

Todd A. Atkinson

Counsel



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Practices/Industries

- Corporate Restructuring & Creditors' Rights
- Bankruptcy & Insolvency Litigation
- Foreclosures, Receiverships & Distressed Property

Education

John Carroll University
(B.S.B.A., Accounting)
Cleveland-Marshall College of Law
(J.D., *magna cum laude*)
CALI Excellence for the Future Awards in Civil Procedure and Commercial Law
Penn State Dickinson Law School (Study Abroad Program, Capitals of Europe)

Overview

A certified public accountant (inactive), Todd is a member of the Business Law Group with wide-ranging experience in bankruptcy. He represents debtors, financial institutions, landlords, utilities, insurance companies, suppliers, trustees, service providers and other parties in restructuring matters, both in and out of court.

Licensed to practice law in Ohio, Delaware and New York, Todd has represented clients in large chapter 11 bankruptcy cases, including litigation arising in and out of those cases. Todd routinely provides advice on bankruptcy and other insolvency matters to various clients.

Experience

- Representing major supplier and chairperson of Official Committee of Unsecured Creditors in technology company's bankruptcy. *See In re: Tintri, Inc.*, Case No. 18-11625 (Bank. D. Del. 2018)
- Defending asset purchaser against claims alleged by counterparty to contract purchased in solar power company's bankruptcy. *See Enercon v. Flextronics International USA, Inc.*, Case No. 18-00258 (D. Me. 2018); *In re SunEdison, Inc. et al.*, Case No. 16-10992 (Bank. S.D.N.Y. 2016)
- Represented senior secured lender in restaurant group's bankruptcy. Acquired "Red, the Steakhouse" and "Moxie, the Restaurant" in bankruptcy 363 sale, offsetting claim against purchase price under 11 U.S.C. § 363(k). *See In re: BJRP, LLC*, Case No. 18-15839 (Bank. N.D. Ohio 2018)
- Represented transcription company in hospital's bankruptcy. *See In re: Promise Healthcare Group LLC, et al.*, Case No. 18-12491 (Bank. D. Del. 2018)
- Represented contract research organization in pharmaceutical company's bankruptcy. *See In re: Sancilio Pharmaceuticals Company, Inc., et al.*, Case No. 18-11333 (Bank. D. Del. 2018)
- Represented, as local counsel, long-term power purchase agreement wind farm seller in energy company's bankruptcy and related litigation. *See In re: FirstEnergy Solutions Corp., et al.*, Case No. 18-50757 and Adv. Pro. Case No. 18-05021 (Bank. N.D. Ohio 2018); *See In re: Krayn Wind LLC*, Case No. 18-308 (6th Cir. 2018)
- Represented secured party franchisor in franchisee's bankruptcy. *See In re: InPrint Management, Inc.*, Case No. 18-11931 (Bank. D. Mass. 2018)
- Represented critical vendor in specialty retailer's bankruptcy. *See In re: Claire's Stores, Inc., et al.*, Case No. 18-10584 (Bank. D. Del. 2018)
- Represented international contract counterparty and patent holder owner in Takata Corporation's main U.S. subsidiary's bankruptcy. Resolved, through settlement, health and welfare related benefit claims. *See In re: TK Holdings, Inc., et al.*, Case No. 17-11375 (Bank. D. Del. 2017)

Experience (Cont)

- Represented brokerage and investment banking firm in former employee's bankruptcy and related litigation. See *In re: Telerico*, Case No. 17-50236; Adv. Pro. No. 18-5008 (Bank. N.D. Ohio 2017)
- Represented critical vendor in toy retailer's bankruptcy. See *In re: Toys "R" Us, Inc., et al.*, Case No. 17-34665 (Bank. E.D. Va. 2017)
- Represented global contract research organization in pharmaceutical company's bankruptcy. Acquired 100% of reorganized debtor's equity in exchange for unsecured claim through plan support agreement and plan of reorganization under 11 U.S.C. § 1123(a)(5)(J). See *In re: NephroGenex, Inc.*, Case No. 16-11074 (Bank. D. Del. 2016)
- Represented public technology company in clothing retailer's bankruptcy. Recovered, by Motion, payment on administrative claim. See *In re: rue 21, Inc., et al.*, Case No. 17-22045 (Bank. W.D. Pa. 2017)
- Represented international financial services company in former employee's bankruptcy. Obtained dismissal of individual Chapter 7 case. See *In re: Schwartz*, 532 B.R. 710 (Bank. N.D. Ill. 2014), *aff'd*, 799 F.3d 760 (7th Cir. 2015)
- Represented software licensor in licensee's bankruptcy and related litigation. Negotiated settlement after moving to lift automatic stay. See *In re: RadioShack Corp.*, Case No. 15-10197 (Bank. D. Del. 2015)
- Defended private student loan lender in 11 U.S.C. § 523(a)(8) non-dischargeability actions. See, e.g., *Hansen v. Loan Science, LLC (In re: Hansen)*, Adv. Pro. No. 15-03060 (Bank. N.D. Ind. 2015); *Zelesnak v. Loan Science, LLC (In re: Zelesnak)*, Adv. Pro. No. 14-01028 (Bank. N.D. Ohio 2014)
- Defended alleged subsequent transferee in fraudulent transfer action, obtaining no liability settlement after successfully arguing under Tenth Circuit precedent Chapter 7 trustee failed to name initial transferee in action. See *Weinman v. UWBI Group, LLC, et al.*, Adv. Pro. No. 14-00296 (D. Colo. 2014)
- Defended chief restructuring officer in breach of fiduciary duty action. See *Pidcock v. Goddard, et al. (In re: SII Liquidation Co. f/n/a Schwab Industries, Inc.)*, Adv. Pro. No. 14-06016 (Bank. N.D. Ohio 2014)
- Represented software licensor in grocery store bankruptcy. See *In re: Fresh & Easy, LLC*, Case No. 15-12220 (Bank. D. Del. 2015)
- Represented key component supplier in manufacturer's bankruptcy, obtaining 100% recovery on unsecured claim. See *In re: Oreck Corp.*, Case No. 13-04006 (Bank. M.D. Tenn. 2013)
- Represented national credit card processing company in merchant bankruptcy proceedings. See, e.g., *In re: Eastern Outfitters, LLC, et al.*, Case No. 17-10243 (Bank. D. Del. 2017); *In re: DirectBuy Holdings, Inc. et al.*, Case No. 16-12435 (Bank. D. Del. 2016); *In re: Delivery Agent, Inc., et al.*, Case No. 16-12051 (Bank. D. Del. 2016); *In re: Fairway Group Holdings Corp., et al.*, Case No. 16-11241 (Bank. S.D.N.Y. 2016); *In re: Vestis Retail Group, LLC, et al.*, Case No. 16-10971 (Bank. D. Del. 2016); *In re: Simplexity, LLC, et al.*, Case No. 14-10569 (Bank. D. Del. 2014); *In re: Altrec, Inc.*, Case No. 14-30037 (Bank. D. Or. 2014); and *In re: The Antioch Company, et al.*, Case No. 13-141898 (Bank. D. Minn. 2013)
- Represented national professional services company in former employee's bankruptcy. Obtained dismissal of individual Chapter 7 case. See *In re: Bryant*, 474 B.R. 770 (Bank. N.D. Fla. 2012)
- Represented broker in commercial real estate company's bankruptcy. See *In re: Grubb & Ellis Co.*, Case No. 12-10685 (Bank. S.D.N.Y. 2012)

Experience (Cont)

- Represented public manufacturer in 11 U.S.C. § 523 nondischargeability actions. *See, e.g., Sherwin-Williams Co. v. Grasso (In re: Grasso)*, Case No. 12-00394 (Bank. E.D. Pa. 2012)
- Represented international brokerage firm in Forex dealer's bankruptcy, recovering 100% of \$500,000 untimely and unsecured claim. *See In re: MF Global FX Clear, LLC*, Case No. 11-15810 (Bank. S.D.N.Y. 2011)
- Defended national insurance company in preference and fraudulent transfer actions. *See, e.g., Redmond v. Progressive Ins. (In re Brooke Corp.)*, Adv. Pro. No. 11-2380 (D. Kan. 2011); *Kirschner v. Fitzsimons, et al. (In re: Tribune Co.)*, Adv. Pro. No. 12-02652 (S.D.N.Y. 2012); and *Weisfelner v. Fund 1, et al. (In re: Lyondell Chemical Co., Case No.)* 10-04609 (Bank. S.D.N.Y. 2009)
- Represented public utility in insolvency related matters, including energy diversion disputes. *See, e.g., In re: May*, Case No. 10-64746 (Bank. N.D. Ohio 2010)
- Defended creditors in preference actions, obtaining favorable settlements. *See, e.g., Szekelyi v. Tallmadge Spinning & Metal Company (In re: Data Cooling Technologies LLC)*, Adv. Pro. No. 18-05094 (Bank. N.D. Ohio 2018); *Kravitz v. NCR Corporation (In re: Fresh & Easy, LLC)*, Adv. Pro. Nos. 16-51568, 16-51862 (Bank. D. Del. 2016); *Kravitz v. Vantiv, Inc. (In re: RS Legacy Corp. f/n/a RadioShack Corp.)*, 15-10197 (Bank. D. Del. 2015); *Kodak GUC Trust v. Tosoh USA, Inc. (In re: Eastman Kodak Co.)*, Adv. Pro. No. 14-01091 (Bank. S.D.N.Y. 2012); *RG Steel Sparrows Point, LLC v. Magnetech Indus. Servs., Inc. (In re: WP Steel Venture, LLC)*, Adv. Pro. No. 13-50427 (Bank. D. Del. 2012); and *JLL Consultants, Inc. v. NCR Corporation (In re: ATA Airlines, Inc.)*, Adv. Pro. No. 10-50192 (Bank. S.D. Ind. 2008)
- Represented municipality/lessor in energy provider's bankruptcy. *See In re: Akron Thermal Ltd. P'ship*, Case No. 09-54101 (Bank. N.D. Ohio 2009) Obtained dismissal of bankruptcy appeal on mootness, ripeness and standing grounds. *See Wehrle v. City of Akron*, 2010 WL 596453 (N.D. Ohio Feb. 16, 2010)
- Represented landlord in tenant's bankruptcy. *See, e.g., In re: Reader's Digest Assoc., Inc.*, Case No. 09-23529 (Bank. S.D.N.Y. 2009)
- Represented retail family clothing company in its Chapter 11 bankruptcy. *See In re: Goody's Family Clothing, Inc.*, Case No. 08-11133 (Bank. D. Del. 2008)
- Represented consumer electronics retailer in its Chapter 11 bankruptcy. *See In re: Tweeter Home Entm't Group, Inc.*, Case No. 07-10787 (Bank. D. Del. 2007)

Other Professional Experience

- Skadden, Arps, Slate, Meagher & Flom LLP, Corporate Restructuring Associate (2006-2009)
- United States Bankruptcy Court for the District of Delaware, Judicial Law Clerk to the Honorable Mary F. Walrath, then Chief Judge (2005-2006)
- Plain Dealer Publishing Co., Accounts Receivable Manager, Internal Audit Manager, Accountant (1994-2004)

Presentations

- "Understanding Bankruptcy," Presenter, NCR Corporation Presentation, Webinar (September 2016)
- "A Random (But Planned) Walk Through The Bankruptcy Forest," Co-Presenter, NCR Corporation Presentation, Atlanta, Georgia (December 2014)

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Presentations (Cont)

- “Maximizing Recoveries And Minimizing Risks In Bankruptcy And Other Insolvency Proceedings,” Co-Presenter, Vantiv Presentation, Chicago, Illinois (April 2014)
- “Other Bankruptcy Causes of Action – Sections 544, 548, 549 and 553 of the Bankruptcy Code,” Panelist, 18th Annual Utility Bankruptcy Conference, New York, New York (June 2011)
- “Understanding Bankruptcy,” Presenter, Dominion East Ohio Presentation, Cleveland, Ohio (August 2011, October 2013, April 2014, December 2014, July 2015, April 2016, August 2017, June 2019)

Publications

- “Gaining Leverage Through § 365 Consent Rights. Why Some Parties To Intellectual Property Agreements Should Seize The Moment When A Contract Party Resorts To Bankruptcy,” *Cleveland Metropolitan Bar Journal*, pp. 50-51 (September 2015)
- “A Creditor Does Not Always Have Standing to Appeal Denial of Its Own Motion,” *American Bankruptcy Institute Journal*, Vol. XXX, No. 4, pp. 48-49 (May 2011)
- “Credit Bidding In Bankruptcy? Don't Bank On It,” Co-Author, *Cleveland Metropolitan Bar Journal*, pp. 18-20 (September 2010)

Involvement

Professional Affiliations

- American Bankruptcy Institute
- Cleveland-Marshall College of Law Alumni Association (*Life Member*)
- Cleveland Metropolitan Bar Association
- Ohio State Bar Association (*Banking, Commercial and Bankruptcy Law Committee*)
- William J. O'Neill Great Lakes Regional Institute (*Committee Member*)

Community Involvement

- Teacher, Glenville High School (*co-taught course entitled “Rights, Responsibilities, Realities”*)
- Teacher, Junior Achievement
- Counselor, The Legal Aid Society of Cleveland (*Will Kohn Bankruptcy By-Pass Clinic*)
- Our Communion of Saints Parish at St. Ann Church, Cleveland Heights, Ohio (Parish Pastoral Council Member; Lector)
- Guide, Heights Heritage Home & Garden Tour

Certifications

- Certified Public Accountant, Ohio (Inactive)

Admissions

- State of Ohio
- State of Delaware

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Admissions (Cont)

- State of New York
- U.S. Court of Appeals, Sixth Circuit
- U.S. District Court, Northern District of Ohio
- U.S. District Court, Southern District of Ohio
- U.S. District Court, District of Delaware
- U.S. District Court, Southern District of New York