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Putting the Puzzle Together: Bankruptcy Issues Facing Franchisors

December 3, 2020 | Noon ET

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Franchising Basics for Bankruptcy Professionals



Franchise Structures



Contractual Relationships



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Basics of Business Bankruptcy for Franchise Professionals



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The Small Business Reorganization Act – The E-Z Pass Bankruptcy Solution for Franchise Companies



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Franchise Agreements and the Bankruptcy Estate



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Bankruptcy Estate includes Franchise Agreements Existing at the Petition Date



Franchise Agreements are not Estate Property if Properly Terminated Pre-Petition



Franchise Agreement Termination is Effective Post- Petition if “Nothing Is Left To Be Done”



Franchise Agreement is Estate Property if the Franchise has Opportunity to Cure before Termination is Complete



Franchise Agreement is Property of the Estate where Termination has been Enjoined



Franchise Agreement is Property of the Estate when saved by State Law



Franchisors may obtain Relief from the Automatic Stay to Terminate or Enforce a Franchise Agreement



Franchisors may have the Automatic Stay Lifted for Cause



The Stay may not be lifted if Defaults have been or can be cured and the Franchisor is Adequately Protected



Strategic Reasons may Exist to Move for Relief from the Automatic Stay even where odds of Success are Slim



**Assumption, Rejection and
Assignment of Franchise
Agreements, Licensing Agreements,
Service Contracts, Noncompetition
Agreements, Unexpired Leases and
the like Under Section 365 of the
Bankruptcy Code**



Franchisors/Licensors may Challenge the Assumption or Assignment of a Franchise Agreement to the Extent that Applicable Intellectual Property Law Prohibits Assignment without the Consent of the Franchisor/Licensor



Certain Jurisdictions Prohibit the Assumption of a Franchise Agreement by a Debtor-in-Possession even if the Debtor-in-Possession does not Intend to Assign the Franchise Agreement to a Third Party



Assumption of a Contract under which Debtor is not in Default



Assumption of a Defaulted Contract



Cure of Noneconomic Defaults under Executory Contracts



Adequate Assurance of Future Performance



Assignment of Executory Contracts in a Franchise Setting



Rejection of Executory Contracts in a Franchise Setting



“Business Judgment” Rule Determines Whether Rejection Is Allowable



Use of Cash Collateral



How the BAPCPA Alters the Balance of Power in Franchise Cases



Time for Assumption and Rejection of Leases Affecting Reorganizations – Issues Affecting All Bankruptcy Cases



Bankruptcy Warning Signs



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Craig resolves disputes responsively and cost-effectively. He has a broad business practice, with strong focuses on franchise, insolvency and infrastructure transactions. In franchise development and disputes, both domestic and international, Craig primarily represents franchisors, but will represent a franchisee in certain transactions, and has represented franchisees in litigation and arbitrations in some cases.



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Keith is a strategic ally for clients involved in bankruptcy proceedings, creditors' rights matters and commercial litigation. Experienced in all facets of bankruptcy, insolvency, distressed acquisitions and dispositions, Keith has represented businesses and individuals in a wide range of industries, including entertainment, healthcare, technology, sports, commercial real estate and hospitality.



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