

We Win In Bankruptcy Court

Litigating in Bankruptcy Court poses special opportunities and challenges not found in other fora. For example:

- Personal and corporate financial data that is frequently shielded from discovery during conventional litigation is often front and center in Bankruptcy Court litigation, without any need for protective orders, confidentiality protections, or filings made under seal.
- Actions taken in connection with an underlying bankruptcy case can sometimes have profound ramifications for related litigation, even compromising a litigant's right to demand a jury trial.
- Litigants are not always required to allow the Bankruptcy Court to make final determinations regarding claims asserted in that court; depending on the circumstances, a lawsuit commenced in front of one judge in the Bankruptcy Court can often be transferred to a different judge in the District Court.
- Although conventional civil litigation can generally be settled on any terms the litigants deem appropriate, that often is not the case in Bankruptcy Court; the Bankruptcy Court is generally required to approve settlements negotiated with Debtors and Trustees.

The Sheppard Mullin Bankruptcy Litigation Team is a focused, knowledgeable and specialized collection of attorneys with a truly unique skillset – *we know how to win cases in Bankruptcy Court*. Sheppard Mullin's Bankruptcy Litigation Team represents clients in all aspects of Bankruptcy Court litigation, from inception to trial, and even through appeal. Our attorneys are savvy in prosecuting and defending the wide variety of claims that can and do arise in Bankruptcy Court, including:

- Cash collateral usage
- Debtor in possession financing proceedings
- Bankruptcy sale contests and post-sale disputes
- Confirmation of contested reorganization and liquidation plans
- Treatment of leases and other executory contracts
- Lien and claim priority disputes
- Relief from the automatic stay
- Primary lien and administrative expense action
- Claims for alleged stay violations
- Involuntary petition disputes
- Preference actions
- Fraudulent transfer actions
- Claims objections and estimations

- Discharge and dischargeability challenges
- Debt guaranty enforcement
- D+O litigation
- Trustee/Examiner appointments
- WARN Act claims and employment law disputes
- Contested Bankruptcy Rule 9019 proceedings
- Appeals
- Request to withdraw the reference

Sheppard Mullin's Bankruptcy Litigation Team draws from all of the Firm's inter-disciplinary practice groups to serve clients that are litigating in Bankruptcy Court. The team includes lawyers with expertise in tax, labor and employment, immigration, intellectual property, construction, and even project finance. And the Bankruptcy Litigation Team stays with our cases until final resolution. So the same lawyers who handle your case at trial, will remain engaged on that matter as it winds its way through the appellate process – with no inefficiencies associated with “new” lawyers needing to re-learn already established facts. The Bankruptcy Litigation Team represents clients on appeals to the district courts, bankruptcy appellate panels, circuit courts of appeal, and the U.S. Supreme Court. Our proven track record and deep expertise in bankruptcy-related appellate matters allows us to offer the best possible solutions to our clients in the most efficient way possible.

Sheppard Mullin's Bankruptcy Litigation Team has handled numerous matters across a broad spectrum of sectors such as Aviation, Construction, Entertainment, Finance, Food and Beverage, Healthcare, Hospitality, Insurance Gaming, Land Use, Non-Profit, Real Estate, Retail, Transportation, and Chapter 9/Municipal Distress.

The attorneys comprising the Bankruptcy Litigation Team have received numerous individual awards and recognitions, including from *Chambers USA*, *Legal 500 US*, *SuperLawyers*, the *American College of Bankruptcy*, and others. Members of the team have served as officers and directors of the California Bankruptcy Forum, the Insolvency Law Section of the California Bar Association, the American Bar Associations' Business Law Section, and the American Bankruptcy Institute.

Clients

- Aetna
- Bank of America
- Catholic Diocese of Orange
- CIT
- Comerica Bank
- Convergent Capital
- First Bank & Trust Company
- Fry's Electronics
- GE Capital Commercial Aviation Services
- GWF Power

- MUFG Union Bank
- Orange County Department of Education
- Pacific Premier Bank
- Prudential Insurance
- Prospect Mortgage Company
- Silicon Valley Bank
- Tanon Manufacturing
- Toyota Motor Credit Corporation
- U.S. Bank
- Wells Fargo Bank

Experience

Published Decisions

Sheppard Mullin's Bankruptcy Litigation Team has played a leading role in many of the cases that govern today's bankruptcy court litigation process, including the following:

- *Bobka v. Toyota Motor Credit Corporation*, 968 F. 3d 946 (9th Cir. 2020). The first ever circuit court of appeal decision addressing the interplay between Sections 365 and 524, confirming that a debtor's lease assumption under Section 365 survives discharge and binds the debtor notwithstanding the debtor's failure to separately reaffirm that obligation under Bankruptcy Code section 524.
- *In re Exide Techs.*, 601 B.R. 271 (Bankr. D. Del. 2019). Important decision establishing limits on the power of government entities, holding that claims asserted by an Air Quality Management District are subject to discharge and that non-compensatory environmental penalties imposed by the government were not entitled to administrative expense priority.
- *In re Berkeley Delaware Court, LLC*, 834 F.3d 1036 (9th Cir. 2016). Critical decision from the circuit court of appeal establishing that a settlement can be effectuated through a trustee's sale of estate claims against to the potential litigation target, so long as that sale complies with the dictates of Bankruptcy Code section 363.
- *Arriva Pharm., Inc. v. Lezdey (In re Arriva Pharm., Inc.)*, 456 B.R. 419 (Bankr. N.D. Cal. 2011). Case establishing the supremacy of a plan confirmation order that included assumption of pharmaceutical patent license, over the objections of licensor who sought to terminate the license.
- *FDIC v. Kipperman (In re Commer. Money Ctr., Inc.)*, 392 B.R. 814 (B.A.P. 9th Cir. 2008). Important decision testing the parameters of true leases, as opposed to disguised loan transactions, holding that lease payments are "payment intangibles" rather than "chattle paper," allowing funds to be recovered into the bankruptcy estate.
- *In re Dunmore Homes, Inc.*, 380 B.R. 663 (Bankr. S.D.N.Y. 2008). Important venue decision confirming that even when a debtor chooses an eligible venue under Bankruptcy Code section 1408, the bankruptcy court can still transfer that matter (in this case, from the Southern District of New York to the Eastern District of California) based upon the interests of justice and creditor convenience.

- *Schoenmann v. BCCI Constr. Co. (In re Northpoint Communs. Grp., Inc.)*, 361 B.R. 149 (Bankr. N.D. Cal. 2007). Decision imposing limitations on a trustee's ability to recover from third parties based upon fraudulent transfer and preference theories of liability.
- *Arris Int'l, Inc. v. Hybrid Patents, Inc. (In re Com21, Inc.)*, 357 B.R. 802 (Bankr. N.D. Cal. 2006). Significant decision governing the venue issues in adversary proceedings, holding that a Northern California bankruptcy case could not provide the basis for transferring already pending patent litigation in the Eastern District of Texas.
- *In re W. Asbestos Co.*, 313 B.R. 456 (Bankr. N.D. Cal. 2004). Decision confirming the propriety of a "pot plan" of reorganization, pursuant to which a trust was created that would both assume all liabilities of the debtor and pursue legal actions against insurers, allowing all holders of asbestos claims to be treated in substantially equivalent manners, as required under Bankruptcy Code section 524(g).

Representative Matters

- Represented CalPERS Corporate Partners LLC in defense of alleged fraudulent conveyance claims in adversary proceeding, involving standing, and Bankruptcy Code and Maine Fraudulent Conveyance laws
- Represented World Rugby Limited in contested debtor-in-possession financing under Section 364 and plan confirmation
- Represented board members to defend alleged breach of fiduciary claims for over \$46 million in adversary proceeding involving standing and Delaware governance law issues
- Represented board in Chapter 11 proceeding seeking over \$180 million in an alleged breach of fiduciary duty action
- Represented the Catholic Diocese of Orange in the successful, contested acquisition of the Crystal Cathedral site and 30 acre campus from the Chapter 11 estate of the Crystal Cathedral Ministries, which also entailed claims estimation/objection litigation
- Represented seven different financial institutions in connection with fraudulent conveyance claims filed by the litigation trustee in Lehman Brothers bankruptcy case
- Represented existing lender in successful, heavily contested litigation concerning "new value" equity acquisition of Chapter 11 reorganized multi-family real estate debtors which owned several large apartment complexes in four states. The court-approved acquisition by the secured lender-related entity occurred over the objection of the old equity holders
- Represented equipment lessor in Chapter 11 proceedings of office supply store chain, including successful trial result concerning "true lease" treatment of the agreements concerning the extensive equipment involved
- Represented agent bank on loan workout, extensive land use issues, enforcement of creditor's rights, and lien and guarantor litigation concerning a series of syndicated and participated loans made to a large national official shopping mall developer concerning projects in California, Texas and Arizona
- Represented Tanon Manufacturing, a Chapter 11 manufacturing debtor and continued to represent the post plan estate administrator regarding pursuit of litigation claims
- Represented agent bank in Chapter 11 proceedings and related state court litigation concerning construction of large ski resort hotel/condo project
- Represented Northwest Farm Credit Services in obtaining the denial of debtors' discharge for fraudulent conduct—the Bankruptcy Court ruling was affirmed on appeal

- Represented First National Bank in defense of a multi-million dollar preference action that challenged an Employee Stock Ownership Plan financing. The matter settled after the bank obtained partial summary judgment
- Represented the bankruptcy trustees in class litigation in many types of cases, including a shopping center developer, an investment company/mezzanine lender, a large trucking company and two low/moderate income housing projects
- Represented a pension and profit sharing plan in a bankruptcy case that successfully resulted in a seminal Ninth Circuit decision holding that the automatic stay stays all appeals in proceedings originally brought against the debtor, regardless of whether the debtor is the appellant or appellee
- Represented the court appointed receiver for a large golf course and residential development in Rancho Santa Fe, California involving three separate lawsuits over the sale of the property and an involuntary bankruptcy filing—the matter spanned six years until the successful discharge of the receiver
- Represented secured lender in bankruptcy court litigation concerning historic mixed use office building and successful pursuit of guarantor for full deficiency
- Represented large Medicare receivables-based lender in Chapter 11 litigation against large medical services provider regarding alleged overpayment issues
- Represented (pro bono) an immigrant married couple that could not speak English in defeating a foreclosure action brought by a predatory lender who sought to sell their home
- Represented (pro bono) an immigrant married couple when they were sued by a credit card company seeking to collect on discharged debt
- Represented a regional bank sued by a Chapter 11 debtor for violation of the automatic stay
- Represented the alleged debtor (a sporting goods company) in defeating an involuntary Chapter 7 petition
- Represented large golf equipment manufacturer in nondischargeability action brought against a debtor who produced and sold counterfeit products
- Represented the Schools & Education Subcommittee (recovering approximately \$1 billion in claims) as a member of the Orange County Pool Participant Committee in the Chapter 9 bankruptcy case of Orange County. Also served as special litigation counsel for the Pool Committee and litigation co-counsel to the County in various related litigation matters, resulting in over \$800 million in recoveries.