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Fifth Circuit Holds Asset Purchaser Unable To Acquire Rejected License Agreement

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A license agreement “deemed rejected by operation of law” could not be acquired under a court-approved asset purchase agreement, held the U.S. Court of Appeals for the Fifth Circuit on Oct. 29, 2018. Although the acquirer claimed “that it purchased a patent license from [the] debtors in bankruptcy sales of their estates,” the court explained that “a rejected executory contract ... could not have been transferred by the bankruptcy sales in question” The court also declined to “approve of the use of a” bankruptcy court sale order “to avoid the requirement that an executory contract be assumed and assigned under” Bankruptcy Code. In this article, of counsel Michael Cook discusses the relevance of the Fifth Circuit’s decision in *In re Provider Meds LLC* regarding a rejected license agreement.

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