

42nd Annual AAAE
Airport Law Workshop
Phoenix, AZ

Session #16

Bankrupt Tenants and Corporate Acquisitions (The Spirit Session)



KAPLAN KIRSCH

Speakers



Eric T. Smith
Partner, Kaplan Kirsch, LLP
esmith@kaplankirsch.com



Stephanie Griffin Mateo
Partner, Kaplan Kirsch, LLP
sgriffinmateo@kaplankirsch.com

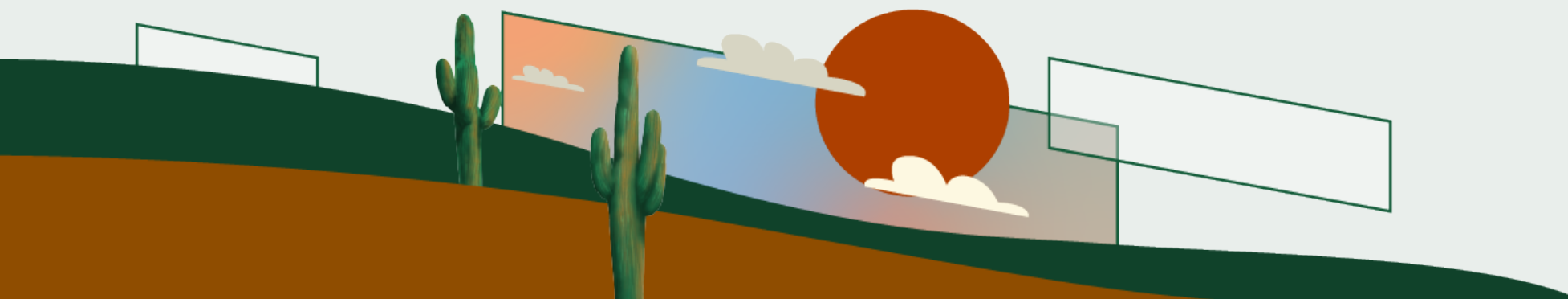
Focus of the Session

- Bankruptcy Overview – Recent Cases as Examples of Airport Issues
- Stories from our “fun” experiences in this arena as a vehicle to put law in real-world context
- Dealing with financially distressed entities who have agreements with your airport
- Financial risk mitigation in airport transactions
- Assessing and addressing multilayer corporate transactions and structures (from a risk mitigation viewpoint)



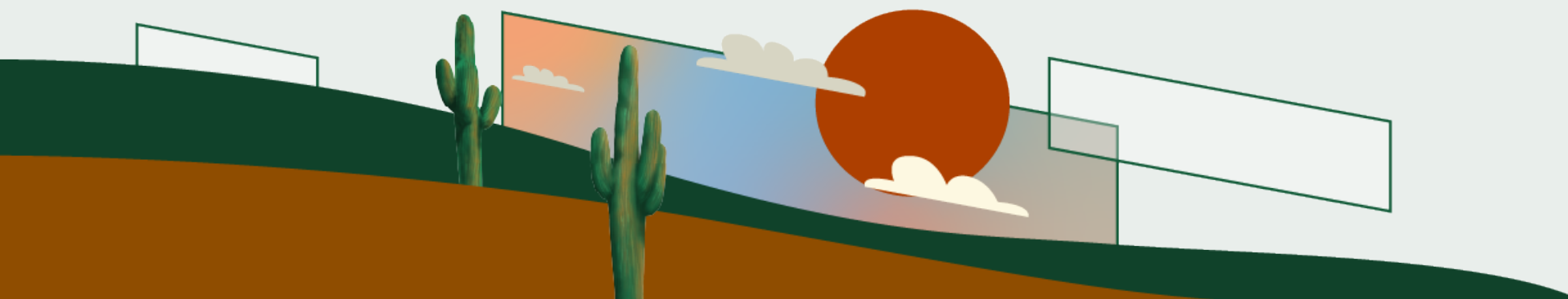
Before We Dig In...

- Trying to cover many topics
- Inch deep and a mile wide
- Lots to cover, if possible, hold questions until end of session
- With that out of the way, let's get to it!



Putting it in Perspective

- U.S. aviation industry is in constant flux
- The particular challenges change but the constant is change
- Airport counsel's role is to anticipate the meltdown



Post-deregulation start-ups... ...and their demise

And the hits just keep coming!

- ✈ 80's
- ✈ 90's
- ✈ 9/11
- ✈ SARS
- ✈ MERS
- ✈ 2009
- ✈ COVID

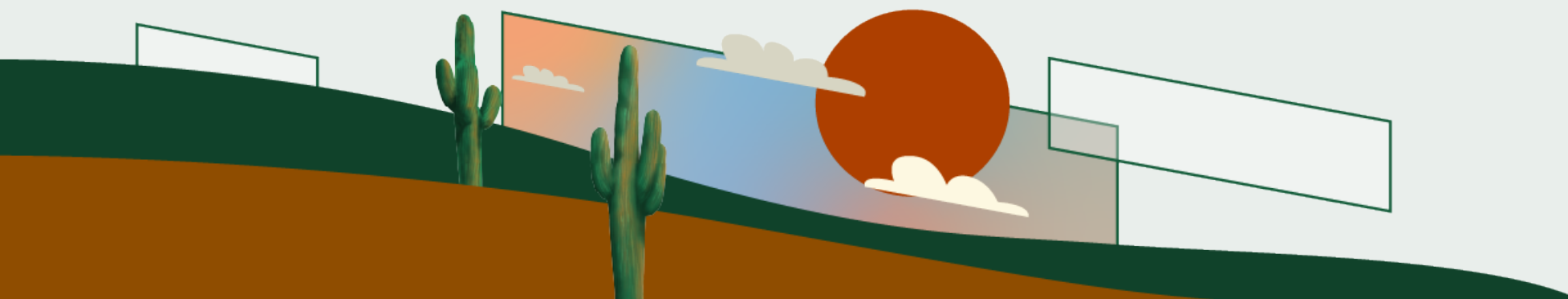


The Failures/Consolidations are not Limited to Airlines



- ✓ Hertz, Dollar, Thrifty
- ✓ National, Alamo
- ✓ Advantage, EZ Rent A Car

Upheaval, restructuring, consolidation, and failure are the norm in the aviation arena.



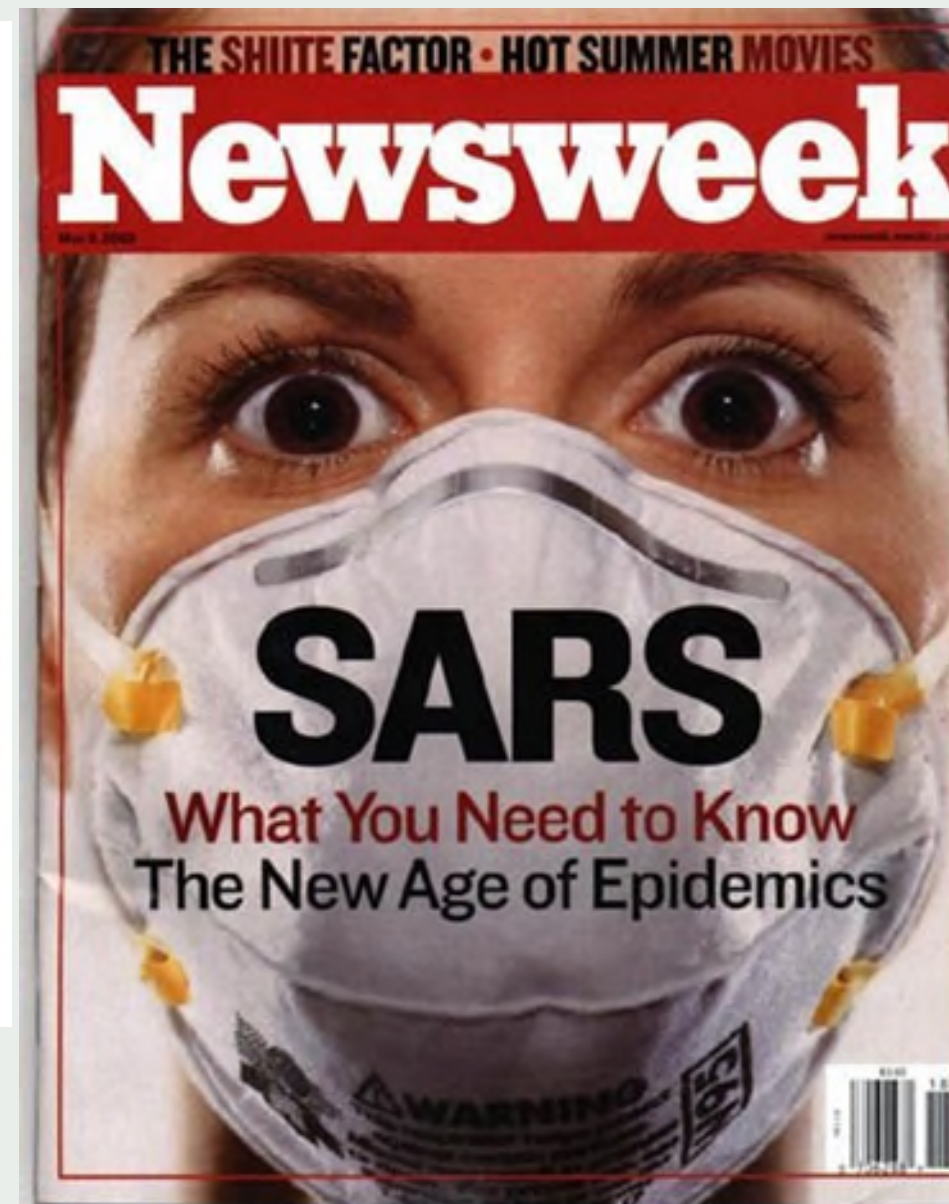
The Unexpected Seems to Keep Occurring

Airlines 'to lose \$9bn' as they fight to survive recession

Iata nearly doubles forecast of losses as passenger numbers fall and carriers slash ticket prices



▲ Willie Walsh, British Airways chief executive, said every airline was in a fight for survival. Photograph: Matt Cardy/Getty Images



WHO raises alert level for swine flu outbreak

Health officials shut down school in Mira Mesa

By Mike Lee
STAFF WRITER

The novel strain of swine flu that has gripped the globe not only infected more people from San Diego to Spain yesterday, but also started exacting an economic toll as stock markets fell and travelers reconsidered trips to Mexico and



Types of Risks

- ✓ Default without seeking protection
- ✓ The “key toss”
- ✓ ABCs
- ✓ Bankruptcy



Airport Parties That Pose Risk

- ☐ Airlines
- ☐ Concessions
 - Food and beverage
 - Retail
 - RACs
 - Other
- ☐ Non-aeronautical, non-terminal



Storm Clouds on the Horizon?



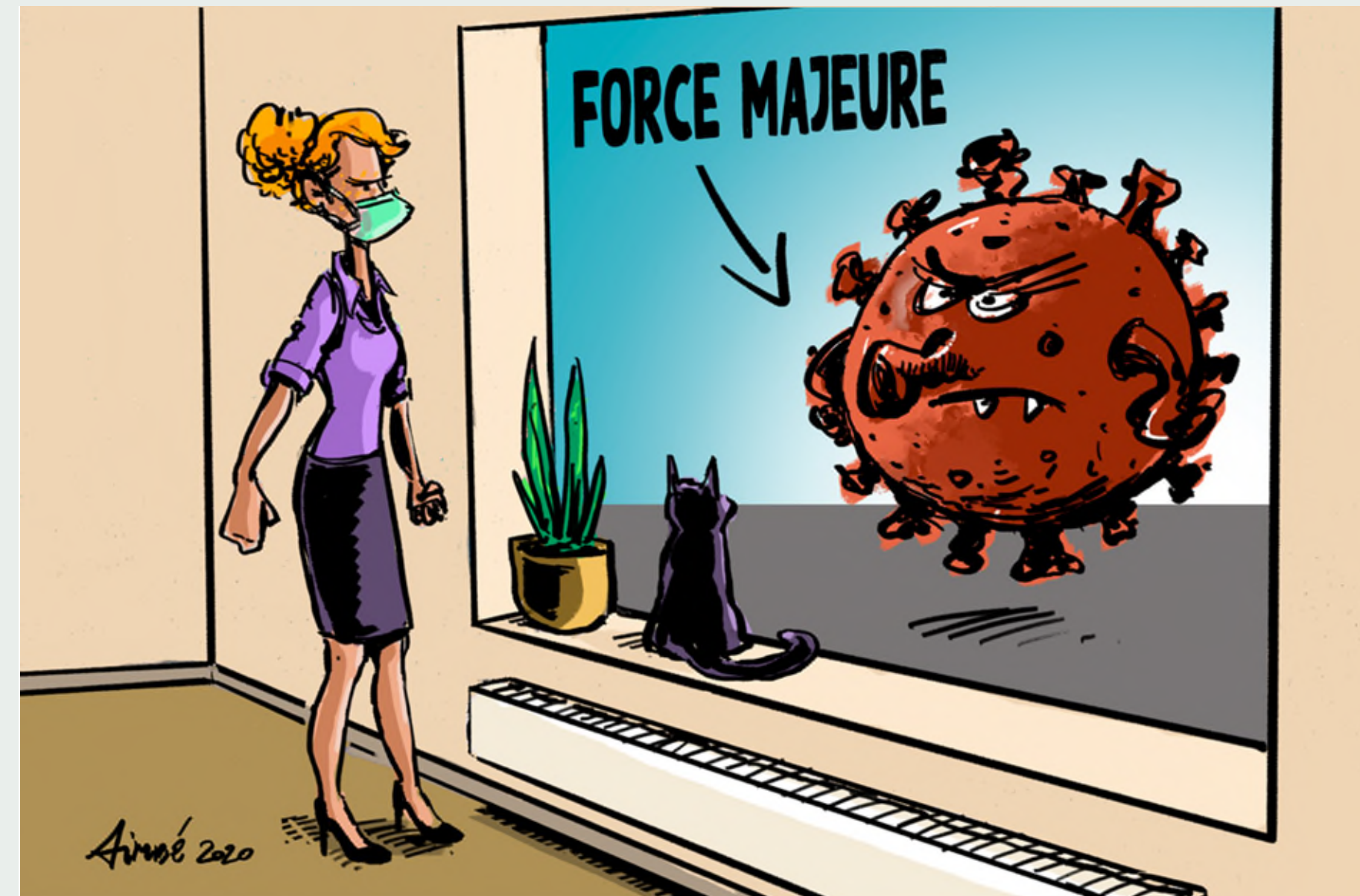
What is an airport lawyer to do?

- ✓ Situational review
- ✓ Contract
- ✓ Risk mitigation
- ✓ The importance of a short lease
- ✓ No good deed goes unpunished?

Planning, what is it good for?

Risk Mitigation Starts With a Good Contract

- Procurement
- *Force Majeure*
- Security for performance
- Upstream guarantees
- Default language
- FF&E
- Self-help/Step-in rights
- Transition/assignment/handover obligations



Grant Assurance #5

- 1st of two times this will be covered
- Generally, every agreement made by an airport with another party should be against the backdrop of Grant Assurance 5
- How can the sponsor stay “in the driver’s seat” in the event of a melt down?
 - ✓ The counter-party
 - ✓ 3rd Parties (lender, employees, contractors, etc.)
 - ✓ Litigation, including bankruptcy
 - ✓ Ability to assign



FAA
Airports

ASSURANCES AIRPORT SPONSORS

5. Preserving Rights and Powers.

The Sponsor ...

- a. ... will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant Agreement without written approval of the Secretary, and, will act promptly to acquire, extinguish or modify any outstanding rights or claims of others which would interfere with such performance by the sponsor...

Bankruptcy

- ✓ Two relevant chapters
- ✓ Automatic stay common to both



Real World Examples

Rental car company bankruptcies

- ❖ Hertz
- ❖ Advantage
- ❖ EZ Rental Car

Airline bankruptcies

- ❖ Almost every network carrier!
- ❖ Spirit (Chapter 22)
- ❖ Silver Airways



TRAVEL ADVISORY

Dear Silver Airways Customers,

We regret to inform you that we are ceasing operations as of today, June 11, 2025. In an attempt to restructure in bankruptcy, Silver entered into a transaction to sell its assets to another airline holding company, who unfortunately has determined to not continue Silver's flight operations in Florida, the Bahamas and the Caribbean.

Please do not go to the airport. All credit card purchases should be refunded through your credit card company or your travel agency.

Silver

Key Airport Bankruptcy Issues

- 1st day orders
 - Motion to continue cash management systems
 - DIP financing
 - Cash collateral
- Passenger Facility Charges (PFCs) & Customer Facility Charges (CFCs) – special to us
- Security deposits, letters of credit, and surety bonds
- Assumption or rejection of airport agreements
- Damages from rejection – real estate lease or not?
- Assumption and cure
- Sale of assets
- Proofs of claim



The Airline Bankruptcy “Flow” After the Initial Flurry of Activity

- Getting settled in – waiting for the Plan
- Post-petition payments to airports
 - Airports & the Squeaky Wheel
- Case monitoring – essential to stay connected
- Cash flow / cash burn analysis
- Motions to compel payments to airports
- Assumption or rejection of airport agreements



Selected Issues in Action

- ✓ Protection of airport trust funds
- ✓ Post-petition performance
(administrative expense claims)
- ✓ Assumption of airport contracts
- ✓ Sale of airport contracts
- ✓ Security for performance
- ✓ The deadbeat airline



Financial Planning – Internal Risk Management

- Not *Rates & Charges* Session, but important to discuss in this context
- Financial Modeling – SO important!
- Rates & Charges Policy
 - Charge for cost of services/facilities
 - But....
- Concept of DCOH (yes, more acronyms!)
- Reserves – O&M, bad debt
- Debt Coverage – bonds & airline agreements
- Rolling vs Hard Coverage
- Extraordinary coverage clauses
- Operational strategies



On-Airport Property Issues

- Aircraft
 - Leased
 - Financed
 - Owned
- Aircraft Parts
 - Engines
 - Other Parts
- Jet Bridges
- Ground Service Equipment
- Computer Equipment
- Kiosks
- Millwork



Selected Special Topics

- Liens on airport property
- Security interests/liens on *tenant* property
- Assignment of Agreements



Grant Assurance #5

Take Two!

5. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant Agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

- Would allowing a tenant or 3rd party to adversely impact the sponsor's ability to remain in control of how the airport operates violate Grant Assurance #5?
- Does it matter if the property is aeronautical (ex. a hangar) or is non-aeronautical (on-airport office building)?
- Is there a cost/benefit analysis to be conducted in assessing the above questions?



Assignability of Airport – Airline Agreements in Bankruptcy

- At some airports, gates are sought-after commodities
- Grant Assurances implicated in airline gate assignment:
 - Grant Assurance # 5
 - Grant Assurance # 22
 - Grant Assurance # 23
- Bankruptcy Code abrogates anti-assignment / approval rights (11 U.S.C. § 365)
- But there's an exception
- Are grant assurances “applicable law” that prevents assignment without sponsor approval?

(c) The trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if—

(1)

(A) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor or the debtor in possession, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and

(B) such party does not consent to such assumption or assignment; or

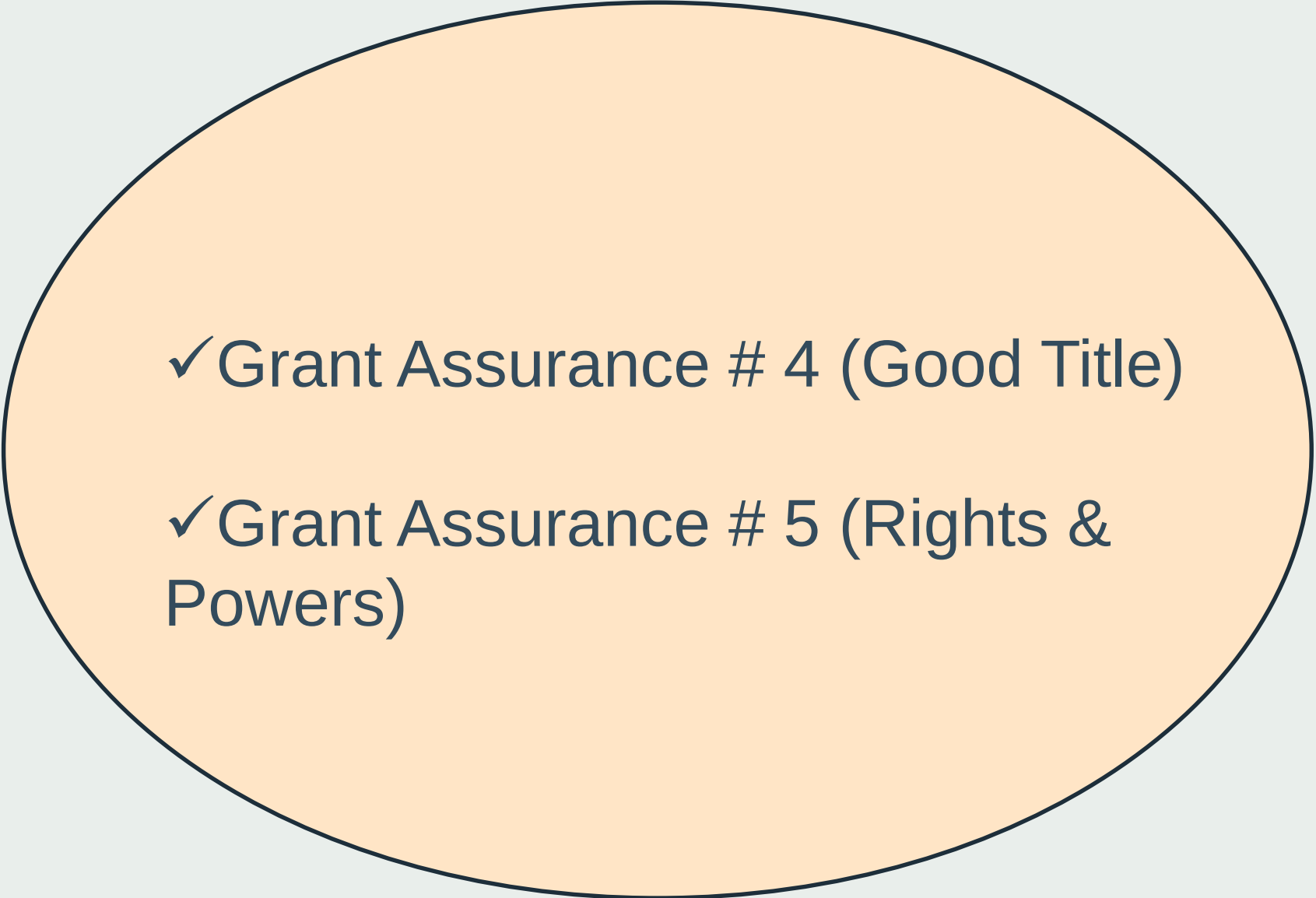
Contractor Claims

- On-airport work by outside contractors performing work for a distressed airline/tenant could create headaches for the airport
- Contractor claims could trigger mechanic's liens
- Best practice: “No Lien” provisions in contracts
- Real world: When music stops, contractual counterparty does not have the means to clear the lien.

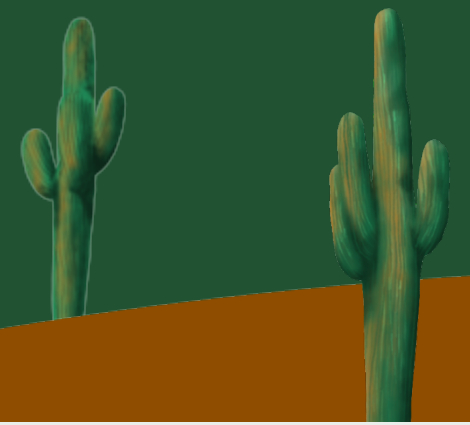


Leasehold Mortgages

- What are they?
- Sponsor obligations regarding its property
- Airport's default position: No
 - Why would an airport say yes?
- But if you must...
 - Aero: Set a maximum time
 - Non-aero: Set conditions
- Usually bad: cross-collateralization
- Examples:
 - Aeronautical leasehold mortgage
 - Non-aeronautical leasehold mortgage

- 
- ✓ Grant Assurance # 4 (Good Title)
 - ✓ Grant Assurance # 5 (Rights & Powers)

Bankruptcy-Created Liens



Debtor cash

Contracts and Leases

Bankruptcy law on
assignability

Non-aeronautical leases



- Not without risk themselves
- More pressure to cover your bases
- Special discussion on **leasehold mortgages** and interface with Grant Assurance 5
- More than landlord perspective - airports are special
 - Assignment
 - Self-help
 - Idle assets



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Questions?




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Thank You!



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