



BUSINESS RESTRUCTURING & BANKRUPTCY

The Business Restructuring and Bankruptcy group counsels our clients regarding all aspects of insolvency and reorganization law. We regularly represent secured and unsecured creditors, purchasers and sellers of distressed debt and/or assets, debtors, debtor-in-possession and exit lenders, private equity sponsors and their portfolio companies and official and ad hoc creditors' committees in domestic and international out-of-court workouts, bankruptcy cases and other judicially supervised insolvency proceedings. In doing so, we are committed to providing practical and business-oriented aimed at preserving or maximizing value for our clients.

Our clients span a wide range of domestic and international industries, including cannabis, technology, energy, utilities, retail, licensors and licensees of intellectual property, pharmaceutical, healthcare, food and beverage, financial services, manufacturing, life sciences, telecommunications, real estate investment and development, and advertising and media. We also represent receivers and trustees seeking to recover funds for investors victimized by fraud or other financial malfeasance. The depth and breadth of our experience with these and other industries allow us to quickly and efficiently understand our clients' most pressing needs and devise and execute business-oriented solutions. We strive to put our talents and resources to use for clients large and small, whether navigating the largest and most complex chapter 11 cases or smaller and more cost-sensitive projects. At RCCB, no matter the size and complexity of the matter, we align ourselves with our clients' business needs in developing, implementing and accomplishing strategies to meet their goals and expectations. Whether in the board room or the courtroom, RCCB protects its clients' interests in even the most challenging restructuring situations.

RELATED PRACTICES

Corporate & Business
Litigation
Banking & Financial Services
Cannabis
Intellectual Property
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COMPANY SIDE REPRESENTATION

Joshua Upin

RCCB attorneys regularly work with companies in out-of-court restructurings and Chapter 11 cases.

We represent:

- Public and private companies
- Private equity portfolio companies
- Private equity sponsors
- Boards of directors

CREDITOR REPRESENTATIONS

RCCB attorneys represent the following in out-of-court restructurings and Chapter 11 cases:

- Secured and Unsecured Creditors
- Individual Creditors
- Ad hoc Creditors' Committees
- Official Creditors' Committees

LENDING REPRESENTATIONS

RCCB attorneys regularly represent lenders and borrowers in various financing transactions. We represent:

- Commercial and money center banks
- ABL lenders and borrowers
- Hedge funds
- Chapter 11 DIP and exit lenders
- Corporate bond issuers
- Real estate lenders and borrowers
- Lenders and private equity funds in connection with acquisition financing
- Originators and purchasers of securitized assets
- Distressed companies in need of “rescue financing”
- Lenders pursuing “loan-to-own” strategies

DISTRESSED DEBT

RCCB attorneys regularly counsel hedge funds and other purchasers of distressed debt such as loan participations and bonds. Our services include:

- Advising the debt purchaser before the purchase on the borrower's capital structure, financial condition and relevant agreements to counsel on issues that are likely to arise in an eventual workout or bankruptcy and determine what is likely to be the "fulcrum" security.
- Representing the client post-purchase in negotiating out of court or in-court restructurings to ensure that the client's interests are protected and value maximized.

FIDUCIARY REPRESENTATIONS

RCCB attorneys have extensive experience in fiduciary representations, regularly counseling or serving as:

- Receivers
- Chapter 11 trustees
- Trustees under the Securities Investor Protection Act
- Other fiduciaries in restructurings and other court proceedings

ALTERNATIVE DISPUTE RESOLUTION

Bankruptcy Courts are increasingly mandating alternative dispute resolution in restructuring cases, and RCCB is well versed in all aspects of ADR.

- We regularly serve as impartial mediators assisting parties embroiled in complex litigation to resolve their differences more efficiently and economically at the mediation table instead of the courtroom.
- RCCB attorneys serve on the mediation panels in the Southern and Eastern Districts of New York and the District of Delaware.
- Given our experience in serving as mediators, we also regularly serve as counsel to parties in mediations.

INSOLVENCY LITIGATION

RCCB attorneys represent directors, shareholders, creditors and others in bankruptcy litigation throughout the United States.

- Preferences
- Fraudulent transfers
- Breaches of fiduciary duty
- LBO liability
- Other insolvency-related claims

EXPERIENCE

- MN Consulting and its affiliates (collectively, “MundiPharma”) are directly or indirectly owned by the Sackler family who also own Purdue Pharma. The Official Committee of Unsecured Creditors in the Purdue Pharma Chapter 11 cases pending in the Southern District of New York Bankruptcy Court (represented by Akin Gump) served a subpoena seeking discovery from MundiPharma to determine whether the bankruptcy estate had any claims against MundiPharma as well as to determine the value of MundiPharma. In May 2020, the Bankruptcy Court ordered the Sacklers to arrange for MundiPharma to retain separate counsel and MundiPharma chose Royer Cooper Cohen Braunfeld as their counsel. After extensive negotiations with the Committee, we reviewed almost one million documents over the course of a few months and produced to the Committee nearly 800,000 documents while withholding about 110,000 additional documents because of privilege. Additionally, we regularly interacted with other constituencies in the cases in connection with the Debtors’ plan of reorganization and other matters and represented MundiPharma in preparing for depositions and at various hearings in the Bankruptcy Court. In excess of \$7 billion. While the bankruptcy is pending in the Southern District of New York, our clients are located in Europe, South America, North America, Asia and Africa.
- HIL Holdings I, LLC (“HIL”) is a secured lender to New York Classic Motors LLC (“NYCM”). Beginning in late 2020, we began representing HIL in connection with efforts to refinance the NYCM debt. NYCM and its affiliates operate a classic car club in New York City. NYCM’s business was impacted by COVID when they were forced to shutter operations beginning in 2020 for many months and they were unable to pay rent to its landlord. In April 2021, NYCM filed for Chapter 11 in the United States Bankruptcy Court for the Southern District of New York. In July 2021, NYCM converted its case to a Subchapter S small business cases. Royer Cooper Cohen Braunfeld is representing HIL in the bankruptcy case including negotiating several cash collateral stipulations and with respect to HIL’s treatment under a proposed plan of reorganization. We have appeared for HIL and all court hearings. HIL’s secured claim is worth \$2.9 million.
- In 2019, our client (“Client”) was sued by the Litigation Trustee appointed under the confirmed plan of reorganization of debtor Black Elk Energy Offshore Operations, LLC (the “Black Elk Lawsuit”). This lawsuit is pending in the Southern District of Texas Bankruptcy Court and seeks damages of nearly \$100 million arising from alleged fraudulent transfers and certain common law claims. Client moved to dismiss the complaint in 2019 and the Bankruptcy Court partially granted our motion with leave to amend. In October 2019, the Trustee amended the complaint and added as additional defendants Client’s principals. We moved to dismiss the amended complaint. Among other things, we alleged that the Trustee’s fraudulent transfer claims against the principals are time barred under the applicable statute of limitations. A hearing was held in February 2021 and an evidentiary hearing was held in June 2021 on the Trustee’s contention that statute of limitations was equitably tolled. The Court took the matter under advisement and we are awaiting a decision. In addition to the foregoing lawsuit, we are also representing Client in connection with the insolvency proceedings of Platinum Partners Value Arbitrage Fund L.P and its affiliates (collectively, “Platinum”) pending in the Cayman Islands. We also represented Client in a lawsuit brought in the United States District Court for the Southern District of New York by the Joint Official Liquidators (the “Joint Liquidators”) of Platinum (the “Platinum Lawsuit”). The Platinum lawsuit sought damages arising from the same events as the Black Elk lawsuit. We settled the Platinum Lawsuit with Client making no payment to the Joint Liquidators. Client and principals were sued for

approximately \$100 million plus interest. United States and Cayman Islands.

- Represented the client, a county in Pennsylvania in the Chapter 11 case of the plaintiff and its affiliates pending in the United States Bankruptcy Court for the Western District of Pennsylvania. Years before its bankruptcy, the plaintiff was selected by the county to provide telecommunications services to allow the county to operate its 911 emergency network. The relationship between the county and the plaintiff had been problematic for years and the problems continued in the bankruptcy. The County wanted to sever ties with the plaintiff while the plaintiff alleged that the County owed it money. The plaintiff threatened to abruptly turn off the County's 911 network which would have been catastrophic as it would have prevented the County from dispatching police, fire, and ambulances to emergencies in the County. We prepared pleadings to seek a temporary restraining order to prevent the plaintiff from terminating services but were able to negotiate a standstill that prevented the plaintiff from doing so. The plaintiff commenced a lawsuit in the bankruptcy against the County and we represented the County with respect to the lawsuit and generally in the bankruptcy. We were able to negotiate a favorable settlement with the plaintiff to resolve the lawsuit and permit the County to sever ties with the plaintiff in a manner that allowed the County to engage an alternate vendor to replace the plaintiff without an interruption in 911 services.
- Represented a bandwidth provider, who years ago, entered into an agreement with the plaintiff and its affiliates for the client to install fiber optic cables in western Pennsylvania for the client. The relationship was fraught with difficulties from the start and the parties engaged in litigation in the United States District Court for the Western District of Pennsylvania in which we represented the client. The plaintiff then filed for Chapter 11 and we represented the client in the bankruptcy. The plaintiff commenced a lawsuit in the bankruptcy seeking damages and other relief from the client. We were able to negotiate a favorable settlement of the lawsuit and all issues between the client and the plaintiff.
- Represented a client who was a franchisee of a popular kids' gym/educational company. The franchise was very successful until COVID hit and they were required to close (along with all or most of the other same owned franchises and company-owned stores). On account of the losses occasioned by COVID, the parent company commenced a Chapter 7 case and decided to liquidate. We represented the franchise owner in the Chapter 7 case and although the client considered making a bid to purchase the parent company's assets decided not to proceed with the bid.
- Represented our clients in an adversary proceeding valued in excess of \$46 million brought by the client, in his capacity as Chapter 7 Trustee for the jointly administered bankruptcy estates pending in the United States Bankruptcy Court for the District of Delaware. The lawsuit alleges that the clients received avoidable transfers as trade creditors of a company acquired by the Debtors in a leveraged buyout. As lead litigation for our clients, the case involves the Trustee's unusual attempt to collapse a series of related transactions so as to impose liability on our clients, among others, and raises novel theories regarding the meaning of "value" and "transferee" under applicable Bankruptcy and Delaware law.
- Represented largest secured creditor in the chapter 11 case styled In re Clifton Hospitality et al. (19-11094) filed in the Bankruptcy Court for the Northern District of New York. The matter involved a hotel and restaurant finance by the client, which defaulted on various loans made by client. As bankruptcy counsel, among other things, we negotiated a series of cash collateral orders, prepared and served deposition notices on the Debtors and their principals, negotiated with the Debtors and several prospective

purchasers and attended court hearings in connection with the foregoing. When it became apparent that the Debtors would not be able to find a purchaser, we negotiated with Debtors' counsel for a voluntary dismissal of the case in April 2020 and the initiation of foreclosure proceedings in New York State Court, which recently concluded in Summer 2021 with a settlement whereby the Client required and sold the property. \$7.5 million in principal plus accrued interest, fees and other costs.

- Represented creditor-landlord in the chapter 11 case pending in the Bankruptcy Court for the Southern District of Texas. The Debtors abandoned and subsequently rejected its lease with the client causing claims for clean-up costs and unpaid rent. For the matter, we negotiated with the Debtors' counsel for a resolution of the clean-up claim and filed a proof of claim for rejection damages.
- We represent a German insolvency-administrator for the estate of Air Berlin PLC, which is subject to a Lander-level (equivalent of a U.S. State) insolvency case. We have been retained by the Administrator's German counsel to advise on matters of U.S. with respect to Air Berlin's U.S. creditors, including the negotiation of an insurance settlement and investigating possible preferential transfer and fraudulent transfer actions against various U.S. creditors. The matter represents a good example of how RCCB can partner with counsel in foreign countries to maximize creditor recoveries. In our role, we have: sent a demand letter to a U.S. insurer and are negotiating a resolution of certain claims, researched how to enforce foreign judgments in Germany, advised on the possibility of instituting original actions in the U.S. against U.S. creditors and generally advised on U.S. law insolvency matters. Estate is valued at approximately \$250 million.
- Represented a law firm client, located in New York City, that dates back to 1888. Because the firm was facing financial issues, we were retained in 2020 to assist with the liquidation of the firm as well as assist a number of attorneys at the firm move to another home. We had extensive discussions with the firm's lenders shortly after our retention and due partly to the then-beginning COVID pandemic, we determined that the secured lender was open to negotiating a loan amendment and the lender agreed to extend additional credit to the client. As a result, the firm reconsidered its decision to liquidate and instead, entered into the financing proposed by its lender. Having led them through a very successful out-of-court restructuring, the client remains in business today.
- In a cross-border transaction, we represented a secured lender to a company that operates in the United States and South America through a foreign affiliate. For a small company, Tegu has a very complex capital structure with many levels of secured and unsecured debt. Tegu has been experiencing financial difficulties for several years and has attempted to do an out-of-court restructuring but some of the out-of-the-money creditors have refused to go along. We have negotiated numerous forbearance agreements for Kernco with Tegu and we are in the process of negotiating the terms of a bankruptcy plan of reorganization. Once the terms are agreed among the in-the-money creditors and Tegu, Tegu will commence a small business bankruptcy case to effect the reorganization. As part of the proposed reorganization, Kernco will provide debtor-in-possession and exit financing to Tegu and get an equity stake in the reorganized company.
- Represented a client invested in a Pennsylvania-based fund and affiliates run by the plaintiff. When the client attempted to redeem investments, the plaintiff provided one excuse after another for not honoring these requests. The client retained Royer Cooper Cohen Braunfeld to assist with the return of his capital. Through numerous interactions with the plaintiff, we were able to convince her to return the client's

investments. The client came to believe that the plaintiff was operating a legitimate fund and he commenced a FINRA case against her and also alerted the United States Attorney's Office of her suspected wrongdoing. The plaintiff was arrested and her funds put into receivership. We have been representing the client in connection with the foregoing and with regard to the receivership.

- Represented a drug research and development company that had been conducting research to develop a migraine and pain treatment technology, but after several disappointing clinical trials, the company ran out of money and was unable to continue further. Because of its small size and lack of recourses, filing for bankruptcy was not an option. The client was able to locate another company to purchase its assets but the client would be unable to proceed with the sale without creditor and shareholder support. They retained Royer Cooper Cohen Braunfeld to assist with its winddown and proposed asset sale. After several divided board meetings, we settled with them on a path toward an out-of-court composition process by which it would seek creditor and shareholder support. We drafted communications to the creditors and equity holders apprised them of the state of affairs and the potential sale and what expected recoveries would be if the sale were to occur. Based on these communications and other meetings with equity and creditors, both the creditors and equity holders overwhelmingly approved the transaction which yielded a payout to them far in excess of what they would have received without the sale. We also represented the client in the sale process and subsequent payouts to the creditors and equity holders.
- Represented a shopping center that incurred substantial build-out costs in developing a location for a franchise. However, the franchise instead liquidated all of its U.S. operations and shuttered all of its stores. Upon learning of this, RCCB was engaged by the client to see if it could recover its build-out costs and lost rent. After negotiation with the franchise's liquidation advisor, the parties entered into a confidential settlement whereby the client received a substantial sum in settlement of its claims.
- Assisted our client with the collection of monies owed by the bankruptcy estate of outpatient healthcare facilities and its affiliates, chapter 7 debtors. We are currently in negotiations with the Chapter 7 Trustee over the alleged receipt of preferential transfers for which the client asserts no liability.
- Represented a client in connection with certain convertible notes issued by a California cannabis company in which the client had made a significant investment. Due to Covid-19 and other operational issues, the Company defaulted on its senior credit facility and the senior lenders were prepared to exercise remedies and put the Company into an assignment for the benefit of creditors, which would have wiped out the value of the convertible notes. Instead, lawyers from RCCB and our client organized other noteholders to present a comprehensive recapitalization plan to the Company and the senior lenders. As part of these efforts, we negotiated a global forbearance agreement, did a convertible note exchange and also participated in an upsized senior lending facility. As a result of these transactions, the Company avoided liquidation and our clients received enhanced economics. The transaction was particularly challenging given the Covid environment and the Company's involvement in the cannabis space, which is highly regulated and does not permit more traditional forms of debt restructurings as part of the bankruptcy process.
- Represented a client who was a leading supplier of branded and non-branded cashmere products to high-end retail stores and supplied Neiman Marcus with its "house brand" cashmere apparel. Due to Neiman Marcus's credit downgrades and later bankruptcy, the client's lender unilaterally determined to no longer accept Neiman receivables as collateral and directed the client to post a substantial sum of

cash collateral or be in default of its loan facility. The client retained RCCB to negotiate a consensual resolution with the lender. RCCB and the Lender agreed that the client's business would be sold in a sale under Article 9 of the UCC and that any shortfall between the purchase price and the remaining balance of the loan would be forgiven. In addition, RCCB negotiated a payment plan for the client's principal who had guaranteed the bank debt. Although the client was forced to sell his business, RCCB obtained substantial financial relief for his company and himself in a business environment particularly hostile to the retail sector due to Covid and massive supply chain disruptions.

- Represented a leading franchisee for an apparel line involved in an ongoing dispute with the apparel line over the terms and conditions of the franchise agreement. RCCB was retained when the apparel line decided to exercise its remedies against our client in an effort to collect the moneys it claims were owed. To resolve the matter, RCCB negotiated with the apparel line lawyers a settlement agreement and "friendly foreclosure" under Article 9 of the UCC whereby the client agreed to turn over certain of its locations to the apparel line in exchange for a release. We were also able to negotiate a separate consulting agreement between the client's principal and the apparel line so that the principal did not lose the value of his equity in the client, which was incorporated into the settlement as his consultancy fee.
- Retained to advise the purchaser of substantially all of the assets, IP and goodwill of a nationally-known fashion designer under Article 9 of the UCC. We also advised on a related sale of an affiliate of the designer, which was a guarantor on the loan facility in default. This was a highly negotiated and complex deal that involved the simultaneous sale and then merger of two related companies in the face of a hostile private equity sponsor, concerns about successor liability, the threat of an involuntary bankruptcy filing and challenging supply chain issues in China. Post-Sale, RCCB continued to advise the Purchaser in connection with demands from the Seller's landlord and other trade creditors of the Seller for payment of past due amounts. In each such case, RCCB was able to convince the landlord and other creditors that the Purchaser did not have any successor liability.
- Represented a leading payroll processing company that holds hundreds of millions of dollars of client funds for dispersal to employees and taxing authorities. In the wake of a bankruptcy case of another payroll processor where the Bankruptcy Court found that the funds in the hands of the processor were available to satisfy creditor claims and not the property of the depositing customers, the client tasked us with reviewing their customer agreements and banking arrangements to determine if it faced similar risks as the other processor. Based on a review of the relevant materials, we suggested some changes and revisions to the forms and business practices to make clear our client was only a custodian of its customers' funds and that those funds would be safe in the event our client became a debtor under the bankruptcy code.
- Retained to advise the client on its rights as a contract counterparty in chapter 11 bankruptcy pending in the Bankruptcy Court for the Southern District of New York. RCCB also assisted another client in negotiating its status as a "critical vendor" in the chapter 11 cases and, as a result, the critical vendor-client was paid in full for its claims and maintained its relationship with the original bankruptcy case holder after the conclusion of the bankruptcy case.

NOTEWORTHY

Best Law Firms® - Bankruptcy Litigation

NEWS

Partner Marc Hirschfield Participates as a Panelist at ABI's New York City Bankruptcy Conference
May 9, 2024

Marc Hirschfield Appointed to the Turnaround Management Association's Board of Directors
RCCB, January 8, 2024

Best Lawyers in America Recognizes Six Practices in New York and Pennsylvania in its "Best Law Firms"
Report for 2024
Best Lawyers®, November 2, 2023

Marc Skapof Appointed to the Turnaround Management Association's (TMA) Global Board of Trustees
RCCB, October 23, 2023

RCCB Partners Tobin, Hirschfield, and Skapof Recognized for Excellence in 2023 New York Metro Super
Lawyers List
Super Lawyers 2023, September 26, 2023

PUBLICATIONS

New Year, New Reporting Requirements: What the Corporate Transparency Act Means for Your Business
RCCB Client Alert, December 20, 2023

Silicon Valley Bank and Signature Bank Closures; Federal Regulators Announce Plan to Protect Depositors
Client Alert, March 13, 2023

The (Failed) Failing Business Exception: Stockholders' Right to Vote on Asset Transfers
RCCB Client Alert, July 20, 2022

Marc Hirschfield Participates in Bankruptcy Ethics Panel Discussion at the ABI New York City Bankruptcy
Conference
ABI, June 10, 2022