

## Restaurant

### Serving Up Straight Talk to the Restaurant Industry

As restaurant companies become larger and their business practices more complex, they face legal challenges similar to any large-scale business enterprise.

Issues that our restaurant clients face include raising public and private capital, mergers and acquisitions, complicated financings and sale/leaseback transactions. Often, restaurants also need legal guidance in real estate, contract, regulatory, intellectual property, and labor and employment matters.

Andrews Kurth lawyers who practice in the restaurant industry provide comprehensive counsel to restaurant companies and their owners, operators, managers, landlords, tenants, franchisors and lenders. Drawing upon our firm resources worldwide, we counsel the restaurant industry in such areas as:

- Corporate and Securities
- Litigation
- Restaurant Restructurings
- Financing and Tax
- Securitized Lending
- Business and Real Estate Transactions
- Labor and Employment
- Intellectual Property

We seek to resolve problems and create opportunities for our clients by delivering effective and efficient solutions to issues arising in:

- General corporate structuring and tax matters
- Operational and management issues
- Lease, master lease and sale/leaseback transactions
- Construction and development of restaurants
- Labor and employment matters
- Trademark and intellectual property matters
- Franchising and brand issues
- Restructuring troubled operations for creditors, restaurant operators, owners, lenders and franchisors
- Receivership and bankruptcy proceedings for owners, operators, tenants, lenders and franchisors

### Corporate and Securities

Our lawyers with experience in the restaurant industry represent acquiring companies, targets and investment advisors in high-profile business combinations, financings, joint ventures and securities transactions involving foodservice companies.

We have experience with stock purchases, asset purchases, spin-offs, cash offers and tender offers, as well as initial public offerings, REIT transactions, mergers and acquisitions and sale/leaseback transactions. Our lawyers understand asset management issues as lenders, owners, operators, tenants and managers see them, so we can effectively anticipate problems and identify opportunities.

### Representative matters include:

- **Chili's Sale**—Represented the founders of Chili's in the roll-up and sale of the original 13 stores to Brinker International.

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- **Consolidated Restaurant Acquisition**—Counseled the company in its acquisition of Spaghetti Warehouse and the financing of Spaghetti Warehouse and El Chico.
- **Outback Steakhouse Development**—Advised in the acquisition and development of the Texas restaurant chain.
- **Restaurant Investment Partnership**—Represented Actuelle, Ltd., in the formation of investment partnership to own and operate upscale Dallas eatery.
- **Applebee's / Investment Partnership**—Counseled Tri-J Capital Partners in the formation of an investment partnership and the acquisition of 29 Applebee's franchised restaurants.
- **Rockfish Seafood Grille / Joint Venture**—Represented Rockfish Seafood Grille in the roll-up of all existing stores into a company to conduct a joint venture with Brinker International.
- **Lee's Famous Recipe Chicken / Sale-Leaseback**—Advised lender in connection with a sale/leaseback transaction involving 151 of the restaurants.
- **Church's Chicken / Bridge Loan**—Represented lender in connection with a bridge loan involving 321 of the restaurants.
- **Taco Bell / Financing**—Represented lender in connection with financing of borrower's acquisition of 50 Taco Bell restaurants.
- **Applebee's / Sale-Leaseback**—Represented lender in connection with borrower's acquisition and leaseback of 181 restaurants.
- **Circle K / Sale-Leaseback**—Represented lender in connection with borrower's acquisition and leaseback of 81 Circle K convenience stores and gas stations.

## Litigation

Andrews Kurth's litigators prosecute and defend jury and bench trials, including injunction proceedings, in all courts and other tribunals nationwide for restaurant companies.

Our litigation experience includes handling matters for American Express Company, Boston Market, McDonald's and Saltgrass Steakhouse Restaurants and a multitude of lenders. The range of disputes that we handle includes:

- Antitrust
- Breach of contract
- Commercial fraud
- Foreclosure
- IP including trademark infringement
- Encroachment
- Franchise terminations
- Insurance
- Banking and finance
- Landlord/tenant disputes
- Negligence
- Officer/director liability
- Personal injury
- Product liability
- Professional liability
- Property damage
- Tortious interference

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### Restaurant Restructurings

Andrews Kurth represents clients in every aspect of corporate reorganizations, in-court and out-of-court. As experienced advisors at all stages of the process, we guide restaurant clients on corporate restructuring, disposition, loan settlements and restructurings, reorganization and receivership proceedings.

We typically handle matters involving a high number of stores in many different states and manage the attendant number of interested parties. Our range of client representation includes:

- Restaurant companies
- Creditors' committees
- Ad hoc committees
- Secured lenders
- DIP lenders
- Trustees
- Buyers and sellers of troubled or distressed assets and claims
- Strategic investors
- Individual creditors of restaurant companies

### Our significant restaurant restructuring experience includes:

- Tony Roma's and Magic Restaurants in respective Chapter 11 restructurings.
- Flagstar Corporation (owner of Denny's Restaurant chain), Ninfa's Restaurants, Sfuzzi's Restaurants and BP Restaurants, representation of the official committees of unsecured creditors.
- Representation of lenders and servicers in the exercise of post-loan default remedies. These include foreclosure and/or appointment of a receiver in receivership and bankruptcy proceedings and in the restructuring, settlement and disposition of defaulted loans and collateral property.

Restaurant restructurings are unique in that the goodwill of a restaurant operator and the related franchise may rapidly erode in a restructuring. To obtain our clients' goals and protect their interests, we work to emphasize cost-effective and practical solutions tailored to each situation.

In our restructuring counsel, we include the recommendation of effective third-party auditors, operators, brokers, auctioneers, title companies and vendors with significant experience and honorable reputations with respect to this industry.

### Financing and Tax

Andrews Kurth represents both lenders and borrowers in financings involving the acquisition of, or investment in, restaurant properties. We also counsel on the refinancing and/or restructuring of existing debt through structured finance transactions, including mezzanine loans and sale/leaseback transactions.

These financing transactions typically involve multiple parties, such as lenders, owners, operators, managers, tenants and franchisors, and properties in multiple states. We have significant experience handling large multiple property/state transactions.

Our approach and results are efficient and effective, and marked by clear communication and strong organization. We complete legal and due diligence requirements, and prepare and negotiate closing documents in conformance with local law requirements.

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### Securitized Lending

Our lawyers who practice in the restaurant industry also advise loan originators on securitized lending programs and loans intended for securitization. We have closed thousands of mortgage loans secured by properties involving quick-service restaurants in multiple states.

In our counsel to casual, upscale specialty restaurant chains, we have advised in "whole-company" securitizations of the cash flows from company-owned and franchisee-owned facilities, as well as all related advertising revenues.

In complicated company restructurings, our Tax practice group is able to support any needed tax planning and to resolve reporting and filing requirements.

Andrews Kurth lawyers' experience includes a large number of securitized lending transactions such as:

- Taco Bell, 50 locations/5 states
- Hardee's Burgers, 40 locations/6 states
- Burger King, 99 locations/6 states
- Church's Chicken, 321 locations/20 states
- Popeye's Chicken, 65 locations/2 states
- Carl's Jr. Burgers, 17 locations/California

We have also counseled on several non-securitized financing transactions ranging from deals involving over 800 Pizza Hut locations in 26 states to deals involving only a few locations of a local chain for clients such as JPMorgan Chase and Saltgrass Steakhouse Restaurants.

### Business and Real Estate Transactions

When restaurant companies grow, our lawyers handle every aspect of the real property transaction, from financing to construction and zoning approval.

We have advised restaurant companies in numerous land purchases, construction, development and restaurant acquisitions, and understand the legal and local law requirements that apply to foodservice operations.

Using broad industry knowledge, our lawyers advise clients on resolving construction, development, zoning and environmental issues. Within the restaurant sector, our real estate experience includes all lease negotiations for Luna De Noche Tex Mex restaurants, Good Eats and Cool River Steakhouse, both owned by Consolidated Restaurant Corporation. We have also counseled Landry's Restaurants, Inc., on real estate leasing, development transactions and project development matters.

### Labor and Employment

Andrews Kurth lawyers advise on unique workforce issues facing restaurant companies. Issues we counsel on include:

- Reduction of high turnover in night and weekend positions
- Improvement of productivity
- Cost reductions
- Avoidance of overtime pay disputes
- Implementation of single- or multiple-employer qualified benefit and pension plans, including profit-sharing and thrift-savings plans
- Allegations of employment discrimination, sexual harassment and wrongful discharge
- Traditional labor laws involving elections, collective bargaining, grievances and union avoidance

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- Creation of effective ethics and corporate compliance programs
- Training managers to comply with labor laws, OSHA and wage and hour rules
- Responses to regulatory authorities including to the U.S. Equal Opportunity Commission (EEOC), National Labor Relations Board (NLRB), OSHA, Department of Labor and many other federal and state agencies

## Intellectual Property

Andrews Kurth helps a wide range of restaurant clients obtain, protect and enforce patents, trademarks, copyrights, trade secrets and other intellectual property rights.

For example, we have handled everything from restaurant industry patent litigation to trademark infringement actions and trade secret aspects of "secret" recipes for nationally branded restaurants. Representative matters we have handled include:

- **Trademark Clearance and Registration**—Provided IP counsel for several restaurants, including Saltgrass Steakhouse, Babin's and Barton Springs Grill.
- **IP Counsel**—Provided general IP counsel to Luna De Noche Tex Mex restaurants.
- **Transactional IP Counsel**—Advised Landry's on IP matters during its acquisition of Golden Nugget Casino.
- **Strategic IP Advisor**—Represented Sysco Corporation, the largest supplier to restaurants in the country, on general intellectual property, e-commerce and strategic venture matters.