

Bankruptcy, Insolvency & Creditors' Rights

Related Practices

Construction Law
Government Reorganization and Restructuring
Health Care
Litigation
Real Estate

Related Industries

Automotive Industry Group
Automotive, OEM & Supplier Business Services
Commercial Mortgage-Backed Securities Special Servicer Group
Energy Industry Group
Financial Industry Group
Financial Services Regulatory & Compliance
Oil & Gas

Overview

Dykema's Bankruptcy, Insolvency and Creditors' Rights practice is committed to delivering timely, creative, practical and cost-effective solutions to the challenges that face creditors and financially distressed companies. Nationally ranked as a "Best Law Firm for Banking and Creditor/Debtor Rights/Insolvency and Reorganization" by *U.S. News*, our team of bankruptcy attorneys, transactional lawyers and litigators is distinguished by its extensive experience in this quickly evolving area.

We represent money center and regional banks, in addition to clients from numerous industries, including automotive, general manufacturing, retail, hospitality, construction and health care. Drawing on resources from across the Firm, we have advised lenders, middle-market businesses, insurance companies, municipalities, landlords, and creditors' committees on the full spectrum of insolvency-related matters, including restructurings of existing credit facilities, in-and out-of-court workouts, Chapter 11 reorganizations and Chapter 7 liquidations.

Areas of specialization include:

Asset Purchases

In business, one company's crisis is inevitably another company's opportunity. Dykema's team of bankruptcy practitioners, mergers and acquisitions attorneys and litigators is adept at identifying both the challenges and the opportunities inherent in situations involving financially distressed companies.

We counsel purchasers attempting to acquire assets from troubled companies, whether through sales by secured creditors under Article 9 of the Uniform Commercial Code (UCC), sales by receivers and assignees for the benefit of creditors, or sales by bankruptcy trustees and debtors-in-possession under Section 363 of the bankruptcy code.

Bankruptcy and Insolvency Litigation

The highly charged and fast-paced nature of bankruptcy litigation requires a combination of strategic insight and comprehensive experience in order to prevail. At Dykema, we have established ourselves as one of the nation's strongest trial and litigation firms. When combined with our specialized knowledge of the Bankruptcy Code, our litigation experience has helped our firm obtain favorable resolutions—in a host of forums—for all types of insolvency-related litigation, arbitration and dispute resolution.

Our bankruptcy litigators provide exceptional service to companies involved in the full spectrum of insolvency-related disputes. This includes representation of lenders foreclosing on all types of properties, such as farms, commercial, retail and office properties, apartment buildings, partially completed residential developments and industrial, specialty and mixed-use properties. In addition, we vigorously represent defendants in lawsuits to avoid and recover preferences and fraudulent transfers, and whose claims in bankruptcy are contested. Our litigators also represent receivers in cutting-edge matters involving their right to seize rents and other assets held by owners and/or borrowers.

Since the result of a bankruptcy dispute dramatically impacts the future of the parties involved, our goal is to help clients resolve business disputes—in- and out-of-court—as quickly and cost-effectively as possible.

Creditors' Committees and Trustee Representation

Given the fiduciary duties imposed on creditors' committees and bankruptcy trustees, it is more important than ever to engage counsel with the experience, knowledge and insight to ensure that those duties are fulfilled.

Dykema's Creditors' Committees and Trustee practice is dedicated to maximizing return for clients in distressed situations. Moreover, the broad and diverse experience of our lawyers helps us manage the often conflicting interests of creditors' committees and their constituents. With these tools in hand, we have successfully formulated and implemented strategies on behalf of trustees and creditors' committees in respect to:

- Investigating of the activities of debtor's officers, directors and shareholders
- Commencing litigation that will enhance recovery to unsecured creditors
- Analyzing and objecting to claims
- Structuring and documenting reorganization plans
- Case administration

Representation of Financial Institutions

At Dykema, we bring decades of experience to our representation of financial institutions in a wide range of bankruptcy and insolvency issues. Our lawyers apply an interdisciplinary approach to craft solutions for commercial banks and other financial entities facing the challenges of insolvency-related matters.

We represent commercial banks, real estate investment trusts and other lenders that have made secured and unsecured loans to businesses that have encountered subsequent economic hardship.

Financial institutions benefit from our counsel and from the range of services we can deploy to reach successful resolutions of their insolvency-related issues. Our work in this area includes:

- Negotiating out-of-court workouts and forbearance agreements
- Restructuring loans
- Financing Chapter 11 debtors through debtor-in-possession financing and cash collateral orders
- Negotiating adequate protection for use, or prohibiting use, of a creditor's collateral by a bankrupt company
- Recovering possession of a client's property from borrowers both in and outside of bankruptcy cases
- Proposing and confirming plans of reorganization or liquidation on behalf of creditors in cases under Chapter 11 of the Bankruptcy Code
- Foreclosure sales under Article 9 of the Uniform Commercial Code (UCC)
- Assignments for the benefit of creditors

In-and Out-of-Court Restructurings and Liquidations

When it comes to restructurings and liquidations, one size never fits all. Our team provides targeted, customized solutions for clients confronting the challenges of distressed asset or non-performing loan situations. Our team of bankruptcy practitioners leverages decades of experience in debtor-creditor laws, in- and out-of-court restructurings, workouts and liquidations to identify winning options and develop strategies for a broad base of financial institution, real estate, manufacturing and middle-market business clients. We represent these clients in every aspect of restructuring and reorganization so that they may both maximize their recovery in troubled credit situations and minimize their risk and expense. We also have experience in liquidating a wide variety of assets, from airplanes and racetracks to perfume factories and shipping vessels.

We represent creditors successfully in all types of restructurings and reorganizations, including Chapter 11 reorganizations, out-of-court restructurings, recovery of pledged collateral, realizing upon liens, and security interests and defense against claims that have been asserted, and prosecution of claims against debtors.

For financially distressed businesses, we provide focused guidance and representation to clients in Chapter 11 and Chapter 7 proceedings, as well as in- and out-of-court restructuring, sales under Article 9 of the Uniform Commercial Code (UCC), and assignments for the benefit of creditors. We have a substantial record of success in resolutions based on strategies such as working with secured and unsecured creditors; settling guaranteed obligations; collecting assets; liquidating claims; out-of-court composition; receiverships; assignments for the benefit of creditors, asset sales and out-of-court workouts to avoid bankruptcy proceedings.

Landlord Representation

The economic climate of recent years has created new challenges for landlords and property owners. Drawing from our experience providing cost-effective strategies that are innovative, realistic and value-driven, Dykema has established a successful history advising owners of real estate who face challenges associated with their financially distressed tenants. In these matters, our goal is to ultimately limit client risk and liability while making the most of client assets.

We have experience with the full array of real estate assets. We represent landlords and owners of office buildings, malls and retail centers, industrial properties and multifamily housing projects.

Representative areas of practice include:

- Forbearance agreements
- Property management issues, including distressed property and “turnaround” situations
- Reorganization under Chapter 11 of the Bankruptcy Code
- Assumption and assignment of tenant leases
- Enforcing claims for lease rejection damages against bankrupt tenants

Representation of Distressed Businesses

Creative, value-driven counsel is critical to businesses enmeshed in bankruptcy and insolvency-related matters. Dykema lawyers approach the Firm’s representation of distressed businesses armed with a thorough grounding in the intricacies of bankruptcy and debtor-creditor laws. We use forward-thinking, yet practical strategies to find viable, risk-reducing solutions for our clients.

Importantly, clients benefit from the perspective gained from our regular representation of lenders and other creditors. For businesses encountering financial hardships, we use this complementary experience to ensure that we approach every matter with a deep understanding of both sides of the issues.

We bring decades of experience in all aspects of law surrounding financially troubled companies. Our lawyers are trusted advisors to clients from the automotive, general manufacturing, commercial real estate, retail, hospitality and health care industries.

Dykema’s bankruptcy and insolvency team is experienced with the full range of insolvency-related matters, including:

- Preparing and filing for Chapter 11 relief
- Complex automotive-related workouts, both in- and out-of-bankruptcy
- Multimillion dollar corporate restructuring transactions
- Litigation prior to or during bankruptcy proceedings
- Liquidation of assets

- Real estate loan restructurings and foreclosures
- Issues related to supply chain management

Experience Matters

Representative bankruptcy matters include:

- Serving as lead counsel to one of the largest U.S. airports in more than 25 bankruptcies, working in conjunction with the United States Department of Transportation on Passenger Facility Charge litigation on behalf of various airports in airline bankruptcy cases nationwide
- Representing a North Texas municipality in Chapter 9
- Representing a major land developer in the municipal bankruptcy of City of Westlake, Texas, in litigation arising from de-annexation of land
- Serving as lead bankruptcy counsel on ad valorem personal property tax issues arising from taxation of transient property, such as airplanes and truck fleets
- Serving as lead bankruptcy counsel in cases relating to assertion of claims over failed special revenue bonds issued by various municipalities
- Serving as lead bankruptcy counsel in environmental cases including large environmental trusts
- Representing a health care REIT in the national Chapter 11 cases of nursing home chains that were lessees of the REIT-owned facilities or borrowers from the REIT
- Working closely with the State of Michigan during the restructuring phase of a publicly traded health care provider
- Representing, as sole lead financing counsel, a global performance material and specialty chemical manufacturer in its \$2.05 billion Chapter 11 exit financing facility from the commitment letter stage through closing
- Representing a public healthcare company in an out-of-court restructuring
- Representing a global leading apparel manufacturer in structuring, negotiation, documentation and closing of a first-lien credit facility, second-lien credit facility and bridge loan facility aggregating approximately \$3.1 billion
- Representing, as the sole debt counsel, an automotive supplier in the structuring, negotiation, documentation and closing its \$725 million debtor-in-possession financing. The transaction included simultaneous negotiations with the supplier's customers, which included most of the world's major automotive companies and related interested parties
- Serving as co-counsel in the successful Chapter 11 reorganization of a major cargo and charter passenger airline
- Serving as lead counsel in the successful Chapter 11 reorganizations of:
 - The second largest vinyl and aluminum window manufacturer in the United States requiring negotiation with unions, landlords and secured lender groups
 - Electrical Cooperatives
 - A VOIP telecommunications company
 - Defense companies
 - Community hospitals
 - Oil and Gas companies
 - Commercial and residential real estate developers
 - Multi-state retailers
 - Multi-state restaurant chains
 - Suppliers

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- Hospitality companies including hotels
- Serving as unsecured creditor committee counsel in successful Chapter 11 reorganization of:
 - A major league baseball team
 - The second largest electric generator in the United States

Publications

"Five Simple Rules for In-House Counsel to Avoid the Most Hidden Insolvency Risks in Commercial Transactions"
January 10, 2019

Business Law Today

"Foreclosure Delay Via Bankruptcy Fraud: How Creditors Can Fight Back"

October 4, 2018

Westlaw Journal: Bankruptcy

"Due Diligence in Distressed Community Hospitals"

August 1, 2018

The Bankruptcy Strategist

"Perspectives: Secured Creditors," Chapter Co-Author

2018

Strategic Alternatives For And Against Distressed Businesses, Thomson Reuters

"Doing the Deal Right: Mitigating the Threat of Insolvency Before It's Too Late"

September 23, 2016

Business Law Today

"Fraudulent Transfers in the Ponzi Era"

September 2016

Pratt's Journal of Bankruptcy Law

State Courts Re-Balance Fraudulent Transfer Litigation and Ponzi Scheme Presumptions

June 29, 2016

American Bankruptcy Institute Business Reorganization Committee Newsletter

"Forbearance Agreements," Chapter Co-Author

2016

Strategic Alternatives For and Against Distressed Businesses, Thomson Reuters

When Gushers Go Dry: The Essentials of Oil & Gas Bankruptcy, Co-Author

January 2016

American Bankruptcy Institute

"Through The Looking Glass: The Mechanical Misapplication of *In Pari Delicto* in Bankruptcy"

January 2016

Pratt's Journal of Bankruptcy Law

"Circuit Review," Contributor

2010/2011 Issue

American College of Bankruptcy

"Proofs of claim take on different nature in bankruptcy arena," *Kramer's Corner*

July 30, 2015

Chicago Daily Law Bulletin

"When Her Smile is a Thin Disguise—How to Stop a Lying Judgment Debtor from Obtaining a Bankruptcy Discharge"

June 24, 2015

Commercial Bankruptcy Alternatives

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"Bankruptcy Year-in-Review," column, author and co-author
2011-Present
Texas Bar Journal

"Benchnotes" column, author and editor
2009 – 2018
American Bankruptcy Institute Journal

American Bankruptcy Institute Journal, coordinating editor
2009 - Present

"How Bankruptcy Firms Stay Afloat During Ch. 11 Slump," Deborah D. Williamson Interviewed by Law360
March 12, 2015

"If It Walks Like a Duck...In Re Duckworth: Another Warning to Lenders to Take Care in Drafting Security Documents"
March 2, 2015
Pratt's Journal of Bankruptcy Law

"Second Circuit Expands Bankruptcy Code's Safe Harbor Protection for Transferees of Ponzi Scheme Payments"
February 9, 2015
Metropolitan Corporate Counsel

"Going on the Offensive: Quick and Aggressive Responses to Bad Faith Bankruptcy Filings"
November 19, 2014
Metropolitan Corporate Counsel

"Turning Paper into Cash: Post-Judgement Collection Methods"
August 2014
Pratt's Journal of Bankruptcy Law

"OSG Bankruptcy Highlights Usefulness of Rights Offerings," Co-Author
June 2, 2014
Law360

"Equity Auctions and the New Value Corollary to the Absolute Priority Rule"
April 2014
Commercial Law League of America

"2013 Year in Review: Bankruptcy Law," by Mark Andrews and Aaron Kaufman, 77-1 Tex. B.J. 45-47 (Jan. 2014)
January 1, 2014

Special Focus: Plan Release Provisions
January 1, 2014
Commercial Bankruptcy Litigation (3d ed.)

"2013 Update to Special Problems in Commercial Real Estate Bankruptcy Cases"
November 2013
IICLE Commercial Bankruptcy Handbook

Pre-Petition Waivers of the Automatic Stay: Lender Satisfaction Not Guaranteed
July 1, 2013
Norton Journal of Bankruptcy Law & Practice

"Section 1111(b) Scenarios"
April 19, 2013
ABI Annual Spring Meeting Educational Materials

"Ethical Rules that a California Attorney Must Consider When Using Social Media"
April 2013
ABI Committee News, Ethics and Professional Compensation Committee

"Key Employee Incentive Programs Make 'Cents' for Creditors"
November 2012

Bankruptcy, Insolvency & Creditors' Rights (Cont.)

American Bankruptcy Institute Journal

"Distressed debt: How business owners can deal with having their debt sold to a third party"

October 2012

Smart Business Dallas

Undoing Receiverships in Bankruptcy

October 1, 2012

American Bankruptcy Institute Real Estate Committee Newsletter

"Don't Jump the Gun: How to Determine if Your Business Really Needs to File Bankruptcy"

August 2012

"Technology Licensing: Understanding the Intersection of Bankruptcy Law and Technology Licensing"

February 3, 2012

InsideCounsel.com

When Gushers Go Dry - A Guide to Oil and Gas Bankruptcy, by Deborah D. Williamson

January 1, 2012

"A Test for Determining Whether a Claim is Derivative or Direct," by Deborah D. Williamson, ABA Section of Litigation, Bankruptcy and Insolvency

July 14, 2011

"Special Problems in Commercial Real Estate Bankruptcy Cases"

April 2011

IICLE Bankruptcy Handbook

"Distressed Acquisitions: How To Buy Assets From A Bankrupt Debtor"

July 2010

Review for Dealmakers

"Managing Relations with Insolvent Customers: How To Get Paid and Keep the Money"

July 2009

Supply & Demand Chain Executive

"Danger Ahead: Director Liability During the Zone of Insolvency"

February 6, 2009

Dallas Business Journal

"What Does the Current Financial Crisis Portend for Bankruptcy Reorganizations?"

February 2009

Bankruptcy and Restructuring Chapter 11 Strategies

"Creditors' Committees Under the Microscope – Recent Developments Highlight the Hazards of Self-Dealing"

September 2007

American Bankruptcy Institute Journal

Bankruptcy Litigation for the Commercial Litigator, by Deborah D. Williamson

January 1, 2007

"Bankruptcy Can Resolve Difficult Business Issues"

August 2002

Michigan Lawyers Weekly

Speaking Engagements

The Unique World of Automotive Supplier Financial Distress and Bankruptcies, ABA Business Bankruptcy Committee Webinar

January 23, 2019

The Intersection of Healthcare and Insolvency: Where Are We Now and Where Are We Heading?

June 19, 2018

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Recent Updates, Speaker, 36th Annual Jay L. Westbrook Bankruptcy Conference, Austin, Texas
November 16, 2017

Recent Legal Issues and Developments in Oil and Gas Restructuring: What Companies Need to Know?
February 9, 2017

Bankruptcy Considerations for In-House Counsel, 15th Annual Advanced In-House Counsel Conference
August 11, 2016

Upstream Energy Forum
May 24, 2016

Outlook for Restructuring/Insolvency in Several Sectors, Including Retail, Healthcare and Energy - Specifically Address Energy (Oil and Gas), 2016 Bankruptcy Outlook with Bloomberg Law, New York, NY
March 29, 2016

Where Will the Work be in 2016? Sector Focus on Bankruptcy and Restructuring
March 29, 2016

ABI Commission Report: Proposed Amendments and Their Impact on Valuation, Panel Moderator, VALCON 2016, Las Vegas, Nevada
March 15, 2016

Bankruptcy 101 for Lenders, Troubled Companies and Business Bankruptcy Primer, University of Chicago, Booth School of Business

Where Will the Work be in 2016? Sector Focus on Bankruptcy and Restructuring, New York, New York
January 26, 2016

ABI Commission To Study the Reform of Chapter 11 Recommendations, ABI Conference, Denver, Colorado
January 22, 2016

ABI Commission to study the reform of Chapter 11 Recommendations, Panelist, 21st Annual Rocky Mountain Bankruptcy Conference, Denver, Colorado
January 22, 2016

Recent Developments, 33rd Jay L. Westbrook Bankruptcy Conference, University of Texas
November 12, 2015

ABI Bankruptcy Reform Commission, National Conference of Bankruptcy Judges, Miami, Florida
September 28, 2015

Oil and Gas Issues in Bankruptcy, ABI Southwest Conference, Las Vegas, Nevada
September 11, 2015

Successor Liability in Asset Sales: What is the Plain Meaning of "Free and Clear?" Panelist, American College of Bankruptcy's 6th Annual Meeting, Chicago, Illinois
September 11, 2015

Recommendations on Professional Fees and Expenses, abiLIVE Webinar Series
July 8, 2015

Analysis of the Supreme Court's Baker Botts v. ASARCO Decision, Speaker, The State Bar of Texas, Bankruptcy Law Section, Telephone CLE
June 24, 2015

The Intersection of Ethics and Discovery (What Attorneys Need to Know), Panel Moderator, American Bankruptcy Institute's 22nd Annual Central States Bankruptcy Workshop
June 13, 2015

Business: The Future of Chapter 11, Speaker, 11th Anniversary, Texas Bench/Bar Bankruptcy Conference
May 29, 2015

2015 Bench/Bar Conference, State Bar of Texas, Bankruptcy Section
May 27, 2015

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"Business Bankruptcy Case Updates," co-author, Annual Jay L. Westbrook Bankruptcy Conference (UTCLE)
2009 - Present

Ethics: Chapter 11 Commission Recommendations on Professional Fees and Expenses, Speaker, American Bankruptcy Institute 33rd Annual Spring Meeting
April 16, 2015

Distressed Municipalities: The Battle Outside of Bankruptcy, Turnaround Management Association Spring Conference, Detroit, Michigan
April 2015

Energy Cases, American Bankruptcy Institute Rocky Mountain Bankruptcy Conference
January 22, 2015

"Hot Topics in Financial Restructuring," author and speaker, PwC Deals Leadership Summit 2015, Grapevine, Texas
January 5, 2015

Recent Developments in Bankruptcy 2014, Speaker, University of Texas at Austin – 32nd Annual Jay L. Westbrook Bankruptcy Conference
November 20, 2014

Help, My Hospital is Sick, University of Texas at Austin – 33rd Annual Jay L. Westbrook Bankruptcy Conference
November 20, 2014

American Bankruptcy Institute – 22nd Annual ABI Southwest Bankruptcy Conference
September 4, 2014

Bankruptcy: Get in the Game, Northern District Bench Bar Conference
June 20, 2014

The 1111(b) Election: Advanced Mathematics and Strategies, ABI Webinar
June 12, 2014

Chapter 15 Overview and Update, Dallas Bar Association, Bankruptcy Section
May 7, 2014

Secrecy in Bankruptcy: Sealing the Record and Confidentiality Agreements, Panelist and Co-Author, State Bar of Texas, Advanced Bankruptcy Seminar
2014

ABI Spring Meeting "18th Annual Great Debates-Past Presidents' Debate," Speaker, Washington, DC
April 25, 2014

Healthcare Provider Bankruptcies, Panelist, Westbrook Bankruptcy Conference
2014

1111(b) Election, Plan Feasibility and Election Issues, ABI Webinar
July 15, 2013

A 180° Strategy for the New Troubled Supplier, 2013 Motor Vehicle Metals & Resins Conference, Troy, Michigan
May 23, 2013

Municipal Bankruptcy and the Anatomy of a Defaulted Lease, 2013 AGLF/ELFA Public Sector Finance Forum
May 9, 2013

Cross Border Insolvencies, Panelist, Center For American and International Law
2013

The 1111(b) Election, Plan Feasibility and Cramdown Issues, Panelist, ABI Annual Spring Meeting
April 19, 2013

Are Capacity Constraints Paralyzing Your Supply Chain?, Automotive News Power Training, Panelist on Webinar
April 16, 2013

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State Bar of Texas – 2012 Advanced Business Bankruptcy Conference
September 13, 2012

Crowdfunding and the IPO On-Ramp
June 5, 2012 (Los Angeles-area)

Crowdfunding and the IPO On-Ramp
May 23, 2012 (Detroit) and May 24, 2012 (Chicago)

What Bankruptcy Lawyers Should Know About the WARN Act, Dallas Bar Association Bankruptcy & Commercial Law
Section, Dallas, Texas
May 2, 2012

Bankruptcy Litigation Training, Instructor, ABI Litigation Skills Symposium
2012

Alternatives to Chapter 11, 85th Annual National Conference of Bankruptcy Judges, Tampa FL (Panel moderator)
October 14, 2011

American Bankruptcy Institute – 19th Annual Southwest Bankruptcy Conference
September 8, 2011

"Hot Bankruptcy Topics in the Fifth Circuit: The Rise of Class Actions, the Fall of Gift Plans and That Equitable Mootness
Doctrine," panelist and co-author, Dallas Bar Association: Bankruptcy and Commercial Law Section, Dallas, Texas
April 6, 2011

Tenant Defaults and Bankruptcies, BOMA Suburban Chicago
June 30, 2010

Identifying M&A Opportunities in the Distressed Marketplace, M&A Source webinar
May 25, 2010

Growth Through Acquisition of Distressed Assets, Third Annual Working with Private Equity Groups, University of Chicago,
Booth School of Business
February 6, 2010

Auto Industry Panel, ABI New York City Bankruptcy Conference, New York, NY (Panel member)
June 16, 2009

Ramifications of Auto Dealer Bankruptcies, Auto Lender's Roundtable (Speaker)
January 2009

Executory Contracts, Business Bankruptcy, 2008 ABA Section of Business Law Spring Meeting (Speaker)
April 2008