

## Restaurant

As restaurant companies become larger and their business practice more complex, they face legal challenges similar to any large scale business enterprise including raising public and private capital, mergers and acquisitions, complicated financings, real estate, contracts, regulatory matters, intellectual property and labor and employment. Accordingly, many restaurant enterprises need the range of legal services that full-service law firms provide. Andrews Kurth is a full-service law firm with offices in Austin, Beijing, Dallas, Houston, London, Los Angeles, New York, The Woodlands and Washington, DC. The firm's Restaurant Practice Group draws on the firm's broad resources across the country and our lawyers' in-depth industry knowledge, and focuses on legal concerns facing restaurant companies and their owners, operators, managers, tenants, franchisors and lenders.

Our Restaurant Practice Group enables us to offer skilled and experienced legal assistance in, among others, the following areas:

- general corporate structuring and tax matters
- mergers and acquisitions
- franchising and brand issues
- financing transactions
- operational and management issues
- lease, master lease and sale/leaseback transactions
- restaurant construction and development
- labor and employment matters
- trademark and intellectual property matters
- restructuring troubled operations for creditors, restaurant operators, owners, lenders and franchisors
- representing owners, operators, tenants, lenders and franchisors in bankruptcy proceedings

In these areas and others, our Restaurant Practice Group delivers effective and efficient solutions to resolve problems and create opportunities for our clients.

### **Corporate and Securities**

Andrews Kurth's Restaurant Practice Group is experienced in representing acquiring companies, targets and investment advisors in high-profile business combinations, financing, joint venture 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.

Our Restaurant Practice Group's significant experience includes the following matters:

- represented the founders of Chili's in the roll-up and sale of the original 13 stores to Brinker International
- represented Landry's with its acquisition of the Golden Nugget Casino in Las Vegas
- represented Consolidated Restaurant Corporation in the acquisition of Spaghetti Warehouse and the financing of Spaghetti Warehouse and El Chico
- represented Outback Steakhouse in the acquisition and development of the Texas restaurant chain
- represented Actuelle, Ltd. in formation of investment partnership to own and operate upscale Dallas eatery
- represented Tri-J Capital Partners in the formation of investment partnership and the acquisition of 29 Applebee's franchised restaurants
- represented Rockfish Seafood Grille in the roll-up of all existing stores into a company to conduct a joint venture with Brinker International

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### **Litigation**

Andrews Kurth's litigators manage jury and bench trials in all courts and other tribunals nationwide for restaurant companies in disputes involving antitrust, breach of contract, commercial fraud, foreclosure, insurance coverage, intellectual property, banking and finance litigation, landlord/tenant disputes, negligence, officer/director liability, personal injury, product liability, professional liability, property damage and tortious interference. Our restaurant experience includes handling matters for American Express Company, Boston Market, McDonald's and Saltgrass Steakhouse Restaurants.

### **Restructuring**

Andrews Kurth lawyers in offices throughout the US have been involved in representing clients in every aspect of corporate reorganization-in court and out-of-court. Our Restaurant Practice Group represents restaurant companies, as well as creditors' committees, ad hoc committees, secured lenders, DIP lenders, trustees, buyers and sellers of troubled or distressed assets and claims, strategic investors and individual creditors of restaurant companies. The group's experience encompasses every stage of corporate restructuring, disposition, loan settlements and restructurings, reorganization and receivership proceedings. The Group's significant restaurant experience includes representing Tony Romas and Magic Restaurants in their respective Chapter 11 restructurings, representing the official committees of unsecured creditors of Flagstar Corporation (owner of Denny's Restaurant chain), Ninfa's Restaurants, Sfuzzi's Restaurants and BP Restaurants, and representing lenders and servicers in the exercise of post loan default remedies, including foreclosure and/or appointment of a receiver and in the restructuring, settlement and disposition of defaulted loans and collateral property.

We understand that restaurant restructurings are unique in that the good will of a restaurant operator and the related franchise may rapidly erode in a restructuring. Therefore, we emphasize cost-effective and practical solutions tailored to each situation to obtain the best results for our clients.

### **Financing and Tax**

We represent both lenders and borrowers in financings involving the acquisition of or investment in restaurant properties or 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 (lenders, owners, operators, managers, tenants and franchisors) and properties in multiple states. Our Restaurant Practice Group has significant experience handling large multiple property/state transactions and providing efficient and effective representation with respect to communication, organization and completion of legal and due diligence requirements, and preparation and negotiation of closing documents in conformance with local law requirements. Our Restaurant Practice Group also advises loan originators on securitized lending programs and loans intended for securitization, and it has closed thousands of mortgage loans secured by properties involving quick-service restaurants in multiple states. Our Restaurant Practice Group has also represented casual up-scale specialty restaurant chains 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 group stands by to assist in any tax planning and the resolution of any reporting and filing requirements. Our Restaurant Practice Group's experience includes a large number of securitized lending transactions involving 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) and Carl Jr.'s Burgers (17 locations/California), and 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 Transactions**

When restaurant companies grow, our lawyers can handle every aspect of the real property transaction, from financing to construction to 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

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operations. Our broad industry knowledge enables us to resolve construction, development, zoning and environmental issues more effectively and efficiently. Our Restaurant Practice Group's real estate experience includes, among many others, all lease negotiations for Luna De Noche Tex Mex restaurants, representation of Good Eats and Cool River Steakhouse, both owned by Consolidated Restaurant Corporation, and real estate leasing, development transactions and project development matters for Landry's Restaurants, Inc.

### **Employment and Labor**

Andrews Kurth lawyers understand workforce issues facing restaurant companies and provide focused solutions to help restaurant managers and human resource staff: reduce high turnover in night and weekend positions; improve productivity; reduce costs and avoid overtime pay disputes; implement single- or multiple-employer qualified benefit and pension plans (including profit-sharing and thrift savings plans); manage allegations of employment discrimination, sexual harassment and wrongful discharge; and deal with traditional labor laws involving elections, collective bargaining, grievances and union avoidance. We can help restaurant employers create effective ethics and corporate compliance programs, train managers to comply with the labor laws, handle OSHA and other inspections, observe wage and hour rules and respond 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, our Restaurant Practice Group has handled everything from restaurant industry patent litigation, to trademark infringement actions for nationally-branded restaurants, to protecting the trade secret aspects of "secret" recipes. We have handled trademark clearance and registration work for several restaurants, including Saltgrass Steakhouse, Babin's and Barton Springs Grill; general intellectual property issues for Landry's in its acquisition of Golden Nugget Casino; and general intellectual property, e-commerce and strategic venture advice for Sysco Corporation, the largest supplier to restaurants in the country.