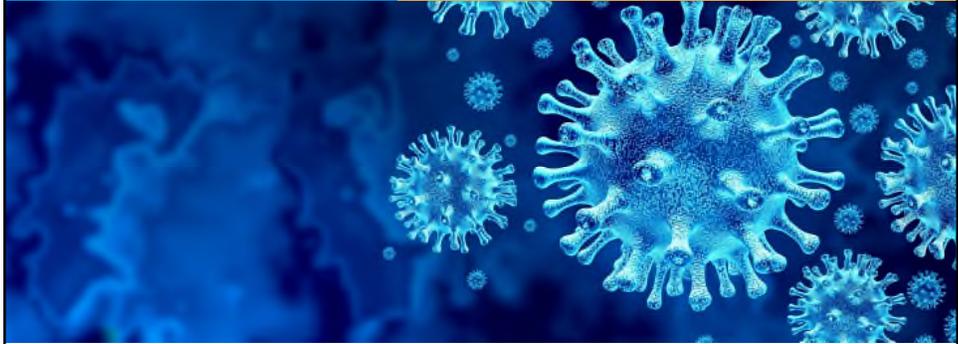


# Bond

**Coronavirus:**  
Update and Discussion on Legal  
and Practical Issues  
April 7, 2020



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## Introduction



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## Navigating Notice, Statutory and Paid Leave Overlay, Health Care Provider Definition, Counting Employees



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## Dealing with Troubled Companies



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## Business Transactions with Troubled Companies

- **Three types of business transactions:**
  - Delivery prior to payment = credit transaction
  - Payment prior to delivery = prepayment transaction
  - Payment demanded at the same time as delivery = “cash and carry” transaction
- **Change in Business Strategy When Dealing with Distressed Companies**
  - Avoid “credit transactions” if possible
  - Consider secured or consignment arrangement
  - Get close to financial information
  - Consider preference exposure



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## Planning – Before a Bankruptcy Case is Filed

- **Assess whether you have a contract**
  - Consider terminating or modifying the contract terms
  - Review risks under the contract if you must keep performing
- **Good to get paid, but beware of preferential transfers**
  - Payments you receive within 90 days before a bankruptcy filing can be clawed back
  - “Ordinary Course of Business” payments are entitled to a defense
  - Prepayment or COD reduces your risk significantly
- **Can you limit credit or change payment terms to reduce risk?**



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## Doing Business With a Company in Chapter 11

- **How will you get paid?**
  - Continuing to ship on credit? Considerations:
    - Postpetition claims must be paid in the ordinary course of business
    - But consider the viability of the bankruptcy case (review budgets, monthly reporting publicly available)
  - If it is a particularly large transaction or outside of the ordinary course of business, get bankruptcy court approval first
- **Do you have a contract?**
  - You must keep performing under the contract
  - Best practice to confirm that the debtor intends to pay post-bankruptcy
  - May seek to force the debtor to assume or reject the contract



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## What about my Claim?

- **The status of pre-petition claims after bankruptcy filing**
  - Filing a claim may expose creditors to bankruptcy court jurisdiction
  - Automatic stay prevents collection efforts on prepetition claims
- **Critical vendor status may be available**
  - If you supply a unique good or service
  - May result in partial or full payment of your pre-bankruptcy claim
- **Priority for certain prepetition claims for goods**
  - Goods shipped within 20 days of a bankruptcy filing are entitled to a priority claim
  - Components of your invoice that are not strictly goods may not be entitled to priority claim



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## Bankruptcy Outcomes – 363 Sales and Plans

- **Sale of assets by a bankruptcy debtor under section 363**
  - Usually required to be held as an open process, subject to higher and better offers
  - Sales in bankruptcy are “free and clear of all liens, claims and encumbrances”
  - Review issues of assignment of contract rights to purchaser
- **Plan of reorganization**
  - Will lay out treatment of claims and the debtor’s ability to comply with its obligations post-bankruptcy
  - May also address issues of assumption or rejection of contracts



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## Commercial Rent Payment – Overview



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## Update from Albany



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## Questions?



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