



Lowenstein Bankruptcy Lowdown Video 37 – Stub Rent: What the *Rite Aid* Ruling Means for Landlords and Debtors

By [Andrew Behlmann](#) and [Daniel B. Besikof](#)

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- Andrew Behlmann:** In today's edition of the [Lowenstein Bankruptcy Lowdown](#), we're going to talk about a recurring issue in bankruptcy cases and especially large retail Chapter 11 cases: stub rent, and whether landlords can force debtors to pay it immediately when the case is filed.
- Daniel B. Besikof:** Landlords push hard on this issue because Bankruptcy Code Section 365(d)(3) requires debtors to timely perform all postpetition obligations under a commercial lease. Landlords argue that means stub rent must be paid right at the outset of the case, but courts are split on whether stub rent is actually a postpetition obligation.
- Andrew Behlmann:** One approach, the [billing date approach](#), says that if the rent was billed before the bankruptcy filing, the entire obligation arose prepetition, even if part of the month extends postpetition.
- Daniel B. Besikof:** The alternative is the [accrual approach](#). Under that view, rent is earned day by day. So, if a debtor files mid-month, the portion of rent covering the postpetition days—the stub period—is treated as a postpetition obligation that must be paid timely. That's why landlords like it.
- Andrew Behlmann:** Many courts follow the billing date approach, and that's exactly what happened in the recent *Rite Aid* decision from Judge Kaplan in the District of New Jersey, an increasingly popular destination for large retailers that file Chapter 11.
- Daniel B. Besikof:** The Landlord there argued that stub rent had to be paid upfront under Section 365(d)(3) and that the Debtor owed late fees because it didn't pay until months later. Judge Kaplan rejected those arguments.
- Andrew Behlmann:** The Court confirmed that stub rent is an administrative expense under Section 503(b)(1) of the Bankruptcy Code,

which doesn't impose a payment deadline. Under this ruling, there's no requirement that stub rent be paid on day one, or even at any time during the Chapter 11 case.

Daniel B. Besikof: Instead, like most other administrative expenses, the Court held that stub rent must be addressed at or before plan confirmation. And because the Code doesn't set a due date for stub rent, the Court found no basis for late fees.

Andrew Behlmann: This is a meaningful clarification. Landlords often assume Section 365(d)(3) gives them leverage to demand immediate payment. But some courts, including the District of New Jersey, are drawing a clear line: if the rent obligation arose prepetition under the billing date rule, Section 365(d)(3) does not accelerate payment.

Daniel B. Besikof: This is an important point as companies decide where to file for bankruptcy. Retail debtors, who often file when liquidity is tight, pay close attention to how courts handle stub rent. A jurisdiction that doesn't require upfront payment gives debtors breathing room in the critical early days of a case.

Andrew Behlmann: New Jersey has worked hard to make itself a desirable venue for retail debtors. A clear, predictable, debtor-friendly ruling on stub rent and Section 365(d)(3) will reinforce that trend for retailers with large lease portfolios.

Daniel B. Besikof: For landlords, the good news is that in New Jersey, stub rent enjoys administrative expense claims status, which must ultimately be paid for a debtor to confirm a plan. But courts may not require it to be paid immediately, even when the debtor occupies the space postpetition, subjecting landlords to the risk of delays and administrative insolvency.

Andrew Behlmann: And for debtors, the predictability of decisions like *Rite Aid* makes the District of New Jersey an appealing place to file in the next wave of retail Chapter 11 cases.

Daniel B. Besikof: Thanks for joining us on this edition of the [Lowenstein Bankruptcy Lowdown](#). We'll see you next time.