Are You a Secured Creditor? An Inside Look at How Clients Can Better Prepare Themselves for the Inevitable

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When Construction and Bankruptcy Converge
Bankruptcy Basics

- Filing
- Automatic Stay
- Estate
- Discharge
Bankruptcy Basics (ctd.)

- Trustee
- Debtor-in-possession
- Committees
Who is the Trustee?

- What does she do?
- Is she my friend?
- Understand her motivation
- Request for Notice
Bankruptcy Basics (ctd.)

- Bankruptcy Code (the “Code”)
- Federal Rules of Bankruptcy Procedure
- Bankruptcy Court
- Local Rules
Bankruptcy Basics (ctd.)

- Section 365 – Executory Contracts
- Section 363 – Non-Plan Sales
Strategies for Owners and Upstream Contractors When a Bankruptcy Occurs Downstream

- Section 365(d)(2) Motion
- Section 362(d)(1) Motion
- Special Considerations When the Debtor Has Posted a Performance Bond
- Supplementing Performance by the Debtor
Strategies for Downstream Contractors When a Bankruptcy Occurs Upstream

- Section 546(c) Reclamation Claim
- Section 503(b)(9) Administrative Priority Claim
- Trust Fund Statutes and Express Trusts
- Constructive Trusts and Earmarking
Strategies for Downstream Contractors When a Bankruptcy Occurs Upstream (ctd.)

- Statutory Mechanic’s Liens
- Statutory Stop-Payment Notices/Owner Personal Liability Notices
- Payment Bond Claims
Things I could do for a Client

- Drafting and Deal Making
- Express Trusts
- Security Interests
- Earmark Assets
Things I could do for a Client (ctd.)

- File a Proof of Claim?
- Not miss important dates
- Call for help early enough
If you can’t spot the patsy, it’s you

- First Day Motions
- Super-Priority Financing
- Pre-Packs
- Exchanging Security Interests
If you can’t spot the patsy, it’s you (ctd.)

- Preferential Payments
- Fraudulent Conveyances
Trading claims

- Selling my claim and maximizing value