



BANKRUPTCY FOR AIRPORT LAWYERS: JUST WHEN YOU THOUGHT IT WAS SAFE...

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May 3, 2019

THE
VOICE
OF
AIRPORTS®



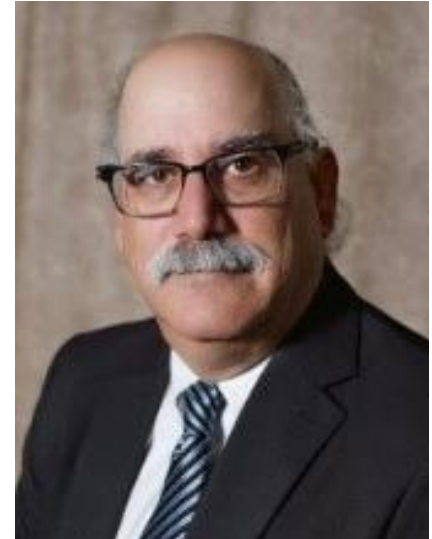
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PURPOSE AND THEORY BEHIND THE BANKRUPTCY CODE



- Airline bankruptcy proceedings are subject to the requirements of the Federal Bankruptcy Code (11 U.S.C. §§ 101, *et seq.*) and rules of procedure, including the requirement that any requested relief is within the jurisdiction of the Bankruptcy Court.
- The Bankruptcy Court is a court of equity.

PURPOSE AND THEORY BEHIND THE BANKRUPTCY CODE, PT. 2



- Chapter 7
 - The purpose of Chapter 7 is to dispose of the assets of debtor that can no longer continue as a viable enterprise
- Chapter 11
 - The purpose of Chapter 11 is to allow debtors to reorganize and continue its business
- Chapter 15
 - Chapter 15 deals with foreign bankruptcies of entities operating in the U.S. (e.g., Air Berlin)

PURPOSE AND THEORY BEHIND THE BANKRUPTCY CODE, PT. 3



- The Automatic Stay
 - Self executing; takes effect immediately upon filing of a bankruptcy petition (11 U.S.C. § 362)
- Preferences
 - 90 “look back” period for preferential transfers that may be “clawed back”.
- Use, sale or lease of property must be in “the ordinary course of business” after filing for bankruptcy protection (11 U.S.C. § 363)

PRE-BANKRUPTCY PLANNING

- Sensitivity studies
 - Airline
 - Specific projects
- Language in leases/contracts

PRE-BANKRUPTCY PLANNING, PT. 2

- Cross-default clauses
- Claw backs (incentives) – Air Service Incentive Plan requirements
- Monitoring Accounts
- Training accounting and operating staff
- Structuring Deposits
 - Letters of Credit
 - Bonds
 - Cash? Not the best security...

THE FIRST 2 DAYS AFTER FILING OF CHAPTER 11 BANKRUPTCY PETITION



- Creditor's Committee formation; participation *ex officio* for governmental agencies
- Cash Collateral
- Segregate PFCs
- Separate Pre- and Post-Bankruptcy Debts

FINANCING ISSUES

- Bond Financing/GARBs/Special Facility Bonds
 - Secured or unsecured?
 - Disclosure issues – both before and after bankruptcy
- Leasehold Mortgages
 - Limitations on rights of mortgage holder
 - Rights of airport w/r/t use, operator, etc.
- Lease Recharacterization
 - Special rules for leases
 - United bankruptcy cases

DURING THE PROCEEDING

- Proof of Claim-Administrative Claims
 - Be sure to include ALL amounts due
- Stub Rent
- Executory Contracts and Unexpired Leases
 - Sometimes, ambiguity is your friend
 - Remedies differ for agreements vs. leases
- Acceptance or Rejection of Leases
 - Leases must be assumed or rejected within a limited period
- Plan of Reorganization/Disclosure Statement

CITATIONS AND REFERENCES



QUESTIONS?

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