CRYPTO PLATFORMS IN CRISIS: BANKRUPTCY CONSIDERATIONS

Brown Rudnick White Paper

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Crypto Platforms in Crisis: Bankruptcy Considerations

Current Situation

The crypto ecosystem is facing a full-blown financial crisis reminiscent of 2008. Numerous crypto companies have failed in the past few months, triggered in part by the collapse in cryptocurrency prices this year following their highs in 2021. These collapses have created a slow-moving contagion – again reminiscent of the 2008 financial crisis.

The collapse of the Terra/Luna "algorithmic stablecoin" ecosystem wiped out billions (if not tens of billions) of notional value – including the Terra "stablecoin" that was pitched as a non-volatile store of value. Several large crypto funds were reported to have sizable investments in that ecosystem, which destabilized their finances. However, because this was a purely crypto-based system and not a traditional company, its collapse was somewhat opaque: there were no insolvency proceedings, and numerous market players have denied exposure.

The next domino to fall was Celsius announcing on June 12, 2022, that it would freeze all customer accounts "[d]ue to extreme market conditions" – which, of course, was actually because it was insolvent. Others followed: crypto hedge fund 3 Arrows Capital ("3AC") went radio silent and plunged into insolvency proceedings in the British Virgin Islands, leading to Voyager Digital (which had lent a vast amount of its assets to 3AC, filing for bankruptcy in the Southern District of New York on July 6, 2022.

Numerous other crypto companies have been bailed out – largely led by crypto exchange FTX. For example, FTX offered a liquidity facility to BlockFi of up to $400 million, with a purchase option to purchase all equity in BlockFi for a sliding scale price of up to $240 million.

However, in the past week, FTX itself has collapsed with a rumored massive hole in its customer accounts. FTX had one operating subsidiary placed into an involuntary liquidation in the Bahamas on Nov. 10, 2022, and FTX quickly (and without the usual preparation such a filing entails) placed the remainder of its entities into Chapter 11 in Delaware on Nov. 11, 2022 (along with certain other entitles associated with its CEO, including FTX US and Alameda Research). Hard data is scarce, but reports – sourced to presentations made by FTX's CEO, Sam Bankman-Fried – indicate that FTX "loaned" $8 billion of FTX customer assets to his affiliated hedge fund, Alameda Research. More accurately, it appears the funds were simply stolen.

Brown Rudnick is closely following the FTX situation, and will put out separate updates on that situation as facts come in. That said, based on initial reports, we have several thoughts.

The bankruptcy of FTX (and affiliated entities FTX US, and Alameda Research) is going to be extraordinarily complex for several reasons. Among those are:

Assets: It is unclear what assets even remain to distribute to creditors, and where those assets are located. Leaked balance sheets suggest FTX Global has little, if any, "hard" crypto assets such as bitcoin or ether, and has a relatively small amount of assets that can be readily converted to dollars or other fiat currencies. Instead, FTX Global appears to hold largely illiquid tokens with values that may be illusory. Alameda – which reportedly received the funds stolen from FTX Global – may have lost those funds (either trading, or in turn stolen by its executives). Further, as FTX Global's operating subsidiary in the Bahamas has been placed into a Bahamas

liquidation, it is unclear which assets are under the control of the liquidators in the Bahamas, and which are under the control of the Chapter 11 debtors.

Subsequent Thefts: Less than a day after the FTX/Alameda/FTX US Chapter 11 petition was filed, it appears that hundreds of millions of crypto (estimates range from $477 million to $663 million) was transferred out of FTX US and FTX Global. It is unclear who was responsible, and suspicion has focused on both an "inside job" and an external hack. This action drained further funds from these already asset-poor entities, and while FTX US was previously (allegedly) solvent, it may no longer be as a result of the hack.

International Issues: Because FTX Global Markets (which appears to be the FTX Global main operating subsidiary) is in a Bahamas liquidation proceeding, and key FTX executives appear to be in the Bahamas, any bankruptcy process will require substantial international cooperation. First, the Chapter 11 estates and the Bahamas liquidation will need to reach agreement on claims between the entities and reach agreement on how to cooperate to maximize recoveries for all creditors. Failure to do so could be significantly damaging – in the Lehman Brothers liquidation, there were disputes between the Lehman Brothers U.S. entity and the Lehman Brothers U.K. entity for a decade, significantly slowing distributions and the resolution of those cases. In contrast, however, in the MF Global liquidation, there was significant international cooperation that hastened the return of funds to customers in that case. Further, assets may be secreted abroad in a number of different countries, and an international effort will need to be mounted to recover them.

The Role of Alameda: It seems inexplicable that FTX Global's owner, Bankman-Fried, who was a multibillionaire on paper based on his FTX stake, would destroy FTX Global to bail out his crypto hedge fund – though based on public reports, it appears that is the case. If Alameda had lost significant sums of money and was insolvent, the logical answer would seem to be: simply let it collapse, let its creditors get stiffed because Alameda didn't have enough money, and remain a multibillionaire with a thriving exchange. Further, Alameda and FTX were both understood to have made significant profits in the past – and those profits appear gone as well. Suspicions have been raised that Alameda may have been more entwined with FTX Global than previously understood, and that it may have been losing significant sums of money for some time. Whatever the answer is, the current situation does not make sense – and that means there may be further shoes to drop. If there are few remaining "hard" assets at Alameda as well, there may be a long road for customers to receive significant recoveries.

All of these issues create significant difficulties for the resolution of FTX/Alameda/FTX US's bankruptcy cases. In particular, the following issues are likely to arise:

Claim Dollarization: In Voyager and Celsius, there has been an effort to pay claims "in kind" rather than converting the claims into dollars and paying in dollars. However, between the leaked balance sheets showing FTX Global has little (if any) "hard" crypto assets, and the subsequent theft of up to $663 million in crypto, there may be little or no "hard" crypto assets available to distribute.

FTX US: There is little useful public information on the status of this entity. While previously it was asserted to be entirely solvent, this assertion came from Bankman-Fried, who appears to have stolen all of the funds from FTX Global, making this statement not particularly reliable. While public statements by others have affirmed this, it's hard to know if they are reliable either, given Bankman-Fried's apparent control over all of these entities. In addition, even if it was solvent, post-bankruptcy thefts may have rendered it insolvent. If this exchange remains solvent – and if it has any "going-concern" value – is very unclear at this point, and as a result there is little

certainty. Further, FTX US's assets (including customer accounts) may not be available to other Bankman-Fried-controlled entities – this is an issue that will likely be litigated.

Reorganizing: It seems unlikely that FTX Global can remain as a going concern. It appears to have perpetrated one of the largest frauds since Bernie Madoff. It has acquired a number of other companies, which may retain going concern value and may have assets that can be sold. But given that the best case for any particular member of FTX's management is "not criminal, but just so incompetent they didn't notice that $8 billion was missing" there appears to be no value whatsoever in maintaining those as FTX-run subsidiaries under control of (remaining) management rather than selling them to third parties.

Further, it may be difficult to sell customer accounts to a solvent exchange (or, if FTX US is relatively or completely solvent, to sell FTX US). Customers of Voyager nearly wound up going "from the frying pan into the fire" given Bankman-Fried's attempts to purchase Voyager customer accounts out of Voyager and add them to FTX US. As a result, there will likely be extreme skepticism towards any potential transfer of customer accounts, unless strong steps are taken to ensure that no customers are exposed to companies they do not trust, and that any potential counterparties are fully vetted.

No Plan: It is clear that the Chapter 11 filings were made without the typical planning for bankruptcy that Voyager and Celsius conducted. The Chapter 11 filings were made without typical "first day" motions that obtain needed relief to continue operating the business. Instead, they appear to have been filed in extreme haste following the involuntary liquidation of FTX Global Markets by Bahamas regulators, to pre-empt any further involuntary bankruptcy filings. As a result, it is likely that the people currently in control of FTX do not know where all the assets are, do not have firm control over the business, and do not have a plan of what will happen next. This creates dramatic uncertainty and heightens the risk of further damage to the estates, like the post-petition theft of up to $663 million.

Litigation and Criminal Investigations: Because there appears to be such a vast hole in FTX Global's customer accounts – and there are reasons to be skeptical that Alameda has enough assets to fill it in – recovery of assets will likely require litigation, which takes time and costs money. As a result, meaningful distributions to creditors may be significantly delayed, and creditors may have lower initial recoveries to fund such recovery efforts. Further, while governments will (appropriately) conduct criminal investigations of the individuals resolved, those investigations may take priority over bankruptcy efforts to recover funds, make it more difficult to obtain information, and may interfere with or delay efforts to recover funds.

The FTX collapse is certain to create additional contagion. It is widely expected that BlockFi – which has already halted withdrawals – will be forced to file for bankruptcy.[1] Questions have been raised about other companies, including crypto.com. Numerous other crypto companies and projects are reported to have held their treasuries on FTX and face the prospect of being wiped out. It is unknown what parties may be significant creditors of Alameda (which has itself collapsed) and may have significant losses as a result. Further, the uncertainty will likely lead to credit drying up and parties seeking to pull funds back, as they fear their business partners or counterparties have been rendered insolvent by FTX's collapse.

While crypto has a number of unique factors that differentiate itself from "traditional finance," these financial issues also have significant similarities to past financial crises that offer key lessons for how this crisis may play out.

[1] There are also rumors that BlockFi funds may have been migrated to FTX as a result of the "bail-out."

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KEY PLAYERS

There are approximately five key financial institutions/companies/organizations at play in the current crypto crisis.

I. Crypto Hedge Funds

Crypto hedge funds are funds backed by some amount of investors (either third parties, or the founders) that are explicitly looking to become investors in the fund. They act as traditional hedge funds operate: looking to make a return on their funds through large-scale market activity.

Certain crypto hedge funds function as normal hedge funds do: they have employees, offices, and similar organization as traditional hedge funds. Their strategy and positions are often opaque. They run trading bots, make large-scale loans (secured and unsecured) and equity investments, and pass their profits (or losses) onto their investors. These institutions pose the same risks in the crypto financial space that they do in the traditional financial space. Generally, their losses are localized to their investors: however, the collapse of a big enough "traditional" fund can create knock-on effects on the institutions that lent to it.

Crypto, however, also has "DeFi" – decentralized community organizations that are built from smart contracts on the blockchain. They are used for a variety of functions, including trading and lending. With respect to lending, a DeFI protocol would take cryptocurrency from investors, and reinvest funds to generate a return. Sometimes those loans are collateralized or over-collateralized. Because they are coded on the blockchain, their strategies, funds, and performance are all public. If a loan becomes undercollateralized, it is margin called and liquidated automatically, and the protocol sells the collateral on decentralized exchanges to repay the loan.

Due to the transparency and relatively limited business model of DeFi there are fewer knock-on effects when such a protocol loses money. Like most cryptocurrency businesses, DeFi funds are susceptible to hacks, and due to their "on chain" nature may be more vulnerable to the identification and exploitation of a flaw in their programming. They also face risks when the protocol is used, essentially, as a cash-out mechanism: a large holder of an illiquid altcoin (a less commonly used cryptocurrency, with thin trading volume) obtains a loan based on the nominal value of those altcoins put up as collateral. However, the holder has no intention of repaying the loan: instead, they simply expect to have their position liquidated – but the market will not support the sale of the volume of altcoins they posted as "collateral" so they will come out ahead. Of course, if the altcoin takes off before the loan is defaulted, the loan acts as a free option – the holder can simply repay the loan and take back the coins (and then, potentially, repeat the process but with a higher amount of more liquid coins extracted).

II. Crypto Exchanges

Crypto exchanges act in a manner similar to a forex exchange: they permit a participant to exchange between different forms of cryptocurrency, or between cryptocurrency and "fiat" currencies (e.g., the dollar or the euro). A crypto exchange, in its simplest form, takes no market risk: it takes a commission on each trade, and holds the full amount of all of its users funds on deposit. Exchanges offer both spot and derivatives trading, though the latter is more limited in the United States because of licensing requirements overseen by the U.S. CFTC.

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A crypto spot exchange should not suffer from liquidity crises or market confidence crises, as long as it has the full amount of currency it owes, in the form it owes it. If every participant withdraws their currency one day, the exchange will cease to function, but it should be able to meet all of its obligations in doing so.

Instead, crypto exchanges that have faced issues have done so because of a shortfall issue: that the exchange does not, in fact, have the assets that its customers have deposited, in the amount they have deposited. In the past, this was often due to a hack or the like: an attacker has gained access to the exchange and drained some amount of its cryptocurrency holdings. Notable examples of an exchange that faced a shortfall include Mt. Gox (which ultimately entered liquidation as a result) and Bitfinex (which conducted a bail-in and ultimately repaid its depositors out of the proceeds of further operation). Crypto exchanges can be uniquely vulnerable to hacks because of the irreversible nature of crypto transactions, combined with their pseudonymous nature, making it particularly difficult (though not impossible) to recover lost funds.

However, a crypto exchange can be tempted to expand its business. An exchange will have large deposits of cash, which it can place in a traditional bank account and earn interest on, boosting profits. However, that exchange will instead be holding its crypto reserves that are unlikely to be accessed on a daily basis in "cold storage" – but earns no interest on those funds. An exchange may, then, be tempted to invest those cryptocurrencies into other business ventures to also generate a return on those funds, further boosting profits. FTX appears to have done this, and there is substantial concern other crypto exchanges have similarly gambled with their customer funds.

A crypto exchange that has invested some amount of its cryptocurrency in crypto investments is then vulnerable to market risk (its investments may lose value, creating a shortfall, or its investments may be denominated in currencies different than what it owes, exposing it to a situation where changing relative values of cryptocurrencies creates a shortfall even if an investment does not lose value); it is vulnerable to liquidity crises (the investments may not be able to be liquidated on demand) and it may suffer from a crisis of confidence.

If a crypto exchange enters bankruptcy proceedings, **U.S. law does not give explicit protection to customer deposits of the exchange**. There may be strong arguments that the deposits are "held in trust" for the customers and are, thus, not the exchange's property – and as a result must be returned to customers intact rather than shared with other unsecured creditors. However, there may also be strong arguments that is not the case – that the crypto deposited is property of the exchange, and customers are nothing but unsecured creditors. These arguments will depend on the terms of service or the user agreement, as well as how the property was actually treated.

Importantly, whose property customer deposits are (the exchange, or the customers) is not the end of the story.

If the customer property is gone, the question of whether that property is entitled to special protection may be academic. If, however, there is a "shortfall" – some, but not all, of the property is gone – there may be additional litigation. There are several different possibilities for how a court could resolve this – and different creditors will face dramatically different recoveries in each, and be heavily incentivized to litigate for their preferred outcome. The following are certain potential positions creditors may take, which range from sharing losses as equally as possible (at the top) to sharing losses as little as possible (at the bottom).

- **Customer Property Shared Equally**: All customer property is "pooled" and valued, and then compared to the total value that is owed to customers. Each customer receives a percentage of their total

account equal to the percentage of customer property that is actually present, compared to the amount that should be present. So, if the exchange has a "shortfall" of 50% - i.e. it has half the customer value it should, as of the valuation date – all customers will receive 50% of their account value, in some form. Customers would have an unsecured claim for the remainder.

- **Customer Property Shared Equally By Asset Type**: In contrast, each category of asset could be considered separately. So, if an exchange has 80% of the USD that it should have, 50% of the bitcoin it should have, 100% of the stablecoins it should have, but no ether at all, then each claimant will receive 80% of the USD in their account, 50% of the bitcoin in their account, 100% of the stablecoins in their account, and no ether at all. Again, customers receive an unsecured claim for the remainder.
- **Customer Property Traced**: Depending on how an exchange operated, it **may** in some cases be technically possible to trace individual creditor's cryptocurrency deposits and determine if those specific cryptocurrencies are still held by the exchange. In such cases, that specifically identifiable property would be returned to its owner. Similarly, if it can be determined that a specific creditor's cryptocurrency is definitively not present anymore, then that creditor would receive nothing. Cryptocurrency (or other value) that was "pooled" or otherwise comingled would be shared among creditors whose crypto went into the pool.

III. Crypto Shadow Banks

An increasing number of crypto companies have a model that consists of accepting customer deposits in cryptocurrency, and paying an interest rate on that cryptocurrency. Those institutions then use those deposits as capital, seeking to earn a return greater than the interest they pay on those deposits – via retail secured lending (generally, their original business model), or by other methods of seeking a return in excess of their interest payments.

In short, these institutions act like banks. Their customer deposits are generally due on demand; their loans cannot be recalled in that manner. They do not maintain full reserves to allow all customers at once to withdraw their money, but instead practice "fractional-reserve banking": they maintain reserves of liquid crypto to meet anticipated withdrawals but no more.

Crypto shadow banks are vulnerable to all forms of financial crisis. They can face a liquidity crisis if their liquid reserves are insufficient to meet withdrawal demand, because their liabilities are on demand but their assets are often illiquid. They can face a shortfall risk: if their investments turn sour, they do not have a contractual means of passing these losses onto their customers and they have fewer assets than liabilities. And the market confidence risk of a bank is well known – if they lose market confidence they face a "run on the bank" which can wipe out even a solvent bank with ample reserves.

Crypto banks have generally been lightly regulated and to date only a few have faced significant regulatory pressure. Their depositors are, by contract, nothing more than unsecured creditors. Customers' money is not "their" money: the agreements they sign by opening an account grants the bank the right to do, essentially, whatever it wants to do with their crypto to generate the bank a return. The company could even take out a secured loan, granting a security interest in its assets that would come ahead of customers looking to get "their" money back.

Because these institutions rely on retail customer deposits for their funding, they often have advertised widely and brought in new individuals to the crypto ecosystem who were seeking higher interest rates than the near-zero rates offered by a traditional bank. The danger, however, is that many of these people may not have fully

understood the risks they were running, and may not have reviewed the user agreements to understand their legal status in an insolvency and how it differs from the customers of a traditional bank.

To date, two crypto shadow banks – Celsius and Voyager – have halted withdrawals, and subsequently filed for bankruptcy. More are anticipated to do so, most notably BlockFi given that it required on FTX support that is now, presumably, unavailable.

IV. Stablecoins

Stablecoins are a relatively unique feature of the crypto financial ecosystem. A stablecoin is a cryptocurrency that is intended to maintain a constant "peg" with a specific currency (such as the U.S. dollar) rather than have a floating market price. While holders of many cryptocurrencies hold those currencies in the hope those cryptos increase in value, stablecoins are explicitly intended not to increase (or decrease) in value: they are intended to function as essentially a "digital dollar."

Stablecoins are used in the crypto ecosystem for several reasons. First, they protect against volatility by allowing users to convert crypto into a stablecoin that has the easy transferability of crypto (not reliant on banking rails) but is marked to an external currency, so the price doesn't change. This is useful, for example, for traders. Second, they enable the transfer of fiat currency through the crypto ecosystem without requiring the use of bank accounts, and potential delays and (in certain cases) regulatory issues. While some coins require KYC/AML, others (such as DAI) do not.

Traditionally, a stablecoin is issued by a centralized company (rather than being "mined") which may hold assets that back each stablecoin issued, dollar-for-dollar. New stablecoins can be purchased from the issuing institution; and existing stablecoins can be redeemed for the face amount of their dollar value from those issuing institutions.[2] When the price of a stablecoin diverges from its "peg" it is returned to its peg by market arbitrage. If the stablecoin drops below a dollar, a market participant will purchase them at below a dollar and redeem them for a dollar. If the price rises above a dollar, those market participants will purchase stablecoins from the issuer for a dollar and sell them for above a dollar on the market.

Two key stablecoins are USDT (also known as Tether) and USDC. Both assert to be fully backed. However, Tether in particular has faced allegations that its tethers are either not fully backed, or are backed by assets that carry significant market risk (Chinese commercial paper, or cryptocurrencies). Notably, however, Tether has faced significant redemptions (over $10 billion dollars in a relatively short period of time) and has been able to meet those redemptions and calm market concern. However, it remains unwilling to disclose the exact assets that back it. USDC, which is backed by Circle, purports to be fully backed and provides third-party assurance of reserves on a monthly basis, and says it is fully backed by cash and short-term U.S. treasuries.

"Backed" stablecoins are a simple business model. If a company holds $1 billion in cash against $1 billion in stablecoins, it can put that cash in a bank account, U.S. treasuries, or similar investments and earn interest for itself. However, these profits can be significantly increased by purchasing riskier assets. One example of this model is the ERC-20 dollar backed stablecoin issued by Paxos.

[2] The market participants allowed to access the "window" may be limited. Tether, in particular, has a very limited number of institutions that are allowed to redeem tethers. However, as long as those institutions have sufficient capital to play their arbitrage role it is unnecessary for retail customers to be able to purchase/redeem stablecoins.

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Well over $100 billion in USDC and UST is currently circulating. As long as these remain fully backed by liquid securities or cash, and their issuers can honor redemptions, they pose no risk to the wider ecosystem. However, if either issuing entity has insufficient assets, or has illiquid assets, they could face a run on the bank that would cause massive damage to the wider crypto ecosystem. In particular, as exchanges often operate via stablecoins, any damage to stablecoin confidence would cause huge contagion in exchanges.

There have also been experiments with "algorithmic stablecoins." Rather than being backed by dollars or securities denominated in dollars, they are backed by a paired floating cryptocurrency. Parties can exchange the paired floating currency into or out of the "algorithmic stablecoin" based on the floating currency's market price in a way that is intended to "hold the peg" for the stablecoin. The "Terra/Luna" cryptocurrencies were the best known example: Terra was the stablecoin,[3] and Luna was the floating cryptocurrency. For some time, these appeared to function: Luna's price continued to rise, while Terra successfully maintained its peg with over $18 billion Terras in circulation.[4] However, ultimately this scheme relies entirely on market confidence, and on May 7, 2022, the market began to lose confidence. This prompted a "death spiral" where in an effort to maintain the peg, the protocol issued increasing amounts of Luna, driving the price to ever-increasing tiny fractions of a cent – essentially worthless, with an exchange rate of billions (or trillions) of Luna to one dollar. With Luna worthless, the exchange between it and Terra broke down. Both currencies collapsed to zero, wiping out a notional $60 billion of value.

DEALING WITH FINANCIAL CRISES

Financial crises are well understood – especially among the wider public today, as a result of the 2008 financial crisis.

One of the quirks of a financial crisis is that, because market confidence plays such a key role, a financial crisis can happen well after the underlying problems have become irreversible. For example, if a bank has insufficient assets, it can simply hide that fact – and as long as depositors don't find out, it can maintain the charade for some time by paying old depositors with new depositor's money. In essence, the market can run off a cliff and keep running until it looks down, Wile E.-Coyote-style. The 2008 financial crisis is instructive. In March, 2008 Bear Stearns failed due to the subprime mortgage crisis. However, the market continued to chug along for **six months** – until the collapse of Lehman Brothers – despite Bear Stearns' failure from the subprime mortgage crisis even though it was well known that the wider financial industry was all deeply enmeshed in the same products.

As a result, the triggering event that precipitates the crisis is distinct from the underlying issues causing the crisis. While market confidence can cover up fundamental problems, once lost it can no longer do so. Solving a financial crisis at a financial firm requires fixing the fundamental problems, in an open and transparent way such that the market regains its confidence. Or, if the problems are unsolvable and the entity is not worth keeping intact, conduct an orderly liquidation to maximize the value of the assets for the benefit of the institution's customers and creditors.

Below is a summary of how financial crises are dealt with, and some comments on their applicability to the present situation. This summary is geared toward solving financial crises at specific institutions – not arresting a

[3] As a technical matter, there were a number of series of Terra stablecoins, each pegged to a different national currency. For practical purposes, the main currency that was relevant was that pegged to the US dollar – the UST.

[4] The success of this protocol was largely driven by the "Anchor Protocol" which promised 20% annual returns on "staked" UST, allegedly funded by lending out that UST in a manner similar to a crypto bank. However, UST placed in the Anchor Protocol could not be redeemed instantly on demand, and there have been serious allegations the Anchor Protocol was simply a ponzi scheme.

broader financial crisis, though arresting a broader financial crisis requires dealing with the individual crises making up that broad crisis.

There are three main factors that lead to a financial firm becoming distressed and ultimately become insolvent or collapse: insufficient liquidity; an asset shortfall; and a loss of market confidence.

A loss of liquidity is uniquely dangerous for a financial firm because it often has a mismatch between its liabilities (short-term or due on demand, because of customer deposits) and its assets (longer-term or illiquid, as those offer greater returns). As long as the company maintains sufficient liquidity to pay its bills in the ordinary course, with a buffer for withdrawals or termination of short-term loans, it will be fine. But if that liquidity runs out, and the company has only illiquid assets – assets that cannot be sold quickly and easily for their full value – the company either needs to sell assets at "fire-sale" prices, causing a significant loss, or reject the withdrawal, causing a devastating loss of market confidence.

An asset shortfall is, simply, that the company is insolvent. It owes more money than it has – even at the full, fair value of its illiquid assets. However, such a shortfall does not immediately collapse a financial firm – it can hide the shortfall (either by lying outright, or simply not disclosing it) and hope to continue paying its bills until the value of its assets recovers. However, if the market gets wind that the company has an asset shortfall and is insolvent, the market will rush to withdraw funds and call its debts, leading to a collapse.

Finally, a financial firm can face a loss of market confidence: the market loses faith the firm has liquidity and is solvent. As a result, depositors withdraw money, counterparties refuse to extend unsecured credit and demand high interest rates and significantly more collateral than the amount of their loan. This is a classic "run on the bank" and even a firm that was in relatively good shape can face a liquidity crisis. As a result, a collapse in market confidence can tank a perfectly solvent financial company – and, equally important, unwarranted market confidence can allow an insolvent and illiquid company to hide its problems.

Crypto financial companies suffer from many of the same issues as "traditional finance" companies. The key differences are:

1) Crypto financial companies have not yet become as reliant as "traditional finance" investment banks are on short-term loans (such as loans for less than a day, or other very short-term time periods). The freezing of these kinds of funding in the financial crisis caused liquidity issues for all financial firms in 2008, regardless of their exposure to the subprime market. This meant, in essence, that the market had a much greater ability to cause a "run on the bank" for even institutions
2) without customer deposits, because they relied on short-term funding that was approximately as easily withdrawn as customer deposits. In the crypto space, it appears there is much less of this kind of extremely short-term liquidity need for companies, and thus it is mostly the "crypto shadow banks" that are susceptible to a loss of confidence caused run on the bank. In the traditional finance world, the self-imposed "withdrawal freezes" would immediately collapse a financial institution. In crypto, however, there is not a similar need for ongoing provision of short-term liquidity that would cause such a collapse while withdrawals were frozen.
3) Conversely, crypto financial companies lack many of the insurance programs and regulatory support that ameliorate losses of confidence. Crypto shadow banks do not have deposit insurance; they do not have minimum capital requirements; and other forms of regulation that have been created to protect depositors in a traditional bank. As a result, they are far more susceptible to a "run on the bank" than a traditional bank – where due to FDIC insurance and FDIC receiverships, individual customers may not rush to withdraw funds if it is reported a bank is in trouble. Crypto

exchanges also lack an analogue to SIPC insurance, which insures customers against loss (up to a specific amount) in the event of the collapse of a SIPC-regulated broker-dealer, and which enables rapid transfer of account value in the event of a SIPA liquidation.

4) Due to the nature of cryptocurrency, and irreversible transactions, there is a far greater likelihood of hacks causing a permanent loss of funds. This "hacking risk" exists in traditional finance, but not to the same degree.
5) Many crypto companies operate in a regulatory "gray zone" either by using offshore entities or simply by waiting for regulatory agencies to object to their actions. This creates substantially increased counterparty risks and potential hidden regulatory risks. Further, there are likely many retail customers who do not fully appreciate the current regulatory status of cryptocurrency institutions and the risks they have undertaken.

I. **Out-Of-Court (Market) Solutions**

First, in many cases a financial crisis at a single firm or a small set of firms can and has been dealt with outside a bankruptcy or other governmental process. When successful, these processes can eliminate the costs, delay, and friction involved with an in-court or governmental solution. However, there are important limitations on out-of-court solutions as well that must be fully understood: specifically, the inability to bind "holdout" creditors, the inability to deal with unknown future liabilities, and the risk of creating liabilities for the parties involved in the event that the out-of-court restructuring fails and the company goes into a bankruptcy process.

The core goal of an out-of-court solution is to restore confidence in the market to end the "run on the bank" and to allow the company to continue as a going concern, preserving the "going concern" value of the company and avoiding a fire sale or liquidation that would lose value otherwise available.

The necessary component of any successful out-of-court restructuring is **capital and liquidity**: enough capital must be publicly injected into the company to restore confidence in the market, and enough liquidity must be injected to allow it to continue to pay its debts in the ordinary course of its business (including any increase in withdrawals or collateral demands the crisis may have caused). Further, this must be done before the situation worsens – either by reckless risk-taking as the company seeks to bet its way back to solvency, or by the company selling assets well below their long-term value to raise capital now.

The key out-of-court solutions that exist are the following:

1. Lying

To be clear: this is not a legal out-of-court solution, and a company in a financial crisis should not resort to it. Unfortunately, nonetheless it is a common one. A financial company in distress may resort to simply lying to the market, hoping to keep financial gravity at bay while the market turns around and restores them to solvency and/or liquidity – by having the company take risks that the customers or creditor would not authorize.

Distilled to its essence, imagine a bank that has lost 20% of its customer deposits. It can report this loss and face the consequences – generally, at severe damage to the decision-makers' careers and/or wallets. Or it can lie to the public, take 30% of the remaining customer assets, and go to Vegas and shove those assets on black. If black comes up: the bank is recapitalized, and the investors are never told. If not, the company can repeat the strategy and hope to get lucky this time (at risk of an even greater loss to customers). At its core, the allure to the decision-makers is that it's no longer their money they are gambling with: the losses to their customers

and creditors (for their selfish purposes) are basically the same whatever the scale of the losses are, but avoiding that loss saves their careers and wealth. But their customers, who do care about the difference between a 20% loss and a 50% loss, lose: they bear the loss if this risky strategy does not pay off.

The reality is rarely this clear-cut. Rather than a Vegas roulette table, the money is invested in risky ventures that the company can assert it believes are a positive expected return; and the company may lie by omission rather than explicitly lie to the public. But this sort of desperate gambling is generally found when a financial collapse is investigated, that took a bad situation and made it worse. MF Global, for example, originally faced a liquidity crisis because counterparties were aware of its overly risky bets and demanded greater collateral (even before those bets moved against it). But in its attempt to solve that crisis – by taking its customer deposits – it took a bad situation and made it worse. Without a shortfall in its customer deposits, the firm could have been acquired by a larger entity that could provide support from its balance sheet (see the section on Balance Sheet Support, below). However, following the revelation of its customer account shortfall, that option was off the table and the company plunged into a liquidation. That liquidation ultimately was highly successful – the trustee paid off all customer claims in full – but only after years of effort and interim distributions to deliver customers their funds back.[5]

There are likely situations where it has seemingly worked out: the risky bet paid off, and customers were none the wiser. However, such desperate gambles avoid the reckoning with the underlying cause of the crisis, and reward a culture of reckless risk-taking, or even impunity and illegality, that will likely create a worse crisis later on.

Because lying is such is a common solution, once a financial firm is known to be in trouble the trouble compounds: it is no longer trusted by the market and when it is in trouble but not actually insolvent, the market's distrust may push it over the edge. It is a famous adage that any time a bank or financial institution mentions its liquidity, it doesn't have any.

As a result, a financial firm in trouble must be carefully scrutinized – and, once it has failed, it is necessary to engage in a careful investigation as to the cause of its ultimate collapse and what actions it took to the detriment of its customers and creditors – and if any of those actions violated the law.

2. Balance Sheet Support

When a financial firm faces a liquidity crunch (but is not insolvent, at the fair value of the assets rather than what they would fetch in a "fire sale"), there are a multitude of out-of-court solutions that can resolve the crisis. Ultimately, these rely on the fact that if the assets really are worth more than the liabilities and the underlying business is worth preserving, then there is a win-win solution that preserves that ongoing value and provides a return for the party providing the capital.

At its simplest, the struggling company can be purchased intact by a much larger company with a strong balance sheet. The new parent provides visible support in the market that the troubled company can pay its debts, and provides the necessary liquidity to pay debts as they come due. In return, the acquiring company obtains the "excess" value of the company (the amount the assets exceed the debt), minus whatever it paid to the old owners of the company. The old owners of the company likely take a loss (as previously they had all

[5] Note that the MF Global Inc. liquidation took place under the Securities Investor Protection Act (SIPA) as well as special bankruptcy rules for a futures commissions merchant, that contained legal protections for customer accounts that are likely not present in a crypto bankruptcy under current law.

of that excess value for themselves, and now have a negotiated fraction), but receive something for their equity rather than being wiped out in a bankruptcy proceeding. Finally, creditors of the company are paid as their debts come due, rather than awaiting the results of an orderly liquidation of the company that would be required to pay their claims while minimizing the losses from selling illiquid assets. The same approach can be taken by a large equity investment providing a substantial equity cushion and immediate liquidity. Here, old equity will be diluted, but retain a share in the upside of the company. Finally, a third party can provide a lending facility – taking a secured lien on the illiquid assets of the company, but offering enough liquidity in return to allow the company to pay its debts as they come due and to right the ship.

Each of these methods boils down to a third party providing additional liquidity to capture a return based on the difference between the asset value in the ordinary course of business, versus a liquidation "fire sale." Ultimately, however, they rely on solid (but illiquid) assets and a business worth saving – though, of course, it may need new management or new strategy to avoid a repeat of its liquidity crisis.

Perhaps the best example of such support is the purchase of Bear Stearns by JP Morgan in the leadup to the financial crisis. JP Morgan was convinced (perhaps wrongly) that Bear Stearns had sufficient assets to be worth saving, and that it could make a return by paying $2 a share (later increased to $10 a share) for a business that had traded at over $90 a share that year. The customers and creditors of Bear Stearns avoided the delay and losses that were associated with the alternative approach – a SIPA liquidation and Chapter 11 bankruptcy, like Lehman Brothers was forced into six months later.

The key issue is that for a company in a liquidity crisis, time is of the essence. The company must admit reality to itself and seek that partner to provide ample liquidity before it's too late – and before it takes foolish and/or illegal actions that turn a liquidity crisis into a balance sheet crisis as well.

3. Recapitalization / Out Of Court Restructuring

If a firm does not merely lack liquidity, but also has insufficient assets, it faces significantly greater difficulties. It needs more than temporary support – it requires a balance sheet restructuring. At its core, the out of court restructuring requires either raising new equity to inject additional assets, and/or converting existing debt into equity, until the company is solvent again.

To obtain new equity, a company can take either approach identified above (sell itself entirely to a company with sufficient equity itself, or raise new equity). However, both suffer from a problem: why put new money after bad obtaining a share of a company with assets less than its liabilities? In some cases, the company's going concern value may be high enough to overcome its asset shortfall. In other cases, the damage the company could cause when it collapses may be great enough that a third party puts in equity just to avoid that occurrence (a classic bail-out). The third party willing to put in money to avoid wider damage is generally the government – but not always. There may be large enough players in the industry that can afford to bail-out the troubled company at a loss to avoid the damage to their companies (and, few enough of those individuals they can avoid coordination or free-rider problems).

The other step is to equitize debt. If sufficient creditors convert their debt into equity (largely diluting existing equity holders to a small fraction of the company), the company can shed enough debt to return itself to solvency. This method of restructuring a business is most common in non-financial businesses with funded debt that can be negotiated with directly by the company, to "turn over the keys" to the debtholders in exchange for the cancellation of their debt (importantly, the value of the equity transferred may not match the face

value of the debt). Further, because the debt is due on maturity (not demand) the company can openly negotiate a restructuring without causing a market panic.

In the financial context, debt equitization is trickier. If they reveal to the market they are in trouble, they face the risk of a run on the bank.

Crypto hedge funds can seek to equitize their debt with their counterparties – but those counterparties (especially in the current market conditions) likely need their assets, crypto, or cash back and will have their own financial difficulties without it. They also may have the ability to try to grab assets first by terminating their relationships with the beleaguered entity and try to ensure they get paid in full while others shoulder the losses.

The entities most likely to benefit from some sort of equitization are the crypto shadow banks – entities like Celsius and Voyager. These entities have frozen withdrawals, creating a "self-help" temporary solution to their liquidity crisis. However, these withdrawal freezes cannot last indefinitely: their customers will eventually commence legal action or an involuntary bankruptcy if they cannot find a solution within weeks. If these entities can equitize some portion of their depositors' money (a so-called "bail-in"), that could be part of a restructuring of their balance sheet.

However, out-of-court restructurings face significant issues.

Most notable is the "hold-out" problem: there is no mechanism to drag along creditors who are unwilling to accept equitization or a haircut on their debt, even if overwhelming support exists among the creditor body. The prospect of a few holdouts demanding (and obtaining) full recovery while all of the participants take a haircut can pose substantial coordination problems. These problems are magnified when the creditor body cannot effectively be negotiated with – a crypto shadow bank with hundreds of thousands of account holders cannot effectively negotiate a deal with all of those holders, or even a sizable fraction. If the accounts are "top-heavy" enough that negotiations with the largest holders offers the possibility of sufficient equitization, there may be a workable path with a deal with just large holders. But if not, the company will need to essentially conduct a large-scale solicitation of its retail customers seeking their consent to equitize their debt.

The other problem is that such a "bail-in" where retail holders are offered equity amounts to, in essence, a large-scale public equity offering. This is likely to raise *substantial* securities law issues – and in the context of an insolvent entity that may have already (in regulators' views) played fast and loose with US securities laws, this may face immediate regulatory scrutiny. Further, the level of disclosure that may be required is likely substantial – customers must be given adequate information to determine if they wish to take equity in the troubled company vs. taking their chances with litigation to be paid according to the terms of their agreement. Again – these problems may be solvable if the customer base is "top-heavy" enough with accredited investors, but that may simply not be the situation at a company needing restructuring.

II. Bankruptcy Solutions

Ultimately, a debtor must decide if it will or will not file for bankruptcy protection. Case constituents may seek to negotiate an out-of-court solution and may strongly prefer one. However, especially in turbulent market conditions where multiple entities are at risk, there may simply not be the time or capital available to conduct out-of-court restructurings for each entity. It is, thus, critical that market participants understand the bankruptcy process and what can (and cannot) be done.

Crypto Platforms in Crisis: Bankruptcy Considerations

Most important is the recognition that virtually all crypto companies **do not** qualify for any of the special kinds of bankruptcies that certain financial entities are subject to – SIPA liquidations for broker-dealers, FDIC receiverships for banks, or FCM-specific customer laws and regulations for futures commissions merchants (commodity markets entities like MF Global). These regimes offer substantial protection to customers and the ability to treat customers as a distinct, privileged class over unsecured creditors. They also, however, come with some downsides – notably SIPA's requirement of a liquidation rather than a reorganization for a bankrupt broker-dealer.

Accordingly, any crypto entity that files in the United States is likely to file a standard Chapter 11 bankruptcy. Understanding the basics of how a Chapter 11 process can work, and the history of other financial bankruptcies and the lessons learned from those bankruptcies (even those conducted under bankruptcy rules not directly applicable to a crypto entity) are critical for market participants to understand how a crypto bankruptcy may play out.

1. American Bankruptcy Law – Understanding "Chapter 11" and "Chapter 7"

When people think of a corporate bankruptcy, they generally assume that what will occur is a liquidation: the company will be sold for parts, all assets converted into dollars, and those dollars distributed to creditors according to their legal rights. This is how the American "Chapter 7" liquidation bankruptcy process works, but **is not** the typical manner in which a corporate bankruptcy (including a crypto bankruptcy) proceeds.

Typically, a corporate bankruptcy takes place under Chapter 11, which enables a company to reorganize and continue as a going concern, and offers far more flexibility in how creditor claims are satisfied and how the bankruptcy process progresses. As described below, in Chapter 11 there **is not** a requirement that the company liquidate its crypto assets for dollars, and there **is not** a requirement that claims be paid only in dollars.

Chapter 11, under U.S. law, is generally filed by a business entity seeking to reorganize and continue to exist with a restructured balance sheet. The core principle behind a Chapter 11 reorganization is that most businesses are worth more "alive than dead" – the value of the operating business is greater than the sum of its parts, and so if that business can be preserved, there is more value to go around for creditors. Even if, ultimately, the business will instead be sold, it is preferable to do so in Chapter 11 because the business can be sold as a going concern. Even if the overall business no longer makes sense and the business will, largely, be shut down it is a rare business that has no aspects that retain going-concern value, and selling those intact can enhance recoveries for creditors.

A company that files for Chapter 11 does not go out of business. It continues to operate in the ordinary course of its business (with certain restrictions, such as opening new bank accounts), under the supervision of the bankruptcy court. Its existing management retains control of the company as a debtor-in-possession, unless for cause the bankruptcy court removes them and appoints a trustee to run the business. The "automatic stay" applies immediately upon filing for bankruptcy, and prohibits any creditor from seeking to collect or enforce a pre-filing debt against the debtor.

Following the commencement of the bankruptcy and the imposition of the automatic stay, the debtor attempts to negotiate a "plan of reorganization." A plan of reorganization provides for the treatment of each "class" of claims, subject to certain bankruptcy rules such as the "absolute priority rule" (generally speaking, each class of creditors (administrative, secured, priority, unsecured, equity) must be paid in full before the class below it can obtain anything on account of its claim). If enough creditors vote in favor of the plan, the plan

can be approved by the bankruptcy court, and once confirmed and implemented the reorganized company exits bankruptcy, free of all debts other than those specifically assumed by the plan.

A bankruptcy plan does not need to pay each creditor in cash. It is common, for example, for a class of creditors to obtain equity, shares in a trust that holds illiquid assets or litigation claims or insurance claims, or other non-cash consideration. Importantly, a crypto Chapter 11 plan could pay creditors whose debts are denominated in crypto **in that currency** – rather than requiring the company to liquidate its cryptocurrencies and pay creditors only in dollars.

One key requirement is that all creditors must do better in a Chapter 11 plan of reorganization than they would do in a Chapter 7 liquidation. This is rarely a difficult standard to meet, because generally speaking there is considerable "going concern" value that is preserved. Even where the plan is a 'liquidating' plan, the administrative savings of a Chapter 11 plan are often considerable.

A Chapter 11 plan and bankruptcy offers several advantages over out-of-court restructurings. First, the plan can bind holdouts: if a class (50% by number, 67% by dollar amount) votes to accept a plan, that vote binds the entire class without needing to obtain approval of each holdout. Second, it is far easier to give non-cash consideration such as equity or contingent interests in trusts without running afoul of securities laws. Third, the automatic stay protects the company from interference in this process and ensures that it has a "breathing spell" to negotiate the plan.[6]

Unless the bankruptcy court orders otherwise, the debtor is the only party that can initially propose a Chapter 11 plan. Typically, the debtor either negotiates pre-petition and enters bankruptcy with a plan that they expect to push though with the support they have (or will obtain), or act as a broker between creditors to negotiate to a plan process.

In most bankruptcies, an official committee of unsecured creditors is appointed to represent the interests of unsecured creditors. This committee owes fiduciary duties to the unsecured creditor class as a whole, and is entitled to retain advisors at the bankrupt company's expense.

2. Bankruptcy-Specific Issues

As discussed, most crypto firms are not regulated financial institutions, and so there are no special forms of bankruptcy that are designed to deal with the sort of customer accounts many have.

1) Accounts: Crypto customers face the prospect of being nothing more than unsecured creditors, and unorganized ones at that. In a bankruptcy proceeding, unsecured creditors are often in a weak position to begin with: company management still controls the company (and hired the lawyers running the bankruptcy), and secured creditors (if any) have significantly greater control over a bankruptcy process by virtue of their collateral.

   Because customers are so widely dispersed it is difficult to organize enough to effectively represent their interests prior to a bankruptcy. As a result, a company may instead negotiate with potential acquirors or potential secured lenders that would impair customer claims and rights.

[6] While certain crypto firms, such as Celsius and Voyager, have created a "self-help" stay by simply refusing to honor withdrawals, such efforts can only last until a creditor secures court intervention.

Customers will need to organize themselves out-of-bankruptcy to the extent possible, but inside bankruptcy will largely act through an official committee.

2) Delay: Because crypto customers lack explicit legal protection, it may be difficult to do interim distributions of accounts (similar to those done in MF Global, Lehman Brothers, and other financial insolvencies). It is not impossible – but debtors may be loath to do so because interim distributions would give up leverage and control in the bankruptcy case. As a result, customers will have an incentive to push a plan process along quickly. However, customers will not immediately have the ability to file and pursue a plan, and must work with management (at least, initially) – and management may be bad actors, whose fraud and/or incompetence caused the crisis.

3) Claim Dollarization: United States bankruptcy law presumes debts are to be valued in dollars, as of the filing date. This makes sense in most contexts – where a claim is denominated in a separate national currency, it is a significant administrative convenience to convert that claim to dollars, and selecting the filing date avoids disputes over what date's exchange rate should be used. Further, since national currencies tend not to significantly move in price, the administrative savings outweigh any potential unfairness to creditors.

   In contrast, in cryptocurrency, valuing a claim in dollars as of the filing date ("dollarization") can lead to significant unfairness and create the sort of intercreditor issues discussed above – particularly if the company still has the cryptocurrency on its books. A creditor who wished to retain the potential for the appreciation in value of their cryptocurrency may be denied that opportunity by dollarizing claims of crypto that increases in value – but the company, or other creditors, may be incentivized to repay crypto that declines in value "in kind" so that heads you lose, tails the company wins. As one example, Mt. Gox filed for bankruptcy in Japan with a significant shortfall in its customer accounts. However, subsequently the company's bitcoins rose dramatically in price – potentially allowing Mt. Gox to pay account holders the full value of their account as of the filing date (valued in yen), and for the owners of Mt. Gox to retain the surplus. The unfairness of such a solution (which did not come to pass) is evident.

   Further, "dollarization" creates an incentive for a crypto company in Chapter 11 to rapidly liquidate its crypto holdings, causing a pronounced decline in prices to the detriment of the broader crypto ecosystem – and to give market participants the opportunity to obtain crypto that belongs to creditors at a discounted price, while those creditors lack the funds to invest at that time themselves.

4) Inter-customer Issues: Where a crypto exchange did business in a number of cryptocurrencies (including stablecoins) there is a significant risk as prices move that the interest of customers moves – customers whose coins are collapsing in value will have different incentives compared to customers whose claims are stable or increasing in value. A prolonged bankruptcy may cause their interests to diverge and create pressure regarding if any shortfall should be shared across asset classes or localized. Further, to the extent that the crypto company's asset mix do not match its liability mix, there will be significant issues regarding if the company should purchase new coins, or to simply pay claims in dollars based on a valuation as of a certain date – the dollarization issue identified above.
5) Customer Risk Tolerance: Finally, customers may disagree how much risk they are willing to take during the pendency of the bankruptcy. Some customers, burned by the "crypto winter" may push to reduce all assets to cash as quickly as possible. Others may, instead, push to get "paid in kind"

by having their debts paid in the cryptocurrencies they are owed. Further, some customers may seek to have the company continue to operate trying to generate a return to pay the full amounts owed; others may wish the company to terminate operations and return funds as soon as possible, having lost faith in the company and its management (if not the entire crypto ecosystem).

6) Funding the Bankruptcy: A Chapter 11 bankruptcy requires money. The debtor and the committee's advisors must be paid, the debtor's employees must be paid, and post-petition expenses of running the business must be paid. This funding will either come out of the debtor's own funds (if it has not granted a secured creditor a lien on those funds), or from a third party that offers debtor-in-possession financing ("DIP financing"). DIP financing may often contain significant "case controls" – which can be to the advantage of creditors if they move the case along, but can disadvantage creditors if they are structured to move the case along in a manner favorable to that lender (and management) but not in the interest of customers.

3. How A Crypto Bankruptcy May Play Out

As discussed, crypto firms are often not licensed as financial institutions with regulators such as the SEC/FINRA, CFTC/NFA or state or federal banking regulators. As a result, there are currently no special forms of bankruptcy in the United States that are designed to deal with the sort of customer accounts many cryptocurrency financial institutions have.

Importantly, a crypto bankruptcy **does not** need to be a long, protracted affair where customers get paid pennies on the dollar years from now. For example, a "crypto shadow bank" that needs to file for Chapter 11 will generally be able to file a simple plan on day one. This plan would:

- Identify the existing assets of the company, its debts, and the amount of the anticipated "shortfall" – the difference between the assets available to customers, and their debts.
- Allocate those assets (after the payment of any required senior claims) to the payment of customer claims and any other unsecured claims. This will identify
    - What can be paid "in kind" – i.e., for debts denominated in cryptocurrency, paid in that cryptocurrency
    - What will be paid "in cash" – i.e., for cryptocurrency debts that the company does not have the applicable cryptocurrency, payment of its value in dollars on a specified date;
    - 100% of the equity of the company (to the extent it will continue as an operating concern); and
    - 100% ownership of a litigation trust, that will pursue any claims against insiders or third parties that contributed to the crisis for the benefit of the customers, and the liquidation of any illiquid or long-dated assets.
- Provide for a quick voting process and exit from Chapter 11, where customers will be able to withdraw their funds from the company if they see fit (if such a company continues to exist).

Most importantly, in a Chapter 11 plan process, you can avoid the two biggest issues in negotiating an out-of-court solution. First, out of court, you generally need unanimous approval to impair a creditor's claim. If 95% of creditors agree to be paid part in equity, the remaining 5% can demand to be paid in full, and sue to obtain payment in full – the "hold-out" problem. Second, issuing securities (such as equity in the company) outside of bankruptcy can be fraught with regulatory issues – magnified in the case of crypto financial firms, which regulators may view as already having violated securities regulations. Inside of bankruptcy, it is a much simpler process to distribute equity, or other forms of securities, to retail customers.

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However, there will be several key ways in which other parties may seek to impair the rights of creditors or customers, or to take value that should be allocated to them.

Most importantly, because management proposes the plan, the plan will often propose to release any and all claims against management and other insiders – subject to an "internal investigation" run by that management, or people that management hired. Customers and creditors should not permit this sort of "white-wash" report, or accept such releases unless accompanied by fair payment from the subjects of these releases. Customers and creditors – likely through the official committee – will need to investigate how the debtor came to be insolvent.

When it comes to financial firms, the answer is often fraud and/or incompetence, and the line between them can be thin. Understanding how and why the losses occurred, and who may be liable for those losses, will be critical – both in recovering funds and holding wrongdoers to account, and ensuring that any reorganized entity is run in a more competent and honest manner.

Further, management may have sought to lie and cover up the situation while making increasingly desperate gambles (as discussed above), and significantly increased losses to their customers. Worse, they may have siphoned off value (or allowed it to be siphoned off) to insiders or preferred creditors in that process, at the expense of unsecured creditors and customers.

Existing management may need to be displaced. Where existing management has committed fraud or committed egregious errors, management may seek to use its control of the Chapter 11 process to protect itself – refusing to allow a plan that does not release them to proceed. In this event, creditors and customers will need to move to replace management by the appointment of a trustee. This happened, for example, in the MF Global bankruptcy – where the management that had "misplaced" $1.6 billion of customer funds, and whose defense against charges that they *intentionally* took them (committing a crime) was that they had *incompetently* lost them by mistake and simply not realized it. There, management realized their control of the company was untenable and joined in the motion to appoint a trustee alongside the committee – but it is likely that would not be repeated in a crypto bankruptcy where management wanted to protect itself. Customers and creditors must be prepared to push the bankruptcy court to remove management, so it can be investigated while customer funds are returned as quickly as possible.

One important factor to keep in mind is that while a Chapter 11 bankruptcy has a number of rules, those rules can often be sidestepped or bent with the consent of most or all parties. Here, there will be huge coordination problems among customers – however, many non-customer creditors may have a vested interest in avoiding impairing customer accounts because of their exposure to the broader crypto ecosystem that would be severely damaged by such an attempt. An example is the MF Global liquidation: the trustee in that case was able to distribute funds to customers prior to the end of the bankruptcy despite certain legal impediments, because the non-customer creditors of MF Global were largely other firms in the commodities industry that could not afford a general customer loss of confidence in the industry. The trustee was, thus, able to lock up support for the customer advances and to sidestep any objection that might have raised serious legal issues.

To date, the Celsius and Voyager bankruptcy proceedings have shown certain elements of how a cryptocurrency bankruptcy may play out, but both are in their relatively early stages. Voyager had appeared close to a resolution of its case – whereby it would sell customer accounts to FTX US, allowing customers to receive distributions quickly, and would pursue litigation for those customers outside of bankruptcy through a

liquidation trust. However, this plan appears to have collapsed due to the bankruptcy filing of FTX US. At this time, it is uncertain what the next steps for Voyager are.

4. Investigation

In a Chapter 11 process, the committee will typically conduct an investigation into the causes of the debtor's bankruptcy, and any claims against third parties that may exist – either for wrongdoing, to recover property of the estate, or to avoid transactions for the benefit of the estate. The committee's investigation will generally utilize so-called "2004 Discovery" which authorizes very broad discovery (far broader than in typical litigation), including to go on a 'fishing expedition' to investigate areas of suspicion without firm evidence of wrongdoing already in hand.

This discovery enables the committee to demand documents, electronically stored information, and any other tangible sources of information (so-called "document discovery") and to demand that witnesses appear for an interview under oath (referred to as "depositions"). These demands are enforceable by a subpoena and failure to comply can result in penalties. However, this investigation is not a law enforcement investigation, and the committee may be limited in how effectively it can compel compliance if relevant information or individuals are abroad, refuse to comply, or assert rights under the 5th Amendment to avoid self-incrimination (when there is potential criminal liability as well).

In addition to this investigation, the debtor may conduct its own investigation. Typically, if the debtor is investigating its current or former officers, or actions taken by management, creditors view this investigation as a "white-wash" and will oppose any effort to privilege this investigation over a committee investigation.

As a separate matter, the government may investigate any potential criminal violations (both against the debtor, or persons affiliated with the debtor), especially if wrongdoing is suspected or evident. This investigation will typically be entirely separate from any investigation conducted by an estate fiduciary, and while the government may request information from those estate fiduciaries (or request information uncovered in their investigation) often this is a one-way street: the government does not share what it learns with the debtor or the committee.

If the court (or a party in interest, such as a creditor) believes that an independent investigation is required, they may seek appointment of an examiner: a party charged with conducting an independent investigation into certain topics (set by the bankruptcy court), and paid for by the bankruptcy estate. For example, Robert Stark, a partner at Brown Rudnick, was appointed as an examiner in the Cred case, and uncovered significant wrongdoing that had not been previously uncovered (including that an officer of Cred was an escaped felon). Debtors typically oppose an examiner appointment. Depending on the facts of the case, the committee may support an examiner, or view it as unnecessary duplication of its own investigation or may impair claims the committee believes it possesses if the examiner disagrees with the committee's conclusion.

In a crypto bankruptcy, it is certain that a committee will conduct a 2004 investigation and seek to bring any litigation claims it uncovers as a result. Appointment of an examiner is also common – both the Cred and the Celsius case have seen an examiner appointed, while none has been appointed in Voyager.

Following an investigation, claims are typically pursued by a committee, pursuant to a motion seeking standing to assert those claims on behalf of the debtors, or by a litigation trust created pursuant to a Chapter 11 plan.

While not applicable to crypto bankruptcies, in a SIPA liquidation (such as the Madoff case, Lehman Brothers, or MF Global) the court-appointed SIPA trustee conducts an investigation (and not the committee, which does not exist in a SIPA liquidation). The SIPA trustee will generally produce a report and recommendation laying out the causes of the bankruptcy and any suggested regulatory reforms.[7] Again, however, this investigation is not a law enforcement investigation, though to the extent appropriate or necessary a SIPA trustee will share information with relevant law enforcement agencies. Again, however, this information sharing is typically a one-way street.

BROWN RUDNICK QUALIFICATIONS

Brown Rudnick is qualified to assist customers and creditors of distressed crypto companies, inside of and outside of bankruptcy. This is an area where Brown Rudnick has deep experience in all key areas of this complex situation. We have represented numerous crypto companies in non-bankruptcy related matters that required deep understanding of the details of cryptocurrency and the blockchain, and can bring that knowledge to bear. In restructuring cases, we are well known as tenacious advocates for junior creditors who will need to fight hard to obtain the value they are owed. We focus on delivering value to those creditors by negotiating creative solutions to complex problems for the benefit of our clients. We do so in negotiated out-of-court restructurings when possible, and in bankruptcy court when those out-of-court solutions are not possible.

1. Crypto-Specific Experience

We have played important roles in cryptocurrency bankruptcy proceedings to date. The head of our restructuring practice, Robert Stark, was appointed as an examiner in the bankruptcy of Cred Inc. ("Cred") and retained Brown Rudnick to conduct his examination. Cred, like Celsius, took depositor cryptocurrency and promised to pay interest on it, and would offer cryptocurrency secured loans to retail customers. Cred – like Celsius – then ran out of liquidity. Mr. Stark was commissioned to investigate and report[8] on Cred Inc. and the cause of its collapse. His investigation revealed that Cred lacked serious risk controls, had made significant investments in companies that could not and would not return its funds on demand with minimal diligence, and employed as their chief operating officer (apparently unbeknownst to other officers) a man who was an escaped felon from a prison in the U.K. Further, our firm has represented Mt. Gox's Japanese trustee in the United States, including in in returning Mt. Gox's U.S. based assets to the plenary proceeding for distribution to creditors, and in U.S.-based litigation.

We also have substantial non-bankruptcy cryptocurrency experience. Brown Rudnick's Digital Commerce Group is a cross-disciplinary team of lawyers focused on advising software, internet, blockchain cryptocurrency, and fintech companies. We also advise companies in a broad range of industries on high-tech matters including data protection and privacy, intellectual property, commercial law, and cyber-crime.

Clients include platforms in various development stages from startups to well-established cryptocurrency exchanges, derivative platforms, bank charter applicants, NFT platforms, mining companies, protocol developers, and a large array of businesses in the blockchain space. We also assist large companies, including multinationals, in matters involving data security, privacy, technology transfer, and IP disputes.

[7] For example, the MF Global Inc. Trustee's report can be found here, which lays out how the "shortfall" in MF Global's customer accounts occurred and suggestions for reform of commodities regulations:
https://document.epiq11.com/document/getdocumentbycode?docId=1753883&projectCode=MFG&source=DM
[8] Available at https://www.donlinrecano.com/Clients/cred/ViewAttachment?casen=20-12836&docketn=605&partn=1

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We help our clients with corporate matters, as well as understanding the regulatory and legal implications of their business model. We handle a wide range of disputes, in arbitration, litigation, trials, and appeals, with a deep bench of seasoned disputes lawyers.

Brown Rudnick offers a combination of traditional financial knowledge with fintech and cryptocurrency experience. Brown Rudnick assists its digital commerce clients in exploring ways to innovate financial systems while ensuring they operate in a compliant manner.

2. Financial Restructuring Experience

We also have experience in complex financial bankruptcies that involve retail customers from all angles. Our team members have represented creditors in the Lehman Chapter 11 case and in the Lehman subsidiary U.K. proceeding, represented the SIPA trustee for the liquidation of Lehman Brothers Inc. and MF Global Inc. Brown Rudnick currently represents the liquidators of the Fairfield Funds (Madoff feeder funds) in recovering funds for the victims of Madoff's Ponzi scheme, represented the FDIC as receiver for failed banks.

We have significant cross-border experience, with offices in the United States and the United Kingdom that both possess restructuring and crypto experience – critically relevant in this case, where Celsius has deep ties to the U.K. (although it is a U.S.-based company). Indeed, we worked on the U.K. or European side of many of the financial bankruptcies listed above, and others such as Lehman Brothers International (Europe), MF Global, Landsbanki, Kaupthing and Glitnir Bank (Icelandic banks in insolvency), Cyprus Popular Bank (deposits frozen, split into "good bank" (i.e. insured deposits under EUR100k) later merged into Bank of Cyprus and "bad bank" uninsured deposits over EUR100k and old shares and bonds), Banco Espirito Santo (Portugal), and Rioforte (Luxemburg).

3. Investigation and Litigation Experience

We have broad experience in conducting investigations into potential corporate malfeasance and other claims both inside of and outside of bankruptcy, and prosecuting claims based on those investigations for the benefit of victims. Our lawyers include former prosecutors and regulatory officials in the key global jurisdictions of today's enforcement environment, and together have decades of experience in the highest-profile civil, criminal, and regulatory matters. We handle investigations and civil and administrative proceedings brought by almost every regulatory body, including the U.S. Department of Justice, U.S. Securities and Exchange Commission, Financial Industry Regulatory Authority, Office of Foreign Assets Control, Internal Revenue Service, federal and state banking regulators, and state law enforcement agencies throughout the United States from the initial inquiry stage through formal investigations, federal court and administrative enforcement actions, criminal prosecutions, and related civil litigation.

In bankruptcy, for example, as discussed above, we conducted an investigation on behalf of the Cred examiner into allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, and irregularity in the management of Cred's affairs. Our investigation determined that Cred's failure could be attributed to grave dereliction in corporate responsibility that uncovered serious fraud and discovered, among other things, that an officer of Cred was an escaped felon who was convicted in the U.K. for financial crimes. Our investigation uncovered additional assets that were recovered for the benefit of creditors, and identified claims and avenues of further investigation that may lead to further recoveries.

Crypto Platforms in Crisis: Bankruptcy Considerations

In other bankruptcy cases we have conducted similar investigations. For example, in EXCO Resources, unsecured creditors were told (accurately) they were hundreds of millions of dollars "out of the money" based on the value of the company and the amount of secured debt as of the filing that existed ahead of unsecured creditors, and entitled to nothing (inaccurately). An investigation conducted by Brown Rudnick on behalf of an unsecured committee revealed significant claims of corporate misconduct by certain directors with links to the secured lenders, as well as significant claims to avoid the secured debt that stood between unsecured creditors and a recovery. Ultimately, in settlement of the litigation that Brown Rudnick led, unsecured creditors received a recovery of an estimated 22% of the value of their claims.

We also have extensive investigation and litigation experience outside of bankruptcy and regularly represent defendants in highly publicized matters. For example, we successfully represented Mark Cuban during a three-week trial concerning SEC insider trading allegations and prevailed on all charges. Currently, we represent Mr. Cuban and the Dallas Mavericks in a class-action lawsuit in the Southern District of Florida in connection with the Voyager bankruptcy. Plaintiffs in the Florida suit allege that Mr. Cuban and the Mavericks violated various provisions of state securities laws and deceptive trade practices statues in connection with Voyager's offering and sales of Voyager's Earn Program Accounts.

We have also represented Elon Musk relating to an SEC securities fraud charge related to his tweets about a potential transaction to take Tesla private. Mr. Musk settled the charges against him without admitting or denying the SEC's allegations.

Brown Rudnick also regularly represents clients defending against government claims alleging financial fraud, often involving complex financial instruments, as well as breaches of fiduciary duty and other corporate misconduct. We represented Lucent Technologies' senior executive in an SEC enforcement action regarding accounting fraud, and summary judgment was granted against the SEC with respect to all fraud allegations. We also represented the owner and director of a global marketing business in relation to allegations of fraud and money laundering in a multi-jurisdictional criminal investigation into the activities of a well-known cryptocurrency business.

Furthermore, we regularly conduct forensic fraud reviews for Boards of Directors, Special and Audit Committees, and senior management in a multitude of contexts dating back two decades to Global Crossing's Special Committee review of allegations of improper accounting methods made by one of its former financial executives. Recent representations have included, among others, (i) a Special Committee of an online payroll and human resource technology provider in a review of whistleblower allegations and SEC disclosure issues; (ii) the former chairman of the Audit Committee for the Board of a Russia-based telecommunications company in connection with a DOJ/SEC investigation into alleged violations of the FCPA; (iii) the Audit Committee of a biotech company in a review of allegations of fraud and accounting irregularities identified in a short seller report; (iv) the representation of the CEO and COO of Chicago Bridge & Iron in Audit Committee and SEC investigations surrounding accounting and disclosure issues; and (v) an electric vehicle company's Special Committee of the Board of Directors in an internal investigation of certain sales of equity securities made by and to individuals associated with the company ahead of the company going public through a SPAC. We are currently representing a senior executive in connection with a Special Committee review investigating allegations of payments of bribes to government officials in connection with securing power contracts in Asia.

We have led numerous internal investigations for Fortune 100 and Fortune 500 companies into fraud-related allegations, several of which also involved related regulatory agency investigations and/or litigation by private shareholders. For example, we represented Royal Dutch Shell Plc in an accounting fraud review concerning proved hydrocarbon reserves, as well as a review of bribery allegations related to Shell's Nigerian-based

Crypto Platforms in Crisis: Bankruptcy Considerations

business operations. We also led internal investigations relating to allegations of fraud for a Japanese multinational company, a Qatar-based infrastructure company, and a solar energy company, among many other high-stakes, cross-border investigations.

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About Brown Rudnick LLP

Brown Rudnick LLP | Introduction

Who We Are

Brown Rudnick represents clients from around the world in complex business transactions and high-stakes litigation. Bringing ingenuity, experience, and relentless focus to our clients' high-stakes matters, we provide business-focused solutions that address the demanding, dynamic, worldwide marketplace.

In a world of mass legal service providers and anonymous corporate law firms, Brown Rudnick acts and thinks a little differently. With more than 250 lawyers in the world's leading finance and technology centers, we offer clients the benefits of working with a global firm. We incentivize our partners to drive superior service through collaboration. And we focus on practice areas and industries where we are market leaders, so clients turn to us when the stakes are highest.

Clients have all the benefits of working with a global law firm but without the drawbacks of clients feeling like they are a "small fish in a big pond" or getting lost amongst the endless red tape, layers of management, or need to "feed" multiple lawyers.

We do not strive to become a provider for "volume work" – instead we focus our energies on being amongst the very best at what we do, working on the most complex transactions and disputes.

Because in business and in the law, ingenuity wins.

250+
lawyers and government relations professionals

7
offices in (Boston, Hartford, London, New York, Orange County, Providence, & Washington DC)

Practical and business-focused

Serving a global client base across a range of disciplines, including:

- Bankruptcy & Corporate Restructuring
- Complex Litigation
- Corporate & Transactional
- Cross-Border Deals & Disputes
- Digital Commerce
- Distressed Debt & Claims Trading
- Employee Benefits
- Energy & Regulatory
- Environmental
- Executive Compensation
- Finance
- Funds
- Government Contracts
- Government Law & Strategies
- Intellectual Property
- Intellectual Property Litigation
- Life Sciences
- Mergers & Acquisitions
- Real Estate
- Securities
- Tax
- Technology
- White Collar Defense, Investigations & Compliance

Bankruptcy & Corporate Restructuring | Overview

- We have successfully represented official committees of unsecured creditors and other key parties in many of the largest and most complex in- and out-of-court restructurings.
- With over 50 restructuring lawyers in the US and Europe, our team has a national and international record and reputation as one of the leading restructuring practices.
- We are seasoned attorneys acting as forceful watchdogs and advocates for our clients whose interests are very often in the most jeopardy in a restructuring.
- We have substantial experience and a successful track record in counseling "mixed" committees where bondholders, trade creditors, labor representatives, and other key stakeholders must find common ground to maximize estate recoveries.
- We lead with an interdisciplinary approach and informed perspective. Our team comprises lawyers from practice areas across the firm including these disciplines:
  - **Litigation**
  - **Corporate**
  - **Mergers & Acquisitions**
  - **Intellectual Property**
  - **Tax**
  - **Real Estate**
  - **Securities**
  - **Finance**
- We provide undistracted, unbiased and zealous representation, free of encumbering relationships and conflicts. We are committed to keeping ourselves available to analyze and, where appropriate, pursue claims against senior lenders and challenge the validity and priority of their asserted claims and liens.

"They are unbelievably good at coming into very difficult situations, and what they can accomplish there is breathtaking."

– Chambers & Partners: America's Leading Lawyers for Business (Bankruptcy & Restructuring)

"The team is excellent … it is particularly insightful in terms of bankruptcy court strategy and procedure."

"The partners all roll up their sleeves and get involved, and are all very sharp."

– Chambers & Partners: America's Leading Lawyers for Business

The firm "is recommended as the '*place to go when you really need someone to fight hard for a position against all odds*'."

– Legal 500 US

"They've really staked a claim in the sector. They have a deep bench and their attorneys are bulldogs."

"They're great lawyers and an awesome firm to deal with."

– Chambers & Partners: America's Leading Lawyers for Business

Brown Rudnick "*really [does] an effective job of pursuing every nook and cranny to chip away at the stone wall that debtors throw up in bankruptcy proceedings until they finally break it down. And they're going up against some of the top names on the debtors' side.*"

– Benchmark Litigation

"They zealously advocate for clients."

– Chambers & Partners: America's Leading Lawyers for Business

"They are *'very thorough and creative,' …* they *'look for new ideas and ways to attack issues.'"*

– Chambers & Partners: America's Leading Lawyers for Business

"They are very structured, diligent and are good at moving the case forward. They achieve phenomenal results in a short period of time."

– Chambers & Partners: America's Leading Lawyers for Business

"What made them a go-to was their depth of experience but also their ability to litigate in the bankruptcy court."

– Chambers & Partners: America's Leading Lawyers for Business

"They are responsive, technically knowledgeable and creative," reports a source, adding: *"They are business-oriented and have the ability to come up with practical solutions."*

– Chambers & Partners: America's Leading Lawyers for Business

"I was going to give my thanks to Mr. Stark and his team … for the great work you did on that report. It was excellent, done in a very short period of time, provided great information for me, and I'm sure for everybody else involved in this case…. [I]t was a comprehensive report and I appreciate it greatly."

– Judge John T. Dorsey, Cred Inc. hearing

"Mr. Stark,…. I've always enjoyed your presentations. I thought that they were a mix of intellect and practicality. And that's what this case needed."

– Judge Barry S. Schermer, Briggs & Stratton hearing

"Tell Mr. Stark I'm sorry not to be able to hear him today. He is *very* interesting…. He's persuasive, without being obnoxious. He's knowledgeable. And he's fun to listen to."

– Judge Barry S. Schermer, Briggs & Stratton hearing

"I really do believe it's important that committees function exactly the way that this committee is functioning. They raise difficult questions, they prosecute them in a highly professional manner, as all of the lawyers in this case have been demonstrating by their professionalism, by the way that they're dealing with each other and with the presentation of evidence. The system is working the way it's supposed to work."

– Judge Marvin Isgur, Legacy Reserves hearing

"Last night I was thinking about how lucky I was to have heard a proceeding with such world class lawyers on both sides arguing the case."

– Judge Marvin Isgur, Alta Mesa hearing

"I've known Stark for a long time. He doesn't leave many rocks unturned…[T]he Committee's been thoughtful. This is a thoughtful response. It's probably the best one that I've ever gotten because Mr. Stark listens…. He's done all the things to make me listen, and I have listened."

– Judge David R. Jones, Chesapeake Energy hearing

Bankruptcy & Corporate Restructuring | Select Experience

Japanese bankruptcy trustee in Chapter 15 proceedings

Claims Counsel for the Financial Oversight and Management Board of Puerto Rico

Ad Hoc Committee of Customers

Chapter 11 Examiner

Defense of bondholders & shareholders re: contractual & statutory burden sharing

Liquidators of Fairfield Sentry, Fairfield Sigma and Fairfield Lambda

Liquidation Trust

Investor Group

Respondents to an application made by the receivers of a trust in Chapter 11

Official Equity Committee

Single Largest Creditor/Chairman of Board

Senior creditors in restructuring of structured investment vehicle

Ad Hoc Committee of Lehman Brothers Treasury, BV Noteholders & Significant Trading Counterparties

Upper Tier 2 & Preference Share Retail Holders

250M€ debt restructuring of the building Rive Défense

Ad hoc group of subordinated noteholders

Digital Commerce | Overview

Brown Rudnick's Global Digital Commerce Group works with established companies, platforms in various development stages, start-ups, exchanges, financial institutions, investors, miners, and individuals looking to explore the benefits that Blockchain and digitization can offer, or expand their existing operations, in a compliant manner across jurisdictions.

Our team consists of a multicultural and multidisciplinary group of lawyers with decades of experience and a global presence that allows us to assist clients around the world.

Scope of Services

Regulatory Analyses
- Regulatory analysis to ascertain nature of tokens under current securities regulations
- Assistance with Terms of Use and Creator Agreements for NFT platforms
- Preparation of compliance blueprints for business models
- Assistance with industry-specific regulations
- Analysis of applicable licensing and compliance requirements
- Advice regarding compliance with KYC/AML obligations, government sanctions, and licensing requirements
- Advice regarding government sanctions
- Government audits
- Preparation of Public Relations guidelines to support regulatory blueprint
- Preparation of website disclaimers
- Assistance with third party communications and disclosures
- IP related matters (including protection of trade secrets, patents, trademarks, and copyrights)
- Cybersecurity and data privacy

Intellectual Property
- Patent, design, and trademark prosecution strategies and filings
- Complex software development, intellectual property, and licensing agreements
- Mobile apps, online liability, and digital strategies

Dispute Resolution
- Arbitration/Mediation/Litigation
- Internal Investigations
- White collar defense
- Government Investigations and Enforcement Actions

Corporate, Funds, Tax, and Transactional
- Incorporation of new entities
- Documentation of intercompany relationships
- Employment related matters
- Token option plans
- Flow of funds and corporate structure analysis
- Global tax planning
- Assistance with identifying targets for strategic alliances and related due diligence
- Documentation of investments at share ownership and token levels
- Design of investment and fund structures
- Assistance with service providers and other third-party MOUs / agreements
- Raising capital and issuing tokens in compliance with applicable law
- Supply Chain Optimization

ICOs/STOs/IEOs/TGEs
- Assistance with white papers
- Elaboration of compliance blueprints
- Elaboration and testing of smart contracts
- Exempt offerings (including Reg D, Reg S, Reg CF, and Reg A)
- Viability of selected functionalities
- Assistance with disclosures and disclaimers
- Assistance with preparation of prospectuses

Exchanges
- Guidance in connection with applicable Money Transmitter regulations, Broker Dealers, ATS registrations, CFTC compliance, and Investment Company Act
- Payment Systems
- Assistance with exchange listing strategy
- Assistance with listing applications

Digital Commerce | Select Experience

- Brown Rudnick represents global FinTech company **Yield.App**, a decentralized finance digital assets platform. We advise Yield.App on its terms and conditions to borrow digital assets and repay clients an annual percentage yield (APY) including in YLD, the Yield.App token. We also advise Yield.App on its general corporate structuring, data protection agreements, retail product and website marketing, corporate lending and borrowing documentation and product structures to meet with U.K. regulatory requirements.
- **Cred Inc.** was a global cryptocurrency platform that filed for Chapter 11 relief in Delaware in November 2020. Shortly after, the U.S. Trustee filed a motion requesting the immediate appointment of an examiner with full plenary authority to investigate the circumstances underlying the case. After a multi-day trial, the court granted the motion. The U.S. Trustee appointed Brown Rudnick's Robert Stark as the case Examiner.
- Represented the **Japanese trustee in the bankruptcy of Mt. Gox**, once the world's largest bitcoin trading exchange. The Firm was nominated for "Deal of the Year" in restructuring for assisting the Japanese trustee in returning Mt. Gox's U.S. based assets to the plenary proceeding for distribution to creditors in the foreign main proceeding.
- Following an in-court hearing, U.S. District Judge Richard Seeborg of the Northern District of California issued a ruling for In Re **Tezos** Securities Litigation, a consolidated federal class action pending in San Francisco, granting Brown Rudnick's motion to dismiss the federal securities claim asserted against its client, Swiss-based crypto financial services company Bitcoin Suisse AG. Judge Seeborg held that the Court did not have personal jurisdiction over our client, that our client was not a "seller" for purposes of Section 12(a)(1) of the Exchange Act, and that our client could not be kept in the action as a nominal defendant. Bitcoin Suisse AG's motion was granted without leave to amend.
- Secured a key victory for client **Wirex**, one of the world's leading cryptocurrency platforms, on its High Court trademark infringement claim against Cryptocarbon Global, another crypto provider, over Wirex's flagship Cryptoback crypto loyalty rewards program. The case highlighted how important it is for businesses to protect and enforce their trademark rights and other intellectual property, particularly in fast-growth industries such as crypto.
- Represented **Bibox**, a leading digital currency trading platform, in a securities class action victory. The suit had alleged violations of securities law. In a decision issued on April 16, 2021, by the Honorable Denise Cote of the U.S. District Court for the Southern District of New York, the ruling dismissed the class action against Bibox for lack of standing and as barred by the statute of limitations. The decision handed Bibox and Brown Rudnick litigators a notable win in a case that has been closely watched by participants in the fintech space and beyond.
- Advised **Coinfirm**, an industry-leading blockchain analytics and anti-money laundering solutions platform, on an $8m Series A funding round with investment from five venture capital funds. The Series A is co-led by SIX Fintech Ventures, the corporate venture arm of SIX, and FiveT Fintech, followed by MiddleGame Ventures. Mission Gate and CoinShares also participated in this round. Coinfirm leads the industry in compliance for cryptocurrency using powerful analytics across the most comprehensive blockchain database.

Additional Representative Clients

BINANCE tapatalk humaniq nash metadium particl Credits

Digital Commerce | Select Experience (Continued)

- A member of our team represented **Morgan Creek Digital** as lead investor in a $400 million investment into Gemini, a cryptocurrency exchange platform providing cryptocurrency purchase, custody and trading services, in addition to a variety of lending, credit, and NFT products, at a $7.1 billion valuation.
- A member of our team represented **Hume, Inc.**, a company employing NFTs to revolutionize the music industry with avatars of fictional musicians, since inception and have completed two rounds of preferred stock and token warrants financing. The most recent financing was a $12 million raise on a $78 million pre-money valuation.
- Members of our team have been:
  - Counsel for a **digital asset derivative exchange** in connection with U.S. regulatory advice and compliance and law enforcement inquiries.
  - Counsel for **software developers** and other **digital asset market participants** in connection with responses to U.S. regulatory inquiries and investigations related to DeFi and other blockchain related platforms and projects.
  - Counsel for **NFT platforms, issuers, and investors** in connection with regulatory compliance and dispute resolution matters.
  - Outside general counsel on regulatory compliance and investment decisions to **major digital asset funds, family offices and investors**.
  - Consumer arbitration and litigation on behalf of **digital asset investors and holders** on a wide range of disputes, including advisor agreements, wallet hacks, theft of NFTs and insurance coverage disputes.
  - U.S. counsel for major **Layer 1 and Layer II protocol developers and foundations**, focusing on U.S. regulatory compliance, transactions and dispute avoidance and resolution.
  - Counsel for a **major wallet provider** in connection with Series A and Series B funding efforts.
  - Counsel for a **major accounting and advisory firm** in connection with digital asset engagements and risk management.
  - Representation of **software developers** in connection with the design, development and launch of several blockchain based and enabled platforms, including consultation regarding platform structure, compliance obligations, and content delivery.
  - Litigation and arbitration for both **exchanges and consumers** in connection with multiple substantial digital asset losses.
  - Defense counsel for **crypto industry participants** in connection with multiple informal inquiries and investigations by state and federal regulators.
  - Counsel for **protocol developers** in connection with token allocation disputes.

Additional Representative Clients

SingularDTV Goldcoin ALEPH ZERO AppCoins SoluTech SENTINEL PROTOCOL

* Some of the above experience was completed by one or more of our lawyers prior to joining Brown Rudnick.

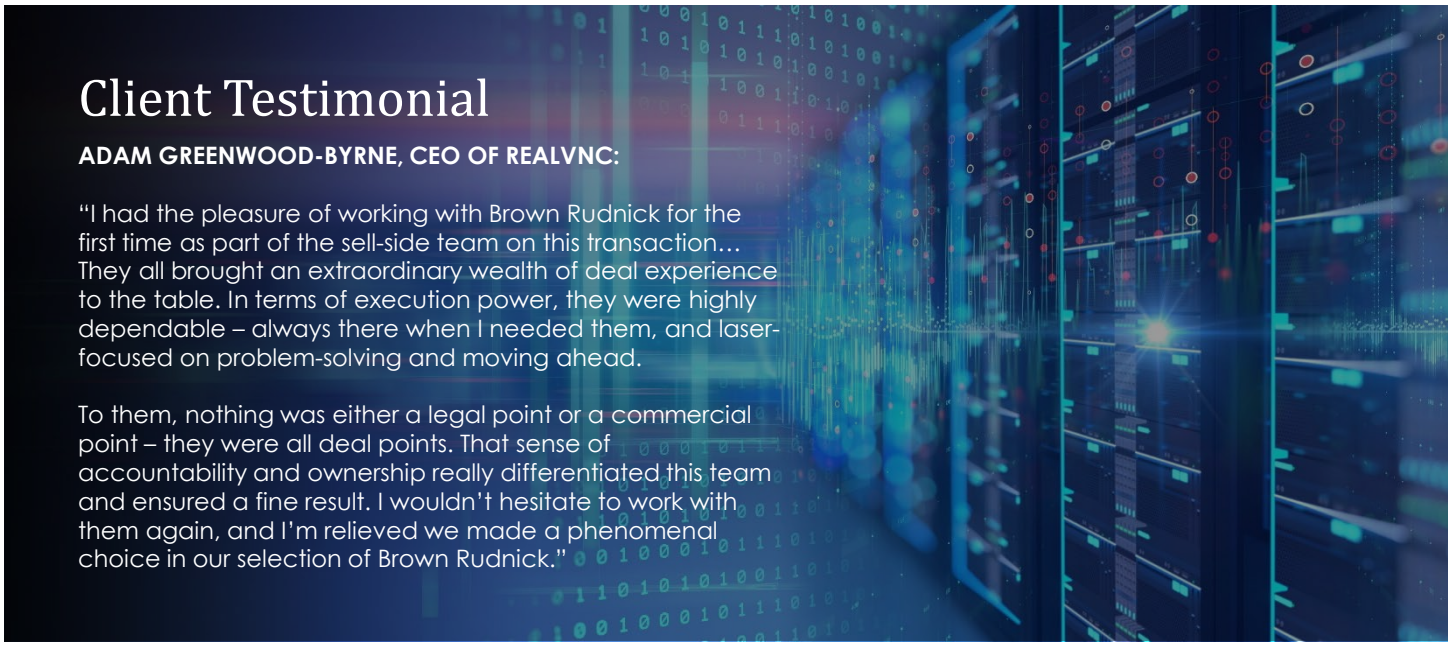
Technology & Innovation | Select Experience

Notable Deals in the Tech Sector

- Advised the sellers on the sale of **RealVNC**, a U.K. software and services company with technology for secure remote working, to Livingbridge, a U.K. PE fund. This was one of the U.K.'s largest software deals of 2021.
- Advised **Sophos plc**, on the sale by the founders and TA Associates, the Boston based tech fund, on the sale of Sophos to Apax for $810m. Sophos is a U.K. originated security software technology company, now head-quartered in the U.S.
- Advised on the investment by **IDG Ventures** into **Shazam**, the music recognition software company, later sold for $500m.
- Advised **Vodafone** on its technology joint venture with EE and Orange for the development and launch of their digital payments platform and app.
- Advised **SpaceX** on its investment into Surrey Satellite Technology.
- Advised **Tesla** regarding a JDA with Lotus for the original Tesla Roadster.

Key Restructuring Experience in the Tech Sector

- Advised **CXO LLC**, the interim managers and restructuring advisers, on the successful restructuring, refinancing and eventual sale of telecoms cable group, Pacific Crossing U.K., part of a $2bn U.S., U.K. and Japanese bankruptcy, for three years.
- Advised **Daewoo Corporation**, the largest creditor on the £100m administration and eventual liquidation of Daewoo Cars U.K., the U.K. distributor of Daewoo automobiles.
- Advised **Dove Energy Limited** on its £100m restructuring and liquidation, as well as the reorganization of its group.
- Advised **Hunt Oil** on its creditor claims in the insolvency of Afren MENA, including the acquisition of certain of Afren's assets.



* Some of the above experience was completed by one or more of our lawyers prior to joining Brown Rudnick.

White Collar Defense, Investigations & Compliance | Overview

Brown Rudnick is a law firm designed for speed and performance. In an age of whistleblowers, tip lines, and the 24-hour news cycle, more people than ever are minding your business. When this combines with increased international cooperation among and competition between enforcement bodies in various jurisdictions, you need a real-time, targeted response to any potential issue.

Brown Rudnick's White Collar Defense, Investigations & Compliance Group has the experience, depth, and judgment to provide that response. Our lawyers include former prosecutors and regulatory officials in the key global jurisdictions of today's enforcement environment, and together have decades of experience in the highest-profile criminal and regulatory matters.

When potential issues arise, our team has the experience to drive the investigation, get ahead of the issue, and avert or manage any crisis. In these situations, an internal investigation is not an end in itself, it is a means to an end. We focus on the key issues, anticipate the questions the enforcement bodies will ask, and convert a reactive situation to a proactive strategy in order to achieve the best outcome efficiently.

Brown Rudnick lawyers have successfully represented clients in minimizing the consequences of investigations and enforcement actions involving, among others, the following issues:

- Accounting Fraud
- Antitrust
- Audit Committees
- Bank Fraud
- Bribery & Corruption
- Computer / Intellectual Property Crime
- Congressional Investigations
- Corporate Internal Investigations
- Environmental Violations
- Export Controls
- Extradition
- False Claims Act (FCA)
- Foreign Corrupt Practices Act (FCPA)
- Forfeiture (Civil & Criminal)
- Health Care Fraud & Abuse
- Insider Trading
- Mail Fraud
- Money Laundering
- OFAC / Sanctions Compliance
- Official Misconduct
- Obstruction of Justice
- Procurement Fraud
- Qui Tam Actions
- Regulatory Investigations
- Securities Fraud
- Shareholder Actions
- Tax Fraud
- Whistleblower Claims
- Wire Fraud

Internal Investigations | Overview

Brown Rudnick's White Collar Defense, Investigations & Compliance Practice Group regularly represents client in internal investigations and has the experience, depth, and judgment to provide the necessary response to achieve the best outcome, efficiently.

If you learn of allegations of fraud, crime, or regulatory violations—regardless of how they come to light or how incredible they may seem—you need the right advice, early. As a result of our practical experience and genuine understanding of how regulators and enforcement agencies work, we will be able to identify swiftly whether a matter requires action and assist you in assessing the risk of shareholder or personal action being taken if no investigation is undertaken. We will also assist you to calibrate the risk of a potential whistleblower, disgruntled employee, or competitor taking matters out of your hands.

If an internal investigation is required, we will conduct it in a proportionate manner and in line with agreed objectives and outcomes. As a result of our extensive experience and interaction with the investigative agencies, we have substantial insight into the breadth and depth of information they likely will require. We use that insight in refining the range of issues from the earliest stage and placing our focus on the crux of the matter.

We avoid "mission creep" by working proactively toward the desired goal. We report regularly to you and apply controlled processes to each phase of an investigation to ensure that it is appropriately tailored and proportional to the circumstances. For corporate investigations, one size does not fit all, and bigger is not always better. That is why we work with you to structure our approach. Our investigation is protected by applicable legal privileges, which ensures that you can receive a candid assessment of the situation and decide on a course of action within the confines of a confidential environment. If you decide that it is in your interests to disclose our findings to the regulator, we will do so in a way that, as far as possible, maintains privilege against third parties and in subsequent civil proceedings. We have reliable legal and government contacts in many jurisdictions and have successfully negotiated numerous resolutions with the authorities.

We understand the unique dynamics of international investigations and can assist you in determining whether any reports need be made or whether action taken solely outside of the enforcement arena will be appropriate.

White Collar Defense, Investigations & Compliance | Select Experience

- Represented Examiner in cryptocurrency financial services platform Cred Inc.'s Chapter 11 petition. Conducted investigation on behalf of Examiner into allegations of fraud, dishonesty, misconduct, incompetence, and mismanagement by Cred's management.
- Represented cryptocurrency company in SEC investigation related to fraud and the improper issuance of securities through an Initial Coin Offering.
- Represented the Special Committee of an Audit Committee of an online payroll and human resource technology provider in a review of whistleblower allegations and SEC disclosure issues.
- Represented a Fortune 100 Company's Special Committee of the Board of Directors in an internal investigation in anticipation of a derivative action.
- Represented the former chairman of the Audit Committee for the Board of a Russia-based telecommunications company in connection with a DOJ/SEC investigation into alleged violations of the FCPA.
- Represented the Audit Committee of an oilfield service company in a review of disclosure concerns, other complex accounting issues, several whistleblower allegations, and allegations of workplace misconduct, including allegations of racism.
- Represented the Audit Committee of a public technology company in a review of whistleblower allegations and SEC disclosure issues.
- Represented the Audit Committee of a biotech company in a review of allegations of fraud and accounting irregularities identified in a short seller report.
- Represented the CEO and COO of Chicago Bridge & Iron in Audit Committee and SEC investigations surrounding accounting and disclosure issues. Matter resulted in no regulatory action being taken against clients.
- Represented Global Crossing, Ltd.'s Special Committee on Accounting Matters of the Board of Directors in an SEC fraud inquiry.
- Represented an electric vehicle company's Special Committee of the Board of Directors in an internal investigation of certain sales of equity securities made by and to individuals associated with the company ahead of the company going public through a SPAC.
- Advised monitor to Bristol-Myers Squibb Co., Frederick B. Lacey, who was appointed as part of a settlement agreement resolving federal charges of accounting fraud.
- Representing the Financial Oversight and Management Board for the Commonwealth of Puerto Rico in planning and bringing litigation to recover funds from billions of dollars of bonds unlawfully issued.
- Represented a clean energy company in an independent review of alleged fraud and accounting concerns, in connection with certain senior executives.
- Represented a company under investigation by the SEC for fraud in connection with the resolution of several defaulting mortgages.
- Represented five individual investors of a leading video supply chain technology company in connection with an SEC fraud investigation, relating to alleged material misrepresentations made to the investors.
- Represented automobile senior executive in connection with the Department of Justice's criminal investigation into defeat devices leading to emissions fraud within vehicles.

Latin America Practice | Overview

Brown Rudnick's Latin America team has extensive experience throughout Latin America on a broad range of corporate matters across the region, including Argentina, Brazil, Bolivia, Chile, Colombia, Ecuador, Peru, Mexico, Paraguay, Uruguay, and Venezuela, as well as Central America and the Caribbean.

With our deep understanding of the business culture, regulatory climate, and regional issues, Brown Rudnick is well positioned to help clients achieve their business goals in Latin America. We have long-standing and solid relationships with many law firms across Latin America. A number of our lawyers are admitted in Latin American jurisdictions and/or fluent in Spanish and Portuguese.

We advise U.S. businesses and other global clients in the following areas in Latin America:

- Mergers & Acquisitions
- Venture Capital & Entrepreneurship
- Private Equity
- Cross-Border Transactional (including matters such as factory relocations, outsourcing, infrastructure development, power plants, renewable energy, and construction)
- Joint Ventures & Strategic Alliances
- Corporate Finance & Restructuring
- Litigation, Arbitration, & Investment Treaty Disputes
- Merger Control & Antitrust
- Taxation & International Trade (including industry exchange control and tax structuring, cross-border acquisitions and dispositions, cross-border service, distribution, and licensing)
- Regulatory (including Exchange Control, U.S. Foreign Corrupt Practices Act (FCPA), UK Anti-Bribery Act, Compliance, U.S. Food and Drug Administration, and European and Latin American agencies)

Brown Rudnick's Latin American Practice group also represents Latin American companies with cross-border business opportunities, litigation and arbitration in the United States, Europe, Asia, and Africa.

Latin America Practice | Select Restructuring Experience

- Advised group of minority bondholders of OGX (Óleo e Gás Participações) in connection with litigation brought in New York and then the corporate issues arising from the proposed Reorganization Plan proposed by the Company. The deal was recognized by AML Global Finance and Latin Lawyers as the 2015 Restructuring of the year for 2015 in Latin America.
- Advised Catalyst regarding the November 2016 approved Creditor and Catalyst Led Restructuring Plan of Pacific Exploration & Production Corporation (Pacific Rubiales) ("Company") resulting in a reduction of overall debt (from USD$5.4 Billion to USD$250 Million) and the recapitalization and listing of the Company with the Toronto Stock Exchange under the symbol "PEN."
- Acted as lead counsel to a consortium of Convertible Noteholders and Potential New Money Investors of Pescanova, S.A. Group, the largest corporate restructuring in Spanish history with far-reaching subsidiary geographies including the U.S., France, Italy, Brazil, Chile, Argentina, Honduras, Portugal, Nicaragua, and Namibia. This engagement has required cross-border capabilities in a range of practice areas and concentrations.
- Advising bondholders and creditors committee in connection with bankruptcy-related issues in Chile.
- Advised an entertainment multinational debtor and its controlling shareholder in bankruptcy and Chapter XI proceedings in Argentina.
- Advised a paper manufacturer and a related financial institution in restructuring and liquidation proceedings in Argentina.
- Advised a major Boston-based financial institution in connection with a potential acquisition of a significant investment manager/asset manager with operations in Argentina and Uruguay.
- Represented a New York-based hedge fund in connection with bankruptcies and related trading opportunities of publicly owned companies in several South American countries including Colombia and Mexico.
- Advised holders of Argentina defaulted debt on settlement negotiations.
- Acted as counsel to Ad Hoc Committee of Bondholders of the Cerro Negro heavy oil project in Venezuela, owned in a joint venture by subsidiaries of ExxonMobil, BP, and Petróleos de Venezuela, S.A. ("PDVSA"). The successful resolution included a tender offer in which 99.11% of bonds were sold by our clients and other bondholders to PDVSA at a purchase price exceeding $500 million – equivalent to par, plus accrued interest, and a significant premium. This was recognized as the "2008 Deal of the Year" by Latin Lawyer magazine.

Representative Experience | Official Committees

A123 Systems, Inc.
Official Creditors Committee

A.H. Robins Corp.
Official Equity Committee

Adeptus Health, Inc.
Official Equity Committee

Aearo Technologies LLC (3M)
Unsecured Creditors Committee for Tort Claimants

Allis-Chalmers Corp.
Official Equity Committee

Alpha Guardian
Official Creditors Committee

Alta Mesa Resources
Official Creditors Committee

Anglo Energy Limited
Official Noteholders Committee

Aralez Pharmaceuticals Inc.
Official Creditors Committee

ATX Communications
Official Creditors Committee

Azure Midstream Partners
Official Equity Committee

Basic Energy Services, Inc.
Official Creditors Committee

BeavEx, Inc.
Official Creditors Committee

Boomerang Tube, LLC
Official Creditors Committee

Briggs & Stratton Corporation
Official Creditors Committee

Budget Rent-a-Car
Official Creditors Committee

Business Express
Official Creditors Committee

Chellino Crane Inc.
Official Creditors Committee

Chesapeake Energy Corporation
Official Creditors Committee

ClearEdge Power, Inc.
Official Creditors Committee

CODA Automotive, Inc.
Official Creditors Committee

Comdisco
Official Equity Committee

Constar International Holdings LLC
Official Creditors Committee

Continental Airlines
Official Subordinated Debt Holders Committee

Corinthian Colleges Inc.
Official Creditors Committee

CTC Communications Group, Inc.
Official Creditors Committee

Days Inns of America
Official Preferred Shareholders Committee

Dewey & LeBoeuf LLP
Official Creditors Committee

Digital Domain Media Group, Inc.
Official Creditors Committee

The Dolan Company
Official Equity Committee

EdgeMarc Energy Holdings, LLC
Official Creditors Committee

Elsinore Corp.
(The 4 Queens Hotel & Casino)
Official Noteholders Committee

EXCO Resources, Inc.
Official Creditors Committee

Fedders North America, Inc.
Official Creditors Committee

Fisker Automotive Holdings, Inc.
Official Creditors Committee

Fort Hill Associates
Official Creditors Committee

FRD Acquisition Corp.
Official Creditors Committee

Global Crossing
Official Creditors Committee

Global Power Equipment Group
Official Equity Committee

Golf Club of New England
Official Club Members Committee

Green Field Energy Services, Inc.
Official Creditors Committee

Green Valley Ranch Hotel and Casino
Official Creditors Committee

Herbst Gaming, Inc.
Official Creditors Committee

Hooper Holmes, Inc.
Official Creditors Committee

Insilco Corp.
Official Creditors Committee

Integrated Resources
Official Subordinated Debt Holders Committee

Ironclad Performance Wear Corporation
Official Creditors Committee

Jagged Peak / TradeGlobal
Official Creditors Committee

KIT digital, Inc.
Official Equity Committee

Legacy Reserves LP
Official Creditors Committee

Lernout & Hauspie Speech Products N.V.
Official Creditors Committee

Libbey Glass, Inc.
Official Creditors Committee

Representative Experience | Official Committees (Continued)

Lionel LLC
Special Counsel to the Official Creditors Committee

LTL Management LLC (Johnson & Johnson)
Official Committee of Talc Claimants

Mercury Finance Corp.
Official Equity Committee

Metabolife International, Inc.
Official Creditors Committee

Metal Partners Rebar, LLC
Official Creditors Committee

The Microband Companies
Official Creditors Committee

Mike Tyson / Mike Tyson Enterprises
Official Creditors Committee

Mirant Corp.
Official Equity Committee

Modern Aluminum Anodizing Corp.
Official Creditors Committee

Modern Shoe Company, LLC
Official Creditors Committee

Motor Coach Industries International, Inc.
Official Creditors Committee

MuscleTech International
Official Tort Claimants Committee in parallel CCAA and Chapter 15 proceedings

New England Compounding Center
Official Creditors Committee

New Seabury Club
Official Members/Homeowners Committee

N.V.E., Inc.
Official Creditors Committee

Oneida Ltd.
Official Equity Committee

Overseas Shipholding Group, Inc.
Official Equity Committee

Pac-West Telecomm, Inc.
Official Creditors Committee

Performance Sports Group Ltd.
Official Equity Committee

Philadelphia Energy Solutions
Official Creditors Committee

Pilgrim's Pride Corp.
Official Equity Committee

Prints Plus, Inc.
Official Creditors Committee

PrismaSystems Corp.
Official Creditors Committee

R.H. Macy & Co.
Official Noteholders Committee

Ravn Air Group
Official Creditors Committee

Real Industry, Inc.
Official Creditors Committee

Red Rose, Inc. (Petersen-Dean)
Official Creditors Committee

Reed & Barton Corp.
Official Creditors Committee

Revere Copper and Brass
Official Equity Committee

Revlon, Inc.
Official Creditors Committee

Rex Energy Corporation
Official Creditors Committee

Riverstone Networks
Official Equity Committee

Ruby Pipeline, LLC
Official Creditors Committee

Rural/Metro Corp.
Official Creditors Committee

Rymer Foods
Official Creditors Committee

School Specialty, Inc.
Official Creditors Committee

Service America Corp.
Official Noteholders Committee

Six Flags (Premier International Holdings Inc.)
Official Creditors Committee

Telemundo Group
Official Creditors Committee

Texscan Corp.
Official Creditors Committee

Thermadyne Holdings Corp.
Official Creditors Committee

Todd Shipyards Corp.
Official Creditors Committee

Tidewater, Inc.
Official Equity Committee

Tracor
Official Creditors Committee

Trump Taj Mahal
Official Noteholders Committee

Twinlab Corp.
Official Ephedra Claimants Committee

Ultra Petroleum Corporation
Official Creditors Committee

Vector Launch Inc.
Official Creditors Committee

Venture Holdings Company, LLC
Official Creditors Committee

Visteon Corp.
Official Creditors Committee

Washington Prime Group
Official Equity Committee

Zacky & Sons Poultry, LLC
Official Creditors Committee

Representative Experience | Other Key Stakeholders

A&P (The Great Atlantic & Pacific Tea Company, Inc.)
Ad Hoc Consortium of Senior Secured Noteholders

Adelphia Communications
Ad Hoc Trade Claims Committee

Allegiance Telecom, Inc.
Successful Auction Bidder

Alpha Latam Management, LLC
Ad Hoc Committee of Unsecured Noteholders

American Safety Razor
Ad Hoc Committee of Second Lien Lenders

AMR Corp.
Co-Chair of Official Creditors Committee

Anchor Glass Container Corp.
Ad Hoc Committee of Senior Secured Noteholders

Aquila, Inc.
Ad Hoc Lenders Group

Arch Coal
Indenture Trustee for Second Lien Notes

Arizona Charlie's Hotel and Casino
Successful Plan Sponsor

Bonanza Creek
Ad Hoc Committee of Equity Security Holders

Boy Scouts of America
Coalition of Abused Scouts for Justice

Bricolage Capital Management
Post-Consummation Liquidation Trust

Buffalo Sabres NHL Franchise
Lender Syndicate

Bush Industries, Inc.
Largest Holder of Senior Secured Debt

Calpine Corp.
Ad Hoc Committee of First Lien Noteholders

Casual Male
Single Largest Creditor

Central European Distribution Corp.
Ad Hoc Consortium of Convertible Noteholders

Centrix Financial, LLC
Single Largest Creditor/Chairman of Board

Cerro Negro Oil Project (Venezuela)
Ad Hoc Noteholders Committee

Charter Communications
Ad Hoc Committee of Third Lien Lenders

Chemtura Corp.
Ad Hoc Committee of Diacetyl Tort Claimants

Claridge Hotel and Casino
Competing Plan Sponsor

Collins & Aikman Corp.
Indenture Trustee

Colt Defense, LLC
Ad Hoc Noteholders Committee

Congoleum Corp.
Ad Hoc Noteholders Committee

Cosi, Inc.
Lenders and Plan Sponsors

Cred Inc.
Court-Appointed Examiner

Dana Corp.
Single Largest Creditor

Delphi Corp.
Indenture Trustee

Delta Petroleum Corp.
DIP Lenders & Liquidation Trust

Dendreon Corp.
Ad Hoc Committee of Noteholders

Dewey & LeBoeuf LLP
Liquidation Trust

Dream Machine, Inc.
DIP Lender/Plan Sponsor

Dynavox Inc.
Ad Hoc Equity Committee

Endeavour International Corp.
Ad Hoc Consortium of Convertible Noteholders

Energy Conversion Devices
Ad Hoc Noteholders Committee & Liquidation Trust

Energy Future Holdings / TXU (Texas Competitive Electric Holdings LLC)
Ad Hoc Consortium of Second Lien Lenders

Enesco
Ad Hoc Equity Committee

Environmental Systems Products Holdings Inc.
Ad Hoc Second Lien Creditors Committee

EPV Solar
Ad Hoc Committee of Holders of Convertible Senior Secured Note & DIP Lenders

Evergreen International Aviation, Inc.
Ad Hoc Noteholders Committee

Extended Stay Inc.
Mezzanine Lender / Member of Official Creditors Committee

Falcon Products Inc.
Ad Hoc Committee of Unsecured Creditors

Federal Mogul
Single Largest Creditor

Financial Oversight and Management Board of Puerto Rico
Acting by and through its Special Claims Committee

Representative Experience | Other Key Stakeholders (Continued)

Flying J / Big West Oil
Ad Hoc Consortium of First Lien Noteholders

Foamex LP
Ad Hoc Committee of Second-Lien Term Lenders

Forest Oil Corp.
Ad Hoc Committee of Noteholders

Frontier Airlines
ETC Aircraft Financing Trustee

F-Squared Investments
Liquidation Trust

General Growth Properties (GGP)
Ad Hoc Noteholders Committee & Indenture Trustee

General Motors, LLC
Designated Bankruptcy Counsel for Lead Plaintiffs

Geneva Steel
Oversight Board for Post-Consummation Liquidation Trust

Geokinetics Inc.
Pre-Petition Secured Lenders

GMX Resources Inc.
Ad Hoc Committee of Second Lien Lenders

Grand Court Lifestyles
Successful Auction Bidder

Granite Corp. (Askin Capital Management)
Unofficial Investors Committee

Greate Bay Hotel and Casino (The Sands)
Successful Plan Sponsor

Haights Cross Communications, Inc.
Ad Hoc Committee of Preferred Shareholders

Hard Rock Park
Indenture Trustee

Harrah's Jazz Company
Ad Hoc Shareholders Group

Hawaiian Air
Competing Plan Sponsor & Major Unsecured Creditor

Hawker Beechcraft Corp.
Ad Hoc Consortium of Minority First Lien Holders

Hawkeye Renewables LLC
Ad Hoc Committee of Second-Lien Term Lenders

Hollywood Casino Shreveport
Major/Petitioning Creditor in Involuntary Chapter 11 Filing

InSight Health Services Holdings Corp.
Ad Hoc Subordinated Noteholders Committee

Imerys Talc America, Inc.
Ad Hoc Committee of Litigation Plaintiffs

Insys Therapeutics Inc
Representing lead counsel in litigation

Intermet Corp.
Ad Hoc Trade Claims Committee

J.C. Penney Company Inc.
Second Lien Noteholders

J. Crew Group, Inc.
Minority Term Loan Lenders

KV Pharmaceuticals
Senior Secured Lenders

Le-Nature's, Inc.
Ad Hoc Secured Lenders Committee

Legends Gaming, LLC
Ad Hoc Consortium of Second Lien Noteholders

Lehman Brothers
Ad Hoc Committee of Lehman Brothers Treasury, BV Noteholders & Significant Trading Counterparties

Life Uniform Holding Corp.
DIP Lender

Livent, Inc.
Principal Equipment Financier

Loral Space & Communications
Ad Hoc Trade Claims Committee

Mallinckrodt Pharmaceuticals
Ad Hoc Committee of Governmental Plaintiffs

Manhattan Investment Fund
Investor Group

Marvel Entertainment Group, Inc.
Single Largest Creditor/Chairman of Board

McDermott International, Inc.
Ad Hoc Group of Bondholders

MCI/WorldCom
Ad Hoc MCI Trade Claims Committee

Metaldyne Corp.
Ad Hoc Noteholders Committee

Millennium Health
Steering Committee of Term Loan Lenders

Minneapolis Star Tribune
Ad Hoc Second Lien Creditors Committee

MobileMedia Corp.
Successful Plan Objector

Movie Gallery Inc.
Ad Hoc Committee of First Lien Lenders

MtGox Co., Ltd.
Japanese Bankruptcy Trustee in Chapter 15 Proceedings

Muscletech Research and Development, Inc.
Ad Hoc Committee of Tort Claimants

Muzak Holdings LLC
Ad Hoc Noteholders Committee

National Energy Group, Inc.
Successful Plan Sponsor

Nebraska Book Company
Ad Hoc Consortium of Noteholders

Representative Experience | Other Key Stakeholders (Continued)

New York Racing Association, Inc.
Competing Franchise Candidate

Newark Group, Inc.
Ad Hoc Committee of Credit-Linked Term Lenders

Noranda Aluminum
Ad Hoc Group of Minority Lenders

Northwest Airlines
ESOP Trustee Holding Union Class C Claims

Norwood Promotional Products
Administrative & Collateral Agent of Second Lien Lender

NTK Holdings Inc.
Ad Hoc Committee of Noteholders

NV Broadcasting, LLC
Ad Hoc Committee of Second-Lien Term Lenders

O'Brien Energy
Largest Energy Counterparty

Oakwood Homes Corp.
Post-Consummation Liquidation Trust

Orexigen Therapeutics, Inc.
DIP Lender

Owens Corning
Ad Hoc Equity Committee

Pacific Exploration & Production
DIP Lender and Post restructuring controlling stock holder

Patriot Coal Corp.
Ad Hoc Committee of Senior Noteholders

Peabody Energy
Indenture Trustee for Second Lien Notes

Pegasus Solutions
Ad Hoc Committee of Preferred Stockholders

Pacific Gas and Electric Company (PG&E)
Fire Victim Trustee & Claims Administrator

Philip Services Corp.
Successful Plan Sponsor

Phoenix Coyotes NHL Franchise
Arena Owner and Largest Creditor

Pier 1 Imports Inc.
Term Loan Lenders

Pinnacle Airlines Corp.
Ad Hoc Equity Committee

Plaid Clothing Group, Inc.
Noteholders Subcommittee

PlusFunds Group, Inc.
Trustee of SPhinX Funds Trust

Premier Entertainment Hard Rock Hotel and Casino
Ad Hoc Committee of First Mortgage Noteholders

Primus Telecommunications Group, Inc.
Ad Hoc Committee of Noteholders

Purdue Pharma, L.P.
Ad Hoc Committee of Consenting Governmental & Other Contingent Litigation Claimants

Quigley Company Inc.
Ad Hoc Committee of Tort Victims

Realogy Corp.
Toggle Noteholders & Indenture Trustee

Refco, Inc.
Ad Hoc Committee of Customers

Reliance Insurance
Single Largest Creditor

Remy Worldwide Holdings, Inc.
Ad Hoc Committee of Noteholders

Rockdale Marcellus
RBL Lenders

Roman Catholic Diocese of San Diego
Ad Hoc Committee of Tort Claimants

Sabine Oil & Gas
Ad Hoc Committee of Forest Noteholders

Sable Permian Resources
Equity Sponsor

Satelites Mexicanos S.A. de C.V.
Ad Hoc Committee of Noteholders

SFX Entertainment
Prepetition Senior Lenders

Sirius/XM Satellite Radio
Ad Hoc Committee of Convertible Noteholders

SIRVA/North American Van Lines
Single Largest Trucking Counterparty

Solutia Inc.
Ad Hoc Trade Creditors Committee

Spansion LLC
Ad Hoc Committee of Secured Floating-Rate Noteholders

SPhinX Funds
Joint Official Liquidators

Sports Authority, Inc.
Term Loan Lenders

Stratosphere Hotel and Casino
Successful Plan Sponsor

Stuarts Department Stores
Single Largest Creditor

Suntech Power Holdings Co.
Indenture Trustee

Synagro Technologies, Inc.
Ad Hoc Committee of Term Lenders

Takata Corporation
Eric Green, as Special Master of the Takata Restitution Funds and Trustee of the Takata Airbag Tort Compensation Trust Fund

TerraVia Holdings, Inc.
Ad Hoc Noteholders Group

TetraLogic Pharmaceuticals
Ad Hoc Committee of Convertible Noteholders

TOUSA
Ad Hoc Committee of First Lien Holders

Representative Experience | Other Key Stakeholders (Continued)

Tower Automotive
Ad Hoc Noteholders Committee

Tribune Company
Indenture Trustee & Ad Hoc Committee of Subordinated Noteholders

Tropicana Entertainment
Ad Hoc Noteholders Committee

Trump Entertainment Resorts Inc.
Competing Plan Sponsor

TWA
Competing Plan Sponsor

United Airlines
Ad Hoc O'Hare Noteholders Committee

Ultra Petroleum Corporation
Ad hoc Equity Committee

Vanguard Natural Resources, Inc.
Ad Hoc Committee of Term Loan Lenders

Viskase
Ad Hoc Noteholders Committee

Wang Laboratories, Inc.
Exit Lender's Counsel

Washington Group International Inc.
Ad Hoc Post-Confirmation Claim Holders Group

Washington Mutual, Inc.
Ad Hoc Consortium of Trust Preferred Security Holders

The Weinstein Company
Bankruptcy counsel for certain victim plaintiffs

XO Communications
Single Largest Creditor & Successful Plan Sponsor

Yonkers Racing Corp.
Administrative Agent & Secured Lender Consortium

Bankruptcy & Corporate Restructuring | Recent Accolades

BROWN RUDNICK LLP 2022 RECOGNIZED BY Best Lawyers

47 Brown Rudnick partners selected by industry peers for inclusion in Best Lawyers in America 2022, including Kenneth Aulet and Robert Stark

TOP RANKED Chambers USA 2022 Brown Rudnick LLP

Bankruptcy/Restructuring practice ranked nationally and regionally

David Molton and Robert Stark named leading practitioners in Bankruptcy/Restructuring

RANKED IN Chambers Global 2021

Bankruptcy/Restructuring practice ranked globally

Robert Stark named leading practitioner in Bankruptcy/Restructuring

TIER 1 BANKRUPTCY FIRM B BENCHMARK LITIGATION 2022

Tier 1 Recommended Firm in Bankruptcy 2022

Robert Stark named National Litigation Stars in Bankruptcy

David Molton named Local Litigation Star

The LEGAL 500 UNITED STATES LEADING FIRM 2022

The LEGAL 500 UNITED STATES LEADING INDIVIDUAL 2022

Recognized in Restructuring (including Bankruptcy): Corporate 2022

David Molton named Recommended Lawyer

Robert Stark named Leading Lawyer

LAW360 BANKRUPTCY GROUP OF THE YEAR 2020

Winner of Bankruptcy Practice Group of the Year in 2020

One of only five U.S. law firms selected in this category

www.law360.com

Kenneth Aulet | Attorney Biography

Kenneth Aulet
Partner

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Area of Practice
- Bankruptcy & Corporate Restructuring

Related Experience
- Litigation & Arbitration

Education
- Columbia Law School — J.D., *Honors*, 2011
- University of Pennsylvania — B.A., cum laude, 2006

Bar & Court Admissions
- New York
- U.S. District Court for the Southern District of New York
- U.S. District Court for the Eastern District of New York

Overview

Kenneth Aulet is a partner in the Firm's Bankruptcy & Corporate Restructuring Practice Group.

Ken represents a wide variety of clients in a wide variety of bankruptcy and bankruptcy-related matters, regularly practicing in bankruptcy courts nationwide including the Southern and Eastern Districts of New York, Delaware, and the Southern District of Texas. Chief Bankruptcy Judge David Jones of the Southern District of Texas remarked on the record, in the confirmation trial for Chesapeake Energy Corporation, "I have seen Mr. Aulet's handiwork before. He is a very fine lawyer."

Ken regularly represents official committees, ad hoc committees, and other parties in interest in all aspects of complex Chapter 11 cases, SIPA proceedings, and associated litigation across a wide array of industries, in many of the largest cases in the country.

In pre-bankruptcy matters, Ken assists clients in analyzing distressed debt, negotiating out of court workouts, and otherwise assisting clients in preparing for potential bankruptcy filings. In active bankruptcy proceedings, Ken assists clients in all aspects of bankruptcy proceedings, including objecting to and negotiating key aspects of "first-day" motions that will set the course of the bankruptcy proceedings; helping creditors navigate the bankruptcy process; investigating and developing causes of action to reallocate value; and negotiating or litigating plans of reorganization. Finally, Ken represents clients in post-bankruptcy litigation brought by litigation trusts or liquidating trusts.

Representation

- **LTL Management LLC**: Represents the Official Committee of Talc Claimants of LTL Management, a special-purpose entity created by Johnson & Johnson, one of the world's largest companies, to place its talc liabilities (and only its talc liabilities) into bankruptcy.
- **Chesapeake Energy Corporation**: Represented the Official Committee of Unsecured Creditors of Chesapeake Energy Corporation, one of the largest oil and gas exploration companies in the United States, with funded debt of over $9 billion.
- **Rockdale Marcellus, LLC**: Represented Alta Fundamental Advisers, LLC, a secured creditor and debtor-in-possession financing provider, in the bankruptcy proceedings of Rockdale Marcellus, an independent exploration and production company in Pennsylvania.
- **The Hertz Corporation:** Represented IEH, Pepboys, and 767 Auto Leasing, significant pre-petition creditors, in the bankruptcy proceedings for the Hertz Corporation.
- **Basic Energy Services Inc.**: Represented the Official Committee of Unsecured Creditors of Basic Energy Services Inc., a provider of production-focused services in the United States to oil and natural gas production companies.
- **The Northwest Company LLC**: Currently represents a member and interest holder in the Chapter 11 cases of the Northwest Company LLC.
- **Vector Launch Inc.**: Represented the Official Committee of Unsecured Creditors of Vector Launch Inc. in their Chapter 11 proceedings.
- **EXCO Resources Inc.**: Represented the Official Committee of Unsecured Creditors of EXCO Resources Inc., an independent oil and gas company, in its Chapter 11 proceeding, in connection with the successful restructuring of the company's approximately 1.395 billion of debt, involving a substantial distribution to unsecured creditors.
- **Insys Therapeutics, Inc.**: Represented the MDL Plaintiffs in the Chapter 11 proceedings of Insys Therapeutics, Inc.

Kenneth Aulet | Attorney Biography (Continued)

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Partner

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KENNETH AULET 2023 RECOGNIZED BY Best Lawyers

- **Alta Mesa Resources Inc.**: Represented the Official Committee of Unsecured Creditors of Alta Mesa Resources Inc. and its affiliated debtors in their Chapter 11 proceedings.
- **EdgeMarc Energy Holdings LLC**: Represented the Official Committee of Unsecured Creditors of EdgeMarc Energy Holdings LLC in their Chapter 11 proceedings.
- **Hooper Holmes Inc.**: Represented the Official Committee of Unsecured Creditors of Hooper Holmes Inc. in their Chapter 11 proceedings.
- **Tidewater Inc.**: Represented of the Official Equity Committee of Tidewater Inc., one of the largest providers of offshore service vessels in the global energy industry, in connection with a restructuring of the company's approximately $2.04 billion of debt.
- **Bonanza Creek:** Represented the Ad Hoc Equity Committee in a contested valuation confirmation trial for the plan of reorganization of the company.
- **Dune Energy Inc.**: Represented Dune's former directors and officers in litigation brought by a litigation trustee created by Dune's Chapter 11 plan.
- **Lyondell Chemical Company**: Represented the Litigation Trustee of the post-Chapter 11 litigation trust.
- **Canyon Ranch Hotel & Spa, Miami Beach**: Represented a homeowner association in post-reorganization litigation in connection with the Chapter 11 filing of Canyon Ranch Miami, a luxury, full-service, ocean front condominium hotel.
- **MF Global Inc.**: Represented the SIPA Trustee for the liquidation of MF Global Inc., including the review and determination of claims against the general estate and the subsequent distribution of general estate funds to those claimants.
- **Lehman Brothers Inc.**: Represented the SIPA Trustee for the liquidation of Lehman Brothers Inc.

Publications

- Co-author, "The 5th Circuit's Ultra Petroleum decision and make-whole claims," Thompson Reuters Westlaw (October 17, 2019)
- "It's Not Who Hires You but Who Can Fire You: The Case Against Retention Elections, 44 COLUM. J.L. & SOC. PROBS. 589, 606 (2011)

Awards and Honors

- ***Turnaround & Workouts,*** *Outstanding Young Restructuring* Lawyer, 2022
- **The *Best Lawyers in America,*** Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law, 2021-2023

Robert J. Stark | Attorney Biography

Robert J. Stark
Partner

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rstark@brownrudnick.com

Area of Practice
- Bankruptcy & Corporate Restructuring

Related Experience
- Litigation & Arbitration
- Distressed Real Estate
- Oil & Gas
- Bankruptcy Litigation

Education
- Vanderbilt University Law School – J.D., 1995
- Lafayette College – B.A., 1992

Bar & Court Admissions
- New York
- New Jersey
- U.S. District Court for the Southern District of New York
- U.S. District Court for the Eastern District of New York
- U.S. District Court for the District of New Jersey
- U.S. District Court for the Eastern District of Michigan
- U.S. Court of Appeals for the Third Circuit

Overview

Robert Stark is chair of the Firm's Bankruptcy & Corporate Restructuring Practice Group. Robert focuses his practice on complex corporate restructuring, including in-court Chapter 11 cases and out-of-court workouts. He has extensive experience representing debtors/borrowers, secured and unsecured creditors, official creditor/equity committees, and other significant parties-in-interest in large corporate insolvency matters.

Robert led the Firm's representation in the following significant case matters (among many others):

- Debtors/Borrowers: Allied Systems Holdings (special committee of the Board); Centrix Financial (primary stockholder, chairman and CEO); GIC Portfolio (out-of-court workout); Keys Resort (Chapter 11 debtor); Sable Permian Resources (equity sponsor); SunEdison (special litigation counsel); Wells Dairy/Blue Bunny Ice Cream (out-of-court workout).
- Secured Lenders/Bondholders: Atlantis Resort and Casino; American Safety Razor; EPV Solar; Evergreen International Aviation; Flying J/Big West Oil; Geokinetics; Hawkeye Renewables; JCPenney; J.Crew; Le-Nature's; Millennium Labs; Minnesota Star Tribune; Newark Group; New Vision Broadcasting; Pier 1 Imports; Rockdale Marcellus; ServiceMaster; Spansion; Sports Authority; Synagro Technologies; TOUSA; Vanguard Natural Resources.
- Unsecured Bondholders/Creditors: Advanced Lighting; C-BASS; CEDC; Ceruzzi Properties; Collins & Aikman; Colt Defense; Delphi Corporation; Delta Petroleum; Endeavour International; Energy Conversion Devices; Falcon Products; Forest Oil/Sabine Oil & Gas; InSight Health Services; Intelsat; LightSquared; McDermott International; Orexigen; Patriot Coal; SIRVA/North American Van Lines; TerraVia; TetraLogic Pharmaceuticals; Tribune Company.
- Official Creditor/Equity Committees: Alta Mesa Resources; Aralez Pharmaceuticals; Basic Energy Services; Briggs & Stratton; Chesapeake Energy; Dolan Company; EdgeMarc Energy; EXCO Resources; Fedders; Green Field Energy Services; Green Valley Ranch Hotel and Casino; Legacy Reserves; Libbey Glass; Lionel Trains (special counsel); LTL Management/Johnson & Johnson (co-lead); Motor Coach Industries; Oakwood Homes Corporation; Oneida; Performance Sports Group; Philadelphia Energy Solutions; Ravn Air Group; Rex Energy; Revlon; Riverstone Networks; Ruby Pipeline; School Specialty; Ultra Petroleum; Visteon Corporation; Washington Prime Group.
- Preferred Stockholders: Spanish Broadcasting; Washington Mutual.
- Examiner: Cred Inc.
- Post-Confirmation Litigation/Liquidation Trusts: Bethlehem Steel; Bricolage Capital; Geneva Steel; Green Field Energy Services; Hayes Lemmerz International; Le-Nature's; Millennium Labs; Oakwood Homes Corporation; Performance Sports Group; and WCI Communities.

Robert is cited in *Benchmark Litigation* ("National Bankruptcy Star"), *Best Lawyers in America* (multiple categories), *Chambers Global* (top 40 bankruptcy lawyers in the United States), *Chambers USA* (top 30 bankruptcy lawyers in the United States), *Euromoney's Expert Guides* ("Best of the Best USA"), *Global M&A Network: Top 100 Restructuring Professionals* (top 50 bankruptcy lawyers in the United States), *IFLR1000* ("Highly Regarded"), *Lawdragon* ("Leading Global Lawyer"), *Lawdragon 500* ("Leading U.S. Bankruptcy and Restructuring Lawyer"), *The Legal 500 US* ("Leading Lawyer"), *Litigation Counsel of America* ("Senior Fellow"), *Super Lawyers*, *PLC Which Lawyer*, and *Who's Who Legal* ("Thought Leader"). He was described in the 2022 edition of *Chambers Global* as "extremely knowledgeable and very strategic."

Robert J. Stark | Attorney Biography (Continued)

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The 2022 edition of *Chambers USA* included the client quote: "He is able to synthesize vast amounts of information quickly and develop appropriate strategies to navigate a complex playing field and maximize the chances of a successful outcome." The 2022 edition of *The Legal 500 US* included the following client quote: Robert "is ALWAYS my first call when I am working on a restructuring situation." In a 2021 profile published by *LevFin Insights*, Robert was described as having a "hard-nosed, no-nonsense reputation, tempered with a penchant for deal making," which has "made him a go-to lifeline in complex chapter 11 cases for a wide range of parties." He was again profiled in a 2011 article published by the *National Law Journal* entitled "Winning: Successful Litigators. Powerful Strategies." In 2010, he was profiled a third time by *Bloomberg/BusinessWeek*, wherein he was described as a litigation "serial killer" but also "bottom-line and commercial oriented." Robert has received numerous "Deal of the Year" citations (domestic and international) in connection with his case work, including awards presented by the *IFLR* (two times), *Turnaround Management Association* (two times), and the *M&A Advisor* (multiple times). In 2020, 2019, 2018 and 2011, he was one of 12 attorneys nationwide named to the annual list of "Outstanding Restructuring Lawyers" published by *Turnarounds & Workouts* and, in five prior years, he was one of 12 attorneys nationwide named to that publication's annual list of "Outstanding Young Restructuring Lawyers." In 2011, Robert was named "Restructuring Lawyer of the Year" at the Turnaround Atlas Awards.

Robert's "first chair" trial and appellate work have resulted in opinions of high precedential value, including (among many others): *In re Visteon Corp.*, 612 F.3d 210 (3rd Cir. 2010) (described by a leading legal commentator as "the most important [Section] 1114 case ever rendered"); *In re Oakwood Homes Corp.*, 449 F.3d 588 (3rd Cir. 2006); *In re TSAWD Holdings, Inc.*, 565 B.R. 292 (Bankr. D. Del. 2017); *In re Millennium Lab Holdings II, LLC*, 2016 WL 7048599 (Bankr. D. Del. 2016); *In re Green Field Energy Services, Inc.*, 2015 WL 5146161 (Bankr. D. Del. 2015); *In re School Specialty, Inc.*, 2013 WL 1838513 (Bankr. D. Del. 2013); *In re Patriot Coal Corp.*, 482 B.R. 718 (Bankr. S.D.N.Y. 2012); *In re Eastman Kodak Co.*, 2012 WL 2501071 (Bankr. S.D.N.Y. 2012); *In re Tribune Company*, 2011 Bankr. Lexis 4128 (Bankr. D. Del. 2011); *In re Washington Mutual, Inc.*, 442 B.R. 314 (Bankr. D. Del. 2011); *In re Spansion, Inc.*, 421 B.R. 151 (Bankr. D. Del. 2009); *In re Oakwood Homes Corp.*, 394 B.R. 352 (Bankr. D. Del. 2008); *In re Oneida Ltd.*, 351 B.R. 79 (Bankr. S.D.N.Y. 2006); and *OHC Liquidation Trust v. U.S. Fire Ins. Co.*, 2006 WL 2578907 (Bankr. D. Del. 2006).

Robert has published extensively on insolvency and restructuring topics. He is a contributing editor of the nation's leading treatise on restructuring law, *Collier on Bankruptcy* (LexisNexis 2020). He was the lead editor of two other legal treatises, *Contested Valuation in Corporate Bankruptcy* (LexisNexis 2011) and *Admitting Expert Valuation Evidence Before the U.S. Bankruptcy Courts* (Bernstein, S., et al., Amer. Bankr. Inst. 2017). He wrote or co-wrote chapters for three other treatises, *Fiduciary Obligations in Business* (Cambridge University Press 2022), *Collier Bankruptcy Practice Guide* (LexisNexis 2020), and *Bankruptcy Business Acquisitions* (Amer. Bankr. Inst. 2006). He wrote or co-wrote articles appearing in, among other academic periodicals, the *American Bankruptcy Law Journal*, *Business Lawyer*, *California Law Review*, and *Journal of Corporation Law*, which have been quoted/cited in trial and appellate court decisions and in the published writings of leading legal scholars. His most recent law review article (co-written with Harvard Law School Professor Jared Ellias), "Bankruptcy Hardball," was selected by law school faculty around the country as among the "Top 10 Corporate and Securities Articles of 2020."

Robert J. Stark | Attorney Biography (Continued)

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Robert frequently speaks on complex restructuring topics. He was invited to guest lecture student classes at Boston College Carroll School of Management, Boston University Law School, Columbia Business School, Georgia State University Law School, Harvard Law School, NYU Stern School of Business, UC Berkeley Law School, UC Hastings Law School, University of Virginia McIntire School of Commerce, and Vanderbilt Law School. He also was an invited speaker at restructuring symposiums sponsored by (among many others), the American Bankruptcy Institute, American Law Institute, Association of Insolvency and Restructuring Advisors, Beard Group, Dallas Bar Association, New York City Bar Association, the University of Pennsylvania Law School, and the University of Texas School of Law.

Speaking Engagements

- Moderator, "The Use (and Misuse) of Market Evidence to Measure Fair Value and Solvency in the Distressed Market," AIRA 21st Advanced Restructuring & Plan of Reorganization Conference (November 14, 2022)
- Panelist, "Law Practice," Prof. J.B. Ruhl, Vanderbilt Law School (August 19, 2022)
- Moderator, "Reorganization Value, § 363 Value, and the Games People Play," VALCON 2022 (May 13, 2022)
- Guest Lecturer, "Corporate Restructuring," Prof. David Smith, University of Virginia McIntire School of Commerce (January 6, 2022)
- Guest Lecturer, "Corporate Valuation and Restructure," Prof. Edith Hotchkiss, Boston College Carroll School of Management (December 7-8, 2021)
- "The Great Debate: Real Estate Valuation in the Face of a Global Pandemic," 28th Annual Distressed Investing Conference, Beard Group (November 29, 2021)
- Guest Lecturer, "Bankruptcy," Prof. Ken Ayotte, University of California, Berkeley Law School (November 15, 2021)
- Q&A, "Failed Corporations: A Post-Mortem," Prof. Jared Ellias, Harvard Law School (October 18, 2021)
- "Fireside Chat: Day In the Life," Boston Lawyers Group (July 8, 2021)
- BR Guest Podcast, Episode 1 (June 15, 2021)
- "Day In the Life: Bankruptcy Practice and the Value of Mentoring," Practicing Attorneys for Law Students Program Inc. (PALS) (June 15, 2021)
- "Valuation Challenges in the Current Environment," VALCON 2021 (May 13, 2021)
- "Volatility in the Oilpatch: Where Did All the Value Go?" 27th Annual Distressed Investing Conference, Beard Group (December 1, 2020)
- "Valuing Debtors Still in Development: The Pre-Earnings Conundrum," VALCON 2019 (February 28, 2019)

Media Coverage

- "Bankrupt Revlon says it is entertaining sale offers," Reuters (October 28, 2022)
- "Revlon Kicks Off Sale Process as Key Bankruptcy Deadlines Near," Bloomberg (October 27, 2022)
- "Revlon 'Sending NDAs to Third Parties' Who Expressed Interested in Assets; UCC Previews 'Very Big Filing' By Challenge Deadline Next Monday, Oct. 31," Reorg (October 27, 2022)
- "18-Month KEIP for Revlon Senior Management Approved Over UST's Objection," Reorg (September 14, 2022)
- "Depp Attorneys Among Brown Rudnick Firmwide Promotions," Law360 (September 8, 2022)

Robert J. Stark | Attorney Biography (Continued)

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- "Revlon Court Rejects White & Case Shareholder Group's Bid for Official Equity Committee, Says Shareholders Are Already 'Adequately Represented,'" Roerg (August 24, 2022)
- "Ruby Pipeline Settles Ch. 11 Timeline, Plans January Exit," Law360 (July 19, 2022)
- "Ruby Pipeline Case Parties Hope to 'Hit Reset Button' After Settling Debtor's, UCC's Dueling Exclusivity Motions; Case Timeline Targets Emergence in Late January 2023," Reorg (July 19, 2022)
- "Special Report: Inside J&J's secret plan to cap litigation payouts to cancer victims," Reuters (February 4, 2022)
- "Jones Day Can Rep J&J Talc Unit In Ch. 11 For Now," Law360 (December 15, 2021)
- "LTL Management Authorized to Act as Foreign Representative, Retain Jones Day on Interim Basis; Talc Claimants, Debtor Stake Out Positions on Whether Bankruptcy's Purpose Is 'Sheltering' J&J," Reorg (December 15, 2021)
- "Bankrupt Gas Company, Pipeline Firm Spar Over Auction Process," Pittsburgh Business Times (October 18, 2021)
- "Judge Taddonio Approves Rockdale Debtors' Bid Procedures, Overruling Objection From Midstream Service Providers; Enters Final DIP Order," Reorg (October 18, 2021)
- "Special Situations Insight: Equity Capital Bailing Out Distressed Companies Like AMC, Exela Has Its Limits," LevFin Insights (October 5, 2021)
- "As Mall Owner Exits Bankruptcy, No One Knows What It's Worth," Bloomberg (September 3, 2021)
- "Chesapeake Bondholders Asked to Choose 2% Recovery or Litigation," Bloomberg Law (November 25, 2020)
- "U.S. Bankruptcy Tracker: Litigation Rules the Realm," Bloomberg (July 13, 2021)
- "Crypto Investment Firm Cred Inc. Gets Nods On Ch. 11 Plan," Law360 (March 11, 2021)
- "Former Crypto Firm Official Was a U.K. Fugitive, Bankruptcy Examiner Says," The Wall Street Journal (March 9, 2021)
- "Ex-Cred CFO Is A Fugitive In UK, Ch. 11 Examiner Says," Law360 (March 9, 2021)
- "Former Cred Execs' Dereliction Caused Bankruptcy, Examiner Says," Bloomberg Law (March 9, 2021)
- "DISTRESSED DAILY: Chesapeake Emergence Unleashes Hidden Windfall," Bloomberg (February 11, 2021)
- "Judge Isgur Confirms Sable Permian Plan; Debtors Intend to Emerge From Chapter 11 on Monday, Feb. 1," Reorg (January 29, 2021)
- "As Anticipated, Chesapeake Debtors File Revised Plan; Day 6 of Confirmation Hearing Shifts Into Deeper Valuation Testimony," Reorg (December 28, 2020)
- "Chesapeake Changes General Unsecured Creditor Treatment in Amended Plan," Debtwire (December 28, 2020)
- "Court: Chesapeake Attacks UCC's Valuation Stance on Day One of Confirmation Trial," Debtwire (December 15, 2020)
- "Judge Jones Tells Chesapeake Debtors, UCC They're 'Not Ready by a Longshot' for Confirmation Trial Commencing Tomorrow, Raises Concerns Over 'End-Game'," Reorg (December 15, 2020)

Robert J. Stark | Attorney Biography (Continued)

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**No aspect of this advertisement has been approved by the Supreme Court of New Jersey. See the selection methodologies for Best Lawyers, Chambers, The Legal 500, Benchmark Litigation, IFLR, Lawdragon, Who's Who Legal, Super Lawyers, Turnaround & Workouts, Turnaround Atlas, PLC Which Lawyer, Litigation Counsel of America, Turnaround Management Association.*

- "Chesapeake Energy, Creditors Kick off Multi-Day Restructuring Plan Trial," Reuters Legal (December 15, 2020)
- "Chesapeake Energy Slams 'Divorced From Reality' Creditor Claims," Bloomberg Law (December 2, 2020)
- "Judge Jones Approves Chesapeake Disclosure Statement, Sets UCC Standing Motions to Be Heard at Confirmation; 'Things Get Done When Both Sides Feel Risk'," Reorg (October 30, 2020)
- "Attorney for Briggs' largest unsecured creditor questions plan to sell company assets," Milwaukee Business Journal (July 21, 2020)
- "Ravn is fighting to keep flying, but a French bank is pushing to sell off the company's planes," Alaska Public Media (May 28, 2020)
- "Judge approves Philadelphia Energy Solutions refinery sale," ABC News (February 13, 2020)
- "SunEdison receives no objections to propose hiring of Brown Rudnick as special litigation counsel in connection with TerraForm 'yieldco' dispute," CapitalStructure (January 11, 2017)
- "Fletcher to get federal trustee," New York Post (September 6, 2012)
- "Winning: Successful Litigators, Powerful Strategies," The National Law Journal (June 13, 2011)

Awards and Honors

- ***Chambers Global***, Bankruptcy/Restructuring, USA, 2019-2022
- ***Chambers USA***, Bankruptcy/Restructuring, USA – Nationwide, 2012-2022
- ***Chambers USA***, Bankruptcy/Restructuring, New York, 2009-2022
- ***The Legal 500 US***, Leading Lawyer, Finance – Restructuring (including Bankruptcy): Corporate, 2020-2022
- ***The Legal 500 US***, Finance – Restructuring (including Bankruptcy): Corporate, 2018-2022
- ***Benchmark Litigation***, Litigation Star, National Bankruptcy Star, 2022
- ***Lawdragon 500***, Leading U.S. Bankruptcy & Restructuring Lawyer, 2022
- ***The Best Lawyers in America***, Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law, Litigation – Bankruptcy, 2012-2023
- ***IFLR1000***, Highly Regarded, Restructuring and Insolvency, United States, New York, 2019-2021
- ***Who's Who Legal***, Restructuring & Insolvency, 2021-2022
- ***Super Lawyers***, Top Rated Creditor Debtor Rights Attorney in New York, NY, 2007-2021
- ***Turnarounds & Workouts***, Outstanding Restructuring Lawyer, 2011, 2018-2020
- ***Lawdragon***, Leading Global Bankruptcy & Restructuring Lawyer, 2020
- ***Turnaround Atlas Awards***, Restructuring Lawyer of the Year, 2011
- ***PLC Which Lawyer?***, Restructuring and Insolvency, 2011
- ***Turnarounds & Workouts***, Outstanding Young Restructuring Lawyer, 2006-2010

Firm Activities

- Diversity, Equity & Inclusion Council Member

David J. Molton | Attorney Biography

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Area of Practice
- Litigation & Arbitration
- Bankruptcy & Corporate Restructuring

Related Experience
- Cross Border Insolvencies
- Financial Fraud Litigation
- Mass Tort Bankruptcies
- Mass Tort MDL Litigation
- Commercial Litigation
- Intellectual Property Litigation
- Financial Institutions
- Securities

Education
- New York University School of Law – J.D., *cum laude*, Order of the Coif, 1982
- Brandeis University – B.A., *summa cum laude*, Phi Beta Kappa, 1979

Bar & Court Admissions
- New York
- New Jersey
- California
- U.S. Supreme Court
- U.S. Courts of Appeals for the Second, Third, and Ninth Circuits
- U.S. District Courts for the Southern, Eastern, and Northern Districts of New York
- U.S. District Court for the District of New Jersey
- U.S. District Court for the Northern District of Illinois
- U.S. District Court for the Northern District of California
- Dubai International Financial Centre Courts

Overview

David Molton is a partner in the Firm's Litigation & Arbitration and Bankruptcy & Corporate Restructuring Practice Groups and is the chair of Cross-Border, Mass Tort, and Restructuring Litigation.

David focuses his practice in complex financial, commercial and mass tort litigation matters in federal, state and bankruptcy courts in the United States, and he represents foreign liquidators, official committees of creditors, unofficial ad hoc committees of creditors and interested parties in financial fraud and mass tort related litigations and bankruptcies in the United States and in foreign jurisdictions.

David is ranked in Chambers USA and The Legal 500 where he has been specifically recognized for his "strength in mass tort Chapter 11 proceedings." In the Chambers 2022 guide, client have made the following comments: "David is an excellent lawyer capable of navigating very difficult and complex situations." "He is an awesome talent; strategically, commercially and legally very astute." "He's a superb strategist and a brilliant negotiator." In Benchmark Litigation, David is commended as "a true trial lawyer" and "a strategic thinker who plays the long game and doesn't get bogged down in the short-game issues."

David is a fellow of INSOL International, a world-wide federation of national associations for lawyers, accountants and other professionals who specialize in financial fraud, asset tracing and recovery and insolvency in domestic and cross-border cases.

After graduating from New York University School of Law, David clerked for the Honorable J. Edward Lumbard of the United States Court of Appeals for the Second Circuit. Earlier in his career, David served as an assistant district attorney in and for the Office of the District Attorney for New York County, where he was assigned to the Special Narcotics Prosecutor for the City of New York under the Honorable Sterling Johnson, Jr. As a prosecutor, David supervised joint federal/state law enforcement task force teams and investigations for the New York Drug Enforcement Task Force and the Department of Justice's Organized Crime Drug Enforcement Task Force, and he prosecuted cases involving (i) racketeering enterprises and organized crime narcotics conspiracies and distribution networks, and (ii) efforts to locate, seize and effectuate the forfeiture of proceeds and assets connected to those criminal activities both in the United States and abroad.

Representation

- Representing the Official Committee of Talc Claimants in the LTL Management LLC (J&J) bankruptcy case. In October 2021, Johnson & Johnson (J&J) completed a broadly observed and highly controversial corporate transaction, colloquially referred to as the "Texas Two-Step," dividing the company's consumer products division into two companies, and transferring all of the company's talc-related tort liabilities to the newly created entity, LTL Management LLC ("LTL" stands for "Legacy Tort Liabilities"). It then filed LTL for bankruptcy, demanding that the court extend all bankruptcy protections to the entire J&J conglomerate (notwithstanding the fact that only LTL filed for bankruptcy).

  J&J's decision was in response to the nearly 38,000 lawsuits alleging that the company's talc-based powder products caused ovarian cancer and mesothelioma. For years, J&J was able to defend against these lawsuits and without bankruptcy protection. However, in 2017, J&J was forced to disclose internal documents revealing that it knew all along that its products contained asbestos. Since then, juries have awarded plaintiffs massive judgements against J&J, including one award for billions in punitive damages.

  This case tests whether a massive/powerful/wealthy corporation can intentionally create a special purpose vehicle as a mere conduit to gain access to bankruptcy protections without the entire conglomerate having to file for bankruptcy itself.

David J. Molton | Attorney Biography (Continued)

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The use of the Texas Two-Step has come under intense scrutiny given its use by large, solvent companies to separate its mass tort liabilities from the company's assets. In early February 2022, there were congressional hearings challenging the use of this type of corporate transaction to take advantage of the Bankruptcy Code to improperly discharge a company of its mass tort liabilities. As a result of this hearing and further congressional investigation, Congress is considering potential amendments to the Bankruptcy Code to address the use of bankruptcy in this manner.

This is the largest and most important Chapter 11 case of 2022, with near media coverage. Future congressional hearings and court rulings will assuredly become public records and precedent respectively that will long be studied and discussed in both legal and academic circles. In February 2022, Brown Rudnick led the trial team's effort to have the LTL bankruptcy case dismissed for bad faith. While its motion was denied in the Bankruptcy Court, the Third Circuit granted the TCC's request for direct appeal from the Bankruptcy Court's dismissal decision.

- Representing the Governmental Plaintiffs Ad Hoc Committee in the bankruptcy cases of Mallinckrodt plc, *In re Mallinckrodt PLC*, Case No. 20-12422, proceeding before Judge John T. Dorsey in the Bankruptcy Court for the District of Delaware. The Ad Hoc Committee is comprised of (i) 8 States, through their Attorneys General; and (ii) the Plaintiffs' Executive Committee in the multi-district litigation captioned *In re National Prescription Opiate Litigation*, Case No. 17-md-02804, MDL No. 2804 (N.D. Ohio) (the "PEC" and the "Opioid MDL"). The PEC is representative of the interests of thousands of cities, counties, American Indian Tribes, hospitals, third-party payors, and other private payors. The Ad Hoc Committee negotiated, on behalf of its members and 42 other U.S. States and Territories, a Restructuring Support Agreement with Mallinckrodt which forms the basis for global resolution of opioid related litigation claims against Mallinckrodt, which was the largest producer of opioids in the United States of America. The Bankruptcy Court recently confirmed a Plan incorporating and implementing this important opioid settlement.
- Representing Justice John K. Trotter, in his capacity as Trustee of the PG&E Fire Victim Trust, and Cathy Yanni, in her capacity as Claims Administrator of the PG&E Fire Victim Trust. From 2017 to 2018, catastrophic wildfires destroyed hundreds of thousands of acres of land in Northern California, killing, injuring and otherwise impacting the lives of tens of thousands of individuals, families and businesses, and destroying residential and commercial properties. Subsequent investigations found that PG&E equipment had started most of the original fires, exacerbated by strong winds in the area. In January 2019, PG&E declared Chapter 11 bankruptcy as a result of the financial challenges caused by its liability in these wildfires. David acts as counsel for the post post-confirmation Trust, Trustee and Claims Administrator formed and appointed to resolve the claims of Fire Victims and compensate them out of approximately $ 13.5B of consideration (inclusive of, *inter alia*, cash, stock, and tax benefits).

David J. Molton | Attorney Biography (Continued)

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The firm was brought in by the Trustee to assist the bankruptcy parties in interest in forming the Trust, and developing the foundational documents effectuating the Trust. David is charged with protecting the interests of the putative Trustee and Claims administrator as well as ensuring that the Trust is established in a manner that is in the best interests of the Fire Victims. David advises the Trustee, Claims Administrator and Trust on all matters of administration of the Trust, including claims resolution and distribution.

- Representing the Coalition of Abused Scouts for Justice in the bankruptcy cases of the Boy Scouts of America, *In re Boy Scouts of America and Delaware BSA, LLC*, Case No. 20-10343, proceeding before Judge Laurie Silverstein in the Bankruptcy Court for the District of Delaware. The Coalition is comprised of many thousands of survivors of sexual abuse in the Boy Scouts. The Coalition has successfully defended the rights of the survivors against violations of the First Amendment and the Bankruptcy Rules, has been formally made a mediation party to negotiate a plan settlement and is negotiating a plan structure for global resolution of sexual abuse claims against the Boy Scouts, their local councils and other third parties, and their insurers.
- Representing the Ad Hoc Committee of consenting Governmental & Other Contingent Litigation Claimants in the bankruptcy cases of Purdue Pharmaceuticals, *In re Purdue Pharma, L.P.*, proceeding before Judge Robert Drain in the Bankruptcy Court for the Southern District of New York (the "Ad Hoc Committee"). The Ad Hoc Group is comprised of: (i) 10 States, through their Attorneys General; (ii) 6 political subdivisions of States; (iii) one federally recognized American Indian Tribe; and the Plaintiffs' Executive Committee in the multi-district litigation captioned *In re National Prescription Opiate Litigation*, Case No. 17-md-02804, MDL No. 2804 (N.D. Ohio) (the "PEC" and the "Opioid MDL"). The PEC is representative of the interests of thousands of cities, counties, American Indian Tribes, hospitals, third-party payors, and other private payors. The Ad Hoc Committee negotiated the settlement framework with Purdue and its shareholders (the Sacklers) that is the proposed basis for a consensual plan in the bankruptcy. The United States Court of Appeals for the Second Circuit is presently considering whether the non-debtor releases and injunctions in that plan can be confirmed.
- Representing the Plaintiffs' Executive Committee in the multi-district litigation captioned *In re National Prescription Opiate Litigation*, Case No. 17-md-02804, MDL No. 2804 (N.D. Ohio) (the "PEC" and the "Opioid MDL") in the bankruptcy cases of Insys Therapeutics, *In re Insys Therapeutics, Inc.*, before Judge Kevin Gross in the Bankruptcy Court for the District of Delaware. Insys manufactured a sublingual fentanyl spray and was subject to approximately 1,000 lawsuits brought by among others, cities, counties and American Indian Tribes in the Opioid MDL. As counsel to the PEC, David negotiated, alongside representatives from certain States' Attorneys Generals' offices, a consensual Settlement Plan for the benefit of all plaintiffs in the Opioid MDL, including cities, counties, and American Indian Tribes.

David J. Molton | Attorney Biography (Continued)

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- Representing Professor Eric D. Green as court-appointed Special Master of the $975 Million DOJ Takata Restitution Fund to provide compensation to designated claimants, including individuals injured by the malfunction of a Takata airbag inflator. The DOJ Takata Restitution Fund was created pursuant to a criminal plea agreement between the U.S. Department of Justice and Takata Corporation to resolve felony charges brought by the government against Takata in connection with Takata's design, manufacture and sale to the public of defective Takata airbag inflators. As lead counsel to the Special Master, David has been integrally involved in, inter alia, (i) developing the Special Master's methodologies and procedures for distributing the DOJ Takata Restitution Fund to eligible claimants, and (ii) liaising and seeking to reach consensus with all stakeholders, including Plaintiffs' counsel in the Takata Airbag MDL, the Official Committee of Tort Claimants, and Future Claims Representative appointed in Takata's United States subsidiary's bankruptcy proceedings in the United States, with respect to the Special Master's distribution methodologies and procedures.
- Representing Professor Green in his capacity as the Trustee of the Takata Airbag Tort Compensation Trust Fund (the "Trust"), established pursuant to the Chapter 11 bankruptcy of TK Holdings Inc., Takata's U.S. affiliate. The Trust, which holds approximately $140 million, was created in the bankruptcy to provide additional compensation to the individuals who suffered personal injury or wrongful death as a result of a Takata airbag inflator malfunction. The Trustee oversees the management of the Trust and distribution of these funds to personal injury and wrongful death victims. As lead counsel, David led the efforts to negotiate the Chapter 11 Plan and related bankruptcy and Trust documents. David has also been integrally involved in developing the procedures for distributing funds to Trust claimants, reconciling the procedures and distribution criteria for compensating claimants of the DOJ Takata Restitution Fund and the Trust, and working with numerous other parties, including automakers and personal injury plaintiffs, to reach a consensual process to distribute these funds to victims. David has also been named as the successor trustee of the Trust.
- Representing Professor Green in his capacity as OEM Claims Administrator, a role created pursuant to TK Holdings Inc.'s Chapter 11 Plan, to distribute funds to more than fifty automakers who have general unsecured claims in the bankruptcy. As lead counsel, David is negotiating the distribution procedures to these automakers, and drafting the documents to finalize such procedures.
- Representing Lead Counsel in the GM Ignition Switch Defect MDL Litigation (S.D.N.Y) as Plaintiffs' Designated Counsel in the Bankruptcy Court (Bankr. S.D.N.Y.) opposing GM's motion to enjoin plaintiffs' economic injury claims based on the injunction contained in the bankruptcy Sale Order by which the assets of Old GM were transferred to New GM in the GM bankruptcy in 2009. As Plaintiff's Designated Counsel, David and his colleagues helped obtain a seminal Second Circuit decision defeating New GM's efforts to use the GM Sale Order injunction to shield New GM from liability for billions of dollars of economic loss and personal injury damages to plaintiffs. In re Motors Liquidation Co., 829 F.3d 135 (2d Cir. 2016), cert. denied, 137 S. Ct. 1813 (2017).

David J. Molton | Attorney Biography (Continued)

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- Representing the American Association for Justice and the New Jersey Association for Justice in submitting an Amici Curiae brief to the U.S. Supreme Court in support of the Petition for a Writ of Certiorari, filed by Dean Erwin Chemerinsky of the University of California Irvine Law School, on behalf of injured diacetyl plaintiffs in connection with the Third Circuit's decision in Diacetyl Plaintiffs v.Aaroma Holdings (In re Emoral), LLC, 740 F.3d 845 (3d Cir. 2014), where the Third Circuit held that the injured plaintiffs' claims against a successor to the debtor were property of the estate which could be settled by the bankruptcy trustee.
- Representing the Japanese Bankruptcy Trustee of the failed (as a result of theft and fraud) Mt. Gox global Bitcoin exchange, which had been the world's largest exchange for this digital currency, in connection with the company's Chapter 15 case in the Bankruptcy Court in Texas and related litigation in the United States. David and his team obtained Chapter 15 recognition of the Japanese bankruptcy proceeding as a foreign main proceeding, thereby staying all U.S. litigation against Mt. Gox for the benefit of its foreign insolvency proceeding.
- Acting as lead U.S. counsel to the BVI Liquidator of the Fairfield Funds (the largest feeder funds into the Madoff Ponzi scheme) in the Funds Chapter 15 case in Bankruptcy Court in New York and related litigation in the United States and elsewhere in the world. Among the achievements achieved by David and his team, together with co-counsel, to date are (i) obtaining recognition from the Bankruptcy Court of the BVI liquidation proceedings as foreign main proceedings under Chapter 15 of the Bankruptcy Code and obtaining affirmance of that judgment in a seminal and first impression decision of the United States Court of Appeals for the Second Circuit (Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.), 714 F.3d 127 (2d Cir. 2013)), and (ii) obtaining another seminal and first impression Second Circuit decision making Bankruptcy Code Section 363 applicable to the foreign liquidator's sale of the Funds' claim against the Madoff SIPA estate, thereby giving the foreign liquidator an opportunity to seek to undo that deal for the benefit of the Funds' creditors and stakeholders based on changed circumstances (Krys v. Farnum Place, LLC (In re Fairfield Sentry Ltd.), 768 F.3d 239 (2d Cir. 2014), liquidator's position upheld on remand, 539 B.R. 658 (Bankr. S.D.N.Y. 2015) (SMB), aff'd, 690 Fed. Appx. 761 (2d Cir.), cert. denied, 138 S. Ct. 285 (2017)). David and his team are also prosecuting over 300 clawback actions commenced by the foreign liquidator and the Funds against certain of the Funds' redeemers, many of which are the world's largest foreign financial institutions. The clawback actions, which are presently pending in the Bankruptcy Court or on appeal to the District Court in New York, seek the return to the Funds of over $6 billion in overpaid redemptions stemming from the Madoff fraud.
- Representing the Official Committee of Unsecured Creditors (principally tort victims) in the New England Compounding Center Chapter 11 case in the Bankruptcy Court in Boston and the related MDL proceeding in the District Court in Boston, the objective of which was the resolution of injury and wrongful death cases resulting from the meningitis outbreak caused by the debtor and its operations in 2012. Despite the absence of any dispositive authority on the issue from the United States Court of Appeals for the First Circuit, David, his team and the Creditors' Committee developed, obtained

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plaintiff support for and confirmed a bankruptcy plan that granted non-debtor releases to allegedly culpable non-debtors who consensually contributed significant monies to a victims' fund, remarkably achieving (in what was widely perceived to be a no asset case) settlements exceeding $200 million for distribution through the bankruptcy plan to injured victims of the outbreak.

- Representing the External Administrator of Awal Bank, BSC (a Bahraini bank implicated in the Al Gosaibi Group/Saad Group global fraud) in the bank's Chapter 15 case in Bankruptcy Court in New York and related litigation in the United States. Awal Bank was destroyed by a major fraud in the Mideast, and, in a matter of first impression, David and his team successfully used the Chapter 15 case to assert Bankruptcy Code statutory avoidance claims against a global bank to recover assets taken from the Awal Bank overseas and transferred into the United States. Recently, David successfully obtained Chapter 15 recognition in the Bankruptcy Court in New York for seven, separate Awal Bank subsidiaries in conjunction with the upcoming trial in the Grand Court of the Cayman Islands of the principal Al Gosaibi Group/Saad Group case.
- Representing the Cayman Island liquidator of the SPhinX Funds (destroyed by the Refco fraud) in the Funds' Chapter 15 case and related litigation in the United States. David and his team prosecuted the Funds' fraud-based claims against aiders and abettors of the Refco fraud (including globally recognized auditors, law firms and service providers) in the Refco MDL presided over by Judge Rakoff in the Southern District of New York. David was appointed by Judge Rakoff as Plaintiffs' Liaison Counsel for the Refco MDL.
- Representing the Central Bank of Bahrain in connection with the Chapter 11 case of Arcapita Bank, BSC (a Bahraini financial institution) in Bankruptcy Court in New York.
- Representing (i) the Ad Hoc Committee of Tort Claimants in connection with the Muscletech CCAA proceeding in Canada (the foreign ephedra bankruptcy) and Muscletech's Chapter 15 case and related litigation in the Southern District of New York (one of the first Chapter 15 cases), (ii) the Official Committees of Creditors (consisting principally of tort claimants) in the Chapter 11 cases of Twinlab, Metabolife and NVE (the domestic ephedra bankruptcies), and (iii) all of these Committees in the ephedra MDL in the Southern District of New York presided over by Judge Rakoff. In each of the ephedra bankruptcy cases, David helped create the architecture for global resolution of all tort claims and negotiated multi-million dollar global settlements for the benefit of the tort claimants.
- Representing dozens of clergy abuse victims in the Chapter 11 case of the Diocese of San Diego in Bankruptcy Court in California and participating in the negotiation of a significant global settlement with the Diocese and its insurers for the benefit of victims.
- Representing diacetyl tort claimants in the Chapter 11 case of Chemtura Corporation in Bankruptcy Court in New York.

David J. Molton | Attorney Biography (Continued)

David J. Molton
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Publications

- Co-author, "A Cauldron of Fraud: AHAB v SICL & Ors – from the Middle East to the Cayman Islands and beyond", INSOL World: The Quarterly Journal of INSOL International (October 2018)
- "Bankruptcies in Mass Tort Cases" and annual supplements, Litigating Mass Tort Cases Vol. 1, Chapter 12 (P. Rheingold, ed.). (2006 to 2020)
- Co-author, "The Long (or Not so Long) Arm of Avoidance Claims: The Issue of Extraterritorial Application", INSOL International Technical Paper 33 (October 2016)
- Co-author, "Baha Mar, Cross-Border Conflict or Cooperation: Provisional Liquidators Appointed in the Bahamas as United States Chapter 11 Proceedings are Dismissed," Insol World (4th Quarter, 2015)
- Interviewee (interviewer, Sheri Qualters), "A Look Inside the $100 Million Tainted-Drug Settlement," National Law Journal (December 24, 2013)
- Co-author, "2nd Cir. Raises a Drawbridge to Chapter 15," Law 360 (December 2013)
- Co-author, "The Ephedra Bankruptcy Cases and the Twinlab Global Settlement Model," The Bankruptcy Strategist (January 2008)

Speaking Engagements

- "The Opioid Crisis," American Bankruptcy Institute's New York City Bankruptcy Conference (May 19, 2021)
- "The Cryptocurrency Craze," American Bankruptcy Institute Cross-Border Insolvency Program, New York, NY (November 7, 2018)
- Moderator, "Group next (or not): continuing challenges in the treatment of enterprise groups in insolvency," INSOL Tenth World Congress, Sydney, Australia (March 2017)
- Moderator, "Boots on the ground: A look at some significant offshore liquidations from the liquidators themselves," INSOL British Virgin Islands One Day Seminar, Peter Island, British Virgin Islands (November 2016)
- "Financial Frauds and Ponzi Schemes: Current Litigation Trends and Creative Mechanisms to Pursue Fraudsters," C-5 5th Forum on Fraud, Asset Tracing and Recovery, Miami, Florida (October 2016)
- "Madoff 7 Years On -- What Lessons Can be Applied to Other Cases," C-5 Conference on Fraud, Asset Tracing and Recovery, Geneva (March 2016)
- "Keeping the Air-Con On: Hot Topics for 2016," INSOL International Annual Regional Conference, Dubai (January 2016)
- "Changing the Rules of the Game -- New and Evolving Tools in the Restructuring Toolbox," INSOL International Annual Regional Conference, INSOL Fellow Refresher Programme, Dubai (January 2016)
- "A Multi-Jurisdictional Roundup of Critical Developments in Fraud Litigation," C-5 Conference on Fraud, Asset Tracing and Recovery, Miami (October 2015)
- "Recent Developments in Knowing Assistance and Accessory Liability in Fraud Cases," C-5 Conference on Fraud, Asset Tracing and Recovery, Miami (September 2014)
- "The Impact of the GM Bankruptcy," HarrisMartin's MDL Conference: General Motors Ignition Switch Recall Litigation Agenda, Chicago (May 2014)
- "Chapter 15 Update with Judges and Practitioners," ABI Caribbean Insolvency Symposium, San Juan (February 2014)

David J. Molton | Attorney Biography (Continued)

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- "The Use and Recognition of Standalone Injunctions in Cross-Border Insolvencies to Freeze and Recover Assets," C-5 Conference on Fraud, Asset Tracing and Recovery, Miami (November 2013)
- "Cross-Border Restructuring Proceedings: A Global Up-Date," Commercial List Users' Committee/OBA Insolvency Law Section/OAIRP Educational Program, Toronto, Canada (June 2013)
- "Case Study: TCT Rubin v. Eurofinance SA," C-5 Conference on Fraud, Asset Tracing and Recovery, Miami (October 2012)
- "Stern v. Marshall: The Sky is Not Falling – A Reasoned Analysis of the Decision and Case Law to Date," ABI Caribbean Insolvency Symposium, San Juan (February 2012)
- "Madoff Case-Study: Developing US Remedies for Failed Offshore Funds to Assist in Asset Recovery," C-5 Conference on Fraud, Asset Tracing and Recovery, Dubai (January 2012)
- "Ephedra / PPA Bankruptcies and Insurance Coverage - Dexatrim and TL Bankruptcy Plans - The Wave of the Future," Mealey's Ephedra & PPA Litigation Conference, New Orleans (June 2005)

Podcasts

- BR Guest Podcast, Episode 1 (June 15, 2021)

Firm News

- "Brown Rudnick Selected as Co-Lead Counsel to the Official Committee of Talc Claimants in LTL Management LLC Case," Brown Rudnick Press Release (November 18, 2021)
- "Historic Settlement Announced in Boy Scouts of America Bankruptcy Proceedings," Brown Rudnick Press Release (July 2, 2021)
- "Statement of the Coalition of Abused Scouts for Justice, Official Committee of Tort Claimants and Future Claimants' Representative Regarding Restructuring Support Agreement with Boy Scouts of America et al.," Brown Rudnick Press Release (July 1, 2021)
- "Brown Rudnick Presents the BR Guest Podcast," Brown Rudnick Press Release (June 15, 2021)
- "Brown Rudnick Wins Law360 Bankruptcy Practice Group of the Year 2020," Brown Rudnick Press Release (November 30, 2020)
- "Bankruptcy Court Allows Fairfield Liquidators To Proceed On 305 Clawback Cases Seeking the Return of $6 Billion in Overpaid Redemptions," Brown Rudnick Press Release (December 10, 2018)
- "Brown Rudnick Secures Major Victory for Fairfield Sentry and Kenneth Krys Stemming from Madoff Fraud," Brown Rudnick Press Release (October 4, 2017)
- "Bankruptcy Judge to Approve Chapter 11 Plan of New England Compounding Center," Brown Rudnick Press Release (May 19, 2015)
- "Plaintiffs File Objection to GM's Motion in US Bankruptcy Court in NY," Brown Rudnick Press Release (April 22, 2014)
- "Brown Rudnick Secures Second Circuit Victory on Behalf of Liquidator of Fairfield Sentry Limited, a Madoff Feeder Fund," Brown Rudnick Press Release (April 16, 2013)
- "United States Bankruptcy Court Freezes Assets Of Four Owners Of New England Compounding Center Through Trial And Judgment," Brown Rudnick Press Release (February 11, 2013)

David J. Molton | Attorney Biography (Continued)

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- "US Bankruptcy Judge Temporarily Restrains Assets of the Four Owners of New England Compounding Pharmacy," Brown Rudnick Press Release (January 28, 2013)
- "Brown Rudnick Selected to Represent the Official Committee of Unsecured Creditors in New England Compounding Center Case," Brown Rudnick Press Release (January 22, 2013)
- "Victims Take Steps To Preserve Assets Of Troubled Compounding Pharmacy," Brown Rudnick Press Release (November 20, 2012)

Media Coverage

- Quoted, "Talc plaintiffs' lawyers allege J&J put lawsuits in bankruptcy to protect brand," Wall Street Journal (February 17, 2022)
- Quoted, "Talc Claimants Say J&J Unit's Ch. 11 Benefits Parent Co. Only," Law360 (February 17, 2022)
- Quoted, "LTL, Talc Claimants Complete Evidence and Begin Closing Arguments on Day 4 of Case Dismissal Trial; UST Supports Dismissal but Asks for Chapter 11 Trustee as Alternative Relief," Reorg (February 17, 2022)
- Quoted, "J&J subsidiary LTL Management's TCCs give closing arguments urging dismissal, calling bankruptcy transaction 'inexplicable'," Debtwire (February 17, 2022)
- Quoted, "J&J Drops Bid To Block Reuters Story As Attys Trade Barbs," Law360 (February 7, 2022)
- Quoted, "Bankruptcy Cases to Watch In 2022," Law360 (January 3, 2022)
- Quoted, "Court Pushes Boy Scouts' Ch. 11 Plan Hearing To February," Law360 (December 21, 2021)
- Quoted, "Boy Scouts Warn of 'Potentially Disastrous Result' After TCC Sent 'Defamatory,' 'Derogatory' Letter From Official Email Account; Judge Silverstein Concerned About 'Potential Taint of the Vote'," Reorg (November 10, 2021)
- Quoted," Bankruptcy Cases to Watch in the Second Half of 2021," Law360 (July 16, 2021)
- Quoted, "U.S. Bankruptcy Tracker: Litigation Rules the Realm," Bloomberg (July 13, 2021)
- Quoted, "'Chaos' reigns at Boy Scouts' exclusivity and disclosure statement hearing," Debtwire (May 19, 2021)
- Quoted, "UPDATE 1: Judge Montali Approves PG&E Fire Victim Trust Exchange Transaction, California to Consider Securities Registration Exemption on May 18," Reorg (April 28, 2021)
- Quoted, "Judge Silverstein Urges Boy Scouts Parties to Reach Consensus Ahead of Upcoming Mediation, Citing 'Staggering' Fees," Reorg (March 17, 2021)
- Quoted, "Boy Scouts Offer Sex-Abuse Settlement, Aiming for End to Bankruptcy," Wall Street Journal (March 2, 2021)
- Quoted, "Boy Scouts' insurers question 'implausibly large' numbers of sex abuse claims," Reuters (January 25, 2021)
- Quoted, "Victims' Coalition Seeks Expanded Role In Boy Scouts Ch. 11," Law360 (October 14, 2020)
- Quoted, "Insys Wins OK For Ch. 11 Plan With Opioid Recovery Trust," Law360 (January 16, 2020)
- Quoted, "Dodgers, beaten fan encouraged to reach settlement," Reuters (March 7, 2012)

David J. Molton | Attorney Biography (Continued)

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**No aspect of this advertisement has been approved by the Supreme Court of New Jersey. See the selection methodologies for Chambers, The Legal 500, Benchmark Litigation, Lawdragon, Who's Who Legal, Super Lawyers, Martindale-Hubbell, Client Choice.*

Professional Affiliations

- Fellow, INSOL International
- Member, International Insolvency Institute

Awards and Honors

- ***Chambers USA***, Bankruptcy/Restructuring, New York, 2022
- ***Benchmark Litigation,*** *Local Litigation Star*, New York, 2013-2022
- ***The Legal 500 US***, Finance – Restructuring (including Bankruptcy): Corporate, 2020-2022
- ***Super Lawyers***, *Top Rated Business Litigation Attorney in New York, NY*, 2010-2021
- ***Lawdragon***, *Leading U.S. Bankruptcy & Restructuring Lawyer*, 2020, 2022
- ***Who's Who Legal***, Asset Recovery, 2020
- ***International Law Office* and Lexology**, *Client Choice Award*, Insolvency and Restructuring, 2014
- ***Chambers USA***, Litigation: General Commercial, New York, 2014
- **Martindale-Hubbell**, *AV®, Preeminent Peer Review Rated*

Stephen D. Palley | Attorney Biography

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Area of Practice
- Litigation & Arbitration

Related Experience
- Digital Commerce
- Technology
- Fintech
- Insurance
- Energy, Regulatory & Environmental
- Real Estate
- Real Estate & Construction Disputes
- White Collar Defense, Investigations & Compliance

Education
- Washington University School of Law, J.D.
- University of Delaware, M.A.
- Tufts University, B.A., *cum laude*

Bar & Court Admissions
- District of Columbia
- New York
- Missouri
- Illinois (inactive)
- U.S. District Court for the District of Columbia
- U.S. District Court for the District of Maryland

Overview

Stephen Palley is a litigation partner and co-chair of Brown Rudnick's Digital Commerce group. Stephen is a seasoned litigator with over 20 years of extensive courtroom experience litigating and trying complex commercial matters. He has deep technical and U.S. regulatory knowledge, particularly in the digital asset space, and assists clients working on the frontiers of technology, including on deal work for blockchain and other technology enterprises. He is also a fellow of the American College of Coverage Lawyers, and uses his insurance knowledge and experience to advise clients on insurance coverage matters related to technology and other risks.

Stephen has written extensively and been quoted widely on legal issues arising from the use of Blockchain technology, with appearances in both print and television media. He is an editor of the International Journal of Blockchain Law (IJBL), a law journal launched in November 2021 to help non-legal communities better understand Blockchain applications and digital assets.

Before joining Brown Rudnick, Stephen founded his prior law firm's Technology, Media and Distributed Systems Practice Group in 2017, which he also chaired. He serves as an outside general counsel to technology and media startups and as a trusted advisor to established businesses across a range of industries, with a focus on securities and financial regulatory law.

Representation

Some of Stephen's notable matters handled prior to joining Brown Rudnick include:

Technology, Media and Distributed Systems

- Counsel for software developers and other digital asset market participants in connection with responses to U.S. regulatory inquiries and investigations related to DeFi and other blockchain related platforms and projects.
- Counsel for a digital asset derivative exchange in connection with U.S. regulatory advice and compliance and law enforcement inquiries.
- Counsel for a major U.S. digital asset exchange in connection with regulatory compliance matters.
- Counsel for NFT platforms, issuers, and investors in connection with regulatory compliance and dispute resolution matters.
- Outside general counsel on regulatory compliance and investment decisions to major digital asset funds, family offices and investors.
- Consumer arbitration and litigation on behalf of digital asset investors and holders on a wide range of disputes, including advisor agreements, wallet hacks, theft of NFTs and insurance coverage disputes.
- Outside general counsel to a direct response advertising platform.
- U.S. counsel for major Layer 1 and Layer II protocol developers and foundations, focusing on U.S. regulatory compliance, transactions and dispute avoidance and resolution.
- Counsel for a major wallet provider in connection with Series A and Series B funding efforts.
- Counsel for a major accounting and advisory firm in connection with digital asset engagements and risk management.
- Representation of software developer in connection with design, development and launch of software-based direct response advertising platform, including a variety of ongoing outside general counsel services, such as pre-publication review of social media statements, negotiation of commercial agreements with employees and vendors, and review of website content and advertising material.
- Representation of software developers in connection with the design, development and launch of several blockchain based and enabled platforms, including consultation regarding platform structure, compliance obligations, and content delivery.

Stephen D. Palley | Attorney Biography (Continued)

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- Representation of media outlets in connection with First Amendment, pre-publication review and media liability matters.

Litigation

- Litigation and arbitration for both exchanges and consumers in connection with multiple substantial digital asset losses.
- Defense counsel for crypto industry participants in connection with multiple informal inquiries and investigations by state and federal regulators.
- Counsel for protocol developers in connection with token allocation disputes.
- Trial and litigation counsel for owner in federal court jury trial regarding coverage for decades of environmental cleanup costs under London and domestic insurance policies issued in the 1970s, leading to a unanimous eight-figure jury verdict.
- Representation of Investment Advisor in connection with recovery under Management Liability policies for SEC investigation costs.
- Representation of owner/developer of multiple residential developments in the New York metropolitan area in state court litigation involving reimbursement of repair costs associated with allegedly defective building components. The litigation involved more than a dozen subcontractors and their insurance companies and multiple cross-claims, as well as third and party complaints. Stephen persuaded all of the involved parties, as well as a court-appointed special master, to engage in an expedited and voluntary discovery process, which led to rapid settlement and payment of claims to his client without extended and expensive discovery or associated costs.
- U.S. coverage counsel for international construction company in resolution of a number of ongoing insurance related construction claims.
- Representation of policyholder in Federal Court in connection with D & O coverage litigation regarding underlying TCPA class action litigation. Successful resolution of matter following filing of complaint and minimal motion practice.
- Representation of EPC contractor in connection with procurement, negotiation and placement of insurance coverage for power plants in northeastern United States.
- Representation of EPC contractor in connection with insurance procurement, placement and negotiation of insurance and related contract language for construction of a proposed nuclear power plant. Representation included negotiation with a public utility, review and negotiation of OCIP requirements, contractual insurance specifications, complex waiver and indemnity provisions applying to a proposed multibillion-dollar project, as well as providing advice on insurance requirements including marine, inland marine, nuclear, and more typical construction insurance products such as CGL/excess and builders risk.
- Representation of owner/developer in connection with insurance coverage denial on the eve of trial of bodily injury claim arising out of construction of landmark Manhattan high-rise. Successfully negotiated eight-figure settlement with excess carrier after filing summary judgment motion.
- Representation of medical practice and physicians in connection with insurance coverage dispute with professional liability insurance company and successful resolution of the same, leading to withdrawal of late coverage denial and defense and indemnity in underlying litigation with eight-figure damages claim.

Stephen D. Palley | Attorney Biography (Continued)

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- Representation of construction manager in connection with procurement, negotiation, placement and litigation of insurance coverage for professional sports venues, airports, new hospital construction and other major infrastructure projects across the United States.
- Representation of medical facility in connection with procurement, negotiation and placement of insurance coverage for construction of $500 million new hospital construction.
- Representation of various parties in connection with procurement, negotiation and placement of insurance coverage for Ground Zero reconstruction in lower Manhattan.
- Negotiation and placement of D&O policies for financial services and investment industry clients.
- Representation of policyholders in reported cases such as *Stanley Martin v. Ohio Casualty Group*, 2009 U.S. App. Lexis 2758 (4th Cir. 2009) (confirming that standard CGL policies provide insurance coverage for property damage resulting from allegedly defective construction); *Hunt Construction Group v. Allianz Global Risk*, 503 F.3d 632 (2007) (Rejecting insurance company argument that builders risk policy written for major construction project at Detroit airport should be considered a "standard fire policy" for limitations purposes).
- Representation of condominium association in connection with successful $2 million settlement of construction defect claims related to defective balconies on high-end residential condominium building in Washington, D.C. This matter involved resolution of claims with insurance companies, a surety, developer and trade contractors.

Publications

- "Cyberattacks on Cryptocurrency Assets: Risk Mitigation and Insurance Coverage," Corporate Counsel Business Journal (August 17, 2021)
- "COVID, 'Direct Physical Loss and Your Property Policy: Can the Courts Even Figure This Out?" Risk & Insurance (April 27, 2021)
- "BitGo's $700 million crypto custody insurance program: what it means and why it matters," The Block (April 21, 2021)
- "Protecting Cryptocurrency Assets," Risk Management Magazine (April 1, 2021)
- "OCC Regulator Implements Groundbreaking Cryptocurrency Guidance For Banks And The Future Of Payments," Forbes (January 4, 2021)
- "Code is (still) not law, contrary to new crypto lawsuit claims," The Block (October 23, 2020)
- "Custody Problems with Bitcoin and Other Crypto Assets," Corporate Counsel Business Journal (September 30, 2020)
- "Insurance coverage for coronavirus claims: 'Loss of use' does not require physical injury in liability policies," Westlaw (April 10, 2020)
- "Viewpoint: Insurance policyholders have property loss claims in coronavirus era," Washington Business Journal (April 3, 2020)
- "Securities fraud lawsuit says cruise line lied about COVID-19's impact on business, causing stock to drop in price," The Block (April 3, 2020)
- "Many Liability Insurance Policies May Provide Coverage for Losses from Coronavirus," Insurance Research Letter (April 3, 2020)
- "Many Liability Insurance Policies May Provide Coverage for Losses from Coronavirus," Advisen FPN (March 26, 2020)

Stephen D. Palley | Attorney Biography (Continued)

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- "The SEC meets decentralization theater with safe harbors for token sales," The Block (February 10, 2020)
- "On lost cats and crypto: a lawsuit on the move raises questions about valuation and liability," The Block (February 5, 2020)
- "Bitcoin, trust, and simplicity," The Block (January 5, 2020)
- "Lawsuit against Craig Wright claims 1 million bitcoin," The Block (January 2, 2019)
- "Winklevoss lawsuit against Charlie Shrem peeled out in top gear, but now may be stuck in neutral," The Block (November 6, 2018)
- "Coverage for Bitcoin Losses...or is There?" American Bar Association, Insurance Coverage, Litigation Journal (October 31, 2018)
- "Understanding the Risk of 'Immutable' Blockchain Applications," Risk Management Magazine (October 10, 2018)
- "Benefits Abound for Blockchain. So Do Risks." Corporate Counsel Business Journal (March 1, 2018)
- "7 Tough Legal Lessons for Crypto Entrepreneurs," CoinDesk (February 5, 2018)
- "Share With Care: A Recent Decision Demonstrates the Perils of Sharing Links without Passwords," Westlaw Journal Insurance Coverage (May 5, 2017)
- "Understanding the Benefits and Risks of Blockchain," Risk Management Magazine (March 6, 2017)
- "Bitcoin, Blockchain and Insurance: New Tech, Old Rules," FC&S Legal (July 7, 2016)
- "Determining Jurisdiction When a DAO is Sued," Coindesk.com (May 22, 2016)
- "How to Sue A Decentralized Autonomous Organization," CoinDesk (March 20, 2016)
- "Seven Things Every Lawyer Should Know About Drones in 2016," Law Practice Today (January 14, 2016)
- "Sticks, Bricks, Bytes & Drones: Opportunities and Challenges at the New Frontiers of Construction Law," American Bar Association, Forum on Construction Law (April 1, 2015)

Speaking Engagements

- "Crypto Asset Disputes: A practical guide to risks, recovery and recent developments," Lexology Webinar (September 28, 2022)
- "Reg and Compliance: Crypto Legal Eagles on What Not to Do," NEARCON (September 13, 2022)
- "Crypto Law with Stephen Palley," The Feedback Loop (September 12, 2022)
- "FinTech Risks: Cyber & Tech E&O," NetDiligence Cyber Risk Summit (June 2, 2022)
- "Stablecoins and the Future of Money," DC Blockchain Summit (May 24, 2022)
- "Decentralized Autonomous Organizations ("DAO") and Other Blockchain Entities," Practicing Law Institute - The Future of Blockchain and Digital Assets 2021 (October 27, 2021)
- "Cyber Insurance, Blockchain & Cryptocurrency," NetDiligence Cyber Risk Summit (October 5, 2021)
- "Crypto and Securities Law Issues," Clubhouse (May 21, 2021)
- "Mastering Bitcoin, Blockchain, & Digital Currency Law," Rossdale CLE (April 21, 2021)
- "Law on the Block: A Look at Crypto and Other Regulatory Developments," The Block (March 30, 2021)
- "The DeFi Debate," Finance Magnates Virtual Summit 2020 (November 18, 2020)

Stephen D. Palley | Attorney Biography (Continued)

Stephen D. Palley
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- "DeFi and the Law - A roundtable discussion with crypto's leading lawyers," The Block (October 13, 2020)
- "Pursuing Coverage for COVID-19 Losses," Trial Guides, LLC (May 5, 2020)
- "Insurance Coverage Stemming from the Coronavirus," Association Trends (April 21, 2020)
- "Algorithmic Malpractice & Lawfare," ALM LegalTech2020 Conference (February 4, 2020)
- "Construction Builder's Risk and CGL Insurance: Scope of Coverage, Covered Losses, Exclusions, AI Endorsements," Strafford Publications (January 29, 2020)
- "Common Pitfalls of Certificates of Insurance," RIMS Toledo Ohio Chapter (October 3, 2019)
- "Contractual Risk Transfer," RIMS Workshop (September 12-13, 2019)
- "Blockchain and Corporate Governance," ETH Berlin (August 21, 2019)
- "Mastering Bitcoin, Digital Currency, & Blockchain," The Rossdale Group (August 14, 2019)
- "Identity and Personal Governance," World Legal Summit New York (August 1, 2019)
- "Insurance Coverage for Blockchain and Cryptocurrency Risks," Strafford Publications (May 29, 2019)
- "A Conversation with Stephen Palley, Partner at Anderson Kill," Block Crypto's The Scoop Podcast (May 21, 2019)
- "Insurance Coverage for Emerging Technology Risks," Lawline (May 20, 2019)
- "Consensus 2019," Coindesk (May 13, 2019)
- "Everything You Wanted to Know About Blockchain (But Were Afraid to Ask)," 2019 Corporate Counsel Institute (March 13, 2019)
- "Use Cases & Applications of Blockchain in Legal Services," LegalWeek 2019 (January 28, 2019)
- "Legal Ethics and Cryptocurrency," American Bar Association, Cyberspace Law Committee (December 18, 2018)
- "FinTech and Cryptocurrency: Opportunity or Hype?" New Castle County FinTech Forum (December 11, 2018)
- "Coindesk Live," Coindesk (November 27, 2018)
- "Environmental Challenges in NYC Commercial Real Estate," CREWNY (November 6, 2018)
- "The Art and Science of Settling an Insurance Claim," RIMS Palm Beach Chapter (October 11, 2018)
- "Cryptocurrency," 2018 PIABA Annual Meeting and Securities Law Seminar (October 10, 2018)
- "Insurance Coverage Disputes and Construction Defects," Lorman (September 20, 2018)
- "Legal Ethics and Cryptocurrency," 2018 American Bar Association Business Law Section Annual Meeting (September 15, 2018)
- "Is Your Nonprofit's Insurance Policy Really Protecting You From Cyber Losses?" Nonprofit Finance & Accounting Summit (September 12, 2018)
- "Panelist, Block (Legal) Tech Conference," Illinois Tech - Chicago Kent College of Law (August 9, 2018)
- "Blockchain & the Evolution of Decentralized Storage" Net Diligence Cyber Risk Summit (June 13, 2018)
- "Fireside Chat Legal Panel," Blockchain Nation Miami (April 25, 2018)

Stephen D. Palley | Attorney Biography (Continued)

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- "Blockchain Technology and Litigation Risk: When Good Ledgers Go Bad," ACC Central Pennsylvania Chapter (April 23, 2018)
- "Contracts and Agreements," American Association of Port Authorities (April 17, 2018)
- "Blockchains, Digital Currencies and the Future of Financial Services Industry," NYU Stern "Crypto Litigation Updates (April 16, 2018)
- "Ten Tips for Nailing Down Responsive Cyber Coverage," RIMS Utah Chapter (April 12, 2018)
- "Blockchain Technology and Litigation Risk: When Good Ledgers Go Bad," New York RIMS Chapter (March 15, 2018)
- "Cyber Risk Symposium for Financial Institutions," Willis Towers Watson (March 1, 2018)
- "Internet of Agreements, Legal Panel," IoA Conference (February 23, 2018)

Professional Affiliations

- Fellow, American College of Coverage and Extra Contractual Counsel
- Fellow, Construction Lawyers Society of America

Honors and Awards

- ***The Best Lawyers in America***, Insurance Law, 2019-2023
- ***The Legal 500 US***, Insurance: Advice to Policyholders, 2018

Clara Krivoy | Attorney Biography

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Area of Practice
- Corporate

Related Experience
- Digital Commerce
- Ibero-America Private Clients
- Cross-Border / International Transactions
- Mergers & Acquisitions
- Litigation & Arbitration
- Finance
- Fintech
- Funds
- Latin America
- Bankruptcy & Corporate Restructuring
- Brand & Reputation Management

Education
- Universidad Católica Andrés Bello, Caracas, Venezuela – Law Degree, 1992
- New York University School of Law – M.C.J., 1993
- New York University School of Law – LL.M., 1994

Bar Admissions
- New York
- Venezuela

Languages
- Portuguese
- Spanish

Overview

Clara Krivoy is co-chair of Brown Rudnick's Digital Commerce group and head of the Ibero-America Private Client group. Clara also provides legal advice on a pro bono basis to support philanthropic initiatives related to human rights on a global basis.

Digital Commerce Experience

As part of the Digital Commerce group, Clara regularly advises clients operating or looking to operate on the blockchain, and establishing tokenized ecosystems, in connection with:

ICOs/STOs/IEOs/TGEs

- Assistance with white papers
- Elaboration of compliance blueprints
- Elaboration and testing of smart contracts
- Exempt offerings (including Reg D, Reg S, Reg CF, and Reg A)
- Viability of selected functionalities
- Assistance with disclosures and disclaimers
- Assistance with preparation of prospectuses

Regulatory Analysis

- Regulatory analysis to ascertain nature of tokens under current securities regulations
- Regulatory analysis of business models
- Assistance with industry-specific regulations
- Analysis of applicable licensing and compliance requirements
- KYC/AML compliance
- Advice regarding government sanctions
- Government audits
- Preparation of Public Relations guidelines to support regulatory blueprint
- Preparation of website disclaimers
- Assistance with third party communications and disclosures
- IP related matters (including protection of trade secrets, patents, trademarks, and copyrights)
- Cybersecurity and data privacy

Exchanges

- Guidance in connection with applicable Money Transmitter regulations, Broker Dealers, ATS registrations, CFTC compliance, and Investment Company Act
- Payment Systems
- Assistance with exchange listing strategy
- Assistance with listing applications

Corporate, Funds, Tax and Transactional

- Incorporation of new entities
- Documentation of intercompany relationships
- Employment related matters
- Token option plans
- Flow of funds and corporate structure analysis
- Global tax planning
- Assistance with identifying targets for strategic alliances and related due diligence
- Documentation of investments at share ownership and token levels
- Design of investment and fund structures
- Assistance with service providers and other third-party MOUs / agreements

Dispute Resolution

- Arbitration/Mediation/Litigation
- Internal Investigations
- White collar defense

Clara Krivoy | Attorney Biography (Continued)

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Representative Digital Commerce Clients

Representative clients include ACN Token, aelf (ELF), Aion (AION), Airthereum, Aleph Zero Foundation, AppCoins (APPC), BCG Chain (BCG), Bibox (BIX), Binance (BNB), Bitcoin Foundation, Bitcoin Suisse, Bitlumens (BLS), BitTorrent (BTT), Blockcloud (BLOC), Blockhaus, BLOCKv (VEE), BnkToTheFuture (BFT), Cardano (ADA), Coin2Fly (CTF), Contents Protocol (CPT), Cosmo Coin (COSM), Credits (CS), CSN, Dala (DALA), Data (DTA), Databits (DTB), DAV Network (DAV), DigixDAO (DGD) and Digix Gold (DGX), Distributed Credit Chain (DCC), Dukascash, Dukascoin, EBCoin (EBC), Efforce (WOZX), FUSION (FSN), Givit, Goldcoin (GLC), GRMTK, Haven (XHV), Heymate (HEY), HyperCash (HC), Humaniq (HMQ), indaHash (IDH), IOST (IOST), Klima (KlimaDAO), KRATOS (TOS), Lendtract, Leveller Media, Maecenas (ART), Medibloc (MED), Merculet (MVP), Metadium (META), Minterest (MNT), Mithril (MITH), Nash Exchange (NEX), NEO (NEO) and Gas (GAS), Obyte/Byteball (GBYTE), OMF, Ontology (ONT) and Ontology Gas (ONG), PAL Network (PAL), Particl (PART), Patientory (PTOY), PieDao (DOUGH), Premium Enterprise, Project SHIVOM (OmiX), Qwark (QWARK), Rate3 (RTE), Sentinel Protocol (UPP), Shift (SHIFT), SingularDTV, SingularX, SoluTech, Spatium (SPT), Tapatalk, TomoChain (TOMO), TTC Token, Ultrain (UGAS), Vestergaard, Woo Network (WOO), Xenon NFT, XL Digital Studio and Yellow Network (YELLOW).

Latin America Experience

As part of the Ibero-America Private Client Practice Group, Clara provides legal advice and support to individuals, families, family offices and their holdings having interests in Spain, Portugal, and Latin America, as they maintain or look to establish a U.S., multi-jurisdictional or global presence.

Clara has represented domestic and foreign clients on corporate and securities matters, debt and equity offerings, mergers and acquisitions, restructurings, bank lending, joint ventures, structuring and development of new ventures, financing, corporate governance, global tax planning, regulatory compliance, internal investigations, as well as cross-border litigation and arbitration matters.

Representative Latin America Experience

- Advised bondholders of Venezuela, Petróleos de Venezuela, and C.A. La Electricidad de Caracas in connection with sovereign default.
- Represented Ag Processing Inc. in connection with the sale of two subsidiaries based in Latin America.
- Advised Eléctricas de Medellín Ingeniería and Servicios, S.A. and Unión Eléctrica S.A. in connection with corporate governance matters related to Empresa Energía Honduras, S.A. de C.V.
- Represented Mexican-based impact investment company in connection with various joint ventures with U.S.-based entities in the hospitality and entertainment industry.
- Advised Institute of Advanced Management Studies (IESA) Foundation in connection with U.S. regulatory tax and compliance matters.
- Advised individuals regarding Undisclosed Foreign Assets in connection with IRS Offshore Voluntary Disclosure Program (OVDP) and Streamlined Filing Compliance Procedures.
- Advised financial institutions based in Latin America on U.S. regulatory issues, including FinCEN regulations and FATCA.
- Advised cross-border financial entities in connection with investigations by the DOJ, SEC, FINRA and the CFTC.

Clara Krivoy | Attorney Biography (Continued)

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- Advised individuals in connection with internal investigations, voluntary disclosure decisions, and development of compliance programs
- Represented a Latin American media company in connection with disputes over licensing of programming.
- Advised companies and shareholders based in Latin America in connection with potential claims against sovereign defendants.
- Represented shareholders and officers of Venezuelan banks in U.S. litigation arising out of the Venezuelan government's intervention and liquidation of the banks.
- Represented various Latin American investors in connection with the defense of fraudulent transfer claims brought by the receiver appointed in the largest Ponzi scheme in Connecticut history.
- Represented various Latin American investors in connection with claims arising from a Ponzi scheme conducted by a New York brokerage firm and affiliated entities.
- Represented Deutsche Bank, S.A.E. (DB SAE) in connection with the USD 80 million structured financing of the construction of four hospitals in Panamá. This financing involved the transfer and assignment by the borrower to DB SAE of certain accounts receivable, which were subsequently transferred by DB SAE to Deutsche Bank AG, London.
- Represented numerous account holders, counterparties, and other creditors in the Lehman Brothers bankruptcy cases and related SIPA proceedings.
- Represented account holders with approximately $500 million of exposure in the Refco, Inc. et al. Chapter 11 cases.
- Represented Bear Stearns International and Banco Bansud S.A., each as underwriter of a series of tax revenue secured notes issued by the Argentine province of Tucumán under a global medium-term note program. The total principal amount was $400 million.
- Represented Companhia Paranense de Energia (COPEL), a major state-owned Brazilian electric utility, in connection with a consent solicitation of holders of certain bonds issued pursuant to Rule 144A in order to seek certain amendments to the bonds necessary to permit the privatization of the company.
- Represented Empresa Nacional de Electricidad S.A. (EndesaChile) and Enersis, two NYSE-listed Chilean utility companies, in connection with a $3.5 billion "club" loan with eight separate international lenders and the concurrent restructuring and refinancing of substantially all of their consolidated bank debt.
- Represented AES Empresa Eléctrica de El Salvador, Ltda. de C.V. in connection with its acquisition of an indirect majority ownership interest in Reliant Energy's distribution assets in El Salvador, backed by a $100 million non-recourse loan from Dresdner.
- Represented Fortuna, a Panamanian hydroelectric generator company in a $170 million Rule 144A/Regulation S secured bond offering.
- Represented Mavesa, S.A., a New York Stock Exchange listed Venezuelan food products company, in connection with the $510 million tender offer for all of the outstanding shares and American Depositary Shares of Mavesa by Empresas Polar, a Venezuelan food and beverage conglomerate. This transaction is the first takeover of a U.S.-listed Venezuelan company.

Clara Krivoy | Attorney Biography (Continued)

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- Represented Southern Cross Latin America Private Equity Fund IV, L.P., a private equity fund formed in 2010 with approximately USD 1.68 billion in capital commitments and which targets investments in Latin America as well as its predecessor funds, in connection with various acquisitions and dispositions.
- Represented Barclays Capital Inc. as dealer-manager in connection with an offer by Transportadora de Gas del Norte S.A. to exchange approximately USD 340 million in Rule 144A/Regulation S notes for a combination of cash and new Rule 144A/Regulation S par notes.
- Represented Wasserstein Perella Emerging Markets as arranger in a USD 120 million financing in which the Argentine Province of Santiago del Estero issued bonds secured by tax revenues.
- Represented Banco Bozano Simonsen Ltd. in connection with a Eurocommercial paper program for Petroflex, a petrochemical company in Brazil and in connection with the first single issue of a BOVESPA-linked note program.
- Represented IRSA Inversiones y Representaciones S.A., an Argentine real estate company (in which George Soros is a principal shareholder) in connection with three concurrent U.S registered offerings: (i) the initial public offering of ADRs and listing on the New York Stock Exchange; (ii) the exchange offer of existing Rule 144A ADRs for registered ADRs; and (iii) a rights offering to holders of the Rule 144A ADRs. We also represented IRSA in connection with a Rule 144A/Regulation S convertible bond offering (PARCKS), the first by a Latin American issuer in the international capital markets, a USD 250 million registered rights offering conducted concurrently in Argentina to holders of common stock and in the United States to holders of ADRs, and in connection with the adoption of a "fair price" anti-takeover provision to its estatutos and subsequent proxy solicitation.
- Represented Brazil Realty S.A. Empreendimentos e Participações, a Brazilian real estate company (in which George Soros was a principal shareholder) in connection with (i) a USD 100 million Rule 144A/Regulation S ADR offering and (ii) a USD 70 million Rule 144A/Regulation S Eurobond offering.
- Represented Companhia Paranense de Energia-COPEL, a major state-owned Brazilian electric utility, in connection with a consent solicitation of holders of certain bonds issued pursuant to Rule 144A in order to seek certain amendments to the bonds necessary to permit the privatization of the company.
- Represented Empresa Nacional de Electricidad S.A. (ENDESA-Chile), a NYSE-listed Chilean energy company in numerous syndicated bank financings and the restructuring of various credit facilities and other debt obligations.
- Represented Enersis S.A. and Empresa Nacional de Electricidad S.A., NYSE-listed Chilean utility companies in connection with a USD 3.5 billion "club" loan with eight separate international lenders and the concurrent restructuring and refinancing of substantially all of their consolidated bank debt.
- Represented Interconexión Eléctrica S.A. E.S.P., in connection with the refinancing of USD 1.1 billion in Rule 144A and bonds locally issued by Cintra Chile S.A., to finance 5 toll-road projects in Chile.
- Represented Prospecta Minera Ltda. and Citicorp International Finance Corp. in connection with the sale of 99.3% of Sociedad Punta de Lobos S.A. to K+S Aktiengesellschaft for approximately USD 500 million.

Clara Krivoy | Attorney Biography (Continued)

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- Represented Sociedad Punta de Lobos, Latin America's largest salt producer, and its U.S. subsidiary in general corporate and financing matters.
- Represented Chivor S.A., a subsidiary of The AES Corporation, in connection with the renegotiation of its USD 335 million debt facility secured by a large hydroelectric plant in Colombia under a prepackaged U.S. Chapter 11 bankruptcy plan.
- Represented Empresa de Energía de Bogotá S.A. E.S.P. in connection with the USD 1.46 billion bridge financing of its acquisition of Empresa Colombiana de Gas S.A. E.S.P.
- Represented Grupo Bancolombia in connection with ongoing cross-border derivative transactions.
- Represented Biper S.A. de C.V. in connection with its annual reports on Form 20-F; represented Biper in changing its trading symbol on Nasdaq; and advised Grupo Elektra in connection with a proposed reorganization of certain of its subsidiaries to take advantage of potential tax benefits.
- Represented F.V.I. Fondo de Valores Inmobiliarios S.A.C.A., a Venezuelan real estate company in connection with a Rule 144A/Regulation S ADR offering and a Level I ADR facility.
- Represented CEDEL Mercado de Capital C.A., a Venezuelan investment banking firm, in connection with its private equity investment for the formation of a pan-regional private bulk mail company.

Professional Affiliations

- Board Member of Magis America since 2019, a non-profit entity devoted to promoting sustainable and impactful solutions to challenges faced by low-income communities in the Global South
- Member of the Global Advisory Board of the Harvard Kennedy School Carr Center for Human Rights Policy (2016-2019)
- Board member of the Venezuelan American Association of the U.S. (VAAUS) since 2006
- President of VAAUS (November 2007 to February 2013)
- Member of the New York City Bar Association and the New York State Bar Association

Awards and Honors

- ***Crain's New York Business***, *Notable Women in Law*, 2021
- ***The Legal 500 Latin America***, Corporate and M&A, 2021
- ***Corporate Counsel***, *Women, Influence, & Power in Law*, 2019
- ***Latinvex***, Top 100 Female Lawyers in Latin America, 2016-2022
- ***Chambers Global***, Corporate/M&A Expert Based Abroad, Venezuela, 2014
- ***Super Lawyers***, Top Rated International Attorney in New York, NY, 2006

Speaking Engagements

- Panel Speaker at Brown Rudnick LLP Paris Arbitration Week Event, "Blockchain Arbitration and the Resolution of Cryptocurrency Disputes" (April 2022)

Stephen A. Best | Attorney Biography

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Areas of Practice

- White Collar Defense, Investigations & Compliance
- Whistleblower Allegations
- Accounting and fraud-based reviews for public and private companies
- Board counseling on compliance related matters
- Anticorruption M&A Due Diligence

Related Experience

- Trials
- Litigation & Arbitration
- Mergers & Acquisitions
- Bankruptcy & Corporate Restructuring

Education

- University of Texas School of Law – J.D., 1989
- Washington & Lee University – B.A., *cum laude*

Bar Admissions

- District of Columbia
- Virginia

Overview

Stephen Best, a former state and federal prosecutor, is chair of the Firm's White Collar Defense, Investigations & Compliance Practice Group. Steve's diverse practice focuses on representing clients in government investigations and enforcement proceedings, FCPA/anti-corruption compliance and defense, corporate governance, crisis management, and audit committee investigations.

Steve is regularly called upon and has developed a strong reputation for achieving successful outcomes for clients in high-profile FCPA and insider trading cases across the country. He served as lead counsel in the successful defense of Mark Cuban against the SEC's highly publicized claims of insider trading.

Steve is a skilled litigator and represents clients in both criminal and civil trials, and he has been lead chair on approximately two hundred jury trials and hundreds of bench trials. Client references in *Chambers & Partners* recently stated that Steve is "a very aggressive litigator, he's no-nonsense and he will basically fight to the death for his clients, he's someone that you would want to hire if you wanted to fight the government" and "[h]e has a keen sense of legal analysis and judgment…He is just an impeccable lawyer in every respect." Steve's litigation acumen and skills, along with his deep understanding of government proceedings and investigations have also been mentioned by clients in *Who's Who Legal: Business Crime Defence*. In recent reports, clients commented that "Stephen Best is a 'bright and thorough litigator' who impresses with his 'complete and utter devotion to clients.' He is highlighted for his 'perfect judgement and analytical skill,' and his stellar track record in anti-corruption proceedings and investigations," as well as, he "is renowned for his tremendous experience handling high-profile fraud investigations and insider trading allegations."

Over his extensive career, Steve has represented audit committees and independent special committees investigating whistleblower allegations of fraud and other corporate wrongdoing. He has a deep knowledge of complex accounting and SEC reporting issues, and anti-corruption compliance, with particular focus on government enforcement and regulatory matters,
ethics, and compliance.

Steve is a regular lecturer on criminal law and procedure to bar associations and state and federal law enforcement agencies. Steve was previously an instructor at the University of Virginia National Trial Advocacy Institute.

Before joining Brown Rudnick, Steve served as the co-chair of the white-collar defense group at a large, multinational law firm based in New York and, prior to that, was a prosecutor for almost ten years serving as an Assistant U.S. Attorney in Washington, D.C. and an Assistant Commonwealth's Attorney in Fairfax, Virginia.

Currently, and along with many of the below-listed matters, Steve represents the Special Claims Committee of the Financial Oversight and Management Board for Puerto Rico tasked with investigating and prosecuting potential claims against third parties in its massive restructuring case, including an action to declare void more than $6 billion of bond debt.

Representation

SEC/Fraud Matters

- Represented a clean energy company in an independent review of alleged fraud and accounting concerns, in connection with certain senior executives.
- Served as lead trial counsel in the successful defense of Mark Cuban against charges by the SEC for insider trading violations.

Stephen A. Best | Attorney Biography (Continued)

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- Represented five individual investors of a leading video supply chain technology company in connection with an SEC fraud investigation, relating to alleged material misrepresentations made to the investors.
- Represented a publicly traded company in an SEC investigation related to perquisite disclosures regarding an individual executive's use of an airplane jointly owned with the company.
- Represented several employees of Elliott Broidy, the former finance chairman of the Republican National Committee and vice-chairman of the Presidential Inaugural Committee for President Donald Trump.
- Represented the CEO of a $5 billion multinational contract research organization in connection with an SEC investigation into accounting policies and various other matters.
- Represented Royal Dutch Shell in an accounting fraud review and a review of bribery allegations related to the company's Nigerian-based business operations.
- Represented an individual defendant in a nationally publicized criminal and civil insider trading case with the resulting sentence of four months, instead of a sentence of 12-18 months as requested by the prosecution.
- Represented Lucent Technologies' senior executive in an SEC enforcement trial case regarding revenue recognition issues. Summary judgment was granted against the SEC with respect to all fraud allegations.
- Represented TeleTech Holdings, Inc. in an SEC investigation and class action defense of accounting and disclosure issues surrounding stock option grants and expensing. Matter resulted in cessation of SEC probe with no regulatory action and a settlement with the class plaintiffs.
- Represented numerous witnesses in an SEC investigation of the Interpublic Group of Companies, one of the largest global marketing companies in the world and a U.S. issuer, relating to the company's restatement of financial results. Clients were never sued by the SEC.
- Represented Global Crossing, Ltd.'s Special Committee on Accounting Matters of the Board of Directors in an SEC fraud inquiry.
- Represented brokers and mutual funds in parallel investigations by the New York State Attorney General (NYAG) and the SEC into market timing and late trading. Matter resulted in declination of prosecution by the NYAG and a civil consent decree with the SEC with no admission of liability.
- Represented Enron Corporation's former vice chair in parallel proceedings before Congress, the SEC, and the DOJ.

Anticorruption/FCPA Matters

- Representing the principal of a global government contracting firm under federal investigation involving allegations of fraud and FCPA violations.
- Represented two Spanish billionaires in a global corruption review concerning allegations of bribing the President of Guatemala and other high-ranking government officials to secure a public infrastructure project.
- Represented senior executives of one of the world's largest meatpacking companies in connection with allegations of paying approximately $120 million in bribes to hundreds of Brazilian politicians.
- Acting on behalf of an American enterprise information management services company in conducting antibribery anticorruption due diligence in anticipation of the client's acquisition of foreign businesses in the Middle East, North Africa, and Turkey region.

Stephen A. Best | Attorney Biography (Continued)

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- Represented the CEO of one of the world's largest online gaming companies regarding allegations of bribery surrounding the award of gambling permits in Sochi, Russia.
- Represented approximately ten senior executives of a leading premium spirits company in a DOJ/SEC FCPA investigation, leading to a successful result where none of the clients were ever charged and one received transactional immunity from prosecution.
- Represented a leading premium spirits company in an FCPA review of China-based business activities.
- Represented U.S. issuer in DOJ FCPA probe regarding hosting and entertainment issues of Chinese bank officials. Matter resulted in written declination of prosecution by DOJ.
- Represented two executives of Panalpina in DOJ and SEC investigations related to FCPA probe.
- Represented CEO of AGA Medical Devices in DOJ FCPA probe involving allegations of kickbacks to Chinese doctors and hospitals. Matter resulted in written declination of prosecution by DOJ.
- Retained as an expert witness on FCPA and anti-corruption compliance policies and procedures for an international arbitration in Oslo, Norway.
- Represented the lead cooperator for the U.S. government in its criminal prosecution of Viktor Kozeny and Ricky Bourke for violations of the FCPA.
- Represented the former chairman of the Audit Committee for the Board of a Russia-based telecommunications company in connection with a DOJ/SEC investigation into alleged violations of the FCPA.
- Represented the former CEO of a leading multinational manufacturer of aviation products in connection with a DOJ FCPA investigation.
- Represented the head of sales for a Japanese multinational conglomerate company in Brazil regarding bribery allegations related to Mexican officials.
- Represented a global water infrastructure company regarding allegations of bribery stemming from operations in Brunei.
- Represented the regional head of legal for a Hong Kong-based global investment bank in a multinational anticorruption probe over the practice of hiring sons and daughters of Chinese officials.
- Represented an AmLaw 100 law firm regarding two separate bribery investigations, one regarding securing business with the Ghana cocoa industry and another involving client gift-giving by the head of the firm's Beijing office.
- Represented a large Azeri conglomerate regarding historical corruption issues in order to make the conglomerate prepared for Western investment.
- Represented the former chief compliance officer of a leading energy company in a global corruption review.
- Represented engineering and design firm Parsons Brinkerhoff and infrastructure group Balfour Beatty in a global FCPA review before the DOJ and U.K. SFO.
- Represented the former head of Sony Pictures, China in an SEC FCPA investigation, which led to the SEC issuing a no-action letter with respect to the client.
- Represented the head partner of a Russian joint venture company in connection with an internal FCPA review conducted by a Fortune 100 joint venture stakeholder.

Stephen A. Best | Attorney Biography (Continued)

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- Represented an independent consultant in Dubai regarding allegations of corruption regarding an oil and gas project, where the matter was successfully resolved in favor of client who received full payment for consultancy services rendered.
- Represented the former COO of Airbus in a global corruption review.
- Represented the Interpublic Group of Companies in numerous anticorruption reviews related to the company's business activities in Brazil, India, and China. No enforcement action was ever initiated.
- Served as primary counsel to numerous U.S. and private issuers, including Fortune 100 companies, on anti-corruption compliance, pre- and post-acquisition anti-corruption due diligence, and regulatory defense matters.

Audit Committee Reviews/Internal Investigations

- Represented an electric vehicle company's Special Committee of the Board of Directors in an internal investigation of certain sales of equity securities made by and to individuals associated with the company ahead of the company going public through a SPAC.
- Represented the Dallas Mavericks of the National Basketball Association in an investigation regarding allegations of workplace misconduct.
- Represented a Fortune 1000 company in connection with allegations of racial and gender discrimination made by former chief compliance officer.
- Represented the Audit Committee of an oilfield service company in a review of disclosure concerns, other complex accounting issues, several whistleblower allegations, and allegations of workplace misconduct, including allegations of racism.
- Represented the Audit Committee of a public technology company in a review of whistleblower allegations and SEC disclosure issues.
- Represented the Special Committee of an Audit Committee of an online payroll and human resource technology provider in a review of whistleblower allegations and SEC disclosure issues.
- Represented the Audit Committee of a biotech company in a review of allegations of fraud and accounting irregularities identified in a short seller report.
- Represented an herbal supplement company in a workplace misconduct review.
- Represented a leading insurance company in an internal investigation of alleged market timing practices.
- Represented the CEO and COO of Chicago Bridge & Iron in Audit Committee and SEC investigations surrounding accounting and disclosure issues. Matter resulted in no regulatory action being taken against clients.
- Represented a Fortune 100 Company's Special Committee of the Board of Directors in an internal investigation in anticipation of a derivative action.

DOJ Matters

- Represented automobile senior executive in connection with the Department of Justice's criminal investigation into defeat devices leading to emissions fraud within vehicles.
- Represented Republican National Committee Chairman Michael Steele in a DOJ and FEC investigation relating to allegations surrounding campaign spending. DOJ investigation concluded with a declination of prosecution.
- Represented an individual in a DOC/DOJ investigation regarding alleged unlicensed exports to an embargoed country.

Stephen A. Best | Attorney Biography (Continued)

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- Represented a senior executive of Japan Air Lines in a DOJ criminal antitrust investigation relating to allegations of price-fixing. Client was never charged by DOJ.
- Represented Arab Bank, one of the largest financial institutions in the Middle East, in a DOJ investigation. Matter resulted in no regulatory action by the DOJ.
- Represented Delta Petroleum in parallel SEC and DOJ investigations of accounting and disclosure issues surrounding stock option grants and expensing. Matter resulted in a declination of prosecution by the USAO-SDNY.
- Represented a commercial real estate company embroiled in the corruption probe of one of the world's largest retailers before the DOJ and SEC. No charges were ever filed.

Other Notable Matters

- Represented Michael Sussmann in connection with civil litigation brought by a Russian bank and Russian oligarchs, in connection with the U.S. government's investigation into Russian interference in the 2016 election and possible collusion with President Donald Trump's presidential campaign.
- Advised a Texas-based energy services company in relation to corporate governance and compliance counselling, including the implementation of a global compliance program, internal controls, and related trainings.
- Advised the Compensation Committee of a public technology company regarding the creation and approval of a new compensation package for the company's CEO.
- Represented Zurich Financial in multi-state criminal and civil investigations before 37 State Attorneys General, as well as class action defense surrounding issues of price-fixing and bid-rigging. Matter resulted in global multi-state settlement agreements.
- Represented numerous witnesses in the KPMG criminal tax investigation before the USAO-SDNY. No client was prosecuted by the USAO-SDNY.
- Represented an individual indicted for embezzlement, resulting in an acquittal on all counts at trial.
- Represented numerous public companies before the NYAG investment protection unit.

Publications

- "Trends and Developments USA," Chambers White Collar Crime Guide (October 23, 2020)
- "Anti-corruption: developments in enforcement policy in the UK and the US," Financier Worldwide (February 2018)
- "Recent Decision Provides Helpful Guidance on FCPA's 'Wide Net'," Brownstein Client Alert (December 19, 2012)
- "DOJ and SEC Release Long-Awaited FCPA Resource Guide," Brownstein Client Alert (November 16, 2012)
- "Indemnity, Advancement and Insurance: Managing Risk in a Heightened Regulatory Enforcement Environment," Brownstein Client Alert (April 19, 2012)
- "Taken To The Extreme: Prosecutions Under The FCPA," Mealey's Corporate Governance Report (December 2003)
- "American Corporate Governance: Scandal, Reform and the Global Capital Markets," White Paper prepared for Coudert Bros., L.L.P. (August 16, 2002)
- "The FBI is Asking," Legal Times (October 1, 2001)

Stephen A. Best | Attorney Biography (Continued)

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Media Coverage

- "Chicago Man In Life Time Fitness Trading Scheme Gets 4 Mos.," Law360 (August 6, 2019)
- "Man Cops To Role In Life Time Fitness Insider Trading Scheme," Law360 (March 12, 2019)
- "Ex-Life Time Exec To Cop Plea In Insider Trading Case," Law360 (January 30, 2018)
- "Alleged Life Time Inside Traders To Help Prosecutors," Law360 (November 8, 2017)

In connection with Mark Cuban, Steve was quoted, interviewed or otherwise featured in a wide variety of news articles and media press, including the highly-publicized trial outcome in SEC v. Mark Cuban and his role as lead trial counsel in that case:

- "Mark Cuban Urges Supreme Court To Review SEC Courts," Law360 (March 8, 2016)
- "Mark Cuban Asks 2nd Circ. To Deny Bharara's Newman Appeal," Law360 (February 19, 2015)
- "SEC Loses as Mark Cuban Triumphs in Insider-Trading Trial," Bloomberg Business Week (October 17, 2013)
- "Mark Cuban cleared of insider trading, blasts US government," Moneycontrol.com (October 17, 2013)
- "Mark Cuban a celebrity status target?," Fox Business News (Broadcast Interview) (October 17, 2013)
- "Jury clears Mark Cuban of insider trading charges," USA Toda (October 16, 2013)
- "Jury says Cuban did not commit insider trading," Yahoo Trading (October 16, 2013)
- "Jury rules for Mark Cuban in insider case," CNN Money (October 16, 2013)
- "Billionaire Mark Cuban cleared of insider trading; blasts US government," Reuters (October 16, 2013)
- "Mark Cuban Cleared of Insider Trading," The New York Times (October 16, 2013)
- "Cuban Verdict Likely The Last Word In SEC Case," Law360 (October 16, 2013)
- "Litigators of the Week: Stephen Best of Brown Rudnick, Christopher Clark of Latham & Watkins, and Thomas Melsheimer of Fish & Richardson," The Am Law: Litigation Daily (October 17, 2013)
- "Raft of US firms advise as billionaire Cuban wins epic and costly battle with SEC," The Lawyer (October 22, 2013)
- "Supreme Court May Clip SEC's Enforcement Power," National Law Journal (April 18, 2017)

Awards and Honors

- **BTI Consulting Group**, *Client Services All-Star*, 2022
- ***Chambers USA***, White-Collar Crime & Government Investigations, 2011-2022
- ***The Best Lawyers in America***, Criminal Defense: White-Collar, 2012-2022
- ***Who's Who Legal***, Business Crime Defence – Corporates / Individuals, 2015, 2019-2021
- ***Lexology Client Choice***, Business Crime Defence – USA, 2021
- ***Global Expert Guides***, *Best of the Best USA*, 2021
- ***Super Lawyers***, *Top Rated White Collar Crimes Attorney in Washington, D.C.*, 2008, 2013-2021
- ***America's Top 100 Attorneys***, Criminal Defense Attorneys, 2018
- ***The National Law Journal***, *White Collar Crime Trailblazers*, 2015
- ***Lawdragon***, *Top 500 Lawyers in America*, 2010
- ***Washingtonian Magazine***, *Top Lawyer in Washington, D.C.*, 2007

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