to perform under their contracts pending assumption, rejection or other order of the Bankruptcy Court.
- In addition, critical vendor status may not turn out to be all that it is cracked up to be, as the Debtor may demand that the creditor accept a lower payment in exchange for current payment as a critical vendor, and most critical vendor orders (or the agreements Debtors demand a creditor to sign under them) require that the creditor continue to supply goods or services on the same or better terms as existed prepetition.

Request to Be Paid Under Other First Day Motions

- In addition to critical vendor motions, Debtors have in recent years also filed first day motions seeking to make payments to other categories of prepetition creditors, including but not limited to shippers, warehousemen and other lienholders.
- While these motions are often also justified by necessity like a critical vendor motion, they are also justified by the fact that shippers, warehousemen and certain other types of lienholders may have statutory liens or liens that can be asserted against the Debtor notwithstanding the automatic stay.
- In this respect, they are unique because they may not be subject to the same limitations imposed on a creditor in connection with a critical vendor motion by reason of it having a contract with the debtor.

Make a Reclamation Demand

- Sellers of goods, although not sellers of services, to buyers who commence chapter 11 cases may have reclamation rights against a Debtor.
- A seller of goods has the right to reclaim goods sold on credit for a 45-day period prior to the Petition Date, so long as written notice is provided to the Debtor (i) within 45 days after the goods are received or (ii) within 20 days after the Petition Date, if the 45-day period expires after the Petition Date.
- A seller of goods also has a post-filing administrative expense claim for goods delivered to the debtor within 20 days before the petition date.
 - Make sure that delivery is being made to the actual Debtor, notwithstanding the Debtor's demands. Recent case law has held that the goods must be delivered *to the Debtor*, rather than a third party, in order to qualify for an administrative expense claim, and even if the Debtor directed that the goods be delivered to the third party.
- These rights only pertain if the goods were sold in the ordinary course of the Debtor's business.

Make a Reclamation Demand (cont'd)

- There is no requirement that written notice be given of that administrative claim.
- However, the administrative claim does not arise automatically – the reclaiming seller must file an administrative claim and comply with all applicable bar dates.
- Note, however, that if a secured creditor has a lien on inventory, the delivered goods will probably be subject to that lien notwithstanding the existence of reclamation claims.

Make a Reclamation Demand (cont'd)

- If you have a reclamation claim, consider the following actions:
 - Make a reclamation demand immediately upon learning that your customer has filed.
 - Demand should be in writing, and contain certain information, including express references to section 2-702 of the UCC and section 546(c) of the Bankruptcy Code.
 - Demand should state the amount for which the supplier has not been paid, as well as either a summary of the shipment dates and the amounts evidencing the debt or copies of the actual invoices.
 - Finally, the demand should request that the goods be segregated and immediately returned to the seller.

Assert a 503(b)(9) Claim

- Section 503(b)(9) of the Bankruptcy Code provides an administrative expense claim for vendors that supply goods *to a debtor* (not a third party even if at the direction of a debtor) in the 20 day period before the bankruptcy filing. 11 U.S.C. § 503(b)(9).
- The date on which goods are received is the date on which the debtor takes actual physical possession of the goods.
- 503(b)(9) claims must be paid in full under a plan, notwithstanding the fact that they are for prepetition claims.
- Creditors should review the filings in a case to make sure that they follow the procedures for asserting a 503(b)(9) claim.
 - Typically, creditors do so by filing a proof of claim and checking the appropriate priority box but sometimes cases have special procedures for asserting a claim or getting paid based on 503(b)(9) status pre-confirmation.
 - In addition, Debtors often seek to justify critical vendor or similar postpetition payments to prepetition vendors early in a case on the basis that part or all the vendors' claims fall within the 20 day 503(b)(9) window.

Move to Compel Assumption or Rejection

- As noted above, the Debtor has no deadline by which to assume or reject contracts until fairly late in the case
- The only recourse available to the non-Debtor counterparty is to make a motion to compel the debtor to assume or reject the contract.
- This type of relief is difficult to get, particularly in the early stages of a case, because courts tend to err in favor of giving the Debtor's breathing room to decide which contracts/leases to assume or reject.
- The Debtor is likely to resist an early assumption because in order to assume, it must cure all defaults, which can be expensive.
- Moreover, an assumed contract is a post-filing transaction, and any damages from a subsequent breach are an administrative priority claim that must be paid in full before the debtor can exit chapter 11.
- Thus, motions to compel assumption or rejection are generally made in attempt to gain negotiating leverage.

Demand Adequate Assurance of Future Performance

- A non-Debtor contract counterparty could also demand adequate assurance of future performance pursuant to § 2-609 of the Uniform Commercial Code.
- Under this approach, the creditor would assert that it has reasonable grounds for insecurity with respect to its continued performance of the remainder of the Debtor's obligations to it and thus demands adequate assurance of due performance from the Debtor in the form of advance payment (or cash-on-delivery) of all remaining amounts under the contract or some other form of security satisfactory to it before delivering any future products to the Debtor.
- The Debtor will almost surely counter any such demand by stating that the demand violates the automatic stay and that the creditor is required to continue to perform under the contract's terms.

Demand Adequate Assurance (cont'd)

- If the Debtor fails to respond to this demand, the creditor could (or could threaten to) seek relief from the Bankruptcy Court.
- The creditor could file a motion under sections 362(d), 363(e) and 365 of the Bankruptcy Code requesting adequate protection of its interest, relief from the automatic stay to either cancel the contract or modify its terms and/or to compel the debtor to assume or reject the contract (discussed above).
- The creditor would have to show that it is not adequately protected (e.g. that the Debtor lacks adequate financing to pay for the goods and/or is administratively insolvent).
 - Challenging in a case where debtor in possession financing has been approved to fund the case and no evidence of administrative insolvency.

Demand Adequate Assurance (cont'd)

- In addition to being unlikely to succeed, this approach is risky because attempts to collect on prepetition debts, or to seek to modify a prepetition contract without court approval, violate the automatic stay imposed by section 362 as of the commencement of the bankruptcy case. Stay violations can be subject to severe damages, including punitive damages and attorneys' fees.
- Thus, this approach requires close assistance of counsel to minimize the risk of such damages, and is generally employed only as a means of gaining negotiating leverage.
- Among other things, the creditor should make clear that it is not seeking to withhold delivery of postpetition goods in exchange for payment of prepetition claims.
- Rather, the creditor would argue that without assurance of postpetition payment for goods delivered postpetition, it would inequitably be compelled to finance the Debtor's case and assume additional credit risk.

Assert a Mechanic's, Shipper's or Similar Lien

- Even if a creditor's claim falls outside the reclamation or 503(b)(9) periods, it may still be entitled to assert a secured claim under state/local/maritime lien law.
- Section 362(b)(3) of the Bankruptcy Code provides an exception to the automatic stay that would otherwise prohibit a creditor from seeking to record/perfect a lien on the Debtor's property "to the extent that the trustee's rights and power are subject to such perfection under section 546(b)"
 - Section 546(b)(1) provides that a trustee's rights and powers are subject to any generally applicable law that "(A) permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection; or (B) provides for the maintenance or continuation of perfection of an interest in property to be effective against an entity that acquires rights in such property before the date on which action is taken to effect such maintenance or continuation."
 - Section 546(b)(2) provides that if "(A) a law described in [546(b)(1)] requires seizure of such property or commencement of an action to accomplish such perfection, or maintenance or continuation of perfection of an interest in property; and (B) such property has not been seized or such an action has not been commenced before the date of the filing of the petition; such interest in such property shall be perfected, or perfection of such interest shall be maintained or continued, by giving notice within the time fixed by such law for such seizure or such commencement."

Assert a Mechanic's, Shipper's or Similar Lien (cont'd)

- Thus, the Bankruptcy Code allows the recording of a mechanic's or similar lien after the Petition Date, and permits a lien claimant falling within those boundaries to take additional steps to perfect its lien.
- However, the lien claimant must still comply with all recording deadlines required under the applicable lien law.
- Note that these exceptions to the automatic stay that allow certain lien claimants to record/perfect their liens under applicable nonbankruptcy law do NOT permit the creditor to seek to enforce that lien absent relief from the automatic stay.

Enforce Non-Insolvency Termination Provisions

- Provisions that purport to terminate a contract upon the filing of a bankruptcy are unenforceable.
- In addition, attempts to terminate an unexpired contract or lease postpetition are generally prohibited by the automatic stay.
- However, if a contract expires on its own terms for reasons other than the filing of a bankruptcy case, the filing does not affect that termination.
- Moreover, a contract counterparty can always terminate a contract with a debtor prepetition if the contract allows for such a remedy.
- Therefore, when contracting with a party who may be in financial distress, consider whether the circumstances warrant terminating a contract prepetition or negotiating a short contract term with the ability to renew, rather than a very long term contract.

Properly Identify Financial Accommodations Contracts

- A contract to make a financial accommodation is not assumable absent the consent of the party obligated to make that accommodation.
- Therefore, consider whether the contact being contemplated is arguably a financial accommodation contract.
- If it is, document it as such.

On the Horizon: Tempnology Supreme Court Decision

- ***MISSION PRODUCT HOLDINGS, INC. V. TEMPNOLOGY LLC (In re Tempnology)***
- Argued February 20, 2019 before the U.S. Supreme Court.
- When a debtor rejects a trademark license in bankruptcy, does that mean that the debtor can stop performing (and become liable for breaching the contract) or does it also mean that the contract is rescinded (retracting any rights it might have granted the other party)?

On the Horizon: Tempnology Supreme Court Decision (cont'd)

- Section 365 of the Bankruptcy Code, Subsection (a) of which gives any debtor the power to “assume or reject any executory contract of the debtor.” Subsection 365(g) offers some guidance as to the effect of rejection, explaining that it “constitutes a breach” of the affected contract, which ordinarily would leave the debtor liable for damages for breach of contract. The question is whether rejection goes further and also eliminates the rights of the licensee that would survive the licensor’s breach under applicable non-bankruptcy law.
- This is a confounding issue and the Supreme Court is likely to resolve this based on statutory language of the Bankruptcy Code, rather than dig deep into harmonizing federal trademark law under the Lanham Act with the goals of corporate revitalization contained in the Bankruptcy Code.

On the Horizon: Tempnology Supreme Court Decision (cont'd)

- The Bankruptcy Code did not include trademarks within the definition of Section 365(n). The result is that rejected trademark licensees do not have a statutory basis to continue to use the marks. The Congressional record states that Congress intended trademark retention rights to be decided on a case by case basis, but the Seventh Circuit in 2012 decided that the licensee could continue to use the trademark and the debtor is absolved of its obligations under the license. The *Tempnology* case is poised to resolve the opposite result reached by the *en banc* First Circuit in the case, reversing the original panel.
- The Court seemed from its questioning to be leaning away from granting the rejecting licensor “rescission” rights to eliminate the licensee’s remedy to continue to use the marks.

On the Horizon: Tempnology Supreme Court Decision (cont'd)

- Trademarks are unique as the registrant must affirmatively maintain quality control and good will of the mark. The respondent argued requiring a debtor to actively police the mark is contrary to the rights to reject burdensome contracts under the Code and failure to do so may result in cancellation of the mark. The Court shot back that allowing the debtor as the breaching party to dictate the use after rejection is contrary to contract law and would give greater trademark rights to the debtor in bankruptcy than federal trademark law.
- Some have summarized the dilemma as whether rejection of a trademark license should be treated like a breach as the Code has suggested, or whether it should additionally allow the debtor to rescind the trademark license rather than suffering the continue burden of policing the mark.

On the Horizon: Tempnology Supreme Court Decision (cont'd)

- Justice Breyer in an analogy suggested that a trademark license was like an obligation to air condition an igloo so that it would not melt. In response, the petitioner argued that the case is not about eliminating the debtor's monitoring obligations, but rather whether the trademark license can be clawed back and resold to other creditors, leaving the non-breaching party without its brand.
- A decision is expected before June 2019.

Panelists – Michael Delaney

- Michael Delaney is an attorney with the Los Angeles office of Robins Kaplan LLP. Michael represents and advises corporate and individual debtors, creditors, committees, and fiduciaries in a variety of distressed financial situations, including Chapter 9 and Chapter 11 bankruptcy proceedings and associated litigation, receiverships, assignments for the benefit of creditors, and out-of-court workouts and dissolutions. His most recent engagements have been in the entertainment, health care, real estate, and technology industries. Michael also represents individual and corporate clients in federal and state business and commercial litigation, including, among other things, disputes pertaining to the ownership, enforcement and infringement of intellectual property rights, the rights of parties under franchise agreements, and the rights of parties in joint ventures. Prior to entering private practice, Michael served as law clerk to the Honorable Ernest M. Robles of the United States Bankruptcy Court for the Central District of California. Michael has been recognized as an “Associate to Watch” by *Chambers USA*, a “Southern California Super Lawyer” by *Super Lawyers* magazine, and one of forty attorneys from across the country to participate in the Next Generation Program during the annual meeting of the National Conference of Bankruptcy Judges.



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Panelists – Chris Gartman

- Chris Gartman is a partner in Hughes Hubbard & Reed LLP’s Corporate Reorganization & Bankruptcy group. He represents chapter 11 debtors, purchasers, equityholders, and creditors in a wide range of matters. Some of his notable representations include: the debtors in the Patriot National, CST Industries, Republic Airways and Delta Petroleum chapter 11 proceedings; the Reorganized Debtors in connection with Cenveo’s post-effective date work, including primary responsibility for administering its claims process involving claims totaling approximately \$2 billion; the trustee for Lehman Brothers Inc. in its SIPA liquidation proceedings; the purchasers in the MSR Resorts, NE Opco and Scout Media chapter 11 section 363 sales; certain defendants in multibillion dollar adversary proceedings in the Adelphia Communications Corp. and Lyondell Chemical Company; the examiner in North General Hospital’s chapter 11 case; and debtors and creditors in a number of out of court workouts. He has represented contract creditors in numerous cases, including, among others, Sears, PG&E, NII (Nextel International) and International Shipholding Corp. In 2018, Chris received the American Bankruptcy Institute’s “40 Under 40” award on the basis of his outstanding professional achievements in the restructuring industry. Chris has been named a “Rising Star” by Super Lawyers every year since 2012 and is a co-author of the book “Examiners in Bankruptcy Cases: A Guide for Examiners, Courts and Practitioners.”



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Panelists – Craig Tractenberg

- Craig Tractenberg is a partner resident in the New York and Philadelphia offices of Fox Rothschild LLP and co-chair of the Franchise Law and International Arbitration practice groups. His cases are diverse and involve bankruptcy, corporate revitalization, bankruptcy litigation, distressed merger and acquisition, infrastructure and energy disputes and franchise program development and litigation. Among his reported decisions involving executory contracts are *In re Egyptian Brothers Donuts, Inc.*, 190 B.R. 26 (Bankr. NJ 1996) (prepetition termination of executory contract ends ability to assume or reject) and *Phillips Services and Luntz Corporation (In re Phillip Services) v. Luntz*, (D. Del 2003) (Summary judgment on preference action granted based on assumption of underlying contract). Mr. Tractenberg has been nationally recognized in Chambers and Partners for franchise law, Best Lawyers for NY (Lawyer of the Year-Franchising 2011), Best Lawyers PA (Lawyer of the Year 2017). His representation of the contested franchisee asset purchase *In re Ground Round, Inc.* (Bankr. MA 2004) was recognized as the Turnaround Management Association small transaction of the year. He was an adjunct professor of franchise law at Temple University School of Law and has contributed three chapters in American Bar Association published books, including *The Bankruptcy Handbook for Franchisors and Franchisees* (2018). He is admitted and actively practices in FL, NJ, NY and PA.



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