

Schneider Builds Case for Preventing Broad Releases of Contractual Duties in *ABI Journal*

In the News

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Stinson LLP Partner [Lucas Schneider](#) authored an article for the *ABI Journal*, “Curing What Actually Ails You,” that provides insight on better defining a bankruptcy term to prevent overreach in bankruptcy plans, confirmation orders and sale orders.

He details why reasonable executory contract counterparties who are owed duties and obligations under contracts covered by bankruptcy proceedings are negatively impacted by the simplicity of “default,” and details why adding a descriptive term to “default” can benefit creditors and other interested parties impacted by bankruptcy proceedings.

“Adding the word ‘accrued’ before ‘default’ in § 365(b)(1)(A) would greatly assist in setting clearer guardrails around what constitutes ‘default,’ and which defaults require cure and would be released,” Schneider writes. “The Bankruptcy Code could then rely on a breadth of state court decisions, applying the choice of law of the respective executory contract.”

He says removing gamesmanship in plans regarding what is “cured” and released will reduce transactional and litigation costs, and aid in getting plans confirmed in an efficient and clearer way for all parties involved.

“The addition of ‘accrued’ into the Bankruptcy Code provision would compel debtors to more closely consider whether the burdens of an executory contract are worth the value. Likewise, the creditors will have more cost-effective certainty in their determinations of whether to actively protect contract rights through bankruptcy litigation.”

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Schneider is an accomplished litigation and transactional attorney with a practice focused on helping lenders, telecoms and insurers in bankruptcy, receiverships, workouts, insolvency transactions and complex litigation. He helps clients maximize cost-effective recoveries, and has litigated receivership cases, preference and fraudulent transfer claims, administrative claims, cure payments, stay and discharge violation claims, and exceptions to discharge, from New York to California.

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