


Bond

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



 **BOND** SCHOENECK
& KING ATTORNEYS

1

Introduction



Peter A. Jones
Deputy Chair, Labor & Employment
pjones@bsk.com
315.218.8337

 **BOND** SCHOENECK
& KING ATTORNEYS

2

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



Jessica C. Moller

Member
jmoller@bsk.com
516.267.6332



3

Dealing with Troubled Companies



Sara C. Temes

Member
stemes@bsk.com
315.218.8327



4

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



5

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?**



6

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



7

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



8

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



9

Commercial Rent Payment – Overview



John B. Elleman

Member

jelleman@bsk.com

315.218.8187



10

Update from Albany



Hermes Fernandez

Member

hfernandez@bsk.com

518.533.3209



11

Questions?



12