



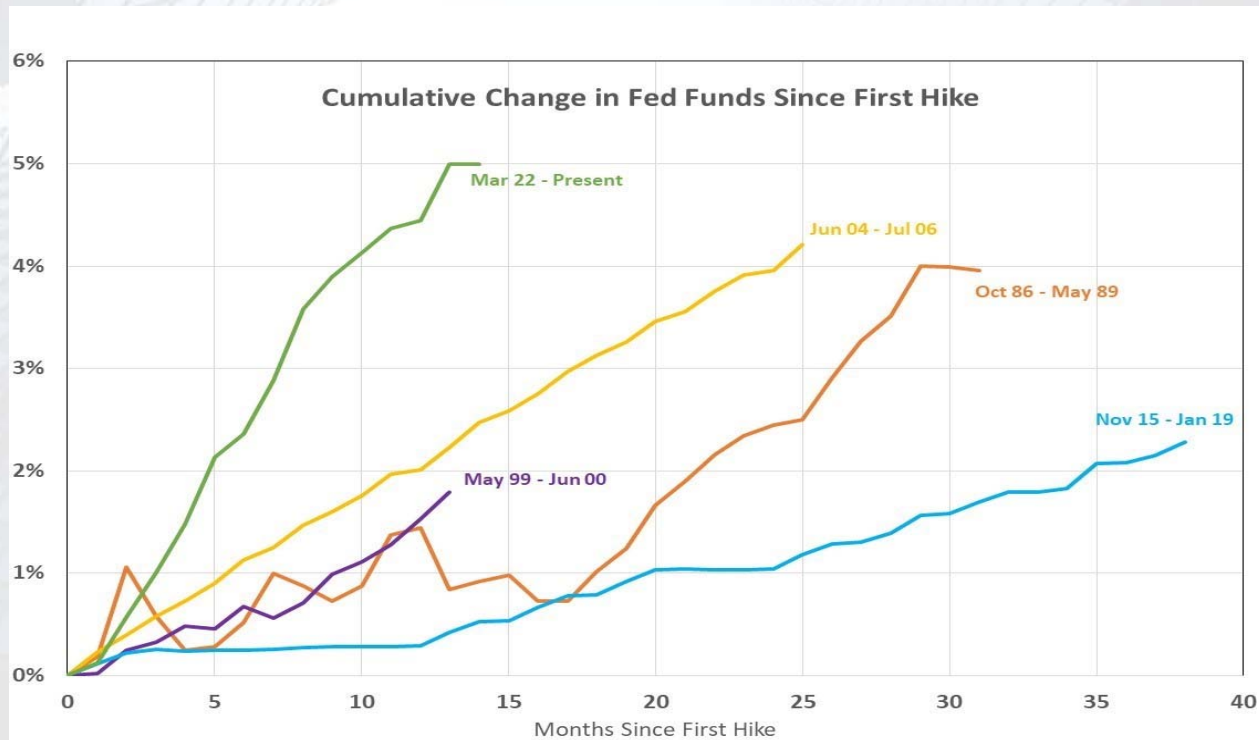
THE BRIDGE GROUP
NETWORK OF LAW FIRMS

Bridge Group Fall Meeting

October 27, 2023



- Most aggressive start to a Fed tightening cycle over the past 40 years.





Unintended Consequences of Fed's Rate Increases

- Today's troubled market, fueled by rising interest rates and high vacancies, follows years of boom times. Banks roughly doubled their lending to landlords from 2015 to 2022, to \$2.2 trillion. Small and medium-size banks originated many of those loans, and all that lending helped push up property prices.
- Nearly \$900 billion in commercial property loans are maturing this year and next, forcing many landlords to seek out more expensive financing from private investors and banks still willing to lend.
- In early 2021, an affiliate of Brookfield Asset Management borrowed \$465 million in CMBS and other debt against the Gas Company Tower, a 52-story office building in downtown Los Angeles.
- At the time, appraisers valued the property at \$632 million, according to Trepp, up from a valuation of \$517 million when Brookfield bought the building in 2013. When the loans came due this February, the owner defaulted. An appraiser earlier this year cut the building's estimated value to \$270 million.

Largest US Banks Grapple With Worst Write-Offs in Three Years

- The biggest US banks are poised to write off more bad loans than they have since the early days of the pandemic as higher-for-longer interest rates and a potential economic downturn are putting borrowers in a bind.
- JPMorgan Chase & Co., Citigroup Inc. Bank of America Corp and Wells Fargo & Co., which reported third-quarter results in mid-October Friday, posted roughly \$5.3 billion in combined third-quarter net charge-offs, the highest for the group since the second quarter of 2020, according to data compiled by Bloomberg.

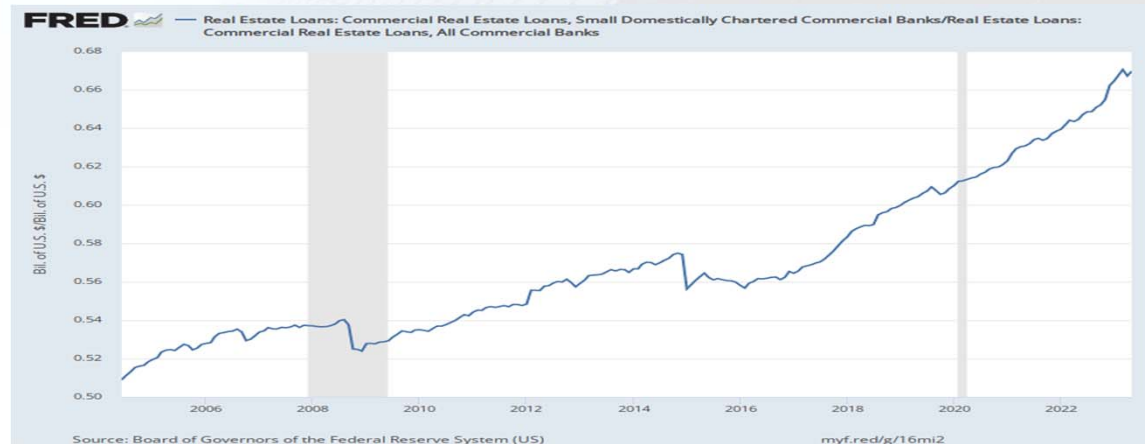


Maturities Coming Due in 24 Months

- Nationally there are \$1.5 TRILLION in commercial mortgages that will mature
- Winners – Multifamily, Industrial, Self-storage, Medical Office and Retail (post Amazon effect)
- Losers – Office, many CRE assets acquired with high leverage in the last three years



- Concerns have moved from unrealized losses in bank securities and the flight of uninsured deposits to the quality of loans (particularly CRE loans) on bank balance sheets and the implications of ongoing tightening of lending standards.
- Small banks hold 67% of CRE loans. These CRE loans represent 45% of their overall loan book.
- Conversely large banks hold 33% of CRE loans. These CRE loans represent only 12% of their overall loan book.
- The Fed's semi-annual Financial Stability Report cited CRE as a major downside risk to the economy and that the jump in interest rates over the past year "increases the risk" that commercial borrowers will not be able to refinance their loans when they reach the end of their term.





Real Estate Woes

- The hollowing out of U.S. cities' office and commercial cores is a national trend with serious consequences for millions of Americans.
- The shuttering of a Whole Foods market after only a year in downtown San Francisco in May 2023 received widespread coverage. Even more telling was the high-end department store Nordstrom's decision to close its flagship store there in August after a 35-year run.
- In New York City, office vacancy rates have risen by over 70% since 2019. Chicago's Magnificent Mile, a stretch of high-end shops and restaurants, had a 26% vacancy rate in spring 2023.
- Many traditional downtowns are dead, dying or on life support across the U.S. and elsewhere. Local governments and urban residents urgently need to consider what the post-pandemic city will look like.



Let's Go Downtown

- Today, many cities are confronting the prospect a massive oversupply of office and retail space, fewer commuters and a looming fiscal crisis. Washington, D.C. is just one example.
- In December 2022, the city had approximately 27,000 fewer jobs than in February 2020, and it faced a growing financial shortfall from declining property taxes.
- The District of Columbia government projects that city revenues will decline by \$81 million in fiscal year 2024, \$183 million in 2025 and \$200 million in 2026.



And It's Not Just the Cities: Suburbs Hurting Too

- More companies trying to get rid of workspace over the past three months pushed the suburban Chicago office vacancy rate to a record high for the 11th consecutive quarter.
- Fueled by big blocks of sublease space that hit the market, the share of available office space in the suburbs increased to 29.7% at the end of September from 28.9% midway through the year, according to real estate services firm Jones Lang LaSalle.
- The new vacancy rate is up from 27.3% a year ago and 22.1% when the COVID-19 pandemic began..



Here's How it Works

- Property valued at \$1,000,000 in 2024. Lender makes loan based on 70% LTV or \$700,000 at 4% interest
- Most real estate loans have little or no principal amortization
- Loan matures in 2024 and will be difficult to refinance, since:
 - Interest rates increased by 500 bps to 9% or more
 - Vacancy rates increased meaning less rental income
 - So new appraisal says property worth \$600,000
- Property can not be refinanced since new lender will only advance 70% LTV or \$420,000. Sale of property results in loss to Lender
- Lather, rinse and repeat



Legal Solutions

- Expose to market
 - Better than workout/REO?
- Hold and restructure
 - Extend for equity piece?
- Deed in lieu
- “Friendly” legal processes
 - Receivership
 - Foreclosure
 - Bankruptcy
- Note sale; Short sale
- Tender property to bank
 - Non-recourse, “good boy” guarantees



THE BRIDGE GROUP
NETWORK OF LAW FIRMS

Bankruptcy

2022 v. 2023 Bankruptcy Filings

- Total bankruptcy filings were 217,420 during the first half of 2023, demonstrating a 17% increase from the 185,352 total filings during the first half of 2022.
- Chapter 11 commercial filings totaled 2,973 during the first half of 2023, which was a 68% increase compared to the first half of 2022.



2022 v. 2023 Bankruptcy Filings Cont.

Commercial Chapter 11 Filings

July 2022 vs. 2023

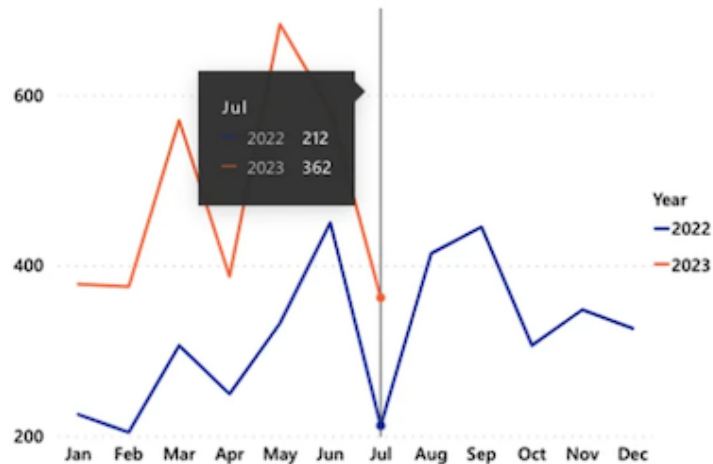


Image provided by [bankruptcy analytics](#)

Commercial Ch 11 Filings

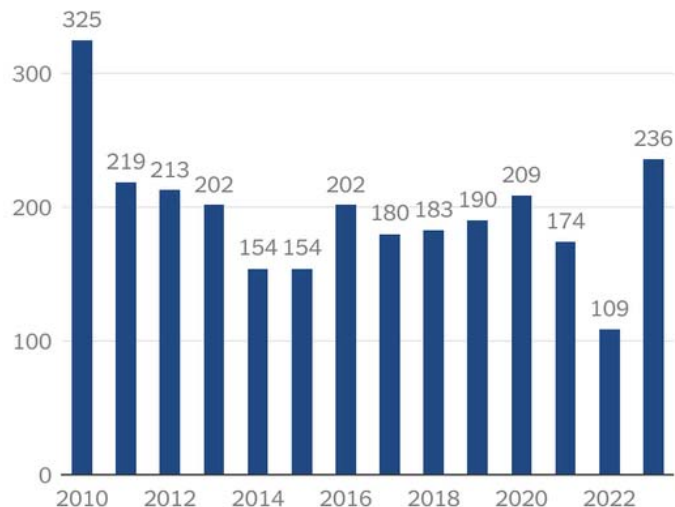
Increase 71%

Year-Over-Year



2022 v. 2023 Bankruptcy Filings Cont.

U.S. corporate bankruptcies



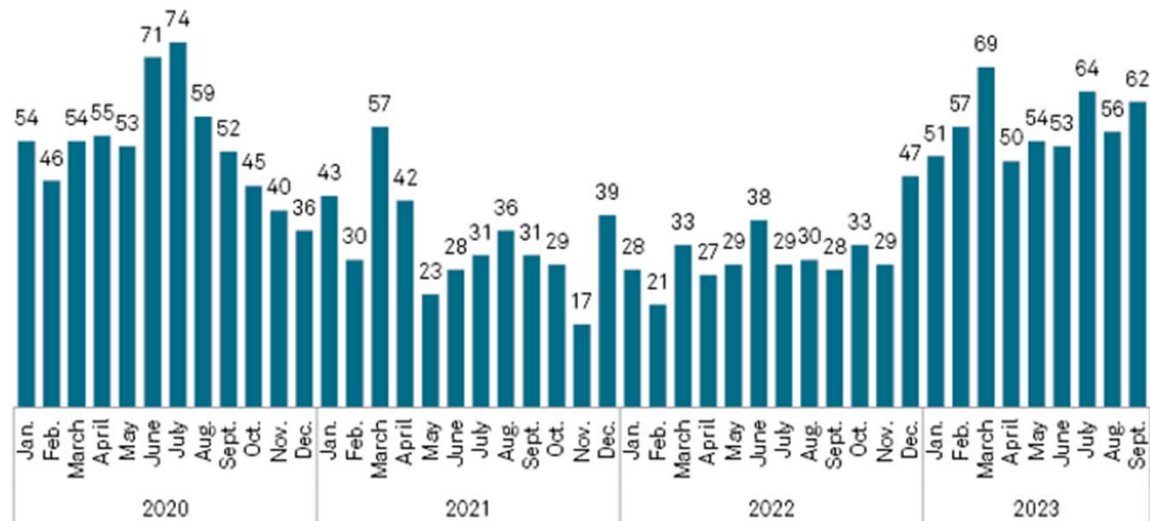
Number of bankruptcies from Jan. 1 through April 30.

Source: S&P Global • By The New York Times



2022 v. 2023 Bankruptcy Filings Cont.

US bankruptcy filings by month



Data compiled Oct. 3, 2023.

Includes S&P Global Market Intelligence-covered U.S. companies that announced a bankruptcy between Jan. 1, 2020, and Sept. 30, 2023.

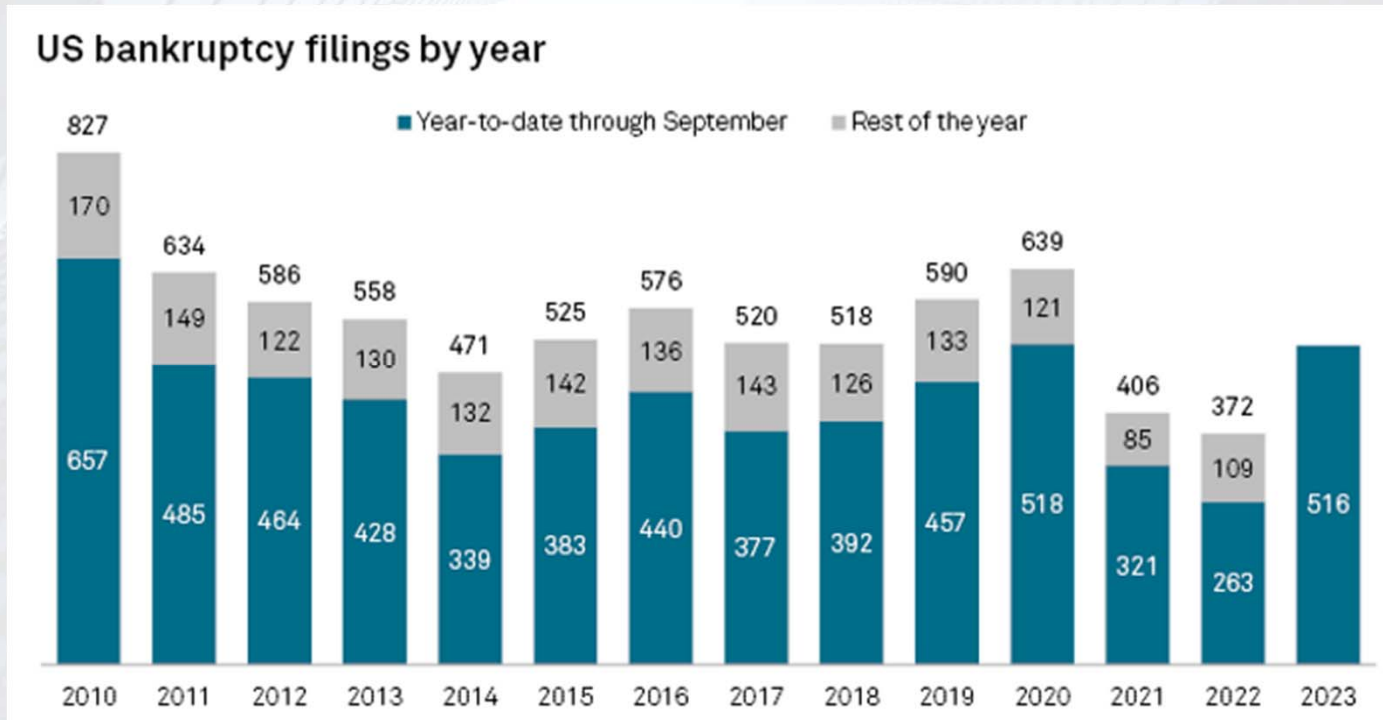
S&P Global Market Intelligence's bankruptcy coverage is limited to public companies or private companies with public debt where either assets or liabilities at the time of the bankruptcy filing are greater than or equal to \$2 million, or private companies where either assets or liabilities at the time of the bankruptcy filing are greater than or equal to \$10 million.

Source: S&P Global Market Intelligence.

© 2023 S&P Global.



2022 v. 2023 Bankruptcy Filings Cont.



Graph From S&P Global. Published in the New York Times.



2022 v. 2023 Bankruptcy Filings Cont.

Company	Primary Sector	Date
Party City	Consumer Discretionary	Jan 2023
Serta Simmons Bedding	Consumer Discretionary	Jan 2023
Avaya	Information Technology	Feb 2023
Diamond Sports	Communication Services	Mar 2023
SVB Financial	Financials	Mar 2023
LTL Management	N/A	Apr 2023
Bed Bath & Beyond	Consumer Discretionary	Apr 2023
Whittaker, Clark & Daniels	N/A	Apr 2023
Monitronics	Industrials	May 2023
Kidde-Fenwal	Consumer Discretionary	May 2023
Envision Healthcare	Healthcare	May 2023
Diebold	N/A	Jun 2023
Wesco Aircraft	Industrials	Jun 2023
PGX Holdings	Industrials	Jun 2023
Cyxtera	Information Technology	Jun 2023
Voyager Aviation	Industrials	Jul 2023



RETAIL BANKRUPTCY WATCH LIST

- Farfetch – (ecommerce) Luxury Apparel Long-term debt: \$917 million
- Joann – (855 Stores) Craft Long-term debt: \$976 million
- Qurate Retail – (ecommerce/catalog) Video Commerce Long-term debt: \$5,268 million
- Rent the Runway – (ecommerce) Apparel Long-term debt: \$735 million
- Rite Aid – (2,152 stores) Drugstore Long-term debt \$3,100 million
- A.K.A. Brands – (ecommerce) Apparel Long-term debt: 47 million
- Big Lots – (1,426 stores) Home Long-term debt: \$493 million
- The Container Store – (98 stores) Long-term debt: \$163 million
- Kirkland's – (431 stores) Home Long-term debt: \$46 million
- Petco – (1,500 stores) Pet Retailer Long-term debt \$1,628 million
- Vince – (62 stores) Apparel manufacturer Long-term debt: \$67 million

Source: Forbes/ Credit Risk Monitor



Key Issues in Bankruptcy Involving Real Estate

- **Issue #1 - Lease Assumption and Assignment/Rejection (11 U.S.C. §365)**
 - What are the Requirements for a Debtor to Assume and Assign an Executory Contract or Lease
 - Business Judgment
 - Cure
 - Adequate Assurance of Future Performance

Section 365

- (a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.
- (b)
 - (1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—
 - (A) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;
 - (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
 - (C) provides adequate assurance of future performance under such contract or lease.
 - (l) If an unexpired lease under which the debtor is the lessee is assigned pursuant to this section, the lessor of the property may require a deposit or other security for the performance of the debtor's obligations under the lease substantially the same as would have been required by the landlord upon the initial leasing to a similar tenant.



Key Issues in Bankruptcy Involving Real Estate Cont.

- **Issue #2 – Lease Rejection Damage Limitations (11 U.S.C. §502)**
 - Rent Cap - Time vs Rent approach
 - What is included in Rent

Bankruptcy Code Section 502:

(6) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds—

- (A) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of—
 - (i) the date of the filing of the petition; and
 - (ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus
- (B) any unpaid rent due under such lease, without acceleration, on the earlier of such dates



Key Issues in Bankruptcy Involving Real Estate - Cont.

- Issue #3 – Real Property Sale Requirements And Benefits (11 U.S.C. §363)
 - Business Judgment
 - Fair Market Value – Requires Proof of Adequate Marketing
 - Free and Clear of Liens, Claims and Interests/Liens Attach to Proceeds
 - Price exceeds the total of liens
 - Consent of Lien Holders
 - Bona Fide Dispute
 - Applicable Non-Bankruptcy Law Permits
 - Secured Creditors May Credit Bid
 - Good Faith Purchaser (11 U.S.C. §363(m))
 - Effect of the Appeal of the Sale Order – Will Title Close?



Section 363

- (f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—
 - (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
 - (2) such entity consents;
 - (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
 - (4) such interest is in bona fide dispute; or
 - (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.
- (k) At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.
- (m) The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.



Key Issues in Bankruptcy Involving Real Estate Cont.

- Issue #4 – Secured Debt Plan Cram Down (11 U.S.C. 1129)
 - What is it? Approval of Plan Treatment of a Creditor Over the Creditor's Objection
 - Requirements
 - Plan must be fair and equitable and not discriminate against creditors within same class
 - Secured Creditor Must Receive Present Value of at least amount of the secured claim
 - Appropriate Cramdown Interest Rate
 - Market Rate if one exists
 - Then Formula Rate (Base Rate Adjusted Upward by assessing Risk.)

Key Issues in Bankruptcy Involving Real Estate Cont.

- Issue #5 – Are Make Whole Provisions Enforceable
 - Depends on whether Enforceable in the State Where Case is Pending
 - 5th Circuit (2023) (Texas Florida, etc.) Holds No, Make Wholes are Unmatured Interest which is not Allowed under the Code (11 U.S.C. 502(b)(2))
 - 2nd Court's (New York) Holds Generally Unenforceable If Triggered By Filing Of Bankruptcy unless
 - 3rd Circuit (States) Generally Enforceable
 - 9th Circuit (California, Oregon, Washington, Arizona) Generally enforceable



THE BRIDGE GROUP
NETWORK OF LAW FIRMS

Q&A



Michael P. O'Neil

With a focus on areas such as mergers and acquisitions, debt refinancing and restructuring, and business workouts and turnarounds, Michael helps business owners, lenders, and other stakeholders when companies are in transition. He represents both healthy and distressed companies in connection with sales, refinancings, and liquidations, as well as in chapter 11 section 363 asset sales and “true reorganization” bankruptcy cases where judicial remedies are needed. Michael is known to many as a trusted advisor during difficult times. In addition, Michael represents secured and unsecured creditors and other stakeholders in distressed businesses with such actions as foreclosure proceedings, preference and other bankruptcy-related litigation, collections and workout advice, and consensual refinancing or restructuring. He has also represented creditor committees (or individual committee members in larger cases) in chapter 11 bankruptcy cases, as well as chapter 7 trustees and receivers.



Shelly A. DeRousse

Ms. DeRousse has extensive experience in the areas of bankruptcy, reorganization, litigation, and asset sales. As lead counsel, she has represented official creditors’ committees throughout the country in chapter 11 bankruptcy cases. Additionally, she represents companies and high earning individuals in their restructurings or workout negotiations with their lenders and other creditors. Additionally, she is known among banks and other financial institutions as a leading attorney for lenders in bankruptcy cases, out-of-court workouts of borrowers’ loans, and assignments for the benefit of creditors, using creative solutions to maximize the lenders’ recovery from collateral and other assets. Ms. DeRousse is the Section Leader of the Firms Bankruptcy and Financial Restructuring Group



Elissa D. Miller

Elissa D. Miller is a partner in the Bankruptcy & Reorganization practice group at Greenspoon Marder. As a well-established bankruptcy lawyer and fiduciary, Ms. Miller represents secured and unsecured creditors, creditors’ committees, and trustees in both Chapter 7 and Chapter 11 bankruptcy cases. She is a member of the Chapter 7 Panel of Bankruptcy Trustees appointed by the Office of the United States Trustee in the Central District of California and serves as a Chapter 11 trustee. Ms. Miller is currently serving as the Chapter 7 Trustee of the infamous law firm of Girardi Keese, and for Mark Slotkin, an entrepreneur and the owner of Antiquarian Traders, a long time established antique store and warehouse in Los Angeles, among many other matters. She has also been named as the Liquidating Trustee under the confirmed Chapter 11 Plan in the case of Jaguar Distribution Corp. a former distributor of films to airlines and cruise ships.



Thank You!

Michael P. O'Neil
Taft/

Partner & Practice Group Co-Chair
Phone: (317) 713-3561
moneil@taftlaw.com

Shelly A. DeRousse
Smith, Gambrell & Russell, LLP

Partner – Section Leader
Phone: (312) 360-6315
sderousse@sgrlaw.com

Elissa D. Miller
Greenspoon Marder LLP

Partner
Phone: (213) 626-2311
elissa.miller@gmlaw.com