Lowenstein Bankruptcy Lowdown
Video 18 – SDNY Chooses Debtor-Friendly "Time Approach" to Capping Damages in Lease Actions Against a Bankrupt Estate

By Keara Waldron and Lindsay H. Sklar

JULY 2023

Keara Waldron: This Lowenstein Bankruptcy Lowdown centers on a recent decision in *Cortlandt Liquidating* in which the Bankruptcy Court for the Southern District of New York parted with decades of precedent concerning the manner in which lease termination or "rejection" damages are calculated.

Lindsay H. Sklar: Section 502(b)(6) of the Bankruptcy Code caps the amount of damages a landlord may collect from a bankrupt estate when its lease is terminated or rejected. Courts disagree on whether the 502(b)(6) cap is intended to apply to the time left under the lease, also known as the "time approach," or the total amount of rent coming due, known as the "rent approach."

Keara Waldron: The "rent approach" is considered more landlord-friendly because it allows a landlord to factor in certain scheduled rent accelerations for the life of the lease. The "time approach," on the other hand, is considered more debtor-friendly as it limits the claim to the rent collectible for a limited amount of time following the termination of the lease or the commencement of the bankruptcy.

Lindsay H. Sklar: In *Cortlandt Liquidating*, the Plan Administrator, whom Lowenstein represents, was appointed to administer the winddown of the Century 21 debtors' estates. In late 2021, the Plan Administrator objected to the claims of two landlords arising from lease obligations guaranteed by the Century 21 debtors. The Plan Administrator stated that the claims should be greatly reduced as they were each subject to the 502(b)(6) cap.

Keara Waldron: In this recent ruling, the Court parted with decades of precedent to reject the "rent approach" and hold that the "time approach" represented the correct view. The Court found that the plain language of the statute, the strong support in the legislative history, and considerations of equity and fairness supported the Court's decision.

Lindsay H. Sklar: As evidenced by the claims at issue in *Cortlandt*, the difference between the two approaches can be considerable. Notably, the application of the "time approach" as opposed to the "rent approach" resulted in a $670,000 and $580,000 reduction of the landlords' respective claims.

As with all bankruptcy decisions, the *Cortlandt* ruling does not constitute binding precedent, but will no doubt influence the way lease termination

claims are resolved. At present, one of the landlords has already appealed the Court's decision to the District Court, so please stay tuned to further developments in this case, and thank you for tuning in.