



MARC SKAPOF

PARTNER

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BIOGRAPHY

Marc Skapof is a NY Super Lawyers top-rated bankruptcy attorney for the seventh consecutive year. He focuses his practice on in- and out-of-court debt restructurings; creditors' rights, debtor and estate fiduciary representations, healthy and distressed, debt financing, lending, DIP and exit financing, bankruptcy litigation, distressed M&A, corporate governance, and bankruptcy-remote transactions.

Client Experience

- Independent associated companies in *In re Purdue Pharma et al.*
- Debt restructuring of a California-based cannabis business
- KeyBank in numerous LBO and other financings
- Purchaser of a high-end fashion business and related IP under Art. 9 of the UCC
- Defendants in bankruptcy litigations pending in the United States Bankruptcy Courts in the Southern District of Texas and Delaware, respectively
- Various private equity acquisition financings
- Distressed wholesalers in the men's and women's fashion space
- Borrowers' counsel for various small and mid-cap companies
- Creditors in, among other, chapter 11 cases: *California Pizza Kitchen*, *Frontier Communications*, and *New York Classic Motors*
- Irving Picard, Trustee for the liquidation of Bernard L. Madoff Investment Securities LLC
- Boscov's Inc.'s successful chapter 11 reorganization

HONORS

New York Super Lawyers, Bankruptcy, 2014-Present

Fulbright Scholar
Study Poland's transition to democracy

Recovery of billions of dollars in stolen assets from the largest Ponzi scheme in history through settlements and litigations for the benefit of defrauded investors.

EDUCATION

J.D., Order of the Coif, Washington University School of Law in St. Louis, 2000

- *Washington University Law Quarterly*, Articles Editor

Fulbright Scholar, Department of Sociology, University of Warsaw, Warsaw, Poland

M.A., Political Science, University of North Carolina at Chapel Hill

B.A., *magna cum laude* and departmental distinction, Carleton College, Political Science

ADMISSIONS

New York
U. S. District Court for the Southern District of New York
U. S. District Court for the Northern District of New York

- Private equity sponsors in connection with LBO, CMBS and structured finance transactions
- Purchasers and sellers of assets in distressed M&A transactions
- Issuers with bankruptcy risk analysis and drafting for 144A and private placement offering documents
- Sellers, purchasers, lenders, and borrowers in various debt financings and securitizations
- Lenders in connection with debtor-in-possession and exit financing
- Lenders and borrowers with bankruptcy remoteness and other liability management transactions

Illinois
U. S. District Court for the
Eastern District of Wisconsin

COMMUNITY & PROFESSIONAL

- Turnaround Management Association - New York City Chapter
 - Chapter Resource and Response Committee (CRRC), Member, 2023
 - Past Presidents' Council, Member
 - Academic Relations Committee, Member, 2023
 - Chairman, Director and Executive Committee Member, 2022
 - New York City Chapter, President, 2021
- New York City Bar Association Bankruptcy Committee, Co-Chair of the Cannabis Section, 2022
- American Bankruptcy Institute Committee on Commercial Fraud, Member
- Association of Corporate Growth (ACG), Member

REPRESENTATIVE MATTERS

CHAPTER 11 CASES

Represent 160 foreign entities under common ownership with Purdue Pharma in connection with responding to voluminous document requests propounded by the Official Committee of Unsecured Creditors and related issues arising therefrom. 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. Although the

bankruptcy is pending in the Southern District of New York, our clients are located in Europe, South America, North America, Asia, and Africa.

Represented HIL Holdings I, LLC ("HIL"), a secured lender to New York Classic Motors LLC ("NYCM"). RCCB is representing HIL in the bankruptcy case, including negotiating several cash collateral stipulations and with respect to HIL's treatment under the recently confirmed plan of reorganization. We have appeared for HIL and all court hearings. HIL's secured claim is worth \$2.9 million.

Represented the 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 the client. When it became apparent that the Debtors would not be able to find a purchaser, we negotiated with the Debtors' counsel for 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 acquired and sold the property.

FINANCIAL FRAUD

Bernard L. Madoff Investment Securities - RCCB was one of the lead counsels to the SIPA Trustee from 2009 through 2016. We helped to bring in more than \$8 billion in settlements to repay Madoff's victims and supervised the prosecution of over 1000 complaints seeking the return of fictitious profits for the benefit of the estate.

Various Delaware Chancery Court Receiverships - Lead counsel to the receiver appointed by the Chancery Court to enforce books and records and other judgments against publicly-listed Delaware holding companies used to raise capital from the U.S. investors, which was then transferred to operating companies in BVI, Hong Kong, Macau, and the PRC.

In re Black Elk - Represent the defendant in a \$100 million lawsuit involving the receipt of allegedly fraudulent transfers and common law claims arising out of the Black Elk bankruptcy and the underlying fraud. The case is currently pending in the Southern District of Texas Bankruptcy Court.

Miller v. Fallas - Represent the defendants in a multimillion-dollar omnibus avoidance action arising out of a failed leveraged buyout of a regional department store chain. The case is currently pending in the Delaware Bankruptcy Court.

FINANCING

Represented a national bank in a \$6.5 million term loan and revolving credit facility for a dividend recapitalization and working capital transaction for a medical diagnostic company.

Represented a national bank in connection with a \$13.5 million term loan, revolving credit facility for a private equity firm's acquisition of an environmental remediation business and related amendments thereto.

Represented a national bank with a \$14.5 million term loan, revolving credit facility, and letter of credit facility in connection with a private equity firm's acquisition of a retail seller of rugs and carpets.

Represented a national bank with a \$19 million term loan and revolving credit facility in connection with a private equity firm's acquisition of a wastewater treatment business and subsequent amendments and bolt-on transactions.

Represented a national lender with a \$25 million term loan, delayed draw term loan, and revolving credit facility in connection with a private equity firm's acquisition of a telecommunications business and subsequent amendments and bolt-on transactions.

Represented a private equity firm in connection with an \$8 million mezzanine term to finance the acquisition of a radiation shielding company and subsequent amendments and waivers thereto.

Represented the U.S. and Mexican agricultural products portfolio company of an Israeli private equity firm in connection with a \$30 million receivables factoring transaction.

FIDUCIARY

In re BPZ - Represented the special committee of the Board of Directors and advised on fiduciary duties as the company prepared to file for Chapter 11 in the Bankruptcy Court for the Southern District of Texas.

In re Trump Hotel and Casinos, Inc. - Represented the Independent Directors of the owner of several casinos and hotels in Atlantic City, Gary, Indiana, and California in connection with a pre-packaged chapter 11 plan and accompanying rights offering.

OTHER NOTABLE MATTERS

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. The Administrator's German counsel has retained us to advise on matters of U.S. law 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.

Represented a New York City law firm client 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 moving to another home. Having led them through a very successful out-of-court restructuring, the client remains in business today.

Represented 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 in an asset disposition under Article

9 of the UCC.

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. To resolve the matter, we negotiated a settlement agreement and “friendly foreclosure” under Article 9 of the UCC, whereby the client agreed to turn over certain 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.

Advised 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 involving the simultaneous sale and 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 convinced 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.

PRACTICE FOCUS

- In- and Out-of-Court Restructurings
- Distressed Debt
- Debt Financing
- Bankruptcy Litigation
- Distressed M&A
- Debtor Representations
- Fiduciary Representations
- DIP Financing
- Corporate Governance

- Ad hoc & Official Creditors' Committees
- Structured Finance & Securitizations

INDUSTRIES

- Retail
- Fashion
- Financial services
- Healthcare
- Pharmaceuticals
- Utilities
- Telecommunications
- Distressed investing
- Food & beverage
- Media
- Oil & gas
- Real estate
- Travel
- Cannabis

NEWS

Best Lawyers in America Recognizes Six Practices in New York and Pennsylvania in its "Best Law Firms" Report for 2024

Firm News, *Best Lawyers*®, November 2, 2023

Marc Skapof Appointed to the Turnaround Management Association's (TMA) Global Board of Trustees

Firm News, *RCCB*, October 23, 2023

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

Firm News, *Super Lawyers* 2023, September 26, 2023

Business Restructuring & Bankruptcy and Intellectual Property Partners Named 2022 NY Metro Super Lawyers®

Firm News, October 3, 2022

PUBLICATIONS

2022 Litigation Year In Review

Publication, *RCCB Litigation Alert*, March 2, 2023

The (Failed) Failing Business Exception: Stockholders' Right to Vote on Asset Transfers

Publication, *RCCB Client Alert*, July 20, 2022