A Commercial Landlord's Damage Remedies in a Tenant's Bankruptcy Proceedings

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In this article, the author explores the damages available to a landlord after a tenant under a non-residential lease enters bankruptcy and rejects the lease.

A debtor's rejection of a non-residential lease results in two claims for a landlord:

1) a claim for unpaid pre-petition rent; and

2) another claim for post-petition future damages under Section 502(b)(6).

There is no cap on pre-petition rent. Decisions regarding pre-petition rent have focused on what constitutes rent (usually "additional rent"). These include, for example, building allowance, property damages, HVAC, utilities, and repairs.

As to post-petition damages, the Bankruptcy Code limits rent to the greater of 15 percent of the remaining term of the lease, or three years. Here, several issues have arisen from the language in the Code. Primarily, how does one calculate the amount? Does 15 percent refer to an amount under the lease or 15 percent of the time under the lease? There are decisions that go both ways. Three other issues that arise in the context of lease rejection in bankruptcy relate to "stub rent," a landlord's duty to mitigate, and payment of post-petition, pre-rejection rent.

Executory Contracts and Unexpired Leases

11 U.S.C. § 365 governs the treatment of "executory contracts" and unexpired leases in bankruptcy. Generally speaking, Section 365(a) provides a trustee or debtor in possession with broad authority to assume or reject unexpired leases. The decision to assume or reject an unexpired lease is a matter within the debtor's "business judgment."[1]

Under the business judgment test, a court should approve a debtor's proposed rejection if such rejection will benefit the estate.[2] Moreover, a debtor's decision to reject an executory contract or unexpired lease should be approved "except upon a finding of bad faith or gross abuse of the [debtor's] business discretion."[3] In cases under any chapter of the Bankruptcy Code, a lease of nonresidential real property is deemed rejected if it is not timely assumed. This power is specifically limited with respect to the rejection to

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leases of real property "so as to preclude eviction of the lessee."[4]

Section 502(b)(6)

A lessor of real property is "entitled to one claim and that claim is limited by Section 502(b)(6)."[5] Under Section 502(b)(6), a lessor's claim resulting from the termination of a real property lease has only two components:

1) a capped claim for postpetition future "rent reserved" under Section 502(b)(6)(A); and

2) a claim for prepetition "unpaid rent due" under Section 502(b)(6)(B).[6]

A landlord must prove its claim as to both the occurrence and the amount of damages.[7] Ultimately, the landlord has the burden of persuasion.[8]

Future Rent

Section 502(b)(6) of the Bankruptcy Code limits a commercial landlord's claim for lease rejection damages, by disallowing such a claim to the extent that it exceeds:

(A) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of—

  (i) the date of the filing of the petition; and

  (ii) the date on which such lessor repossessed, or the lessee surrendered, the lease property, plus

(B) any unpaid rent due under such lease, without acceleration, on the earlier of such dates.[9]

In other words, a landlord has a claim for the greater of one year's rent or 15 percent of the remaining term of the lease, not to exceed three years. For example, if the remaining term is six years, the landlord will have a claim for up to one year's rent (which is greater than 15 percent of the remaining term). If the remaining term of the lease is 30 years, 15 percent would be 4.5 years. Accordingly, the claim would be capped at three years.

Section 502(b)(6) is not a formula for determining allowable damages.[10] Rather, Section 502(b)(6) limits a landlord's claim for unpaid rent.[11] First the amount of the claim must be ascertained,[12] then the limitation is applied. If a landlord has no claim for remaining rent, Section 502(b)(6) does not grant that landlord any additional claim. In *In re Highland Superstores, Inc.*,[13] the court discussed a four-step process courts usually go through to determine a landlord's rejection claim. The court calculates the total rents due under the lease from the earlier of the petition date or the date the premises were repossessed; then the court determines whether 15 percent of the rent is higher than one year's rent; if it is higher, the 15 percent is compared to three years rent under the lease; finally, on the basis of these calculations, the court determines the amount of damages. The Third Circuit has noted that the Section 502(b)(6) cap "reflects Congress's intent to limit lease termination claims to prevent landlords from receiving a windfall over other creditors."[14] As such, the first step is to determine what constitutes "rent reserved" under the lease.

The Bankruptcy Code does not define the term "rent reserved." In the Third Circuit, the most commonly used test for determining what is included in rent reserved is set forth in *Kuske*.[15]

Under the *McSheridan* test, a charge must meet three requirements to be considered "rent reserved." The charge:

1) must (a) be designated as "rent" or "additional rent" in the lease; or (b) be provided as the tenant's/lessee's obligation in the lease;

2) must be related to the value of the property or the lease thereon; and

3) must be properly classifiable as rent because it is a fixed, regular or periodic charge.[16]

To avoid attempts to sidestep the limitations imposed by Congress in Section 502(b)(6), the court "has a duty to make an independent determination of what constitutes 'rent reserved' because labels alone may be misleading."[17]

How to Calculate Rent

Another question that has arisen in calculating a landlord's claim is whether 15 percent of the "remaining term" of the lease under Bankruptcy Code § 502(b)(6) is 15 percent of the dollar amount of rent remaining to be paid, or 15 percent of the time remaining under the lease.

In *In re Andover Togs, Inc.*,[18] the court commented that the view that the phrase "remaining term" refers to the rent remaining to be paid under the lease is the majority view. After an extensive review of the analysis provided by other courts, the *Andover* court concurred that a landlord['s claim is determined by calculating 15 percent of the rent remaining to be paid.[19] Similarly, in *In re Gantos, Inc.*,[20] the court opined that the majority of case law supports the position that the § 502(b)(6) damage cap is a function of rent, not time. The court rejected the debtor's claim that 15 percent refers to time remaining under the lease, and held that it was reasonable for the landlord to receive damages for the rent for which the parties had bargained.[21]

On the other hand, in *In re Allegheny Int'l, Inc.*,[22] the court based the landlord's damages on 15 percent of the time remaining under the lease, rather than the amount of rent reserved. Affirming the bankruptcy court, the district court noted that 15 percent means time because the statute references time periods when discussing damages limitations.[23] Similarly, in *In re Iron-Oak Supply Corp.*,[24] the court concluded that Congress meant the phrase "remaining term" to be a measure of time, not rent.[25] In *Heller*, there was a $2 million difference when using rent versus time to calculate rent.

Pre-Petition Rent

While *McSheridan* discussed rent in the context of Code § 502(b)(6)(A), other courts have extended *McSheridan* to apply to the term "rent" in § 502(b)(6)(B) (pre-petition rent). For example, in *In re Smith*,[26] the court noted that: "Although the B.A.P. [in *McSheridan*] was solely concerned with § 502(b)(6)(A), this test has been applied to claims under § 502(b)(6)(B)."

In *Smith*, the court held that an unamortized building allowance, which required a landlord to contribute up to $28,500 toward construction work, failed to meet all of the elements of the *McSheridan* test.[27] With respect to the second prong of the *McSheridan* test, the *Smith* court stated: "[a]bsent default, Landlord had no expectation of recouping any part of the $28,500.00, so the building allowance cannot be related to the value of the property or the Lease."[28]

On the other hand, in *In re Q-Masters,*

Inc.,[29] the court addressed § 502(b)(6)(B) and allowed the landlord's claim for property damage as part of the rent owed under § 502(b)(6)(B). Likewise, in *In re Clements*,[30] the bankruptcy court was "persuaded that all sums due under the lease at the time of the filing of the petition should be included as part of [the landlord's] claim." Under § 502(b)(6)(B), the court included and allowed legal expenses, taxes, insurance and maintenance expenses.[31]

Several other courts have not limited claims for damages arising prior to the filing of the petition. For example, in *In re Bob's Sea Ray Boats, Inc.*,[32] the landlord filed a claim, including a portion of damages to the property. The court agreed with other courts that had held that § 502(b)(6) applies only to the time period following termination.[33] Section 502(b)(6) "does not address damages wholly collateral to the termination event—such things as waste, destruction or removal of leasehold property."[34] The court held that the damages asserted by the landlord had nothing to do with the kind of damages restricted by § 502(b)(6), and allowed the claim.

In *In re Best Products Co., Inc.*,[35] the landlord filed a claim including deferred maintenance damages. After an extensive review of the history of § 502(b)(6) and several decisions, including *In re Mr. Gatti's, Inc.*,[36] and *McSheridan*, the court concluded that any damages caused by the debtor's failure to maintain the premises was unrelated to the lease termination, and therefore were not restricted by § 502(b)(6).[37] The court disagreed with courts holding that § 502(b)(6) limits damages resulting from rejection to all damages resulting from nonperformance of the tenant's obligations under the lease.[38] "The rulings of the bankruptcy courts in *Mr. Gatti's* and *McSheridan*, while not unreasonable, strike me as resting upon a somewhat tortured analysis of the relevant code sections."[39]

In fact, the *Best Products* court concluded that most cases do not follow the restrictive rationale of *Mr. Gatti's* and *McSheridan*. "Rather, the weight of authority in reported opinions where landlords have actually claimed damages for such items as maintenance and repairs is that these damages do *not* result 'from the termination of a lease of real property' and are therefore not subject to the cap of § 502(b)(6)(A)."[40] The court allowed the claim for deferred maintenance damages finding that any damages caused by the debtor's failure to fulfill its repair and maintenance obligations were unrelated to the lease termination.[41]

In *In re Atlantic Container Corp.*,[42] the landlord sought to recover, *inter alia*, for repair and maintenance expenses required to remedy physical damage caused by the debtor's failure to perform necessary maintenance.[43] The court concluded that maintenance damages were not the type of damages contemplated in the phrase "damages resulting from the termination of a lease."[44] "Any damages caused to the Premises by the Debtor's failure to fulfill its repair and maintenance obligations are unrelated to the termination of the lease."[45]

Mitigation

Whether or not a landlord whose tenant is in bankruptcy has a duty to mitigate damages also remains an open issue. Some states do not require a commercial landlord to mitigate damages upon a tenant's default.[46] For example, if a tenant abandons the premises prior to expiration of the lease, the landlord is not required to relet the premises

for the tenant's benefit.[47] Notwithstanding the foregoing, some courts have concluded that, once a tenant is in bankruptcy, a landlord must attempt to mitigate its damages.

In *In re Handy Andy Home Improvement Centers, Inc.*,[48] the court commented that a landlord has a duty to mitigate, citing *In re Bob's Sea Ray Boats, Inc.*[49] Neither of these courts explained the basis for finding a duty to mitigate, nor do the decisions explain whether the courts were applying state law related to mitigation. Similarly, in *D.H. Overmyer Co., Inc. (Ohio) v. Irving Trust Co.*,[50] notwithstanding the fact that New York law does not impose a duty to mitigate, the district court rejected application of New York law on the issue of mitigation, stating '[the landlord's] claim that the bankruptcy court should have applied New York law on the subject of mitigating damages is rejected."

In *Matter of Parkview-Gem, Inc.*,[51] the district court actually applied the common law of both Missouri and Tennessee, noting that the law "appears to be that a landlord has no duty to mitigate his damages when a tenant defaults on a lease. Applying Missouri law, the court held that if a landlord treats a default as a lease termination, the landlord then has a duty to mitigate.[52]

Other courts have applied state law in determining whether or not a duty to mitigate exists. In *In re Andover Togs, Inc.*,[53] the court applied New York law to conclude that the landlord "has no duty under its commercial lease with Andover to mitigate its damages."[54]

In *In re Episode USA*,[55] the court concluded that a Chapter 11 debtor-guarantor could not assert a mitigation defense, because New York law did not recognize a duty to mitigate after breach of a commercial lease. Bankruptcy Judge Garrity's reasoning consisted of a single statement: "In any event, New York does not recognize a duty to mitigate damages by reletting premises after breach of a commercial lease."[56] In support, the court cited two New York state court decisions, and another decision from the bankruptcy court for the Southern District of New York.

Stub Rent

When a tenant under a non-residential real property lease files a petition under the Bankruptcy Code, obviously the landlord would like to receive all of its post-petition rent as an administrative expense. On the other hand, to the extent possible, the debtor/tenant would rather that the landlord's claim be classified as a pre-petition unsecured claim. One issue that has been debated heavily is whether rent that is due for the month of the filing is pre-petition rent or post-petition rent. While the Bankruptcy Code provides no clear answer to this dilemma, there are two schools of thought represented in the various bankruptcy court and appellate decisions on this issue.

Billing Date Approach

The first approach views the billing date on the lease as the operative date to determine whether rent is a pre-petition or post-petition expense. Adoption of this approach favors the debtor/tenant which might choose to file a bankruptcy petition several days after the first of the month to avoid having to pay administrative rent for one entire month.

Under the billing date approach, § 365(d)(3) only applies to obligations for which the payment date arises after the petition date pursuant to the terms of the lease. This approach has been adopted by three circuit courts of appeal[57] which have issued

opinions. Under this approach, an obligation arises on the date "when one becomes legally obligated to perform." *Montgomery Ward*.[58] This literal approach distinguishes between having the obligation arise under the terms of the lease and having a mere claim, which claim may have its origin in a breached obligation of the debtor which was required to be paid prior to the order for relief.[59]

In re Montgomery Ward Holding Corp.[60] involved the debtor's obligation to reimburse the landlord for real estate taxes. Although the landlord's liability accrued in large part prior to the petition date, the debtor's reimbursement obligation arose post-petition.[61] While the landlord argued that the invoices were payable as obligations arising from the lease, the debtor asserted that it should only pay real estate taxes attributable to the post-petition period.[62] The bankruptcy court ruled for the debtor and the district court affirmed.[63]

The Third Circuit reversed, holding that the tax obligation arose post-petition and had to be paid in full.[64] According to the Third Circuit: "The clear and express interest of § 365(d)(3) is to require the trustee to perform the lease in accordance with its terms."[65] Under this analysis, it is difficult to justify a proration approach.[66] The Third Circuit acknowledged its reluctance in rejecting the proration approach, considering various other courts' opposite conclusion, but noted that: "It is not our role, however, to make arguably better laws than those fashioned by Congress."[67]

In *In re Ha-Lo Industries, Inc.*,[68] the debtor appealed the lower court's order that the debtor pay its former landlord the remainder of a full month's rent due under an office lease which covered a post-rejection period too. Under the terms of the lease, rent was due on the first day of each month.[69] After filing a bankruptcy petition in July, the debtor sought to reject the lease effective November 2.[70] On November 1, the debtor made a partial lease payment representing the three days in November that the premises would be occupied.[71] The landlord accepted the rent but demanded payment for the balance of November.[72] Upon the debtor's refusal, the landlord sought and obtained an order compelling immediate payment of administrative rent for the balance of November.[73] The district court affirmed.[74]

The Seventh Circuit agreed that rent was due for the entire month because the debtor was obligated to pay for the month on the first day of the month.[75] The Seventh Circuit distinguished a prior pro-ration decision (*Handy Andy*)[76] because that case involved non-rent (*i.e.*, real estate taxes).[77] However, the Seventh Circuit Court of Appeals viewed rent as "a charge for the consumption of a resource during the administration of the lease" as opposed to pre-paid real estate taxes which is a risk cost relating to the pre-petition period.[78]

The Seventh Circuit pointed out that the debtor controlled the timing and could have rejected the lease effective October 31, rather than November 2.[79] Accordingly, "we agree with the Sixth Circuit that equity as well as the statute favors full payment."[80]

The Sixth Circuit considered "stub rent" in *In re Koenig Sporting Goods, Inc.*,[81] where the debtor appealed from a judgment awarding the landlord a full month's rent. The lease required the debtor to pay rent on the first day of the month.[82] The debtor sought to reject the lease effective the second day of the month and the landlord moved for payment of a full month's rent.[83] The Sixth Circuit

noted that under the lease payment was due in advance for the entire month.[84] Because the debtor controlled the rejection date, the Sixth Circuit concluded that both equity and the Bankruptcy Code favored the landlord.[85]

Pro-Rata Approach

The second approach treats rent on an accrual basis so that a claim can be pro-rated based on the bankruptcy filing date. In a jurisdiction that has adopted the second approach, a debtor/tenant will be liable for a pro-rated share of administrative rent, determined from the date of filing through the end of the month. Courts that have adopted this approach usually rule that payment of administrative rent must be made currently rather than be allowed to accrue until the end of the case.

Under this approach, known as the accrual method, obligations under § 365(d)(3) are prorated, based on pre-petition and post-petition accruals. Several courts followed this approach based on adherence to the case law under the old Bankruptcy Act and an alleged concept of fairness.[86]

Under this view, a debtor is required by Section 365(d)(3) to timely pay those amounts due under a lease that pertain to the benefits realized by the estate during the post-petition, pre-rejection period regardless of when the payment(s) became due. In other words, the obligations arising under a lease are prorated based upon whether and to the extent that they relate to benefits that were enjoyed by the debtor on a pre-petition basis or a post-petition, pre-rejection basis.[87]

For example, in *In re Furr's Supermarkets*,[88] the bankruptcy court ordered the debtor only to pay the pro-rated portion of rent. The Tenth Circuit Bankruptcy Appellate Panel affirmed, believing the pro-ration rate to be the better interpretation of Section 365(d)(3).[89] The Tenth Circuit Bankruptcy Appellate Panel concluded that pro-ration is more consistent with the legislative purpose underlying Section 365(d)(3).[90] The court expressed a concern that adopting the billing rate approach would eliminate the priority of pre-petition claims.[91] Reading Section 365(d)(3) in context led to the conclusion that Section 365 protects landlords from the status of involuntary creditors and entitles them to payment for rent that accrues post-petition.[92]

In *In re Dunn Indus., LLC*,[93] the debtor filed a petition for Chapter 11 bankruptcy protection on June 2, 2004. The debtor/lessee had an obligation under its lease agreement to reimburse its landlord for certain Maryland real property taxes paid by the landlord on the debtor's behalf, which taxes were payable by the landlord yearly in advance. On or about July 21, 2004, the landlord provided the debtor with an invoice for the real property taxes for the period July 1, 2004 through June 30, 2005, which the landlord had recently paid on the debtor's behalf. The debtor maintained that its real property tax reimbursement obligation accrued and, therefore, arose under Section 365(d)(3) only for each day that the debtor occupied the leasehold premises on a post-petition, pre-rejection basis. Accordingly, the debtor argued that it should only be liable for the real property tax payments on a monthly, pro-rated basis post-petition until the lease is assumed, assumed and assigned, or rejected.[94]

In addressing the issue, Judge Derby concluded that Section 365(d)(3) is ambiguous and that the "better reasoned and more equitable approach" is the application of the majority's accrual approach for the classifica-

tion and treatment of the debtor's real property tax reimbursement obligation under its lease.[95] Central to the court's conclusion to apply the accrual approach was the concern that the application of the billing date approach to Section 365(d)(3) would result in an impermissible, judicially-created exemption to the definition and treatment of "claims" pursuant to various provisions of the Bankruptcy Code.[96]

In *Travel 2000*, the debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code on February 2, 2001 and took the position that since rent for February of 2001 was "due" pre-petition, 11 U.S.C. § 365(d)(3) did not compel payment of rent for the post-petition period of February 2-28, 2001.[97] The court analyzed both approaches and adopted the proration approach.[98] In so holding, the court cited to the remarks of Senator Orrin Hatch in the legislative history of 11 U.S.C. § 365(d)(3):

> [T]he landlord is forced to provide current services—the use of his property, utilities, security, and other services without current payments. No other creditor is put in this position.... The bill would lessen these problems by requiring the trustee to perform all the obligations of the debtor under a lease of nonresidential real property at the time required in the lease. This timely performance requirement will insure that debtor-tenants pay their rent, common area charges, and other charges on time pending the trustee's assumption or rejection of the lease.[99]

In *Travel 2000,* the court concluded, therefore, that although the "responsibility to pay rent crystallized on the first of the month... the Debtor's obligation arose each day in the month of February."[100] The court therefore held that the landlord was entitled to be paid on a *pro rata* basis under 11 U.S.C. § 365(d)(3).[101]

The proration approach is also consistent with the view of the courts which have addressed "other rent" items, such as real property taxes and common area maintenance fees.[102]

Immediate Payment of Administrative Rent

As noted, several courts have required immediate payment of post-petition rent. In *In re MHI, Inc.*,[103] a commercial landlord sought payment of a post-petition rent under Section 365(d)(3) of the Bankruptcy Code. Even though the debtor had never occupied the space, the landlord contested it was entitled to administrative rent until the lease was rejected.[104] The bankruptcy court concluded that under the then recent changes to the Bankruptcy Code, the landlord was entitled to the relief it sought.[105] The bankruptcy court concluded that Section 365(d)(3) (requiring timely performance) was added specifically to protest lessor of non-residential real property.[106]

Similarly, in *In re Dieckhaus Stationers of King of Prussia, Inc.*,[107] the landlord sought immediate payment of all rent due until the surrender of the premises. The court found that the claim entitled the landlord to immediate payment of administrative rent.[108] Reviewing the legislative history of 1984 "shopping center" amendments to the Bankruptcy Code led the court to conclude that Congress sought to ease the burden on commercial landlords.[109] Further, Congress clearly envisioned that tenants would pay their rent on time.[110] Accordingly, administrative rent claims should be paid immediately unless good cause is shown for withholding payment.[111]

NOTES:

[1]*Sharon Steel Corp. v. National Fuel Gas Distribu-*

tion Corp., 872 F.2d 36, 39-40, 19 Bankr. Ct. Dec. (CRR) 353, Bankr. L. Rep. (CCH) P 72821 (3d Cir. 1989); *see also In re Pesce Baking Co., Inc.*, 43 B.R. 949, 956 (Bankr. N.D. Ohio 1984).

[2]*In re Chi-Feng Huang*, 23 B.R. 798, 801, 9 Bankr. Ct. Dec. (CRR) 972, 7 Collier Bankr. Cas. 2d (MB) 639 (B.A.P. 9th Cir. 1982).

[3]*Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047, 12 Bankr. Ct. Dec. (CRR) 1281, 12 Collier Bankr. Cas. 2d (MB) 310, 226 U.S.P.Q. 961, Bankr. L. Rep. (CCH) P 70311 (4th Cir. 1985) (abrogation recognized by, In re Brown, 211 B.R. 183, 31 Bankr. Ct. Dec. (CRR) 186 (Bankr. E.D. Pa. 1997)).

[4]*Jetz Laundry Systems, Inc. v. Wingates, LLC*, 2005 WL 1388392 (S.D. Ohio 2005) (quoting *Precision Industries, Inc. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, 546 41 Bankr. Ct. Dec. (CRR) 65, 49 Collier Bankr. Cas. 2d (MB) 1765, Bankr. L. Rep. (CCH) P 78836 (7th Cir. 2003)).

[5]*In re Foamex Intern., Inc.*, 368 B.R. 383, 393, 48 Bankr. Ct. Dec. (CRR) 83 (Bankr. D. Del. 2007), related reference, 382 B.R. 867 (D. Del. 2008) and related reference, 491 B.R. 100, 35 I.E.R. Cas. (BNA) 720 (Bankr. D. Del. 2013)

[6]Section 502(b)(6) does *not* limit recovery against a non-debtor guarantor. *In re Modern Textile, Inc.*, 900 F.2d 1184, 1191, Bankr. L. Rep. (CCH) P 73330, 16 Fed. R. Serv. 3d 212 (8th Cir. 1990)

[7]*In re Blatstein*, 1997 WL 560119 (E.D. Pa. 1997), on remand to, 1997 WL 626544 (Bankr. E.D. Pa. 1997), aff'd, 226 B.R. 140, Bankr. L. Rep. (CCH) P 77822, 36 U.C.C. Rep. Serv. 2d 1194 (E.D. Pa. 1998), on remand to, 1998 WL 778017 (Bankr. E.D. Pa. 1998), order aff'd, 39 U.C.C. Rep. Serv. 2d 896 (E.D. Pa. 1999) and aff'd in part, rev'd in part, 192 F.3d 88, 34 Bankr. Ct. Dec. (CRR) 1198, 42 Collier Bankr. Cas. 2d (MB) 1350 (3d Cir. 1999), on remand to, 244 B.R. 290 (Bankr. E.D. Pa. 2000), order aff'd in part, vacated in part, 260 B.R. 698 (E.D. Pa. 2001) (citing 4 Collier on Bankruptcy ¶ ¶ 502.03[7][c], [d]); *see also In re Allegheny Intern., Inc.*, 954 F.2d 167, 173, 26 Collier Bankr. Cas. 2d (MB) 663, Bankr. L. Rep. (CCH) P 74447 (3d Cir. 1992) (holding that when asserting claim against bankrupt estate, claimant must allege facts that, if true, would support finding that debtor is legally liable to claimant).

[8]*Allegheny Int'l*, 954 F.2d at 174.

[9]11 U.S.C. § 502(b)(6).

[10]*In re Fifth Ave. Jewelers, Inc.*, 203 B.R. 372, 376, 30 Bankr. Ct. Dec. (CRR) 65, 37 Collier Bankr. Cas. 2d (MB) 273 (Bankr. W.D. Pa. 1996).

[11]*Id.*.

[12]Although the Bankruptcy Code is silent on this point, several courts have determined that the amount of rent due over the lease term must be reduced to present value. *See In re Highland Superstores, Inc.*, 154 F.3d 573, 33 Bankr. Ct. Dec. (CRR) 157, 40 Collier Bankr. Cas. 2d (MB) 1038, Bankr. L. Rep. (CCH) P 77785, 1998 FED App. 0265P (6th Cir. 1998) (both parties agreed that future rents should be discounted to present value); *see also In re Ames Dept. Stores, Inc.*, 209 B.R. 627, 631 (S.D. N.Y. 1997) (reduce landlord's claims to present value); *In re Child World, Inc.*, 161 B.R. 349, 352, 24 Bankr. Ct. Dec. (CRR) 1450 (Bankr. S.D. N.Y. 1993) (general rule is that measure of damages which landlord may recover as result of tenant's rejection of lease is difference between rental value of remainder of term and rent reserved, both discounted to present worth.)

[13]*Highlands Superstores*, 154 F.3d at 577.

[14]*In re PPI Enterprises (U.S.), Inc.*, 324 F.3d 197, 207, 41 Bankr. Ct. Dec. (CRR) 16, 49 Collier Bankr. Cas. 2d (MB) 1749, Bankr. L. Rep. (CCH) P 78824 (3d Cir. 2003).

[15]*In re McSheridan*, 184 B.R. 91, 27 Bankr. Ct. Dec. (CRR) 585, 33 Collier Bankr. Cas. 2d (MB) 1300, Bankr. L. Rep. (CCH) P 76614 (B.A.P. 9th Cir. 1995) (overruled by, In re El Toro Materials Co., Inc., 504 F.3d 978, 48 Bankr. Ct. Dec. (CRR) 255, Bankr. L. Rep. (CCH) P 81021 (9th Cir. 2007)) (overruling the *McSheridan* test as applied to tort and other damage claims not arising from a tenant's failure to complete a lease term).

[16]*McSheridan*, 184 B.R. at 99-100.

[17]*In re Foamex Intern., Inc.*, 368 B.R. 383, 48 Bankr. Ct. Dec. (CRR) 83 (Bankr. D. Del. 2007), related reference, 382 B.R. 867 (D. Del. 2008) and related reference, 491 B.R. 100, 35 I.E.R. Cas. (BNA) 720 (Bankr. D. Del. 2013) (internal quotation and citation omitted). *See Foamex*. The Third Circuit applied the *McSheridan* test in *First Bank Nat. Ass'n v. F.D.I.C.*, 79 F.3d 362, 15 A.D.D. 40 (3d Cir. 1996), a Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) proceeding, analogizing and applying the limitations of Section 502(b)(6) to landlord claims in the FIRREA proceeding. *First Bank*, 79 F.3d at 369 n.7. The First Bank decision has been described "as the Third Circuit's implicit, if not explicit, approval of the *McSheridan* rationale and holding." *Foamex*, 368 B.R. at 393. In *In re El Toro Materials Co., Inc.*, 504 F.3d 978, 980, 48 Bankr. Ct. Dec. (CRR) 255, Bankr. L. Rep. (CCH) P 81021 (9th Cir. 2007), the Ninth Circuit held that a landlord's claims for waste and trespass did not result from the lease rejection and therefore were not subject to Section 502(b)(6) limitations.

[18]*In re Andover Togs, Inc.*, 231 B.R. 521, 545 (Bankr. S.D. N.Y. 1999).

[19]*Id.* at 547.

[20]*In re Gantos, Inc.*, 176 B.R. 793, 796, 26 Bankr. Ct. Dec. (CRR) 662, Bankr. L. Rep. (CCH) P 76437 (Bankr. W.D. Mich. 1995), related reference, 181 B.R. 903, 27 Bankr. Ct. Dec. (CRR) 257 (Bankr. W.D. Mich. 1995).

[21]*See also In re Financial News Network, Inc.*, 149 B.R. 348, 351, 23 Bankr. Ct. Dec. (CRR) 1431, 28 Collier Bankr. Cas. 2d (MB) 384, Bankr. L. Rep. (CCH) P 75115 (Bankr. S.D. N.Y. 1993) (concurring with landlord's calculation of 15 percent of total rents).

[22]*In re Allegheny Intern., Inc.*, 136 B.R. 396, 17 U.C.C. Rep. Serv. 2d 459 (Bankr. W.D. Pa. 1991),

decision aff'd and remanded, 145 B.R. 823 (W.D. Pa. 1992).

[23]*Id.* 136 B.R. at 403.

[24]*In re Iron-Oak Supply Corp.*, 169 B.R. 414, 420, 25 Bankr. Ct. Dec. (CRR) 1269, 31 Collier Bankr. Cas. 2d (MB) 439, Bankr. L. Rep. (CCH) P 76009 (Bankr. E.D. Cal. 1994).

[25]*See also In re Allegheny Intern., Inc.*, 145 B.R. 823 (W.D. Pa. 1992) (502 refers to time, not rent); *In re Shane Co.*, 464 B.R. 32, 39, 55 Bankr. Ct. Dec. (CRR) 253, Bankr. L. Rep. (CCH) P 82226 (Bankr. D. Colo. 2012) (15 percent of the remaining term of the lease is plainly a reference to an amount of time, not money); *In re Heller Ehrman LLP*, 2011 WL 635224 (N.D. Cal. 2011) (adopting the time approach).

[26]*In re Smith*, 249 B.R. 328, 337, 36 Bankr. Ct. Dec. (CRR) 57, 44 Collier Bankr. Cas. 2d (MB) 443, Bankr. L. Rep. (CCH) P 78204 (Bankr. S.D. Ga. 2000).

[27]*Id.*, 249 B.R. at 339.

[28]*Id.*

[29]*In re Q-Masters, Inc.*, 135 B.R. 157, 160 (Bankr. S.D. Fla. 1991).

[30]*In re Clements*, 185 B.R. 895, 903 (Bankr. M.D. Fla. 1995), related reference, 185 B.R. 903 (Bankr. M.D. Fla. 1995) and related reference, 194 B.R. 923 (Bankr. M.D. Fla. 1996).

[31]*Id.*

[32]*In re Bob's Sea Ray Boats, Inc.*, 143 B.R. 229, 230, 27 Collier Bankr. Cas. 2d (MB) 656 (Bankr. D. N.D. 1992), related reference, 144 B.R. 451 (Bankr. D. N.D. 1992).

[33]*Id.*, 143 B.R. at 231.

[34]*Id.*

[35]*In re Best Products Co., Inc.*, 229 B.R. 673, 674 (Bankr. E.D. Va. 1998).

[36]*In re Mr. Gatti's, Inc.*, 162 B.R. 1004 (Bankr. W.D. Tex. 1994), related reference, 164 B.R. 929, 25 Bankr. Ct. Dec. (CRR) 571 (Bankr. W.D. Tex. 1994) (rejected on other grounds by, In re CHS Electronics, Inc., 265 B.R. 339, 38 Bankr. Ct. Dec. (CRR) 39 (Bankr. S.D. Fla. 2001)).

[37]*Best Products*, 229 B.R. at 679.

[38]*Id.* at 677.

[39]*Id.* at 677-78.

[40]*Id.* at 678 (emphasis in original; citations omitted)

[41]*Id.* at 679.

[42]*In re Atlantic Container Corp.*, 133 B.R. 980, 22 Bankr. Ct. Dec. (CRR) 521, 26 Collier Bankr. Cas. 2d (MB) 597, Bankr. L. Rep. (CCH) P 74388 (Bankr. N.D. Ill. 1991).

[43]*Id.*, 133 B.R. at 983.

[44]*Id.* at 987.

[45]*Id.*

[46]*See, e.g., Holy Properties Ltd., L.P. v. Kenneth Cole Productions, Inc.*, 87 N.Y.2d 130, 637 N.Y.S.2d 964, 966, 661 N.E.2d 694 (1995); *Cummings Properties, LLC v. Empire Technologies, Inc.*, 2002 Mass. App. Div. 84, 2002 WL 971807 (2002) (commercial landlord need not mitigate when tenant elects to vacate).

[47]*Crowder v. Virginian Bank of Commerce*, 127 Va. 299, 103 S.E. 578, 579 (1920). *See also tenBraak v. Waffle Shops, Inc.*, 542 F.2d 919, 924 (4th Cir. 1976) (upon tenant's abandonment, landlord is entitled to remaining rents that accrue under the lease).

[48]*In re Handy Andy Home Imp. Centers, Inc.*, 222 B.R. 571, 575 (Bankr. N.D. Ill. 1998).

[49]*In re Bob's Sea Ray Boats, Inc.*, 143 B.R. 229, 231, 27 Collier Bankr. Cas. 2d (MB) 656 (Bankr. D. N.D. 1992), related reference, 144 B.R. 451 (Bankr. D. N.D. 1992) ("as with any claim for damages arising out of the breach of a lease, claim for damages under [S]ection 502(b)(6) is subject to mitigation including an obligation on the part of the landlord to attempt the re-letting of the premises."). *See also In re PPI Enterprises (U.S.), Inc.*, 324 F.3d 197, 208 n. 17, 41 Bankr. Ct. Dec. (CRR) 16, 49 Collier Bankr. Cas. 2d (MB) 1749, Bankr. L. Rep. (CCH) P 78824 (3d Cir. 2003) (duty to mitigate); *In re EDM Corp.*, 2009 WL 6338012 (Bankr. D. Neb. 2009) (must mitigate).

[50]*D.H. Overmyer Co., Inc. (Ohio) v. Irving Trust Co.*, 60 B.R. 391, 394 n.5 (S.D. N.Y. 1986).

[51]*Matter of Parkview-Gem, Inc.*, 465 F. Supp. 629, 636 (W.D. Mo. 1979).

[52]*Id. See also In re Lomax*, 194 B.R. 862, 865, 28 Bankr. Ct. Dec. (CRR) 1282, 35 Collier Bankr. Cas. 2d (MB) 1172, Bankr. L. Rep. (CCH) P 76973 (B.A.P. 9th Cir. 1996) (applying California law related to landlord's duty to mitigate); *Highland Superstores, supra* note 1, 154 F.3d at 577 (landlord has duty to mitigate damages).

[53]*Andover Togs, supra* note 33, 231 B.R. at 543.

[54]*See also In re Episode USA, Inc.*, 202 B.R. 691, 37 Collier Bankr. Cas. 2d (MB) 172 (Bankr. S.D. N.Y. 1996), as amended, (Nov. 20, 1996) (applying New York law in rejecting landlord's duty to mitigate); *In re PAVCO Enterprises, Inc.*, 172 B.R. 114, 117 (Bankr. M.D. Fla. 1994) (applying Florida mitigation law); *In re Ames Dept. Stores, Inc.*, 158 B.R. 35, 36 (Bankr. S.D. N.Y. 1993) (commercial landlord has no duty to mitigate); *In re Blondheim Modular Mfg., Inc.*, 65 B.R. 856, 861 (Bankr. D. N.H. 1986) (applying New Hampshire mitigation law).

[55]*Episode USA*, supra.

[56]*Id.*, 202 B.R. at 697.

[57]In an unpublished decision, the citation of which is disfavored, the Fourth Circuit used the billing date method in connection with the payment of real property rent. *In re Rose's Stores, Inc.*, 155 F.3d 560 (4th Cir. 1998); *see also In re Baby N' Kids Bedrooms, Inc.*, 48 Bankr. Ct. Dec. (CRR) 48, 2007 WL 1218768 (E.D. Mich. 2007), reconsideration denied, 2007 WL 1434797 (E.D. Mich. 2007) (holding that entire month's rent was pre-petition obligation because rent was due on first day and petition was filed on eighth day of month).

[58]*In re Montgomery Ward Holding Corp.*, 268 F.3d 205, 209, 38 Bankr. Ct. Dec. (CRR) 135, 47 Collier Bankr. Cas. 2d (MB) 135, Bankr. L. Rep. (CCH) P 78515 (3d Cir. 2001). *See also In re Einstein Moomjy, Inc.*, 2012 WL 2884943 (Bankr. D. N.J. 2012) (pro-rate post-petition rent); *In re Goody's Family Clothing Inc.*, 610 F.3d 812, 818, 53 Bankr. Ct. Dec. (CRR) 90, 63 Collier Bankr. Cas. 2d (MB) 1692, Bankr. L. Rep. (CCH) P 81798 (3d Cir. 2010) (landlord entitled to administrative claim for stub rent).

[59]*Id.*

[60]268 F.3d at 212.

[61]*Id.* at 207.

[62]*Id.* at 208.

[63]*Id.*

[64]*Id.* at 212.

[65]*Id.* at 209.

[66]*Id.*

[67]*Id.* at 211.

[68]*HA-LO Industries, Inc. v. CenterPoint Properties Trust*, 342 F.3d 794, 796, 41 Bankr. Ct. Dec. (CRR) 233, Bankr. L. Rep. (CCH) P 78907 (7th Cir. 2003).

[69]*Id.*

[70]*Id.*

[71]*Id.* at 797.

[72]*Id.*

[73]*Id.*

[74]*Id.*

[75]*Id.* at 798.

[76]In an earlier decision in *Matter of Handy Andy Home Improvement Centers, Inc.*, 144 F.3d 1125, 32 Bankr. Ct. Dec. (CRR) 992, 40 Collier Bankr. Cas. 2d (MB) 295, Bankr. L. Rep. (CCH) P 77722 (7th Cir. 1998), the Seventh Circuit seemed to adopt the proration theory of § 365(d)(3). The dispute was over the payment of real estate taxes which had accrued pre-petition but became payable when billed post-petition. However, in *Ha-Lo*, the court expressly limited *Handy Andy* to the payment of taxes that had accrued during pre-petition occupancy, held to be akin to "sunk costs" not chargeable to the postpetition debtor, even though billed postpetition." *Ha-Lo*, 342 F.3d at 798-99. With respect to rent, the Seventh Circuit expressly adopted the plain meaning approach taken by *Montgomery Ward and Koenig Sporting Goods.* Clearly, the Seventh Circuit was struggling to apply the plain meaning rule without expressly overruling Handy Andy.

[77]*Id.*

[78]*Id.* at 799.

[79]*Id.* at 800.

[80]*Id.*

[81]*In re Koenig Sporting Goods, Inc.*, 203 F.3d 986, 989, 35 Bankr. Ct. Dec. (CRR) 187, 43 Collier Bankr. Cas. 2d (MB) 1229, Bankr. L. Rep. (CCH) P 78114 (6th Cir. 2000).

[82]*Id.* at 987.

[83]*Id.* at 988.

[84]*Id.* at 989.

[85]*See also In re Baby N' Kids Bedrooms, Inc.*, 48 Bankr. Ct. Dec. (CRR) 48, 2007 WL 1218768 (E.D. Mich. 2007), reconsideration denied, 2007 WL 1434797 (E.D. Mich. 2007) (applying *Koenig* logic and result to landlord's claim for administrative rent under Section 503(b)).

[86]*See, e.g.*, *In re Child World, Inc.*, 161 B.R. 571, 575, 25 Bankr. Ct. Dec. (CRR) 4 (S.D. N.Y. 1993) (legislative history explains that Congress sought to ensure that landlords received current payment for current services). *See also In re Furr's Supermarkets, Inc.*, 283 B.R. 60, 69-70, 49 Collier Bankr. Cas. 2d (MB) 239 (B.A.P. 10th Cir. 2002), related reference, 2003 WL 25926938 (Bankr. D. N.M. 2003) and related reference, 294 B.R. 763 (Bankr. D. N.M. 2003) and related reference, 296 B.R. 33 (Bankr. D. N.M. 2003) and related reference, 315 B.R. 776 (D.N.M. 2004) and related reference, 320 B.R. 1 (Bankr. D. N.M. 2004) and related reference, 317 B.R. 423, 43 Bankr. Ct. Dec. (CRR) 265 (B.A.P. 10th Cir. 2004) and related reference, 359 B.R. 356, 47 Bankr. Ct. Dec. (CRR) 235 (B.A.P. 10th Cir. 2007) and related reference, 373 B.R. 691, 48 Bankr. Ct. Dec. (CRR) 190 (B.A.P. 10th Cir. 2007) and related reference, 378 B.R. 418 (B.A.P. 10th Cir. 2007) and related reference, 2008 WL 820076 (Bankr. D. N.M. 2008) and related reference, 2008 WL 5157917 (Bankr. D. N.M. 2008) and related reference, 2012 WL 3396146 (Bankr. D. N.M. 2012) and related reference, 485 B.R. 672 (Bankr. D. N.M. 2012) (rent, taxes and other lease obligations arise under Section 365(d)(3) as they accrue); *In re GCP CT School Acquisition, LLC*, 443 B.R. 243, 253, 53 Bankr. Ct. Dec. (CRR) 233 (Bankr. D. Mass. 2010) (apply accrual approach to post-petition pre-rejection obligations).

[87]*See In re Furr's Supermarkets, Inc.*, 283 B.R. at 69-70; *In re Handy Andy Home Improvement Ctrs., Inc.*, 144 F.3d. at 1127; *In re Child World, Inc.*, 161 B.R. at 576-77; *In re Dunn Industries, LLC*, 320 B.R. 86, 90-93, 44 Bankr. Ct. Dec. (CRR) 76, 53 Collier Bankr. Cas. 2d (MB) 1208 (Bankr. D. Md. 2005); *In re Travel 2000, Inc.*, 264 B.R. at 450-51; *In re NETtel Corp., Inc.*, 289 B.R. 486, 497 (Bankr. D. D.C. 2002), related reference, 2004 WL 3130571 (Bankr. D. D.C. 2004) and related reference, 319 B.R. 290 (Bankr. D. D.C. 2004) and related reference, 323 B.R. 1, 44 Bankr. Ct. Dec. (CRR) 180 (Bankr. D. D.C. 2005) and related reference, 327 B.R. 8 (Bankr. D. D.C. 2005) and related reference, 364 B.R. 433 (Bankr. D. D.C. 2006) and related reference, 369 B.R. 50 (Bankr. D. D.C. 2007), reconsideration denied, 2007 WL 2119029 (Bankr. D. D.C. 2007) and related reference, 2008 WL 1932075 (Bankr. D. D.C. 2008) and related reference, 2008 WL 5071733 (Bankr. D. D.C. 2008), subsequent determination, 458 B.R. 782 (Bankr. D. D.C. 2011) and related reference, 2011 WL 5330785 (Bankr. D. D.C. 2011) (applying pro-ration approach).

[88]*In re Furr's Supermarkets, Inc.*, 283 B.R. at 62.

See also In re NETtel Corp., Inc., 289 B.R. 486, 492 (Bankr. D. D.C. 2002), related reference, 2004 WL 3130571 (Bankr. D. D.C. 2004) and related reference, 319 B.R. 290 (Bankr. D. D.C. 2004) and related reference, 323 B.R. 1, 44 Bankr. Ct. Dec. (CRR) 180 (Bankr. D. D.C. 2005) and related reference, 327 B.R. 8 (Bankr. D. D.C. 2005) and related reference, 364 B.R. 433 (Bankr. D. D.C. 2006) and related reference, 369 B.R. 50 (Bankr. D. D.C. 2007), reconsideration denied, 2007 WL 2119029 (Bankr. D. D.C. 2007) and related reference, 2008 WL 1932075 (Bankr. D. D.C. 2008) and related reference, 2008 WL 5071733 (Bankr. D. D.C. 2008), subsequent determination, 458 B.R. 782 (Bankr. D. D.C. 2011) and related reference, 2011 WL 5330785 (Bankr. D. D.C. 2011) (criticizing the billing date approach for converting pre-petition debt into administrative claims); *see also In re Leather Factory Inc.*, 475 B.R. 710, 714, 56 Bankr. Ct. Dec. (CRR) 208, 68 Collier Bankr. Cas. 2d (MB) 546 (Bankr. C.D. Cal. 2012) (adopting pro-rata approach for stub rent entitled to administrative priority).

[89]*Id.*

[90]*Id.* at 68.

[91]*Id.*

[92]*Id.* at 69; *see also In re Elizabethtown Family Care Clinic, LLC*, 2008 WL 5333563 (Bankr. W.D. Ky. 2008) (post-petition poc-rejection rent should be prorated regardless of billing date).

[93]*In re Dunn Industries, LLC*, 320 B.R. 86, 44 Bankr. Ct. Dec. (CRR) 76, 53 Collier Bankr. Cas. 2d (MB) 1208 (Bankr. D. Md. 2005).

[94]*Id.* at 87-88.

[95]*Id.* at 88-93.

[96]*Id.* at at 90; *see also In re Einstein Moomjy, Inc.*, 2012 WL 2884943 (Bankr. D. N.J. 2012) (landlord entitled to 13 days stub rent).

[97]264 B.R. at 445-46.

[98]*Id.* at 450.

[99]*Id.* at 448, *quoting* 130 Cong.Rec. S8887, S8994-95 (daily ed. June 29, 1984).

[100]*Id.* at 451.

[101]*Id.* at 450. *See also In re Automationsolutions Intern., LLC*, 2002 WL 31863871 (Bankr. N.D. Cal. 2002) (following *Travel 2000*); and *NETtel*, 289 B.R. at 490-91 (analyzing each approach and adopting the proration/accrual approach stating that "landlord's entitlement to compensation for occupancy at a fixed periodic rate relates to the actual days the tenant was entitled to occupancy, and in a practical and fundamental economic sense can be said to arise on each occupancy day" and holding that "[v]iewing the term 'arises under' in its accrual sense is most consonant with the spirit of § 365(d)(3) itself as well as the Bankruptcy Code as a whole.").

[102]*See, e.g.*, *In re Trak Auto Corp.*, 277 B.R. 655, 662-64 (Bankr. E.D. Va. 2002), decision aff'd, 288 B.R. 114 (E.D. Va. 2003), rev'd, 367 F.3d 237, 42 Bankr. Ct. Dec. (CRR) 255, 52 Collier Bankr. Cas. 2d (MB) 1009, Bankr. L. Rep. (CCH) P 80085 (4th Cir. 2004) ("Anything accruing after the entry for the order for relief is a post-petition charge that may be elevated to administrative priority."); *In re Best Products Co., Inc.*, 206 B.R. 404, 407 (Bankr. E.D. Va. 1997) (payment of real estate taxes must be pro-rated).

[103]*In re M.H.I., Inc.*, 61 B.R. 69, 14 Bankr. Ct. Dec. (CRR) 270 (Bankr. D. Md. 1986) (rejected by, In re Tammey Jewels, Inc., 116 B.R. 292, 20 Bankr. Ct. Dec. (CRR) 1164, Bankr. L. Rep. (CCH) P 73522 (Bankr. M.D. Fla. 1990)); *see also Key Plaza I, Inc. v. Kmart Corp.*, 49 Collier Bankr. Cas. 2d (MB) 1533, 2003 WL 115240 (N.D. Ill. 2003) (affirming extension of time to assume or reject leases based in part on continued post-petition rent payments).

[104]*Id.* at 70.

[105]*Id.* at 71.

[106]*Id.*

[107]*In re Dieckhaus Stationers of King of Prussia, Inc.*, 73 B.R. 969, 970 (Bankr. E.D. Pa. 1987); *But see In re NETtel Corp., Inc.*, 289 B.R. 486, 488 (Bankr. D. D.C. 2002), related reference, 2004 WL 3130571 (Bankr. D. D.C. 2004) and related reference, 319 B.R. 290 (Bankr. D. D.C. 2004) and related reference, 323 B.R. 1, 44 Bankr. Ct. Dec. (CRR) 180 (Bankr. D. D.C. 2005) and related reference, 327 B.R. 8 (Bankr. D. D.C. 2005) and related reference, 364 B.R. 433 (Bankr. D. D.C. 2006) and related reference, 369 B.R. 50 (Bankr. D. D.C. 2007), reconsideration denied, 2007 WL 2119029 (Bankr. D. D.C. 2007) and related reference, 2008 WL 1932075 (Bankr. D. D.C. 2008) and related reference, 2008 WL 5071733 (Bankr. D. D.C. 2008), subsequent determination, 458 B.R. 782 (Bankr. D. D.C. 2011) and related reference, 2011 WL 5330785 (Bankr. D. D.C. 2011) (landlord not entitled to immediate payment of rent); *In re Burival*, 2010 WL 4875995 (Bankr. D. Neb. 2010) (rejecting landlord's claim for attorneys' fees as administrative rent because claims arose post-rejection).

[108]*Id.*

[109]*Id.* at 972.

[110]*Id.*

[111]*Id. See also In re Musikahn Corp.*, 57 B.R. 942, 944, 14 Collier Bankr. Cas. 2d (MB) 314 (Bankr. E.D. N.Y. 1986) (clear language of Section 365(d)(3) specifies that trustee must divide by post-petition rent obligations.)