



Bankruptcy, Restructuring, and Creditors' Rights

Navigating rough patches with an eye on the long term.

We're known for skillfully guiding clients through insolvency matters and the complexities of the bankruptcy process. But our deep experience allows us to do much more. Understanding a client's position in their industry and market, the risks and opportunities facing them now and in the future, and the business strategies and relationships that have contributed to their success, we can devise legal solutions that address both their immediate and longer-term goals.

Overview

Maximizing recoveries and moving businesses forward

We have long been known for our creative problem-solving abilities and pragmatic approach – at the negotiating table and in bankruptcy court. Navigating clients through the details of the bankruptcy process, we work to maximize their recoveries and advance their business objectives.

And when bankruptcy is not the best option, we are equally adept at navigating clients through nonbankruptcy insolvency matters to favorable results – whether it be state court loan enforcement actions, out-of-court workouts, receiverships, assignments for the benefit of creditors, or similar insolvency proceedings.

Handling all sides of bankruptcy and insolvency matters

We know the needs of parties on all sides of bankruptcy and insolvency matters and have represented a wide variety of clients, including:

- Bond trustees
- Bondholders
- Chapter 7 and Chapter 11 bankruptcy trustees
- Debtors
- Investors and purchasers of distressed assets
- Landlords
- Litigation and liquidating trustees
- Officers and directors
- Plaintiffs and defendants in adversary proceedings and contested matters
- Receivers and assignees
- Secured creditors
- Trade creditors
- Unsecured creditors' committees

Experience

Spencer Fane restructuring lawyers have helped clients resolve issues in a wide range of industries, and have backgrounds in banking, corporate finance, real estate, and litigation. This breadth of experience allows us to address problems with an interdisciplinary approach to best meet the needs of our clients. Examples of how we have helped clients include:

- Reorganized one of the Midwest's largest suppliers of storage containers and trailers in a contested Chapter 11 plan confirmation hearing, resulting in an interest rate reduction of approximately 2.5%.
- Represented multibillion dollar insurance client in enforcement of noncompete agreement against former agent soliciting hundreds of high-value clients by obtaining a temporary restraining order in less than one week and a preliminary injunction in less than one month.
- Routinely represent buyers and sellers of multimillion dollar companies (construction, manufacturing, technology, retail, and distribution), both through stock and asset sales, inside, and outside of the Chapter 11 bankruptcy process.
- Successfully guided secured lender to a single-asset real estate debtor through the Chapter 11 process, including defeating plan confirmation, obtaining dismissal, and, ultimately, taking control of the property.
- Represented the liquidating agent for a multimillion dollar loan portfolio held by a foreign banking institution, which included the liquidation of more than 40 properties of various types and in various stages of completion throughout the U.S., most of which had a variety of access, title, construction, lien, and similar issues that required resolution prior to sale.
- Represented a Chapter 7 trustee in litigation to pierce multiple private trusts, resulting in settlement and a \$20 million recovery for the bankrupt estate.
- Represented the liquidating agent of a large portfolio of defaulted commercial loans administered under a confirmed Chapter 11 plan.
- Counseled and defended banks, other financial institutions, executives, principals, and investors in relation to fiduciary duty and lender and investor liability litigation and related insurance coverage matters.
- Represented Official Committees of Unsecured Creditors in several multibillion dollar energy-related bankruptcy cases.
- Represented plaintiffs and defendants in investigation, prosecution, and defense of fraudulent transfer, fraud, turnover, preference actions, and pursuit of asset nondisclosures and nondischargeability claims.

Areas of Focus

Bankruptcy and Financial Restructuring

Bringing business savvy to formulate bankruptcy strategies.

We understand what bankruptcy can mean for a business, and we find creative resolutions whether a company has \$2 million, \$200 million, or \$1 billion in assets and liabilities. We enhance business results by providing counsel that benefits the client's current operations at the same time that we develop and manage their bankruptcy strategy.

Drawing on deep experience, our team:

- **Guides both creditors and debtors** through bankruptcy proceedings when alternative approaches are not an option, allowing clients to focus on day-to-day concerns and move past financial distress and into the next phase of their business.

- **Helps clients navigate all aspects of insolvency proceedings**, including traditional Chapter 11 bankruptcy as well as Subchapter V reorganizations or sales, Chapter 7 liquidations, and nonbankruptcy proceedings such as receiverships, assignments for the benefit of creditors, and out-of-court workouts.
- **Represents a range of parties**, including debtors in possession, secured and trade creditors, bankruptcy and bond trustees, landlords, receivers, creditors' committees, and buyers of distressed assets.

Members of the Spencer Fane Bankruptcy and Financial Restructuring team are routinely involved in some of the most complex bankruptcy proceedings in the country, and are regularly recognized for their professional excellence and contributions to the fields of bankruptcy and insolvency. Members of our team have also served, or are currently serving, as court-appointed receivers; trustees under Chapter 7 and Chapter 11, including Subchapter V; and as fiduciaries with respect to liquidation trusts.

Bankruptcy Litigation and Recovery

Bankruptcy-specific litigation acumen. Given the unique nature of bankruptcy litigation, even a small mistake can be potentially fatal to a client's case. Our attorneys aren't merely litigators with bankruptcy court experience. They are bankruptcy litigators who have spent decades representing debtors, creditors, trustees, committees, and other key parties in bankruptcy proceedings. This extensive experience enables our team to avoid common pitfalls and execute litigation strategies that optimize results for each client's unique situation.

With deep understanding of the specific rules that govern bankruptcy courts, our team:

- **Defends and prosecutes** claims and causes of action that arise in bankruptcy court proceedings, including preference and fraudulent transfer actions.
- **Helps clients successfully navigate the complexities** of bankruptcy courts.
- **Works with clients in negotiating amicable resolutions** both in and out of mediation.
- **Negotiates or litigates**, as necessary, post-petition financing proposals, sale motions, and Chapter 11 plan confirmations.

Defaulted Bonds

Handling defaulted bond matters across the country and across multiple business sectors. Our attorneys have served as trusted advisers on matters throughout the U.S. involving troubled hospitals, charter schools, shopping districts, convention centers, entertainment facilities, industrial parks, prisons and residential developments such as retirement and assisted living communities, and apartment complexes. What sets us apart is our skill in not only dealing with legal issues facing governmental and political entities beset by financial difficulties, but bringing seasoned business acumen to help bond trustees realize their objectives for both financial institutions and bondholders.

The Defaulted Bonds team:

- **Represents bond trustees in situations when a loan is in default or threatening to go into default**, helping to determine the financial institution's best methods for protection and recovery of the bondholders' investments.
- **Helps bond trustees find solutions that maximize recovery**, whether the situation involves lagging sales tax revenue, changes in special assessments, fluctuations in the market, or fraud.
- **Clearly understands the spectrum of obligations** that bond trustees have depending on the status of the deal as well as the risks that they seek to minimize.
- **Provides assistance with any of the available methods for recovery**, including negotiations, restructuring through involuntary court proceedings, restructuring, liquidations, traditional litigation, receivership, or even bankruptcy.

Additionally, our team handles trust instruction proceedings when involved parties reach a point of resolution. This gives individual bondholders an opportunity to show up to court if they disagree with the status of the deal and the reorganization approach. It also gives added assurance and protection to bond trustees when a judge backs the actions being taken between the major parties involved in the deal.

Loan Enforcement

Representing many types and sizes of lenders, enforcing loans through a variety of means. We assist traditional and nontraditional lenders facing difficult situations related to loan nonpayment by providing options that allow clients to maximize financial returns and maintain a focus on successful revenue-generating investments.

Our Loan Enforcement attorneys:

- **Work with all types of banks and traditional financial institutions and alternative lenders** to protect depositors' investments.
- **Advise financial institutions of many sizes**, with different structures and goals, learning each client's unique business objectives to inform our recommendations for pursuing loan enforcement.
- **Handle large, complex commercial loans** with particular difficulties.
- **Maintain flexibility to develop creative solutions** by staying current with industry trends.
- **Work, when possible, to address any situation early**, providing pathways to recoup losses that don't involve litigation, including bankruptcy or alternative resolutions such as workouts, receiverships, or foreclosures.
- **Analyze all options** appropriate to a client's situation and provide the client with the likely outcome of each procedure.
- **Leverage the knowledge and skill of colleagues in various specialties** based on a client's preferred method of enforcement.

In addition, we keep clients in compliance with FDCPA and other key statutes during all phases of the loan enforcement process, and our team can investigate fraudulent transfers, borrower misrepresentation, and borrower misconduct.

Receivership and Bankruptcy Alternatives

Preserving asset values to maximize monetary recoveries. Clients turn to our team when standard judicial proceedings threaten delays and expenses that could diminish asset values. We offer financial institutions, investors, borrowers, and parties to litigation an array of bankruptcy alternatives, including receivership, and we work with them to identify the option that best aligns with their goals.

Members of the Spencer Fane Receivership and Bankruptcy Alternatives team:

- **Help clients maximize monetary recoveries** while efficiently preserving the value of commercial assets, including, in some cases, operating, maintaining, and restructuring ongoing company operations.
- **Serve as court-appointed receivers at both the federal and state level**, efficiently administering a variety of domestic and foreign assets for the benefit of victims resulting from the violation of federal and state laws.
- **Are adept at applying the receivership laws to a wide variety of commercial organizations**, including real estate entities, operating companies, service providers, health care providers, and judgment creditors.

In addition, Spencer Fane attorneys have played key roles in creating a business-friendly environment for bankruptcy alternatives. In addition to multiple published works and speaking engagements on the subject of bankruptcy alternatives, our attorneys have been significantly involved in the review and updating of various state laws on the subject of bankruptcy alternatives.