

Business Restructuring and Bankruptcy

When it comes to Business Restructuring and Bankruptcy, our differentiator comes down to one word: *experience*. Our team of lawyers has practiced in this field for a very long time. Whether our client is experiencing financial difficulties, is a creditor of a distressed debtor, is in or will be in litigation, or wants to purchase assets in a bankruptcy-related case, we have seen a lot and done a lot. We have the substantive knowledge and experience, that when coupled with informed strategic thinking, allows us to work with clients to strive for the best possible results.

What does this mean, specifically? It means that the underpinning of most clients' situations is familiar to our lawyers and that we understand the real-world implications they may be facing. This allows us to use our experience, and to work together with our client, to address the client's unique facts and collectively develop approaches and alternatives to rapidly develop and implement an optimal strategy. Although each client's situation and goals are unique, we are conversant with the risks, alternatives, and the opportunities a course of action presents and we work to clearly and concisely communicate and explain them to our client.

OUR ADVANTAGE

Looking Ahead

Restructuring and bankruptcy law is a complex field of law. It takes into account related disciplines such as litigation, corporate governance, property sales, secured transactions, lending practices, documentation issues, underlying business practices, and others. These can lead to issues such as fraud litigation, corporate governance review, analysis, and advice, purchasing assets in a bankruptcy case, financing debtors in

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Sussman Shank Recognized in Chambers USA Legal Guide 2024

The firm's ranking in Chambers is a significant achievement that underscores Sussman Shank's expertise and accomplishments in the field of bankruptcy. This recognition highlights the firm's deep understanding of the complex legal landscape and acknowledges our ability to deliver tailored solutions that assist clients in navigating intricate bankruptcy matters. It is also a reflection of the trust placed in us by our valued clients and respected colleagues.

Chapter 11, out-of-court workouts and restructures, and assisting criminal counsel with civil aspects of white-collar criminal cases.

Working with the Courts and Clients

No matter the issue, our team has deep experience in explaining complex bankruptcy-related arrangements to Bankruptcy Courts, as well as other courts. With respect to creditor clients with a regional or national footprint, we study their documents and meet with key personnel to understand their goals, internal practices, and philosophies. This allows us to represent them seamlessly in bankruptcy and litigation matters in courts throughout the United States. At times we may need to retain local counsel in those cases. Our repeated work saves time and ultimately money, as the client need only call us to be educated when a new case is filed. This is particularly important in bankruptcy cases which move very quickly.

AREAS OF EXPERTISE

- Adversary proceedings in bankruptcy court
- Agriculture liens and insolvency
- Asset purchases
- Business and financial restructuring
- Business termination and liquidation
- Chapter 7, 11, and 12 creditor and debtor representation
- Chapter 13 creditor representation
- Creditors' committee representation
- Debtor-in-possession financing
- Lender representation
- Federal and state court litigation
- Out-of-court workouts and loan restructures

AREAS OF FOCUS

Loan Workouts

Our lawyers have long and varied experience negotiating and restructuring the terms of varieties of loans in different industries, and are particularly skilled at devising innovative solutions to seemingly unworkable situations. In many cases we have been able to restructure loans and avoid costly and distracting legal proceedings, while obtaining results consistent with the client's objectives.

Receiverships



Sussman Shank's receivership practice involves moving courts to appoint a receiver to protect our creditor client's rights, representing the receiver in cases when appointed, representing creditors in receivership cases, and representing purchasers of receivership assets and businesses. A creditor asking a court to appoint a receiver can be a very viable tool to protect the creditors' rights, remove company control by bad-actor corporate operatives, and lead to better results than forcing a bankruptcy filing. The independent Receiver controls and manages assets, investigates and recovers wrongful transfers, investigates and litigates claims against management, sells assets, and protects the estate for creditors. With our extensive expertise in all aspects of receiverships, our team can provide effective and efficient solutions to help clients navigate a wide range of financial situations.

Bankruptcy Reorganization and Liquidation

Sussman Shank's bankruptcy reorganization and liquidation practice provides a full range of legal services to help clients navigate the complex, demanding, and sometimes overwhelming process of a filed bankruptcy or a threatened bankruptcy filing. With a deep understanding of bankruptcy law and strategy, both of which change the debtor-creditor leverage equation, along with the experience handling unique challenges faced by individuals, businesses, and creditors, we work closely with clients to develop and implement effective strategies to restructure debt, protect assets, and allow businesses to restructure and emerge in the strongest possible position.

REPRESENTATIVE WORK

Mediated High-Stakes Litigation with Favorable Settlements

- The Sussman Shank team mediated the settlement of three litigation matters that involved eight figures of potential value. Our work resulted in the release of claims with a limited reserve for future litigation. Of four lawsuits for breach of fiduciary duty and fraud, three were settled.

Guided Cattle Operation Owner Through Successful Bankruptcy and Debt Restructuring

- We represented the individual owner of a large-scale cattle operation through a bankruptcy proceeding that allowed the client to continue operations. Our lawyers reduced and restructured debt in a way that allowed the client to meet a payment schedule while still operating the business.

Recovery of Secured Lender's Claim

- We represented a lender whose \$650,000 loan balance was collateralized by health equipment lease receivables. The lease portfolio was not performing well, and the borrower was not paying the bank according to loan terms. Initially, we helped prepare and negotiate a Forbearance Agreement. We also defended a lawsuit against the bank by the borrower and successfully obtained dismissal. We later filed a lawsuit on behalf of the lender upon default under the Forbearance Agreement. We obtained immediate "possession" of the leasehold receivable collateral at a provisional process hearing and obtained an order appointing a receiver to collect the leasehold receivables. The bank recovered the full amount of the debt and most of its attorney fees and costs

Purchasing Assets Through Bankruptcy

- Represented a well-known Oregon company who desired to purchase assets and Portland-area locations of a well-known Chapter 11 debtor. There were competing bidders from two other states. The combined bids of our client and one other party were greater than the single bid from two out-of-state bidders, each of whom wanted all of the locations of the debtor. Prepared pleadings to obtain appropriate bidding procedures to enable our client to "partner" with another interested party from Oregon. Client was successful in obtaining the highest bid at an auction for the assets the client wanted. Prepared or approved all of the necessary documentation to finalize the sale of those assets. Success of our efforts enabled the acquisition of the operations synergistic to our client's existing business

Wind-Down of Business Operations

- Represented a long-time Portland retailer at several locations in a year-long program involving reduction of operations and ultimately a going-out-of-business sale. Advised client on steps to take which enabled all priority and secured debt to be satisfied. Successful in enabling company to satisfy secured debt (and, in turn, minimize individual owner's guaranty exposure to lender).

Representation of Governmental Entities for Bankruptcy

- Sussman Shank successfully obtained payment of ad valorem tax claims in large Chapter 11 bankruptcy proceedings in multiple jurisdictions, including New York, Florida, Delaware, Colorado, California, Washington , and Oregon.

Dismissal of Abusive Filings

- We obtained three dismissals with prejudice of Chapter 13 cases on grounds of abuse of the bankruptcy laws after contested hearings. These cases involved repeat filers who had no intention of

reorganizing. In one matter, the court barred the debtor from filing any type of bankruptcy for two years. This permitted the creditor (a county tax collector) to commence and continue with long frustrated foreclosure proceedings.

Removal of Adversary Proceedings to "Home Turf"

- In a large international Chapter 11 bankruptcy pending in the District of Delaware and Canada, Sussman Shank successfully obtained an order transferring venue of an adversary proceeding filed in Delaware, by the debtor, against Oregon residents to the Bankruptcy Court in Oregon. This was a contested matter involving interpretation and enforcement of contract documents between the debtor and the Oregon residents, which contained forum selection provisions. Filing the action in Delaware was contrary to the contract documents signed by the debtor, and the only connection with Delaware was that the debtor filed bankruptcy there. Had venue not been transferred to Oregon, the cost of defending the action would have been prohibitive for the clients and could have resulted in causing one of the clients to file bankruptcy.

Mediation

- We initiated a mediation process in the Bankruptcy Court for the District of Oregon which resolved issues in three related bankruptcies and several adversary proceedings pending in three different Bankruptcy Courts in the Western District of Washington. This resulted in a settlement which requires payment in full of a debt owed to the client of over \$2 million.

Bankruptcy Litigation Involving Electrical Co-Ops

- We recovered virtually the entire amount requested in a lawsuit filed on behalf of an Oregon bankruptcy trustee against an Oregon electric cooperative alleging breach of fiduciary duty and breach of bylaws. We argued the bankruptcy trustee had a right, as successor to the debtor-cooperative member's interest, to obtain payment of its capital contributions on an accelerated basis under a bylaw provision permitting distributions upon the "death" of a member. This was a case of first impression in the District of Oregon. We argued on behalf of the trustee that a Chapter 7 corporate debtor is "dead" for purposes of entitlement to distributions upon the death of a member. Based on this result, we have been retained and have successfully negotiated resolutions in two other cooperative cases. A third case is pending.

Objection to Plan

- We obtained an Order for Relief after filing an involuntary bankruptcy petition on behalf of a creditor against a Willamette Valley real estate

developer. The case proceeded as a Chapter 11 in the Eugene Division of the Oregon Bankruptcy Court. We objected to confirmation of Debtor's Chapter 11 Plan. After a contested hearing, we obtained an Order denying confirmation and converting the case to a Chapter 7 proceeding. This was accomplished expeditiously, within approximately one year of the petition date.

Refusal of Preference Claim

- Sussman Shank represented a publicly-held company in a bankruptcy pending in the Southern District of New York. Knowing our client had preference exposure of \$5 million, we negotiated assumption of a contract between our client and the debtor. As a result, most of the pre-petition default was paid, the debtor paid our client for services provided post-petition, and the client received an administrative expense claim (essentially elevating its claim from a pre-petition unsecured claim). In addition, we defeated the subsequent preference claim based on case law prohibiting the debtor from pursuing a preference claim from a creditor whose contract has been assumed.

Preference Litigation

- We represent a client who is often sued for preferential transfers. As a result of our 10+ years of representation of this client, the client accepted an offer to settle "all preference claims" for about \$2,000. Subsequently, the debtor made demand for additional sums from the client (approximately \$1 million based on additional preferential transfers later discovered by the debtor). We successfully defended the trustee's larger claim, and the debtor ultimately dismissed its claim with no additional payment from the client.

Creditors' Plan

- Sussman Shank successfully represented a governmental entity as a creditor in a Chapter 11 bankruptcy case that allowed our client to prepare a plan through which it purchased a failed construction project out of bankruptcy. We were able to arrange for the purchase of the project free and clear of liens, which eliminated a large number of construction liens against the project. As a result, the project was sold and work was restarted on the project.

Debtor/Creditor Litigation

- We were hired to collect \$1.3 million owed by the purchaser of a large machine. We examined the paperwork and discovered, to our client's surprise, that our client had recourse against the manufacturer. We made demand on the manufacturer and recovered the whole \$1.3 million for our client. The manufacturer retained us shortly thereafter.

Successful Purchase of Retail Stores' Assets In Boston Chapter 11 Case

- Sussman Shank LLP represented an Oregon-based retailer who successfully purchased, free and clear of liens, 11 retail stores located in California from a Chapter 11 Debtor who had filed in Boston, Massachusetts. We negotiated the terms of the sale, drafted the purchase agreement, assisted in negotiating new lease terms, addressed issues of successor liability, participated in the preparation of pleadings necessary to obtain court approval of the sale, and participated at the hearing in Boston that resulted in court approval of the sale.

Successful Purchase of Chapter 11 Computer Consulting Company Assets

- Sussman Shank LLP represented an out-of-state national company in its successful purchase, free and clear of liens, of assets from an Oregon-based computer consulting company that had filed Chapter 11. We participated in negotiating the terms of the sale, which included overbid protections and provisions for expense reimbursement, and participated with the Debtor's attorney in the contentious evidentiary hearing on objections to the sale and possible competing bids.

North Pacific Group of Companies

- Served as lead counsel to the federal court receiver appointed to liquidate the assets of the North Pacific debtor companies. Our attorneys, Barry Caplan and Jeff Misley, led a team that promptly sold the company's major assets, paid its secured creditors in full within weeks of the receiver's appointment, and implemented a further liquidation strategy for the remaining assets and for distributions to creditors.

Consolidated Freightways Corporation

- This was one of the largest and most complex Chapter 11 cases filed by a freight company in the United States. We represented the company in liquidating the company's assets and resolving thousands of claims. Although our offices are located in Portland, Oregon, we were able to provide these services to a debtor whose bankruptcy case was being administered in the Central District of California.

Archdiocese of Portland In Oregon

- Sussman Shank served as lead counsel to the Archdiocese of Portland. We developed and implemented a strategy that considered the interplay of First Amendment religious rights, charitable trust, and

bankruptcy law in proposing and confirming a reorganization plan that resulted in the settlement and payment of over 250 known clergy sex abuse claims, provided a trust for the liquidation and payment of future abuse claims, and preserved the assets and operations of 124 parishes and 3 Catholic high schools.

Society of Jesus, Oregon Province

- The Society of Jesus, Oregon Province was the first Chapter 11 bankruptcy case filed by a Roman Catholic religious order in the United States. Relying on our experience from the Archdiocese of Portland case, and facing new issues relevant only to a religious order, we were able to implement a strategy for resolving and paying over 500 clergy sex abuse claims through the use of insurance coverage and other assets. This resulted in a plan that was overwhelmingly accepted by all creditors, which included \$119 million in contributions from the debtor's insurers and allowed the province to continue its mission throughout Alaska, Idaho, Montana, Oregon, and Washington.

Sunwest Companies

- Represented a group of financial institution lenders in one of the largest and most complex Chapter 11 bankruptcy cases ever filed in the state of Oregon involving assisted living and nursing homes located throughout the United States. Successfully asserted and protected our lender clients' rights and remedies regarding their collateral in the negotiation of a \$1.2 billion sale of the companies' assets.

The Columbian Publishing Company

- The major secured creditor of The Columbian daily newspaper in Vancouver, Washington, called upon us to represent it in a Chapter 11 bankruptcy case filed in the Western District of Washington . We successfully negotiated the bank's treatment under a plan of reorganization that resulted in The Columbian surrendering its recently-built, state-of-the-art headquarters building to the bank in exchange for relief from a substantial portion of its unsecured debt. This resulted in improved cash flow to the debtor, allowed the bank to liquidate a non-performing asset, and assured the bank of consistent future payments on its remaining secured debt.

Talbitzer Homes/Hawks Prairie Chapter 11 cases

- A major homebuilder in southern Washington engaged us to file a Chapter 11 petition when negotiations with one of his major secured creditors broke down and he was faced with imminent foreclosure of valuable assets. A team from our Bankruptcy & Creditors' Rights and

Litigation Practice Groups implemented a strategy that involved significant litigation concerning approximately \$15 million in secured claims held by our client, negotiated settlements with the secured creditors in both bankruptcy cases, and restructured approximately \$50 million of debt under two separate plans of reorganization. This resulted in confirmation of a plan for our client that is expected to pay all of its creditors in full, provide the client with financing to complete the construction of homes in all of its subdivisions, and allow it to retain most of its other income-producing assets.

Cottage Grove Community Hospital

- We represented an ad hoc committee of community leaders in this Chapter 11 case, whose goal was to ensure that the citizens of Cottage Grove, Oregon, did not lose local access to emergency and acute medical care. Our involvement in the case ensured that the community's concerns were met, ultimately resulting in Peace Health, a major health care provider organization, agreeing to erect a new community medical center to address the citizens' needs.

Camera World

- Represented the assignee for the benefit of creditors of a major instore and website camera retailer in two multi-million dollar sales of the company's assets. Prepared the formal asset assignment agreement and sale documents, and handled creditor-related claim and payment issues. All secured and priority claims were paid in full, with unsecured creditors receiving a large percentage of their claims through an earn-out.

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