

Richard J. Bernard



PARTNER

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Richard J. Bernard is a partner with Foley & Lardner LLP. His practice concentrates on corporate and financial restructuring, business solutions, bankruptcy litigation, secured transactions, corporate governance, mergers and acquisitions, and debtors' and creditors' rights. Mr. Bernard represents debtors, creditors, buyers, financial institutions, contract counterparties, trustees and official and ad hoc committees in large-asset bankruptcies, out-of-court workouts and adversary proceedings. Mr. Bernard's experience spans numerous industries, including energy, aviation, retail, manufacturing, telecommunications, financial services, heavy industry, real estate and hospitality. He is a member of the firm's Bankruptcy & Business Reorganizations Practice and Energy Industry Team.

Education

Mr. Bernard received his J.D., *cum laude*, from the University of Miami School of Law and his B.A. in economics from Columbia College, Columbia University.

Upon receiving his J.D., Mr. Bernard clerked for the Honorable Robert A. Mark, United States Bankruptcy Court, Southern District of Florida.

Recognition

Mr. Bernard has been Peer Review Rated as AV® Preeminent™, the highest performance rating in Martindale-Hubbell's peer review rating system. He also serves on the board of directors for the New York chapter of the Turnaround Management Association (TMA).

Admissions

Mr. Bernard is admitted to practice in New York; Connecticut; Florida; and before the U. S. District Courts for the Eastern District of Michigan; Southern, Eastern, and Northern Districts of New York; Southern, Middle and Northern Districts of Florida; District of Connecticut and the U.S. Court of

Appeals for the Sixth and Eleventh Circuits.

Chapter 11 Debtor Representations

- NEON Communications, Inc., first chair of complex debt for equity restructuring of publicly held telecom company with \$350 million of bond debt and \$50 million of secured debt
- Planet Hollywood International, Inc., reorganization of publicly held restaurant chain with numerous contract and lease issues
- Sunterra Corporation, reorganization of one of the largest U.S. time share companies with \$1 billion of assets and \$800 million in debt
- Frontier Insurance Group, Inc., reorganization and liquidation of insurance holding company with \$200 million in debt
- Lynx Associates, L.P., an affiliate of Merrill Lynch, reorganization and liquidation of real estate holding company, which was formed to take advantage of certain tax loopholes available in the early 1980s, with 13 nonrecourse, standalone mortgages and a make-whole issue
- Alrose Allegria LLC, reorganization of an independent hotel located in Long Beach, New York
- Atlas Environmental, Inc., reorganization of publicly held construction and demolition recycling and soil remediation company located throughout Florida

Secured Creditor Representations

- Bancorp Bank, as secured creditor in the chapter 11 case of Phoenix Payment Systems
- Bancorp Bank as a secured lender to a number of stressed and distressed borrowers
- Cordell funds, as non-institutional secured creditors of entities related to The 1031 Tax Group debtors, as to which the principal is attempting to refinance to return \$170 million to The 1031 Tax Group
- NTFC Capital Corporation, an affiliate of General Electric Capital Corporation, as an asset-based lender of \$125 million in the chapter 11 case of PSINet Inc., a telecom services provider with certain litigated perfection issues
- General Electric Capital Corp., an asset-based lender of nearly \$100 million in the chapter 11 case of Enron Corp. with valuation and sale issues
- Strategica Capital Corporation, an asset-based lender and successful plan proponent to take over company in the chapter 11 case of Telecom America, Inc.
- Condor One, Inc., an affiliate of General Electric Capital Corp., as mortgagee in the single asset chapter 11 case of Oakland Lakes, Ltd.
- Wells Fargo, as lead secured creditor under prepetition term loan and operating facility and proposed postpetition financier in the chapter 11 case of FAO Schwartz
- Wells Fargo Equipment Finance, as an asset based lender in out of court work out involving a packaging company
- Wells Fargo Equipment Finance, as a defendant in an action attempting to avoid transfers made pursuant to the equipment financing documents in the Allou Distributors, Inc. case
- Associates Housing Finance, L.L.C., as an asset-based lender in excess of \$100 million in the chapter 11 case of American Homestar Corporation, a mobile home manufacturer

Committee Representations

- The Official Creditors' Committee of Stillwater Asset Backed Offshore Fund Ltd. (offshore investment fund)
- The Official Creditors' Committee of Raser Technologies, Inc., (geothermal power plant developer)
- The Official Creditors' Committees of LWD, Inc. (landfill and incinerator), addressing certain

insider fraud issues

- The Official Unsecured Creditors' Committee of Matco Electronics (electronics manufacturer), addressing certain insider fraud issues
- The Unofficial Bondholders' Committee of Jumbo Sports (sporting goods retailer)
- The Official Unsecured Creditors' Committee of American Way Service Corp. (insurance holding company), securing a significant distribution to unsecured creditors

Trustee Representations

- Ken Tepper as plan trustee for Guaranty Financial Group
- SIPA Trustee for the liquidation of Bernard L. Madoff Investment Securities LLC
- Law Debenture as plan trustee for Frontier Insurance Group
- Plan trustee for the Raser Creditor Trust
- Stillwater Liquidating LLC, liquidating assets of Stillwater Asset Backed Offshore Fund and 11 affiliated funds
- Southern Pacific Funding Corporation Liquidating Trust, liquidating sub prime home mortgage portfolio and servicing platform
- Creditor Trust of Frontier Insurance Group, administering litigation assets of an insurance holding company for distribution to unsecured creditors

Indenture Trustee Representations

- WSFS in Verso Paper chapter 11 case
- U.S. Bank in Quicksilver Resources chapter 11 case
- U.S. Bank in Quicksilver chapter 11 case
- U.S. Bank in Caesars Entertainment Operating Company
- U.S. Bank in American Airlines chapter 11 case
- Wilmington Trust in Samson Resources Corporation
- Wilmington Trust in JCPenney action and bond redemption
- Wilmington Trust in General Growth Properties chapter 11 case
- Wilmington Trust in Hellas actions
- Wilmington Trust in Perkins & Marie Callender's chapter 11 case
- Wilmington Trust in Calpine chapter 11 case
- Wilmington Trust in Guaranty Financial Group chapter 11 case
- Wilmington Trust in Winn-Dixie chapter 11 case

Buyer Representations

- Best Buy Co., Inc. as acquirer of the equity of Partsearch Technologies, Inc. through chapter 11 plan
- Conesco Private Capital Group as acquirer of the subprime auto loan portfolios of NAL Financial Group through chapter 11 plan
- Lenzing Plastics GmbH as purchaser of monofilament manufacturing assets and business of Glassmaster Company through section 363 sale
- SLG Media as purchaser of Air America, a radio content company, through section 363 sale
- General Electric as acquirer of the assets of Enron Wind through section 363 sale
- Toy Biz as acquirer of Marvel Entertainment through chapter 11 plan proposed jointly with the secured creditors

Published and Unpublished Cases

- *In re Stillwater Asset Backed Offshore Fund Ltd.*, Case No. 12-14140, 2013 Bankr. LEXIS 226 (Bankr. S.D.N.Y. Jan. 17, 2013)

- *In re R.G. Pharmacy, Inc.*, 374 B.R. 484 (Bankr. D. Conn. 2007)
- *In re LWD, Inc.*, 342 B.R. 514 (Bankr. W.D. Ky. 2006)
- *Official Unsecured Creditors' Committee v. K&B Capital, LLC (In re LWD, Inc.)*, 332 B.R. 543 (Bankr. W.D. Ky. 2005)
- *In re PSINet Inc.*, 268 B.R. 358 (Bankr. S.D.N.Y. 2001)

Speaking Engagements and Publications

- Panelist, "Plan Support Agreements," 11th Annual NYIC/AIRA Joint Bankruptcy and Restructuring Event (January 2016)
- Panelist, "Solvency, Restructuring and Bankruptcy," Practicing Law Institute, Pocket MBA (October 2014)
- Panelist, "Financial Advisor's Toolbox," AIRA 30th Annual Bankruptcy & Restructuring Conference (June 2014)
- Panelist, "Indenture Trustees/Bond holders," AIRA 12th Annual Advanced Restructuring & Plan of Reorganization Conference (November 2013)
- Panelist, "Solvency, Restructuring and Bankruptcy," Practicing Law Institute, Pocket MBA (October 2013)
- Panelist, "Session 3: Bankruptcy and Buying Distressed Assets," Foley & Lardner LLP Energy Bootcamp Series (July 2013)
- Panelist, "Restructuring a Company in Financial Distress," TMA New York Academic Outreach Program (April 2013)
- Panelist, "Current Legal Issues and Bankruptcy Developments Confronting Bank Agents and Indenture Trustees," 8th Annual NYIC I AIRA Joint Bankruptcy and Restructuring Event (January 2013)
- Panelist, "Solvency, Restructuring and Bankruptcy," Practicing Law Institute, Pocket MBA (Fall 2012)
- Panelist, "Achieving Prompt and Efficient Confirmations: Pre-Negotiated Plans, Pre-Packaged Plans and Plan Support Agreements," 7th Annual NYIC/AIRA Joint Bankruptcy and Restructuring Event (January 2012)
- Panelist, "Use of Valuations in Fraudulent Conveyance Actions," AIRA 10th Annual Advanced Restructuring & Plan of Reorganization Conference (November 2011)
- Panelist and co-author, "When is an Executory Contract a Financial Accommodation Agreement?," ABI 18th Annual Northeast Bankruptcy Conference (July 2011)
- Speaker, "Litigation Tactics Boot Camp: Beyond the Fundamentals," New York City ACC Presentation (April 2011)
- Panelist, "Anatomy of a Workout," 2010 Northeast Regional TMA Conference (September 2010)
- Panelist, "Unlocking Value for Creditors in Chapter 11 Cases," New York State Society of CPAs (September 2009)
- Panelist, "The Bankruptcy Cycle: New Terrain Ahead," Christiana Bank & Trust Company Roundtable (Summer 2009)
- Presenter, "Bankruptcy 101," Client presentation for Sulzer (February 2009)
- Author, "Borrower Beware—Real Estate Loan Forbearance Agreements and Stay Waivers," *Ohio TMA News* (January 2009)
- Co-Author, "Fraud," American Bankruptcy Institute Northeast Conference Fraud Panel (2009)