

Restructuring, Bankruptcy & Creditors' Rights

Attorneys in Barclay Damon's Restructuring, Bankruptcy & Creditors' Rights Practice Area represent local, regional, national, and international clients as debtors and creditors with respect to simple and complex financial challenges. We provide representation in out-of-court restructurings, in proceedings pending in bankruptcy courts, and in state and federal court actions. Our clients come from all sectors and include individual and commercial debtors, trustees, trade creditors, banks, non-bank lenders, finance lessors, real property lessors and lessees, franchisors, loan servicers, municipalities, utilities, developers, manufacturers, distributors, retailers, asset purchasers, and service providers.

Our experience includes:

- Representing senior secured lenders in bankruptcy matters, including as debtor-in-possession (DIP) lenders.
- Negotiating sales transactions for both buyers and sellers pre- and post-bankruptcy.
- Representing commercial developers in the nationwide bankruptcy proceedings of retail tenants.
- Engaging in restructuring negotiations on behalf of lenders and borrowers in an effort to avoid bankruptcy proceedings.
- Pursuing enforcement actions against borrowers, guarantors, and their assets in state and federal court.
- Representing creditors in all aspects of bankruptcy proceedings, including filing proofs of claim; asserting Perishable Agricultural Commodities Act (PACA), reclamation, and 503(b)(9) claims; seeking relief from the automatic stay; enforcing rights in cash collateral; defending clients in preference and fraudulent transfer litigation; and protecting clients' interests in contested confirmation hearings.
- Representing debtors in all aspects of complex Chapter 11 proceedings, including the prosecution of avoidance actions.
- Representing unsecured creditors' committees.
- Representing equity committees.
- Acting as Chapter 11 trustee or examiner.
- Acting as Chapter 7 trustee.
- Acting as conflicts or special counsel for Chapter 11 debtors.

While our first approach is to reach a negotiated resolution, when a resolution cannot be achieved, we will litigate the matter. Our approach is to provide clients with cost-effective solutions by leveraging resources available in the firm and maximizing the firm's multi-office platform, ensuring local representation in any court within our geographical footprint. We have a deep bench, and our team draws as needed on lawyers in the firm's related practice areas for their capabilities in business services, real estate, environmental law, trusts and estates, intellectual property, labor and employment, tax, and other areas.

Attorneys in our Restructuring, Bankruptcy & Creditors' Rights Practice Area are active members of local and national bar associations and trade organizations, have received numerous professional recognitions and awards, and are recognized as leaders in their fields.

Representative Experience

- Represented a former telecommunications services provider in a six-day trial seeking to collect payment for telecommunications services provided and accepted under the terms of a services contract. The matter involved various breach of contract claims, resulting in damages in excess of \$1.5 million to the client, plus statutory interest at 9 percent per annum.
- Successfully defended a client in a preference claim brought in the Sears bankruptcy. Even though the matter presented challenges on the facts, still negotiated a settlement that only involved a 45-percent payment of the amount challenged.
- Represents landlords of 31 stores in Destination Maternity Corporation bankruptcy cases.
- Represents landlords of 43 stores in Forever 21, Inc. bankruptcy cases.
- Represented a client in a preference adversary proceeding in the Sears bankruptcy, resulting in a dismissal of the complaint.
- Represented a secured creditor in connection with the workout of the obligations of a related age-restricted residential project, assisted living facility, and nursing home.
- Represented the secured lender in the foreclosure and sale of a manufacturing company's assets with facilities in three states and successfully defended against lender liability counterclaims.
- Represented a secured lender in the foreclosure and subsequent sale of a hotel, including obtaining a deficiency judgment against the guarantor and successfully defending against lender liability claims.
- Represented a three-member steering committee in a multi-lender workout of the obligations of two major New York and Connecticut real estate developers.
- Represented the lead lender in a global resolution of the obligations of a high-net-worth individual to 18 creditors.
- Represented a secured lender to a munitions manufacturer, including the foreclosure and sale of all business assets and resolving competing claims to the collateral and claims against the lender.
- Represented a purchaser of a debtor's automobile dealership from a Chapter 11 trustee and in related litigation.
- Represented a regional bank in a complex workout of over \$9 million in secured debt, including restructuring, forbearance negotiations, pre-bankruptcy support agreement negotiations, and a 363 sale of the debtor's assets.
- Represents Eastern Niagara Hospital as debtor-in-possession in a Chapter 11 proceeding pending in the Western District of New York.
- Represented an individual in a foreclosure where liens were acquired from a municipality to allow him to obtain the title to the lien property.
- Assisted a receiver in liquidating the assets of a garbage collection business and handling environmental and wage issues connected to the business. Assisted the receiver in collecting over \$2.5 million, which resulted in full payment to all secured creditors with a small dividend to unsecured creditors.
- Successfully opposed portions of a motion to approve bidding procedures for a sale of assets.
- Represent landlords of one store in Retailing Enterprises, LLC (Invicta Stores) bankruptcy cases.
- Represent landlords of five stores in David's Bridal, LLC bankruptcy cases.
- Represent landlords of two stores in Christmas Tree Shops, LLC bankruptcy cases.
- Represent landlords of 29 stores in Bed Bath & Beyond Inc. bankruptcy cases.
- Represent landlords of 20 stores in Party City Corporation bankruptcy cases.
- Representing a not-for-profit rural health care enterprise in restructuring and corporate governance matters.

- Represent landlords of 143 stores in Ascena Retail Group, Inc. bankruptcy cases.
- Represent landlords of six stores in CEC Entertainment, Inc. (Chuck E. Cheese) bankruptcy cases.
- Represent landlords of 11 stores and vendors in Ruby Tuesday, Inc. bankruptcy cases.
- Represent landlords of 19 stores in J. C. Penney Corporation, Inc. bankruptcy cases.
- Represent landlords of 13 stores in Tailored Brands, Inc. bankruptcy cases.
- Represent landlords of 83 stores in GNC Holdings, Inc. bankruptcy cases.
- Represent landlords of two stores in YouFit Health Clubs, LLC bankruptcy cases.
- Represented clients in a Chapter 11 bankruptcy case, which was converted into a Chapter 7 bankruptcy. Each client had a pre-needs deposit for funeral-related services.
- Represented clients in a Chapter 11 bankruptcy case, which converted into a Chapter 7 bankruptcy case. Each client had a pre-needs deposit for funeral-related services.
- Successfully obtained the dismissal of a \$2.3 million preference lawsuit on behalf of a client, a leader in the national commercial toll management industry. Successfully asserted defenses of a preference action, as set out in the bankruptcy statute, 11 U.S.C. § 547, through the lens of the client's business.