

Financial Restructuring and Bankruptcy

Our Financial Restructuring and Bankruptcy Group helps financial institutions, unsecured creditors, businesses and investors navigate the challenges and opportunities that arise out of the ebbs and flows of the credit and real estate markets. Our experience with a variety of complex, high-stress workout situations allows us to provide timely legal and business guidance, as well as market insight, to clients seeking to restructure, foreclose, liquidate, sell, buy or workout distressed loans and the underlying collateral. Our lawyers have the unique experience of representing both debtors and creditors, providing us with deep understanding of the priorities and motivations of opposing parties and the industry at large. We rely on these collective skills to deliver practical and creative solutions.

We provide financial restructuring, bankruptcy-related services, and asset recovery to secured lenders/creditors, unsecured trade creditors, distressed businesses, trustees, insurers, property receivers and lessors. Members of the group have received bankruptcy trustee appointments, including under Chapter 11 and Subchapter V.

Our group has extensive experience in all aspects of:

- bankruptcy-related proceedings and litigation
- Liquidations
- loan enforcement actions
- credit workouts/restructurings
- receivership proceedings
- the sale and purchase of distressed loans or businesses
- borrower liquidations.

Our lawyers serve in leadership roles in organizations addressing industry issues such as the Turnaround Management Association (TMA), the International Women's Insolvency and Restructuring Confederation (IWIRC) and the American Bankruptcy Institute (ABI). Our team also is involved with development and execution of events such as the Eastern District of Pennsylvania Bankruptcy Conference and the IWIRC Leadership Summit.

PRACTICE CONTACTS

Amy E. Vulpio, Chair
215.864.6250
vulpioa@whiteandwilliams.com

Heidi J. Sorvino, Partner
212.631.4417
sorvino@whiteandwilliams.com

RELATED PRACTICES

Corporate and Securities

Finance

Real Estate

Trusts and Estates

RELATED INDUSTRIES

Financial & Investment Services

Healthcare

Insurance

Technology

PRACTICE HIGHLIGHTS

- Provide business and legal guidance along with market insight
- Service secured lenders and creditors, distressed businesses, trustees, insurers, property receivers, lessors and trade creditors
- Act as local counsel for clients seeking representation in bankruptcy proceedings

Loan Modifications, Restructurings, Foreclosures and Asset Recovery

We advise financial institutions, as well as public and private investors, regarding strategies for consensual restructurings and alternatives to litigation of non-performing credit facilities and structured finance transactions. We represent clients as lenders or co-lenders, agents, participants and loan purchasers and investors in connection with distressed mortgage or asset-based loans, mezzanine loans and CMBS investments. We have extensive experience in efficiently negotiating and documenting loan modifications, extensions, restructurings, forbearances, discounted pay-offs and sales of loans or participation interests.

Whether enforcing consensual liens on real or personal property, or enforcing judgments obtained through litigation, we routinely prosecute judicial foreclosures and execution sales in state and federal courts. We have significant experience in navigating the specialized rules governing the foreclosure process, including the strategic use of receiverships to sell or preserve collateral value.

Our lawyers are equally skilled in enforcing loans by confession of judgment, if available, or pursuing civil actions to obtain judgments on notes or guarantees. If a confessed judgment is challenged through a petition to open or strike, we will vigorously defend the judgment. Conversely, if a confessed judgment has been improperly entered, we can defend enforcement.

We also represent financial institutions and investors in enforcing lenders' security interests against various types of personal property, including pledged stock and other equity interests, equipment, inventory, accounts receivable, patents, trademarks and other general intangibles. We have substantial experience in liquidating personal property either through judicial proceedings or non-judicially through public auctions or private sales under Article 9 of the Uniform Commercial Code.

Structured Finance Workouts and Dispositions

While turmoil in capital markets can saddle financial institutions with excess debt on their balance sheets, it also creates opportunities for investors to capitalize on market instability. Consequently, expedient sales and purchases of distressed assets has become an attractive strategy. We combine experience in securitization, derivatives, real estate, bankruptcy and distressed asset dispositions to provide legal and business guidance, as well as market insight, to clients that focus on structured debt opportunities. Further, we can often expedite clients' ventures by drawing on our network of relationships with institutional lenders, servicers and special servicers, underwriters, investors, insurers and funds, as well as real estate owners and operators. Our clients appreciate our skill in managing intercreditor relationships in helping them navigate distressed deals.

Distressed Loan and Asset Sales

Our group has extensive experience in the purchase and sale of commercial loans, participation interests and assets securing loans. We prepare loan sale agreements, perform due diligence, negotiate terms of sale agreements and consummate closing such that our clients' loans are sold to third parties. In addition, we represent purchasers of such loans. In that regard, we perform the same functions but with an emphasis on due diligence regarding loans documents and collateral.

We have represented numerous entities in bankruptcy that have sold their assets through Section 363 sales. We have also represented numerous purchasers of such assets. In these instances, we add value to the transaction by not only negotiating the asset purchase agreement and drafting and reviewing all relevant transaction documents, but also drafting the pleadings filed in the bankruptcy proceedings to permit consummation of a sale or purchase to our clients' benefit. This may include court orders approving the sale and bidding procedures, we ensure that our client understands the process, considers all contingencies and has the best possible opportunity to be the successful bidder at an auction sale.

Creditor and Interested Party Representations

Our lawyers have substantial experience advising secured and unsecured creditors, Creditors Committees, and insurers seeking to enforce their rights and protect their claims in bankruptcy proceedings. We help secured and unsecured creditors file and recover their claims in the bankruptcy proceedings. We also help secured creditors protect their collateral from a diminution in value or waste, and/or obtain relief from the automatic stay to exercise their rights and remedies by foreclosing on, or taking possession of, their collateral. We also monitor the progress of the bankruptcy proceedings to advise our clients if any proposed plan of reorganization or relief might adversely affect their claim, collateral or rights and advise on appropriate action to mitigate their risks.

We represent numerous insurance companies in complex bankruptcy cases filed in courts throughout the country by policy-holders facing asbestos, environmental and other mass tort liabilities. In such cases, we protect the clients' rights under their policies, related agreements, settlement agreements and collateral through plan objections, prosecution and defense of adversary proceedings, filing claims and motions for payment of premiums and other post-petition insurance obligations and, where appropriate, post-petition settlements.

In addition, our group represents shopping center/mall owners, property receivers and other landowners in bankruptcy cases filed by national and regional retail tenants. We protect their client-landlord's rights during the tenant's bankruptcy proceeding, including moving to compel payment of post-petition administrative rent or to obtain relief from the automatic bankruptcy stay; objecting to motions to extend the time to assume or reject leases, or to assume and assign leases and proposed cure amounts; objecting to store closing, going out of business or lease assumption/rejection procedures motions; objecting to motions to sell assets and assume and assign related leases; or filing proofs of claim for landlords to recover lease rejection damage claims.

To the extent that the debtor or a trustee seeks to sell assets that serve as collateral for our client's claims, we participate in that process on behalf by either objecting to the sale or making sure that the terms of the sale are satisfactory to our clients. We help ensure the price is satisfactory, that our clients receive all net proceeds to which they are entitled and that any administrative expenses incurred are minimal and reasonable to our clients.

Debtor Representations

We have substantial experience advising distressed businesses as they evaluate options, including Chapter 11 reorganization, Chapter 7 liquidation and out-of-court workouts. We guide clients through the bankruptcy planning and filing process and provide assistance with selling their business or assets in bankruptcy, addressing employment-related issues, bringing avoidance actions or other litigation or accomplishing an orderly wind-down. We also help distressed businesses explore alternatives to bankruptcy, including negotiating loan modification and forbearance agreements with their secured and unsecured creditors and implementing orderly out-of-court workouts.

Litigation

Our group represents defendants in preferential transfer and fraudulent conveyance avoidance actions, and breach of fiduciary duty, filed by debtors or trustees in Chapter 7 or 11 bankruptcy cases. We aggressively defend avoidance claims by seeking to have them dismissed or favorably settled. We often assert the ordinary course of business, subsequent new value and other defenses to eliminate or reduce liability for a preference claim. We also have resolved many avoidance claims through mediation.

We regularly defend former directors and officers of companies in bankruptcy against allegations of negligence, fraud and breach of fiduciary duty. We frequently defend lenders, suppliers, vendors and other creditors in adversary proceedings relating to breach of contract, property turnover and other claims.

Representation of Trustees and Other Professionals

Members of our group represent - and serve as - bankruptcy trustees, financial advisors, trustees of liquidating trusts and other professionals in bankruptcy cases. We obtain the appointment of professionals, represent them during the proceedings, prepare fee applications, resolve disputes regarding the payment of their fees, and negotiate litigation and liquidating trust agreements on their behalf. We have prosecuted preference and other avoidance actions and resolved claims objections on behalf of bankruptcy trustees to maximize the recoveries of unsecured creditors.

REPRESENTATIVE MATTERS

Appointed Chapter 11 Trustee by the Bankruptcy Court for the Southern District of New York, successfully closing a Chapter 11 bankruptcy sale and removal of a shareholder of a defaulted borrower from a New York City property

Represented the Committee of Unsecured Creditors, Phoenix Payment Systems, Inc., U.S. Bankruptcy Court, District of Delaware, 2014

Represented senior mezzanine lender group in stopping the foreclosure of the senior mortgage and the subsequent sale of the group's \$300 million debt position in the capital structure that financed the \$5.4 billion acquisition by Tishman Speyer and Blackrock Realty of Stuyvesant Town – Peter Cooper Village, an 80-acre apartment complex located in the Lower East side of Manhattan

Represented a large commercial lender in liquidating its defaulted multi-family real estate portfolio through foreclosure, note sales and deed-in-lieu transactions

Represented Chapter 11 debtor which sold substantially all its assets to its secured creditor who is also an owner of the debtor with a small carve-out provision for unsecured creditors and administrative expenses

Served as Delaware counsel for the administrative agent on a \$325 million revolving credit facility for the debtors in the WCI Communities, Inc. Chapter 11 bankruptcy, and the pre-petition lender in connection with its \$75 million term loan with the WCI debtors

Represented a computer-based simulation training company as debtor in Chapter 11 proceedings in Eastern District of Pennsylvania; successfully transferred venue of breach of contract litigation from Connecticut to Bankruptcy Court, extended automatic stay protection to debtor's principal and rejected burdensome office space lease

Represented investment funds in multi-party, multi-tranche workout and liquidation relating to \$5 billion of class "A" office properties

Represented the trustee in the formation of a litigation trust to prosecute and distribute the proceeds of malpractice litigation arising from a failed Gulf-Coast condominium project

CASES & DEALS

White and Williams Team Completes Complex Sale Leaseback of Seven Properties
4.15.21

White and Williams Secures Summary Judgment in Involuntary Bankruptcy Dispute
8.29.19

NEWS

Best Lawyers® Recognizes 40 White And Williams Lawyers
Firm News, 8.18.22

Congratulations 2022 DE, MA, NJ, NY and PA Super Lawyers and Rising Stars
7.13.22

Christopher Graham Quoted in Article on Russia's Tussle with Bondholders
BNN Bloomberg, 6.7.22

Chambers USA 2022 Ranks White and Williams as a Leading Law Firm
6.1.22

Christopher Graham Joins White and Williams in New York City
1.6.22

Heidi Sorvino Elected President of TMA New York City Chapter
1.5.22

White and Williams Announces 15 Lawyer Promotions
1.3.22

White and Williams Ranked in Top Tiers of "Best Law Firms"
11.5.21

White and Williams Welcomes Ten New Associates
11.4.21

White and Williams Lawyers Recognized as Super Lawyers and Rising Stars
11.1.21

Best Lawyers® Recognizes 38 White and Williams Lawyers
8.19.21

Chambers USA 2021 Ranks White and Williams as a Leading Law Firm
5.20.21

Heidi Sorvino Appointed President-Elect of the Turnaround Management Association's New York City Chapter
1.4.21

White And Williams Announces Lawyer Promotions
Three Lawyers Elected to Partnership and Eight Associates Promoted To Counsel
1.4.21

White and Williams Earns Tier 1 Rankings from U.S. News "Best Law Firms" 2021
11.5.20

Best Lawyers® Recognizes 43 White and Williams Lawyers
8.20.20

Lawdragon Recognizes Amy Vulpio as Leading US Bankruptcy and Restructuring Lawyer
7.31.20

White and Williams Wins Materials Deal of the Year at 18th Annual M&A Advisor Awards
11.22.19

13th Annual Coverage College Hosts Over 400 Insurance Professionals
11.1.19

White and Williams Earns Tier 1 Rankings from U.S. News "Best Law Firms" 2020
11.1.19

Congratulations 2019 DE, MA, NJ, NY and PA Super Lawyers and Rising Stars
10.17.19

Bankruptcy Group Named M&A Advisor Award Finalist
9.5.19

Best Lawyers® Recognizes 29 White and Williams Lawyers
8.15.19

White and William Sponsors Eastern District of Pennsylvania Bankruptcy Conference 30th Annual Forum
1.24.19

Heidi Sorvino Named to Turnaround Management Association Executive Committee and Board of Directors
1.4.19

White and Williams Earns Tier 1 Rankings from U.S. News "Best Law Firms" 2019
11.1.18

12th Annual Coverage College Features Current Trends and State of the Insurance Claims Industry
10.23.18

Congratulations 2018 DE, MA, NJ, NY and PA Super Lawyers and Rising Stars
10.18.18

Best Lawyers Recognizes Twenty White and Williams Lawyers
8.15.18

White and Williams Hosts 2018 IWIRC Leadership Summit
7.27.18

White and Williams Sponsors the Eastern District of Pennsylvania Bankruptcy Conference
Convene at the Cira Center (Philadelphia, PA), 1.18.18

Congratulations 2017 DE, MA, NJ, NY and PA Super Lawyers and Rising Stars
11.11.17

White and Williams Earns National "Best Law Firm" Rankings from US News
11.1.17

Heidi Sorvino Joins White and Williams New York Office
4.3.17

White and Williams Elects Four Lawyers to Partnership, Promotes Six Associates to Counsel
1.6.17

Coverage College Celebrates Its 10th Anniversary
9.22.16

Sorvino Comments on New York Bankruptcy Court Ruling in Sabine Oil & Gas Case
Reuters, 3.8.16

Sorvino Comments on Impact of Distressed Exploration and Production Companies on Midstream Sector
Natural Gas Pipeline, 2.23.16

PUBLICATIONS

Benefits of Subchapter V Under the Bankruptcy Code to Private Equity Funds in Managing Distressed Assets
EisnerAmper, 12.3.22

Federal Rules of Bankruptcy Procedure Amended In Response to Small Business Reorganization Act of 2019
Financial Restructuring and Bankruptcy Alert, 12.2.22

Second Circuit Finds Willful Stay Violation in Foreclosure Sale of Non-Debtor's Real Property
Financial Restructuring and Bankruptcy Alert, 8.17.22

New York Appellate Court Restores Insurer's Right to Seek Pro Rata Allocation of Settlements Between Insured and Uninsured Periods
Insurance Coverage and Bad Faith and Financial Restructuring and Bankruptcy Alert, 3.23.22

District Court Overturns Purdue Pharma's Chapter 11 Plan and Related Releases of Sackler Family from Opioid Liability Claims
Journal of Bankruptcy Law, February/March 2022

New York Court Permits Asbestos Claimants to Proceed Against Insurers with Buyout Agreements
SUGGESTS CIRCUMSTANCES WHERE SUCH AGREEMENTS MAY CONSTITUTE FRAUDULENT CONVEYANCES
Insurance Coverage and Bad Faith and Financial Restructuring and Bankruptcy Alert, 11.12.21

Commercial Lease Disputes and Renegotiation – A Look Back During the COVID-19 Pandemic
Corporate Disputes Magazine, July - September, 2021

Commercial Lease Disputes and Renegotiation – A Look Back During the COVID-19 Pandemic
Corporate Disputes Magazine, July - September 2021 Issue

COVID-19 Pandemic Preference Amendments to Bankruptcy Code Benefiting Vendors, Customers, Commercial Landlords and Tenants
Financial Restructuring and Bankruptcy Alert, 3.30.21

New York State Enacts Small Business Truth in Lending Law
Finance Alert, 1.12.21

Key Takeaways From "Buyer Beware: Issues and Strategies for Addressing Dangers in Acquiring Financially Distressed Companies"
11.20

What Middle Market Lenders Need to Know about Subchapter V
Journal of Corporate Renewal, 10.20

Hidden Costs in Bargain Acquisitions of Businesses: Exposure to Fraudulent Transfer Claims
Commercial Litigation Alert, 8.18.20

New York Court Temporarily Enjoins UCC Foreclosure Sale
Real Estate Alert, 8.14.20

Congress Introduces HOPE-ful Solution for Distressed CRE Borrowers
Real Estate Alert, 8.3.20

How COVID-19 Mezzanine Foreclosures May Fare In NY Courts
Law360, 7.7.20

Mezzanine Loan Defaults, UCC Foreclosures and Recent New York Court Decisions
Real Estate Alert, 7.6.20

Debt Forbearance/Settlement Agreements: One of the Most Important and Often Overlooked Clauses
Real Estate and Finance and Tax and Estates Alert, 6.25.20

Consider Short-Term Lease Workouts For Commercial Tenants
Law360, 6.17.20

Recipe for Survival: What Restaurants Should "Takeaway" From Recent Retail Bankruptcies
Part Two of a Two-Part Series Covering Hospitality Industry Bankruptcy Considerations
Financial Restructuring and Bankruptcy Alert, 5.6.20

Looming Hotel Bankruptcies Impact Loan Workouts
Part One of a Two-Part Series Covering Hospitality Industry Bankruptcy Considerations
Financial Restructuring and Bankruptcy Alert, 4.24.20

Second Circuit Decision Addresses New York Usury Laws and Post-Default Mortgage Loan Obligations
Real Estate Alert, 4.17.20

Commercial Lease Workouts During the COVID-19 Pandemic
Real Estate, Finance and Financial Restructuring Alert, 4.6.20

Distressed Debt and Workout Agreements During the COVID-19 Pandemic

Real Estate, Finance and Financial Restructuring Alert, 3.27.20

New Subchapter V May be the Bankruptcy Lifeline Small Businesses Need to Survive COVID-19

Financial Restructuring and Bankruptcy Alert, March 23, 2020 (Updated April 15, 2020)

Preparing for a "Looming" Recession: Practical Tips for Lenders

Part One of a Three-Part Series

Finance Alert, 9.16.19

Delaware Bankruptcy Court Sustains Objection to Claim on a Note Transferred in Violation of Anti-Assignment Restriction

Financial Restructuring and Bankruptcy Alert, 6.22.18

Cumulus Media Reminds Lenders to Carefully Draft Covenants in Credit Agreements

Finance Alert, 1.31.18

Recent Bankruptcy Court Decision Reminds Lenders That Perfection of a Security Interest May Not Be Enough to Protect Funds in a Bank Account

Taking Care of Business, 1.3.18

Key Takeaways from Real Estate and Finance Forum

Presentation on "America's Brick-and-Mortar Retail Stores – A Vanishing Act in an Online Shopping World"

Real Estate and Finance Alert, 11.17.17

Legalized Marijuana Sector Reaches New Highs: Safeguards for Investors and Creditors

Financial Restructuring and Bankruptcy Alert, 8.15.17

Jevic: Structured Dismissals Must Respect Creditor Priority, but Survive Supreme Court Scrutiny (For Now)

Financial Restructuring and Bankruptcy Alert, 4.14.17

Residential Mortgage Lenders and Servicers Beware of Changes to Rule 3002.1

Financial Restructuring and Bankruptcy Alert, 11.30.16

Employment Agreement Class Action Waiver Deemed Unenforceable by Delaware Court

Labor and Employment Alert, 10.13.16

Unsecured Creditor Appeals Delaware Bankruptcy Court Ruling as to Postpetition Interest on an Unsecured Claim

Financial Restructuring and Bankruptcy Alert, 12.16.15

Flipping Through The New Bankruptcy Forms

Law360, 12.2.15

Form Reform: Major Bankruptcy Form Overhaul Takes Effect December 1, 2015

Financial Restructuring and Bankruptcy Alert, 12.1.15

Involuntary Bankruptcy Petitions - Use With Caution

Financial Restructuring and Bankruptcy Alert, 10.29.15

New Uniform Voidable Transactions Act Enacted by Eight States, Four to Consider
Financial Restructuring and Bankruptcy Alert, 10.28.15

EVENTS

White and Williams Sponsors the Eastern District of Pennsylvania Bankruptcy Conference
Convene Cityview (Philadelphia, PA), 4.1.22

Is Your Insured in a Financial Crisis? Not Sure What to Do Next? Part II: Assignments for Benefit of Creditors (ABCs)
Webinar, 12.7.21

Is Your Insured in a Financial Crisis? Not Sure What to Do Next?
Webinar, 11.30.21

Adaptive Reuse & Best Practices in Repositioning Distressed Assets
IMN NYC Distressed CRE Virtual Forum, 1.27.21

Buyer Beware: Issues and Strategies for Addressing Dangers in Acquiring Financially Distressed Companies
Webinar, 11.12.20

Bankruptcy in a Pandemic: What You Need to Know
Pennsylvania Bar Institute (Webcast), 10.30.20

Virtual Credit Smorgasbord
New York Institute of Credit

COVID-19 Insurance Program
Webinar, 8.11.20

Getting Ahead of the Tidal Wave: Bankruptcy Basics and Pre-Bankruptcy Risk Mitigation Strategies
Webinar, 6.24.20

Commercial Leases In Economic Distress: Pre-and Post-Bankruptcy Strategies for Landlords
Negotiating Lease Modifications With Distressed Tenants, Participating in the Bankruptcy Process
Webinar, 6.11.20

2020 Eastern District of Pennsylvania Bankruptcy Conference
EDPABC 31st Annual Forum (Philadelphia, PA), 1.24.20

Bankruptcy 101: What Every Claims Professional Needs to Know About Bankruptcy
Webinar, 12.10.19

Pennsylvania Bar Institute 24th Annual Bankruptcy Institute
PBI Bankruptcy Institute, 9.25.19

2019 Eastern District of Pennsylvania Bankruptcy Conference
EDPABC 30th Annual Forum (Atlantic City, NJ), 1.25.19

UST's Most Watched List

PBI Annual Bankruptcy Institute (Philadelphia, PA), 10.24.18

UCC Article 9 and Title 11 U.S.C.

PBI Annual Bankruptcy Institute (Philadelphia, PA), 10.24.18

What's Happening in the Retail Leasing and Lending Market

CRE Finance Council (New York, NY), 5.17.18

60 Cases in 90 Minutes

Eastern District of Pennsylvania Bankruptcy Conference (Philadelphia, PA), 1.18.18

America's Brick-and-Mortar Retail Stores – A Vanishing Act in an Online Shopping World

Philadelphia, PA, 11.2.17

Is Your Chapter 11 Sale Really "Free and Clear"?

PBI Annual Bankruptcy Institute (Philadelphia, PA), 10.26.17

Insolvency and Bankruptcy Code and US Cross-Border Insolvency Regime

Mumbai, India, 10.17

Finance Forum: Current Lending Issues Regarding Environmental Risks and Limited Guaranties

Philadelphia, PA, 1.26.17

The Chapter 13 is Ending – Now What?

PBI Annual Bankruptcy Institute (Philadelphia, PA), 10.20.16

The Chapter 13 is Ending – Now What?

PBI Annual Bankruptcy Institute (Pittsburgh, PA), 9.8.16

The Changing Landscape of Commercial Loan Documents

Philadelphia, PA, 4.7.16

Finance Forum: Cybersecurity in Financial Transactions

Philadelphia, PA, 11.12.15

Finance Forum: Intercreditor and Subordination Agreements in Real Estate & Commercial Finance

Philadelphia, PA, 4.23.15