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COVID-19 Impacts on Landlords of Retail Debtors

The Bankruptcy Code contains special protections for landlords of nonresidential property. While ordinary counterparties can be compelled to wait indefinitely for a chapter 11 debtor to decide whether to assume or reject their leases or other executory contracts, and must continue to perform in exchange for administrative claims for the debtor's obligations, commercial landlords are entitled to current cash payments of rent (subject to a suspension of up to 60 days from the filing). A debtor also must assume or reject a lease of nonresidential real property within 120 days of filing, subject to only one extension of up to 90 days.

Retail debtors, who have been experiencing particularly acute difficulties from the COVID-19 pandemic, generally have significant numbers of commercial leases. Government shutdowns of nonessential businesses and shelter-in-place rules have virtually eliminated live retail shopping for non-essential items, dramatically reducing brick-and-mortar revenues. In response, some retail debtors have sought extraordinary relief from obligations to their landlords. A bankruptcy court recently permitted Pier 1 Imports to suspend operations and reduce expenses to an absolute minimum during the pandemic, including expressly authorizing the deferral of rent payments while the operational suspension is in effect. Modell's Sporting Goods has received similar relief, although it is still within 60 days of its bankruptcy filing; a further hearing has been set to determine whether the deferral of rent payments can continue past the 60 days.

So long as the COVID-19 crisis continues, it can be expected that other retailers, and many other types of businesses dependent on in-person consumers, such as movie theaters, restaurant chains and fitness centers, will make similar requests to defer rent obligations. Such debtors may also seek to extend the 120-day period to assume or reject leases on the basis that consideration of the long-term viability of particular locations or the business overall is not feasible during the shutdown. While it is likely that bankruptcy courts will be sympathetic to debtors who are paying rent on locations that have been shuttered by government order and are thus incapable of producing revenue from operations, or even from conducting going out of business sales, such relief can effectively shift much of the risk of the bankruptcy to the landlords. As retail cases have increasingly resulted in administrative insolvency, *see* Corporate Bankruptcy and Restructuring: 2019-2020, commercial landlords may effectively wind up subsidizing chapter 11 cases, despite their special protections under the Bankruptcy Code.

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