When Contracts and Bankruptcy Collide, a Short Term May Be Better in the Long Term



Image by NY Photographic

Before entering into a long-term contract, you should consider that the longer the contract, the greater the risk of a change in the contract counterparty's financial situation. A safe credit risk in 2017 might find itself filing for bankruptcy by 2020, warns **Jeffrey A. Krieger**, a partner in **Greenberg Glusker Fields Claman & Machtinger LLP**.

For those who respond that they're not worried because the agreement includes a bankruptcy termination clause, Krieger says: "The U.S. Bankruptcy Code has a lot to say about the rights of both the debtor and the non-debtor party once a bankruptcy is filed – often to the chagrin of the non-debtor party."

"A Right to Terminate clause is unenforceable because the non-debtor party's termination would violate the 'automatic stay' of Bankruptcy Code section 362. Once a bankruptcy is filed, section 362 puts a halt to any action to obtain possession of, or exercise control over property of the estate," he writes.

He offers an approach that could deal with this potential problem before signing the agreement.

Read the article.