



**David A. Agay**

**Chicago Managing Member; Board of Directors; Executive Committee; Co-Chair, Business Restructuring**

**Chicago**

**P: 312.642.2217**



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**Practice Focus**

- Business restructuring
- Business counseling
- Commercial finance
- Mergers and acquisitions
- Distressed M&A

David is managing member of the firm’s Chicago office, co-chair of the Business Restructuring Department, and serves on the firm’s Board of Directors and Executive Committee. He represents public and private companies, strategic and financial investors, directors, officers, lenders, committees, and shareholders in a variety of distress and non-distress engagements. He regularly counsels clients in: financing and M&A transactions, including ESOPs; free-fall, pre-negotiated and involuntary Chapter 11 and 7 bankruptcies; cross-border matters; out-of-court exchanges and balance sheet restructurings; and other corporate reorganization and insolvency proceedings.

David also advises boards and management teams on strategic, corporate and governance matters and in the negotiation of commercial and employment contracts.

As a bankruptcy lawyer, David regularly litigates in federal and state courts. Prior to joining McDonald Hopkins, David was a partner at a major international law firm.

David received a J.D. from the University of Michigan Law School in 1998 and a B.A. from Pomona College in 1994.

**Industry Experience**

David has represented clients in a wide range of industries, including:

- Airlines
- Automotive
- Consumer Products
- Energy
- Equipment rental
- Food and restaurants
- Franchises
- Gaming

- Healthcare
- Industrial
- Manufacturing
- Media and entertainment
- Mining
- Packaging
- Plastics
- Real estate
- Technology
- Telecommunications

### Representative Cases/Matters

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#### *Energy*

- **Edison Mission Energy** – Represented Edison Mission Energy (EME) as conflicts counsel in its chapter 11 bankruptcy case; represented EME subsidiary, Camino Energy, as primary debtor's counsel. EME, through its subsidiaries, owned or leased and operated a portfolio of more than 40 electric generating facilities powered by coal, natural gas, wind, and biomass (with aggregate existing project indebtedness of approximately \$1.5 billion), as well as an energy marketing and trading operation.
- **Calpine Corporation** – Represented world's largest producer of renewable geothermal energy in its chapter 11 bankruptcy case.

#### *Manufacturing, Retail, and Industrial*

- **NetShape Technologies** – Represent manufacturer of powder metal products and metal injection molding components in its sale to Metal Powder Products LLC.
- **Werthan Packaging** – Represent strategic buyer in its stalking horse bid and acquisition of substantially all the assets of Werthan Packaging out of bankruptcy.
- **Country Stone Holdings, Inc.** – Representing Official Committee of Unsecured Creditors in chapter 11 bankruptcy case of manufacturer, processor, and packager of lawn and garden products (such as mulch, soil, fertilizer, plant food, organics, concrete, and decorative stone).
- **Kurz-Kasch** – Represented leading manufacturer of conventional coils and stators, engineered composite components and subassemblies, magnetic/electrical/electronic sensing devices, and high performance solenoids in its out-of-court restructuring.
- **Keywell, LLC** – Representing Official Committee of Unsecured Creditors in chapter 11 bankruptcy case of leading supplier of recycled titanium, high-temperature alloys and stainless steel in North America.
- **MEGA Brands Inc.** – Represented Canadian toy manufacturer in its chapter 15 bankruptcy cases and as U.S. counsel in its recapitalization implemented through a Canadian plan of arrangement.
- **Norwood Promotional Products** – Represented Norwood, a leader in the market of customizable corporate merchandise, including calendars, writing instruments and awards, in its chapter 11 bankruptcy cases and 363 sale of the business as a going concern.
- **Fortis Plastics** – Represented leading manufacturer of produced thermoplastic injection and extrusion molded plastic parts for manufacturers in several industries, including home appliance, furniture,

automotive, building products, medical devices and power tools, in its out-of-court restructuring and wind down.

- **Jason, Inc.** – Represented private equity sponsor in the out-of-court recapitalization and balance-sheet restructuring of a leading international manufacturer of consumer, automotive, and industrial products.
- **Portola Packaging, Inc.** – Led balance-sheet restructuring and chapter 11 prepackaged bankruptcy cases of leading designer, manufacturer, and marketer of plastic closures, bottles, and related equipment.
- **Tekni-Plex** – Represented private equity sponsor, in the out-of-court restructuring of Tekni-Plex, a major consumer and industrial packaging manufacturer.
- **Euro-Pro** – Represented household products company in its involuntary bankruptcy proceedings (eventually dismissed) and out-of-court restructuring.
- **TSC Global, LLC** – Represented company involved in the sale, marketing, and distribution of consumer brand products, including “e-cigarettes,” to top retailers, travel centers, and truck stops, in its out-of-court restructuring, wind down, and two UCC Article 9 sales.
- **Hess Industries, Inc.** – Represented manufacturer of heavy equipment and metal forming machines in its out-of-court restructuring and eventual chapter 7 filing.
- **Hussey Copper, Ltd.** – Represented strategic stalking horse purchaser in proposed acquisition of leading producer of copper bar.
- **Lang Holdings Inc.** – Represented private equity client, as provider of DIP financing and stalking-horse purchaser of substantially all assets of Lang Holdings, a leading supplier of art and design driven calendars, back-to-school products, greeting cards, stationary, and specialty products.
- **Propex Inc.** – Represented private equity client as provider of debtor-in-possession financing and stalking-horse purchaser of substantially all assets of the world's largest producer of geosynthetic, concrete, furnishing, and industrial fabrics and fiber.
- **Global Home Products** – Represented private equity client in its section 363 purchase of Anchor Hocking from Global Home Products.
- **Service Merchandise Company, Inc.** – Represented joint venture in purchase of Service Merchandise’s lease designation rights.
- **ASARCO LLC** – Represented bondholder group in negotiating complex global settlement eventually incorporated into confirmed chapter 11 plan, and in formulating bid for certain assets of ASARCO, a leading U.S. copper producer.
- **LyondellBasell Industries** – Represented bondholder group in connection with chapter 11 plan and related rights offering of LyondellBasell, the third largest independent chemical company in the world.

### **Gaming**

- **Caesars Entertainment** – Represent significant equity stakeholder in the Caesars chapter 11 bankruptcy case.
- **Commercial Lender** – Representing commercial lending client in asset based loans to multiple gaming companies.
- **Majestic Star Casino** – Represented gaming company and multi-jurisdictional operator of casino properties in its chapter 11 bankruptcy cases.
- **Green Valley Ranch & Aliante Station** – Represented two Station Casino properties in their pre-negotiated chapter 11 cases resulting in the restructuring of almost \$1.0 billion in total debt.

### ***Media, Entertainment, and Communications***

- **Sun-Times Media Group, Inc.** – Represented publisher, printer, and distributor of newspapers in greater Chicago metropolitan area, including the Chicago Sun-Times, in its chapter 11 bankruptcy cases and 363 sale of the business as a going concern.
- **Musicland Holding Corporation** – Represented entertainment retailer in its chapter 11 bankruptcy cases.
- **HiT Entertainment PLC** – Represented HiT Entertainment PLC in connection with an out-of-court amendment of the company's secured indebtedness. HiT was the owner of popular children's entertainment properties such as Bob the Builder, Barney, Thomas & Friends, Pingu, Fireman Sam and Angelina Ballerina.
- **Source Interlink Companies** – Represented leading publisher and wholesaler of magazines and home entertainment products, including CDs and DVDs, in its balance-sheet restructuring and prepackaged chapter 11 bankruptcy cases.
- **InPhonic Inc.** – Represented private equity client as provider of debtor-in-possession financing and stalking-horse purchaser of substantially all the assets of InPhonic, Inc., a leading marketer of wireless telephone and satellite television services.
- **Regent Communications** – Represented private equity client as plan sponsor in pre-arranged chapter 11 bankruptcy cases of Regent Communications, and its affiliates, owner and operator of radio stations in mid-sized markets across the United States.

### ***Transportation***

- **Sea Containers** – Represented the Sea Containers group, a leading London-based marine container leasing company, in its chapter 11 bankruptcy cases and global restructuring.
- **United Air Lines, Inc.** – Assisted in all aspects of United's chapter 11 bankruptcy cases, including aircraft finance, union, retiree, and employee benefit matters, and customer loyalty programs.

### ***Automotive***

- **Automotive Suppliers** – General corporate counsel to multiple second and third-tier, private-equity backed automotive suppliers and manufacturers.
- **Dura Automotive** – Represented leading independent automotive supplier in its chapter 11 bankruptcy cases.
- **Autocam Corporation** – Led the out-of-court balance restructuring of a leading manufacturer of precision components for primarily the automotive and medical device industries.
- **Raybestos PowerTrain LLC** – Represented private equity client in its acquisition of one of the world's largest manufacturers of transmission and wet-wheel brake friction products, supplying both OEMs and automotive aftermarket customers.
- **Metaldyne Corporation** – Represented a secured lender group in its successful credit bid for substantially all assets of Metaldyne, a leading global manufacturer of highly engineered metal components for the global light vehicle market.

### ***Healthcare***

- **Park Place Christian Community of Elmhurst** – Represented continuing care retirement community in pre-negotiated chapter 11 bankruptcy, which restructured over \$150 million in bond debt.

- **CCRCs and Nursing Home** – Represent numerous owners and operators in federal and state court receiverships.
- **Elements Behavioral Health** – Represented joint venture in providing DIP financing and acquiring leading operator of addiction treatment facility out of bankruptcy.

### ***Real Estate, Construction, Leasing, and Services***

- **Construction Firm** – Represent shareholder of Midwest-based contractor focused on industrial projects in out-of-court restructuring and workout with senior lender.
- **Subprime Auto Lender** – Represent subprime auto lender in its out-of-court workout.
- **TOUSA, Inc.** – Represented publicly traded homebuilder with substantial operations in Florida, the Mid-Atlantic, Texas, and the West, doing business under trade names, including Newmark, Engle Homes, and Trophy Homes, in its out-of-court restructuring and chapter 11 bankruptcy cases.
- **Cambridge Integrated Services Group, Inc.** – Represented assignee in Illinois assignment for the benefit of creditors for national company specializing in risk management, claims services, and specialty loss cost management.
- **Risk Management Alternatives, Inc.** – Represented leading provider of accounts receivable management services in its chapter 11 cases.
- **National Equipment Services, Inc.** – Represented national equipment leasing corporation in all aspects of its chapter 11 bankruptcy cases and restructuring.
- **American Business Financial Services, Inc.** – Represented DIP lender to a publicly-traded subprime lender.

### ***Food and Restaurant***

- **Bertucci's** – Represent DIP lender and stalking horse buyer in acquisition of chain of sit-down Italian restaurants.
- **Central Grocers, Inc.** – Represent wholesale cooperative and its subsidiaries, including Strack and Van Til Super Market, Inc., in their chapter 11 bankruptcy cases.
- **Commercial Lender** – Representing commercial lender in asset based loan to retailer of beer, wines and spirits in connection with ESOP transaction.
- **Awrey Bakeries** – Represented Awrey Bakeries, one of the largest privately owned bakeries in the U.S. (producing fresh and frozen pastries, breads, cakes, donuts, biscuits, and muffins), in its Article 9 sale as a going concern to Minnie Marie Bakers.
- **Mother's Cookies** – Represented strategic acquirer in its purchase of Mother's Cookies from Archway through a 363 bankruptcy sale.
- **Fargo, S.A.** – Represented bondholders in filing of involuntary bankruptcy petition against Compañía de Alimentos Fargo, S.A., an Argentine producer of packaged baked goods.

### ***Municipalities***

- **City of Detroit** – Representing Syncora Guarantee and Syncora Capital Assurance in connection with its holdings of certificates of participation of the City of Detroit and as insurers of certain swap obligations.

### ***Representative Pro Bono Matters***

## David Agay

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- Represented prisoner in his criminal and sentencing appeal before the United States Court of Appeals for the Seventh Circuit.
- Represented political asylum applicant in immigration proceedings.

### Admissions - Court

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- Illinois Supreme Court
- U.S. District Court for the Northern District of Illinois
- U.S. Court of Appeals for the 7th Circuit
- Numerous appearances in Bankruptcy Courts across the U.S.

### Admissions - State

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- Illinois
- New York

### Education

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- University of Michigan Law School
- Pomona College

### Honors and Awards

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- 2020 Lawdragon 500 Leading U.S. Bankruptcy and Restructuring Lawyers
- Named one of the *Best Lawyers* in America (2016-2021)
- Selected for inclusion in *Illinois Super Lawyers* (2013-2019)
- Selected for inclusion in *Illinois Rising Stars* (2008-2009, 2012)
- Judicial Law Clerk for the Honorable Paul E. Riley, United States District Court for the Southern District of Illinois

### Professional Membership

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- American Bankruptcy Institute
- Turnaround Management Association

### Alerts

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- R-E-L-I-E-F for small business debtors: CARES Act and SBRA
- Restructuring Professionals - Is it time to rewrite your retention agreements?
- Get money from the state to train your employees

### Blog Posts

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- What happens to contracts?

## David Agay

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- How do I deleverage and restructure my business
- What if a vendor is considering bankruptcy?
- What if a customer is considering bankruptcy?
- Street smarts in restructuring
- Don't be a stranger

### News

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- Lawyer of the Year honorees Riley and Welin among 42 McDonald Hopkins attorneys recognized as 2021 Best Lawyers
- McDonald Hopkins attorneys recognized as 2020 Illinois Super Lawyers and Rising Stars
- 41 attorneys from McDonald Hopkins recognized as 2020 Best Lawyers®
- What does the Federal Reserve's decision to cut its benchmark rate mean for you?
- A Survival Guide for Middle Market Professionals
- McDonald Hopkins names David Agay managing member in Chicago
- 35 attorneys at McDonald Hopkins selected for inclusion in Best Lawyers® 2018
- Four attorneys at McDonald Hopkins named Illinois Super Lawyers
- 39 attorneys at McDonald Hopkins selected for inclusion in Best Lawyers 2017
- 41 attorneys at McDonald Hopkins selected for inclusion in Best Lawyers® 2016
- Six attorneys at McDonald Hopkins named Illinois Super Lawyers and Rising Stars

### Podcasts

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- Ruminations and insights on corporate restructuring: The lawyer and the investment banker
- Perspectives on the Chicago law firm market

### External Publications

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- "A Survival Guide for Middle Market Restructuring Professionals," Journal of Corporate Renewal, September 2018 (co-author)
- "Markets Party Like It's...2007?" Financier Worldwide, March 2010 (co-author)
- "Crossing Borders: International Reorganizations," Daily Bankruptcy Review, February 10, 2010, (co-author)
- "Credit (Bid) Where Credit's Due – Part Two," The Bankruptcy Strategist, February 2010, (co-author)
- "Credit (Bid) Where Credit's Due – Part One," The Bankruptcy Strategist, January 2010, (co-author)
- "International Insolvencies: New Thinking Required," The Lawyer, September 2008