



From Early Warning to Action: A Practical Framework for Corporate Distress

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NEAL GERBER EISENBERG



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OVERVIEW

A leader of the firm's Restructuring & Insolvency Practice Group, Josh delivers practical, creative, and results-driven solutions tailored to each client's business needs. His restructuring expertise – combined with his entrepreneurial and business background – enables him to guide companies in distress as well as solvent companies, sponsors, and investors who are either navigating relationships with distressed counterparties or acquiring distressed assets.

With a decade of experience counseling clients in complex Chapter 11 cases and out-of-court restructurings, Josh is skilled at balancing competing stakeholder interests and crafting strategic compromises to bring multi-party disputes to a consensual resolution that maximizes value for his clients. When litigation is necessary, he advocates vigorously to secure the best possible results.

Clients value Josh's candid, strategic style and the legal rigor he brings from his big-law background. His ability to operate effectively in high-stakes, fast-paced matters has earned the trust of a diverse client base that includes corporate leaders, boards of directors, independent directors, special committees, sponsors, lenders, landlords, creditors, and asset purchasers. Josh is focused on delivering outcomes that align with each client's goals and is known for his ability to quickly assess complex situations and provide actionable guidance.

Josh's sector experience includes retail, hospitality, aviation, oil and gas, media, real estate, construction, and both early and late-stage startups. Josh has also advised clients with significant cross-border issues in jurisdictions including



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EDUCATION

Northwestern Pritzker School of Law (J.D., 2015) *magna cum laude* Order of the Coif

Northwestern University Kellogg School of Management (M.B.A., 2015) *with Distinctio* Beta Gamma Sigma International Honor Society

Columbia University (B.A., Political Science, 2009) *magna cum laude* Phi Beta Kappa

Jewish Theological Seminary (B.A., Jewish Law, 2009) *summa cum laude*



Canada, Mexico, Switzerland, the UK, Australia, India, and Saudi Arabia. His ability to distill complex and novel issues, both domestic and international, into clear, concise guidance and counsel makes him a dependable advisor in times of uncertainty.

Josh is deeply committed to pro bono work. He has partnered closely with the National Immigrant Justice Center to represent asylum seekers and assist foreign nationals seeking temporary protected status.

EXPERIENCE

- Counsel to private equity sponsor in connection with out-of-court restructuring transaction of large, nationwide retail chain. *
- Counsel to special committee of board of directors of large U.S. fast-casual restaurant chain in connection with restructuring transaction, including investigation of company's claims and causes of action. *
- Counsel to special committee of global technology solutions provider in connection with restructuring transaction, including investigation of company's claims and causes of action. *
- Counsel to special committee of emergency transportation provider in connection with restructuring transaction, including investigation of company's claims and causes of action. *
- Counsel to special committee of cosmetics manufacturer in connection with assignment for the benefit of creditors. *
- Counsel to directors and officers of Chapter 11 debtor in connection with claims against the debtor and other matters related to Chapter 11 case. *
- Counsel to senior secured lender in connection with borrower default and restructuring, including out-of-court restructuring efforts, exercise of remedies under UCC article 9, and Chapter 11 representation. *
- Counsel to purchaser in connection with Chapter 11 Section 363 sale of assets of technology production supply chain services provider. *
- Counsel to ad-hoc group of second-lien creditors in connection with liability management transaction of large industrial services data provider. *
- Counsel to Canadian company in connection with preparation for Chapter 15 filing, governance matters, and negotiations with investors and lenders. *
- Represented a material life sciences company when the company filed its prearranged Chapter 11 cases. *
- Represented a wholesale supplier of home decor and other home goods to prominent brick-and-mortar and online retailers when the company filed its prearranged Chapter 11 cases. *



- Represented an innovative and eco-conscious construction company as well as its subsidiaries in their Chapter 11 cases. *
- Represented a leading owner and operator of fitness clubs, primarily located in the Northeast and Mid-Atlantic regions of the United States, as well as certain affiliates in their Chapter 11 cases. *
- Represented an energy company in its prepackaged Chapter 11 cases to pursue a sale of its assets as a going-concern. The sale was supported by the company's first-lien revolving lenders and second-lien term lenders and was meant to restructure more than \$1 billion in funded indebtedness and address over \$500 million of plugging and abandonment liabilities. *
- Represented a leading provider of hydraulic fracturing and cementing services to upstream oil and gas companies, as well as its affiliates, in their Chapter 11 cases, during which the company sold its
- Represented a publicly-traded omnichannel retailer specializing in home furnishings and decor with 923 stores in the United States and Canada, as well as its subsidiaries in their Chapter 11 cases. *
- Represented a leading content creation-to-distribution company that provides digital media services to Hollywood studios, independent filmmakers, television networks, online content producers, and brands in their prepackaged Chapter 11 cases. The Chapter 11 cases were filed to consensually reorganize the company by exchanging its secured debt for equity in the reorganized company. *
- Represented a leading brick-and-mortar and e-commerce retailer focused on fashion and art-conscious home decor in its Chapter 11 case. *
- Represented a retailer of toys and baby products, as well as several of its direct and indirect subsidiaries, in one of the largest ever retail Chapter 11 filings. Led efforts to construct and implement global settlement agreements amongst all stakeholders and five distinct Chapter 11 plans following a successful wind down of US operations, along with reorganizations of worldwide operations, including in Asia. *
- Represented a specialty family footwear retailer in their Chapter 11 cases. The retailer filed for Chapter 11 to exit unprofitable store locations and implement a pre-arranged restructuring plan supported by two-thirds of its lenders that reduced approximately \$830 million in funded debt by nearly 50 percent. The company also filed for recognition of the US Chapter 11 proceedings under Part IV of the Companies' Creditors Arrangement Act in the Ontario Superior Court of Justice. *
- Represented an independent oil and gas company engaged in the exploration, development, and production of oil, NGLs, and natural gas in its prearranged Chapter 11 restructuring. The Company filed for Chapter 11 with a support agreement that reduced the company's long-term debt from approximately \$1.2 billion to approximately \$128 million. *



- Represented a provider of casino entertainment services, the owner/operator of 44 gaming and resort properties in 13 US states and five countries, in its Chapter 11 restructuring. The company and its debtor subsidiaries had more than \$18.4 billion in funded debt obligations as of the commencement of their Chapter 11 cases. *

*Experience prior to NGE

NEWS & INSIGHTS

May 26, 2026 Publication

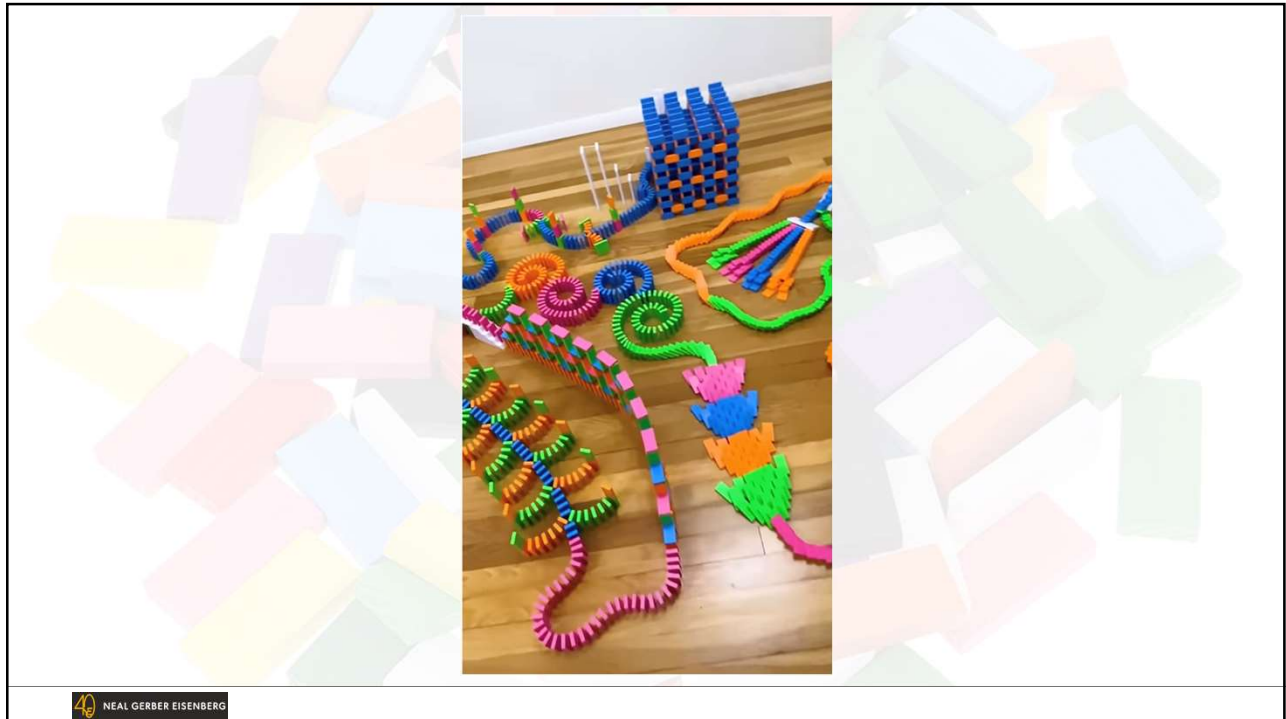
The End of “Extend and Pretend” for Hotel Owners and Operators Facing Distress

November 20, 2025 Publication

Cybersecurity and Data Privacy Implications When a Services Partner Fails

October 20, 2025 Firm News

Neal Gerber Eisenberg Welcomes Josh Altman as Partner in Restructuring & Insolvency Practice



1



Why Optionality Matters

"In the 10 years since financial panic, we've learned we're 'all dominoes' spaced closely together." — Warren Buffett

Distress spreads like dominoes: performance can look solid until one supplier, policy change, or customer failure tips the first tile.

Where are you most vulnerable?

- Do you have a single-source, mission-critical input?
- Do you have a key shipper/service provider you can't operate without?
- Do you have a highly concentrated customer base or revenue stream?
- What if any of these disappear overnight?
- Is AI going to revolutionize your industry (if not this month, then next)?

One systemic shock, one large macro-economic change, can have an outsized impact if it hits the right domino at the right time.

It takes thoughtful, strategic planning to get your dominos in place today for an uncertain future.

2

When Your Customers Face Distress

"Nowadays people can be divided into three classes—the haves, the have-nots, and the have-not-paid-for-what-they-haves" – Earl Wilson (nationally syndicated newspaper columnist)

How do you learn about customer distress?

- News leak (common with larger companies with traded debt/equity)
- Behavioral change (stretching payables, changing orders, missed commitments)

When should you be alarmed?

- One late payment that resolves quickly may not be a red flag.
- A "runaround" + rising A/R is a warning sign.
- If you are constantly encountering responses such as "let me check", "let me follow up," or "we are processing it" – and your accounts receivable is increasing – these delays are likely not accidental.

3

Reacting When Your Customers Face Distress: Past Due Amounts

Your goal is to get paid and limit preference exposure. Exposure? They owe me that money!

Once a customer falls behind, any payment they make comes with the risk of a later preference claim.

Preferences (Bk. Code Sec. 547(b)), include:

- Transfer made for the benefit of a creditor
- On account of past-due debt
- While the debtor was insolvent
- Within 90 days of the filing of a bankruptcy petition (one year for insiders)
- Allowing the creditor to receive more than it would under a chapter 7 liquidation

Defenses

- Contemporaneous exchange for new-value (Bk. Code Sec. 547(c)(1)): intended to be, and in fact; e.g. cash on demand
- Ordinary course of business (Bk. Code Sec. 547(c)(2)): Ordinary course of business and ordinary business terms
- Subsequent new value (Bk. Code Sec. 547(c)(4)); e.g., you provided new goods after the alleged preference (and those goods are unpaid)

Negotiate for past due payments promptly to get the 90-day preference window ticking.

- What leverage do you have to get paid now? Can you withhold a shipment?
- What is the best structure to mitigate preference exposure?

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Reacting When Your Customers Face Distress: New Order Requests

Once you ship the product, it becomes collateral of the secured lenders.

- **Reclamation Demands are Ineffective.** The UCC and Section 546(c) of the Bankruptcy Code provide reclamation rights, but a properly perfected lien and debtor-in-possession financing order will trump those rights.
- **Review your contractual obligations.** Unless you have a binding contract (not in default), you likely have no requirement to ship, and particularly on the same terms.
- You can require cash in advance for future orders, rendering the payment **not** on account of antecedent debt.
- You can also modify terms to cash-on-delivery, maximizing the contemporaneous exchange defense.

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When Vendors / Your Supply Chain Face Distress

"The only man who sticks closer to you in adversity than a friend is a creditor."

How you find out:

- Delayed or incomplete shipments
- Requests to tighten payment terms (COD/cash in advance)
- Price adjustment requests
- Claims that shocks (e.g., war, cost spikes) trigger contract provisions (force majeure, MAC, price adjustments)
 - Tariffs are rarely listed in force majeure—often debated as foreseeable vs. extraordinary

When to be alarmed:

- You have reason to believe critical inputs or inventory won't arrive on budgeted terms or timelines.

What to do (and key risks):

- Build optionality now for mission-critical items: alternate suppliers, products/inputs, and logistics providers.
- If options are limited, be a strong partner—vendors may prioritize reliable customers when capacity is constrained.
- If the supplier is vital, consider targeted support/financing.

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Customers, Suppliers, and Vendors in Chapter 11

Barring court authority, prepetition debts cannot be paid. But do you need to perform?

The Automatic Stay (Bk Code Section 362) prevents any collection activity.

Executory Contracts. The type of contract you have can dictate a lot about your leverage. An executory contract will remain in effect during a Chapter 11 case.

The Countryman definition: "a contract under which the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing the performance of the other." Executory Contracts in Bankruptcy: Part I, 57 Minn. L. R. 439, 460 (1973)

You may be compelled to perform under an executory contract with a Chapter 11 debtor. You will have an administrative claim for amounts due to you.

The Fallacy of Critical Vendors.

This is a negotiated payment on prepetition debts authorized by the "necessary or appropriate" provision of Bk Code Section 105. It isn't a judgment on your value.

"Termination on Bankruptcy" Provisions are Ineffective. Bk Code 365(e)(1)

When Your Tenant Faces Distress

"Why is it that when you lose your job, the landlord is the first to know, but when you need a plumber, they are the last to know?"

Before a Filing: Contract Review

Contract Review. Consult with counsel about options to terminate the lease prior to a bankruptcy filing.

Unexpired Lease is Property of the Estate. Bk. Code Sec. 541: If a tenant files Chapter 11 with an unexpired lease of real property, that lease is property of the estate.

While this is not always the right solution, **termination creates optionality.**

If a Tenant Files Chapter 11

Prepetition vs Administrative Claims. Bk. Code Sec. 503(b): They do not need to pay past due rent during the case; they must pay contractual rent during the case as an "actual, necessary cost and expense of preserving the estate."

Power to Assume (and Assign) or Reject a Lease. Bk. Code Sec. 365: Provides a debtor 120+90 days to decide whether they want to keep (assume) the lease or terminate (reject) it.

- Look out for consent notices!
- If it is a below-market lease, they may be able to sell it to another tenant.

Damages Upon Rejection. Bk. Code Sec. 502(b)(6): "The rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease."

- Tenants will often threaten rejection to extract lease modifications from the landlord.

When Your Landlord Faces Distress

"Why is it that when you lose your job, the landlord is the first to know, but when you need a plumber, they are the last to know?"

Situation	What It Means for You
Receivership / Deed-in-lieu	Generally, your tenancy will continue with someone else managing the building. They may not do much investment, but basic services should continue to be provided.
Landlord Files Chapter 11	Consult counsel regarding your rights. You must continue making regular payments—your rent is an asset of the estate and you cannot withhold it . Under <i>Bk. Code Sec. 365</i> , the debtor has 120+90 days to assume (keep) or reject (terminate) the lease.

What happens if the landlord rejects the lease?

Treat the Lease as Terminated

Walk away. You will have an unsecured claim against the estate for your damages.

OR

Remain in Possession

Your right to possession is protected by the bankruptcy code, but the landlord has no obligation to provide services (utilities, maintenance, repairs). You can deduct any amounts paid from rent.

Either way: Consult counsel about options to get out of the lease, while simultaneously looking for another space.

Licensees and Licensors in Chapter 11

There are special provisions of the Bankruptcy Code that relate to licensee-licensor relationships.

Even if a licensor rejects a license agreement, the licensee can choose to treat the license as terminated or retain its rights.

Bankruptcy Code 365(n) allows a licensee to continue using a license for the duration of the license and on the same terms despite a debtors' rejection of that license.

- 365(n) applies to trade secrets, patentable inventions and patent applications, plant varieties, and works subject to U.S. copyright law.
- It does not apply to trademarks, trade names, and servicing arrangements related to licenses.



If you are a licensee or a licensor, you should consult with restructuring counsel prior to entering into any license in order to maximize (or minimize, as the case may be) the applicability of 365(n).

When Your Business Faces Distress

"How did you go bankrupt? Two ways. Gradually, then suddenly." – Ernest Hemingway

Systemic shocks are disrupting purchase patterns and causing margin compression.

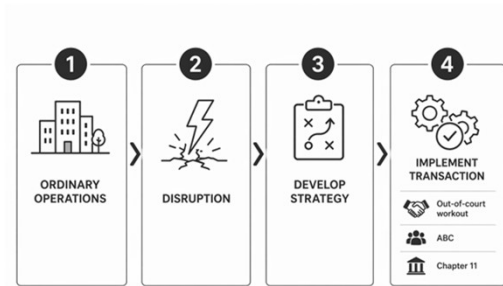
- These trends lead to tightening liquidity, stretching payables, and cash conservation actions.
- Some companies will face a covenant default without runway to solve your problem.

Take control of the situation, don't let it control you.

- The earlier you act, the more (lower-cost) optionality you have, including recaps, refi, amend and extend transactions, partial debt for equity conversions, sales, etc.

Don't face this alone! Distress is a complex issue with many paths.

There are professionals who help clients turn their companies around and maximize their value every day.



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Fiduciary Duties In Distress

- Fiduciary duties are important in distress because decisions made by directors and officers may be subject to later litigation and review.
 - Duty of Care: The level of care that a “reasonably prudent” person would exercise in a similar situation under similar circumstances.
 - Duty of Loyalty: Put the organization's interests above your own.
- Directors and officers **do not** have a shifting burden in the “zone of insolvency.”
- Board of directors must always act with the intent of maximizing the value of the corporate enterprise.

“When a solvent corporation is navigating in the zone of insolvency, the focus for Delaware directors does not change: directors must continue to discharge their fiduciary duties to the corporation and its shareholders by exercising their business judgment in the best interests of the corporation for the benefit of its shareholder owners.”

N. Am. Catholic Educ. Programming Found., Inc. v. Gheewalla 930 A.2d 92 (Del. 2007)

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Fiduciary Duties In Distress – Best Practices

Best practices for governance in distress include, or may include, depending on the circumstances:

1. Seek professional assistance
2. Stay informed - regular board updates
3. Choose the path that maximizes value
4. Create a paper trail - contemporaneous documentation of good governance is good governance
5. Review insurance coverage
6. Maintain appropriate decision-making authority
 - a) Avoid self-dealing
 - b) Avoid a *Hail Mary*
 - c) Use special committees and delegations of authority, as needed

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Recap: My Vendor/Supplier/Customer/Landlord Filed For Chapter 11. Now What?

Depending on your relationship with the counterparty, the impact of a Chapter 11 case could have an array of consequences. Considerations include:

- The Automatic Stay (BK. Code. Sec. 362) prevents you from seeking to collect amounts owed outside of chapter 11.
 - Actions to collect can be sanctionable by the court.
 - Depending on your situation, you may be able to negotiate for “critical vendor” status.
- If they are your landlord, you likely need to continue paying them, in full, during the case.
- If they are your tenant, they will have 210 days to decide if they want to assume or reject the lease.
 - While they must pay you for occupancy **during the case**, they do not need to pay past due amounts.
 - They could seek to sell the lease, renegotiate the lease, or terminate the lease, which would leave you with a claim in Chapter 11 that could recover effectively, nothing.
- If they are an executory contract counterparty, you may need to continue providing services following the filing, even though they will not pay you for services provided prior. They **do** have to pay you for services provided during the case.
- If you are a licensee, protect your rights!
- You will also want to file a claim in the cases to make sure you are entitled to recovery from the estate, if any is available.

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What To Do Now

1

Stress Test Liquidity and Financial Projections

How much of a shift would it take to push you towards distress or covenant failure?

2

Audit Your Vulnerabilities

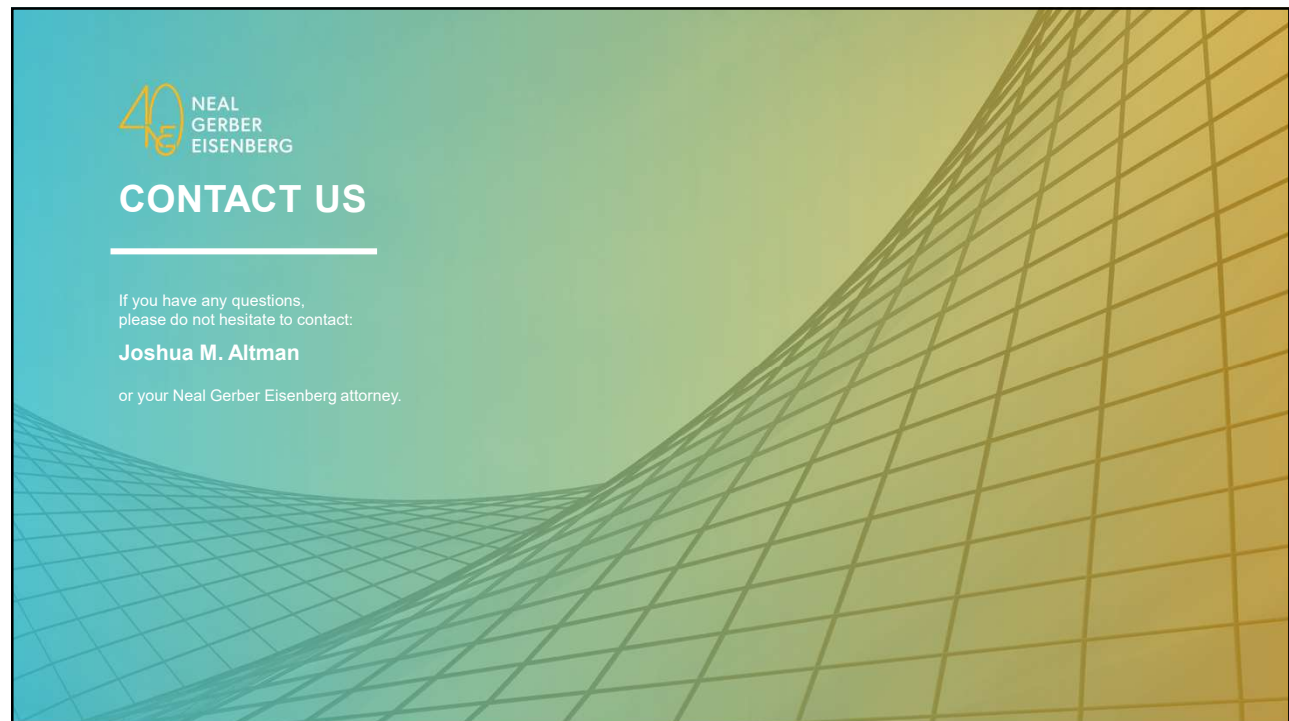
Do you have highly concentrated customers?
Do you have single-source suppliers/vendors?
Are there places where the dominos are all aligned?
Intellectual Property – Licensors have special rights. A license is an executory contract.


3

Review Key Contracts

Counsel can advise on the impact of a Chapter 11 filing on your contractual relationship (and where you may want amendments, if the timing arises).
This is particularly important for leases, intellectual property licenses/agreements, and material supplier/vendor relationships.

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CONTACT US

If you have any questions, please do not hesitate to contact:

Joshua M. Altman

or your Neal Gerber Eisenberg attorney.

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