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Circuit Splits in Bankruptcy 2018

Key Decisions Distinguishing the Fifth Circuit from other Circuits in Business Bankruptcy Cases

Trademark Licensee Rights after Licensor Rejection in Bankruptcy

- *Lubrizol Enterprises Inc. v. Richmond Metal Finishers Inc.*, 756 F.2d 1043 (4th Cir. 1985).
  - Rejection of IP license terminates licensee's rights to use IP
  - Congress thereafter adds Section 365(n) and the definition of "intellectual property"(Section 101(35A))
  - Trademark excluded from definition of intellectual property
- *Sunbeam Products Inc. v. Chicago American Manufacturing LLC* , 686 F.3d 372 (7th Cir. 2012).
  - Rejection of a trademark license does not terminate licensee's rights in the trademark
  - Rejects *Lubrizol's* reasoning

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- *Mission Products Holdings Inc. v. Tempnology LLC (In re Tempnology LLC)*, 879 F.3d 389 (1st Cir. Jan. 12, 2018).
  - Rejects *Sunbeam*
  - Trademark licensee's rights do not survive rejection of licensing agreement by bankrupt licensor
  - Petition for writ of *certiorari* filed; at conference on October 12, 2018, the justices were to consider the *certiorari* petition

Note: The Third and Eighth Circuits have also been presented with whether to follow Lubrizol for trademark licenses, but declined to reach the merits.

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Bankruptcy Court Protection from CMS Actions in Healthcare Cases

- *Fla. Agency for Health Care Admin. v. Bayou Shores SNF, LLC*, 828 F.3d 1297 (11th Cir. 2016).
  - Medicare Act bars bankruptcy court jurisdiction over SNF's request to stop government from revoking its Medicare and Medicaid provider agreements.

- Sullivan v. Town& Country Home Nursing Services, Inc., 963 F.2d 1146 (9th Cir. 1991).
  - Failure to exhaust administrative remedies did not preclude bankruptcy court jurisdiction.

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