

Environmental Aspects of Bankruptcy

Kaplan Kirsch & Rockwell clients have come to rely upon our attorneys' expertise in navigating the complex world of the bankruptcy courts for creditors, with a particular focus on public sector creditors. While firm attorneys have experience representing debtors in bankruptcy proceedings, most of our attorneys' work has focused on preparing public agencies for the potential bankruptcy of tenants, users, contractors, and polluters and then assisting our public agency clients protect their interests through the bankruptcy process. The firm also has assisted our private sector clients in navigating the acquisition of distressed property and associated assets out of bankruptcy and receivership.

In bankruptcy, environmental enforcement or injunctive measures are more likely to avoid application of the Bankruptcy Code than claims for monetary damages. Timing of claims and equitable considerations also can affect the likelihood that environmental claims will survive. The firm has advised our public and private clients regarding the extent to which bankruptcy protections do and do not extend to environmental regulatory requirements and liabilities and how best to preserve environmental claims against bankrupt and insolvent polluters.

The firm also understands well the interaction of environmental due diligence and risk management tools used in contaminated property acquisition and redevelopment with the mechanisms used to transfer these properties and assets from receivership and bankruptcy. Examples of these mechanisms, include deeds-in-lieu of foreclosure and stalking horse bidding procedures.

Representative Environmental Matters

- Firm lawyers have provided counsel on the environmental law implications of bankruptcy proceedings, including as part of the team that worked with Treasury in sorting out environmental issues arising from TARP-era arrangements with General Motors.
- Advised municipality impacted by historical mining-related contamination in strategy for preserving and pursuing potential claims against insolvent successor responsible party.
- Advised Brownfields developer in negotiation of stalking horse purchase and sale agreement for shuttered Illinois coal-burning power plant site and facilities.
- Advised municipal and private clients in acquisition of contaminated property from creditors using deeds in lieu of foreclosure.
- Following bankruptcy of the landfill operator, advised state attorney general's office and environmental agency on managing financial assurances for post closure of four RCRA hazardous waste landfills.

Kaplan Kirsch & Rockwell attorneys have also represented a broad range of clients in the aviation, rail, and infrastructure sectors in bankruptcy proceedings.

Other Representative Matters

- Representation of two public-sector clients in connection with involuntary bankruptcy proceedings against a railroad involved in STB abandonment proceedings.
- Advised a state transportation agency and county in connection with the disposition of assets in bankruptcy of an individual claiming interests in railroad property.
- Counseled public entities with varying ownership interests in a rail line consisting of abandoned and active segments in connection with the bankruptcy of a third-party rail operator.
- Defended a state port in an adversarial proceeding in which a port tenant sought a declaration that the port violated the federal constitution in refusing to negotiate a new lease on terms favorable to the bankrupt tenant.



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- Represented a state transit agency in bankruptcy court when commuter bus operator's filed for bankruptcy and was seeking to hold onto the State-owned buses and use the State awarded contracts to buy its way out of bankruptcy.
- Negotiated the assignment of State Contracts with commuter bus operator and the recovery of the buses owned by the State.
- Filed various claims in Bankruptcy Court on behalf of a State transit agency where vendors filed bankruptcy and failed to return fare media given to vendors on consignment to sell and failed to account for the proceeds from the sales.
- Represented rail industry clients – railroads and other affected parties – in rail reorganization proceedings in both Bankruptcy Court and in related service-preservation proceedings at the Surface Transportation Board and its predecessor agency, focusing on ensuring that all parties place the public interest in preservation of rail service over the interests of creditors and others.
- Represented rail shipper in rail reorganization proceeding where Trustee and railroad sought to use the bankruptcy to eliminate essential service to plants served by the railroad in reorganization.
- Advised public sector rail transit agency on potential remedies available and procedures to follow in the event of bankruptcy of a contract operator.
- Represented multiple large airports—including several large hub airports—in almost all airline bankruptcies since 2001, including the Frontier, TWA, ATA, Vanguard, Midway, United, Independence, US Airways (I & II), Delta, Northwest, and American Airlines Chapter 11 proceedings.
- Assisted airports in securing uninterrupted flow of PFCs, post-petition payments, and related airport operations.
- Advised large hub airport in matters related to potential filing under Chapter 9 by the local municipality in which the airport was located.
- Represented large hub airport in work out of airline lease of special facility-financed terminal, resulting in bonds remaining outstanding and airline continuing operations at the airport.
- Represented several airports in restructuring of fuel farm leases to hub carriers to allow continual fueling operations during airline bankruptcies.
- Defended large hub airport in litigation initiated by bond trustee resulting in bankruptcy-based rejection of special facility lease that triggered a default in underlying special facility bonds used to finance construction of hangar complex.
- Represented airports in rental car bankruptcy cases involving a multitude of matters, including protecting airport interests with respect to environmental claims, objecting to sales of assets that would have resulted in an unwanted concentration of companies at the airport, and negotiating the assumption of certain on-airport contracts.
- Structured a complex airport management agreement to anticipate bankruptcy-centered issues to maximize airport owner/operator power and avoid operational disruptions.
- Represented major hub airports to obtain ex officio status on Official Committee of Unsecured Creditors and represented airports' interests on committee, assisting in committee analysis and oversight of labor and fleet restructurings of subject airlines.
- Pursued claims of a large hub airport related to rejection of use and lease agreements in excess of \$1 billion.
- Structured and negotiated new use agreements with carriers under bankruptcy protection.
- Pursued litigation against airlines regarding whether certain agreements are leases or financing arrangements (such as Special Facility Bonds).
- Advised airports on airline restructuring, including the propriety of providing short-term incentives to carriers and the potential economic impact of their restructuring on the community.
- Utilized FAA-based Grant Assurances in bankruptcy proceedings to protect airport-based interests and address matters such as adjusting rates to avoid future FAA concerns.



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- Used bankruptcy law in conjunction with intimate knowledge of airport agreements and operations along with FAA-based Grant Assurances to secure a large financial recovery to mitigate damage resulting from rejection of Airline Operating Agreement.
- Represented a small hub airport in state court and bankruptcy proceedings to evict a tenant in breach of its leasing, fueling, and other contractual requirements.
- Advised infrastructure fund investors in connection for a bid to acquire the Indiana Toll Road concession out of bankruptcy.
- Counseled a potential bidder in connection with the insolvency of the SH 130 toll road concession company in Texas.
- Advised a commercial lender in connection with the insolvency of the parent company of the Vista Ridge water pipeline project company in Texas.