

Tinkering With Ipso Facto Provisions in Financial Contracts Could Send Them Sailing Out of Safe Harbors

The scope of the Bankruptcy Code's safe harbor for certain financial contracts has been tested again, this time in the United States Bankruptcy Court for the Western District of Louisiana, according to an article written by **Maurice Horwitz** in the **Bankruptcy Blog** of **Weil, Gotshal & Manges**.

The question in the case he described was whether an *ipso facto* provision continues to be safe harbored if enforcement of that provision is conditioned on other factors – in this case, the debtor's failure to perform under the contract.

“Consistent with prior case law, the court held that termination is only safe harbored if it is based solely on a condition specified in 365(e)(1), *i.e.*, the financial condition of the debtor, bankruptcy, or the appointment of a trustee,” **Horwitz wrote**. “Because the *ipso facto* provision in this case contained an additional condition to enforcement (the debtor's breach), it no longer fell within the safe harbor. Thus, even if both conditions were satisfied (bankruptcy and breach), the automatic stay applied and the termination clause could not be exercised absent relief from the automatic stay.”

Read the article.