



Marc J. Carmel

Member

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Practice Focus

- Business counseling
- Business restructuring
- Commercial finance
- Creditors' committees
- Distressed M&A
- Equity holder representation
- Litigation finance
- Mergers and acquisitions

Marc is a member of the firm's Business Restructuring Services Department residing in the Chicago office (with clients located throughout the United States). He has two decades of experience representing public and private companies, private equity and other investment firms, directors and executives, lenders, committees, and equityholders in a variety of distress and non-distress engagements. Marc regularly advises clients regarding strategic alternatives, including: out-of-court and in court restructurings and bankruptcies; mergers and acquisitions, refinancings, recapitalizations, and sales; and fiduciary duties and governance matters throughout the United States and internationally. Whenever necessary, he assists his clients with commercial litigation in insolvency matters. Additionally, Marc has extensive experience in the litigation finance industry.

Marc is a frequent author and speaker on restructuring topics, with a focus on fiduciary duties, acquisitions of distressed assets, and cutting edge strategies and tactics to address bankruptcy issues. Marc also writes and speaks about litigation finance.

Prior to joining McDonald Hopkins, Marc led representations in restructurings and bankruptcies at two major international law firms and was the leader of a litigation finance firm's involvement in the bankruptcy and restructuring sector. Marc worked for a large national accounting firm before attending law school and is a Certified Public Accountant (inactive).

Marc earned his Juris Doctor from Harvard Law School and his Masters of Accounting and Bachelor of Business Administration degrees from the University of Michigan.

Industry Experience

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

- Distribution
- Energy
- Gaming
- Health Care
- Manufacturing
- Media
- Real Estate, Mining, and Construction
- Retail
- Technology
- Transportation

Representative Cases/Matters

Distribution

- **Confidential Distributor** – Represented a distributor of food processing and industrial supplies in its successful refinancing.

Energy

- **Extreme Plastics Plus, Inc.** – Represented an oil field service company in the debtors' chapter 11 cases filed in the Delaware bankruptcy court, including a sale of substantially all of the debtors' assets to a stalking horse purchaser under section 363 of the Bankruptcy Code after an active auction.

Gaming

- **Caesars Entertainment Operating Company** – Represented a casino company (as conflicts counsel) in the debtors' chapter 11 cases filed in the Northern District of Illinois bankruptcy court (in the largest casino bankruptcy), including by negotiating and documenting issues related to a joint venture for ownership of significant casino operations.
- **Tropicana Entertainment, LLC** – Represented a casino company in the debtors' chapter 11 cases filed in the Delaware bankruptcy court, in which the exit strategy included two separate, contemporaneous chapter 11 plan confirmation processes.

Health Care

- **Confidential Health Care Company** – Represented a health care provider in an out-of-court restructuring of a portfolio company of a private equity sponsor.
- **IntraOp Medical Corporation** – Represented the closed end mutual fund FirstHand Technology Value Fund, Inc. in the chapter 11 cases of IntraOp Medical, a company whose medical devices deliver intra-operative radiation to cancer patients, filed in the Northern District of California bankruptcy court. FirstHand Technology Value Fund provided debtor-in-possession financing, which was credit bid in a sale of substantially all of the debtors' assets under section 363 of the Bankruptcy Code in accordance with a

negotiated lock-up agreement that committed the debtors' pre-bankruptcy secured lenders and equityholders to support the client's stalking horse credit bid.

- **Contract Research Solutions, Inc. (Cetero Research)** – Represented a contract research organization accused of fraud by the Federal Drug Administration in the debtors' chapter 11 cases filed in the Delaware bankruptcy court, including a sale of substantially all of the debtors' assets under section 363 of the Bankruptcy Code in accordance with a credit bid by pre-bankruptcy lenders and a joint disclosure statement and chapter 11 plan process.
- **Erickson Retirement Communities LLC** – Represented a joint venture of private equity firms Kohlberg Kravis Roberts & Co., Beecken Petty O'Keefe & Co., and CoastWood Senior Housing Partners in the chapter 11 cases of Erickson Retirement Communities, a continuing care retirement community developer and operator, filed in the Northern District of Texas bankruptcy court.

Manufacturing

- **GT Advanced Technologies, Inc.** – Represented a manufacturer of advanced material and electronics in the debtors' chapter 11 cases filed in the New Hampshire bankruptcy court.
- **Furniture Brands International, Inc.** – Represented a designer, manufacturer, and retailer of furniture in the debtors' chapter 11 cases filed in the Delaware bankruptcy court, including active competition to provide debtor-in-possession financing and the sale of substantially all of the debtors' assets under section 363 of the Bankruptcy Code.
- **Indalex Inc.** – Represented the private equity firm Sun Capital Partners Inc. in the chapter 7 cases of Indalex, a former manufacturer of aluminum products, filed in the Delaware bankruptcy court.
- **Collins & Aikman Corporation** – Represented one of the nation's largest automotive component part suppliers in the debtors' chapter 11 cases filed in the Eastern District of Michigan bankruptcy court, including a bankruptcy filing with only three days of preparation and multiple simultaneous sale processes in conjunction with confirmation of the debtors' chapter 11 plan.
- **Techneglas, Inc.** – Represented a manufacturer of television parts in the debtors' chapter 11 cases filed in the Southern District of Ohio bankruptcy court, including a chapter 11 plan process that effectuated a global settlement between the United States Pension Benefit Guaranty Corporation, two affiliated debtors that were separately administered, and their foreign parent company.

Media

- **Velo Holdings, Inc.** – Represented the private equity firm Endeavour Capital and its portfolio company Global Wide Media, Inc. in the chapter 11 cases of Velo Holdings, a holding company with assets that included an online marketing company, filed in the Southern District of Delaware bankruptcy court. Endeavour Capital and Global Wide Media purchased substantially all of the assets of Velo Holdings' online marketing debtor-subsidiary Neverblue Communications, Inc. and the equity of one of its non-debtor affiliates in a sale under section 363 of the Bankruptcy Code.
- **Plum TV, Inc.** – Represented private company Media Greenhouse LLC in the chapter 11 cases of Plum TV, the owner of a collection of local cable channels, filed in the Southern District of New York bankruptcy court. Media Greenhouse purchased substantially all of the debtors' assets under section 363 of the Bankruptcy Code.
- **Movie Gallery, Inc.** – Represented a movie rental business with the second most stores in the United States in the debtors' chapter 11 cases filed in the Eastern District of Virginia bankruptcy court, including the liquidation of unprofitable stores and the debtors' restructuring pursuant to a pre-arranged chapter 11

plan.

Real Estate, Mining, and Construction

- **Molycorp, Inc.** – Represented the Official Committee of Unsecured Creditors of Molycorp, Inc., a company focused on mining and refining rare earth metals, in the debtors’ chapter 11 cases filed in the Delaware bankruptcy court.
- **The Abbey Companies LLC** – Represented a California-based office building real estate enterprise in the mostly out-of-court restructuring of several pools of assets as well as the settlement of state court foreclosure actions filed in Los Angeles, California and a chapter 11 case filed in the Central District of California bankruptcy court to effectuate a settlement with respect to one significant asset owned by a subsidiary of The Abbey Companies.
- **Confidential Real Estate Trust** – Represented a real estate trust that extended a loan for a real estate project that was owned by “tenants in common” in an out-of-court restructuring.
- **ALT Hotel, LLC** – Represented the private equity firm The Chartres Lodging Group, LLC and its affiliate Kokua Hospitality, LLC in the chapter 11 cases of ALT Hotel, LLC, the owner of the Allerton Hotel, filed in the Northern District of Illinois bankruptcy court, including to protect the interests of The Chartres Lodging Group as former owner of ALT Hotel, LLC and Kokua Hospitality as the hotel manager of the Allerton Hotel.
- **Innkeepers USA Trust** – Represented an owner and operator of 70 hotels in the debtors’ chapter 11 cases filed in the Southern District of New York bankruptcy court, including in the restructuring of more than \$1 billion of obligations owed to a variety of lenders, including two separate collateralized mortgage-backed securities.
- **Brundage Bone Concrete Pumping, Inc.** – Represented the private equity firm Aurora Resurgence (an affiliate of Aurora Capital Group) in the chapter 11 cases of Brundage Bone Concrete Pumping, a construction company, filed in the Colorado bankruptcy court.
- **Archstone-Smith Trust** – Represented one of the lead investors in a national apartment real estate investment trust in the out-of-court restructuring of more than \$10 billion in debt.
- **Parking Company America Airports** – Represented the private equity firm Aurora Resurgence (an affiliate of Aurora Capital Group) in the chapter 11 cases of Parking Company America Airports, the owner and operator of parking lots around the country, filed in the Delaware bankruptcy court. Aurora Resurgence purchased substantially all of the debtors’ assets under section 363 of the Bankruptcy Code.

Retail

- **Lucky's Market Parent Company, LLC** – Represented Bo Sharon in the chapter 11 cases of Lucky’s Market Parent Company, LLC, a grocery store company, filed in the Delaware bankruptcy court. Bo Sharon purchased substantially all of the assets of two grocery stores of Lucky’s Market under section 363 of the Bankruptcy Code.
- **Mishti Holdings LLC (Lolli & Pops)** – Represented affiliates of private equity firm TerraMar Capital LLC in the chapter 11 cases of Mishti Holdings, a California-based candy retailer, filed in the Delaware bankruptcy court. The affiliate of TerraMar Capital purchased substantially all of the debtors’ assets under section 363 of the Bankruptcy Code.
- **Sugarfina, Inc.** – Represented private equity firm TerraMar Capital LLC in the chapter 11 cases of Sugarfina, Inc., a California-based candy retailer, filed in the Delaware bankruptcy court. TerraMar Capital provided debtor-in-possession financing and submitted a bid for substantially all of the debtors’ assets under section 363 of the Bankruptcy Code.

- **Mi Pueblo Food Centers** – Represented private equity firm Victory Park Capital Advisors, LLC in the merger of its portfolio company Mi Pueblo with KKR-owned Cardenas Markets LLC.
- **Gordman Stores Inc.** – Represented a joint venture of Hilco Merchant Resources, LLC and Gordon Brothers Retail Partners, LLC in the chapter 11 cases of Gordman Stores, an apparel and home fashion retailer, filed in the Nebraska bankruptcy court.
- **Aéropostale, Inc.** – Represented a joint venture of Hilco Merchant Resources, LLC and Gordon Brothers Retail Partners, LLC in the chapter 11 cases of Aéropostale, an apparel retailer, filed in the Southern District of New York bankruptcy court. Hilco and Gordon Brothers assisted in the liquidation of substantially all of the debtors' inventory pursuant to an agency arrangement and was part of a first-of-its-kind consortium to acquire substantially all of the debtors' operations pursuant to section 363 of the Bankruptcy Code.
- **The Great Atlantic & Pacific Tea Company, Inc.** – Represented the private equity firm Balboa Retail, LLC in the chapter 11 cases of The Great Atlantic & Pacific Tea Company, a grocery store company, filed in the Southern District of New York bankruptcy court. Balboa Retail purchased several of the debtors' leases of real property under section 363 of the Bankruptcy Code.
- **Haggen Holdings, LLC** – Represented the private equity firm Balboa Retail, LLC in the chapter 11 cases of Haggen Holdings, a grocery store company, filed in the Delaware bankruptcy court. Balboa Retail purchased several of the debtors' leases of real property under section 363 of the Bankruptcy Code.
- **Haggen Holdings, LLC** – Represented real property lessors BRNK Beaverton, LLC and BRNK Simi Valley, LLC in the chapter 11 cases of Haggen Holdings, including in the sale and assignment by the debtors of grocery store leases to third party purchasers.
- **RadioShack Corporation** – Represented private company Office Depot de México, S.A. de C.V. in the chapter 11 cases of RadioShack, a consumer electronics retailer, filed in the Delaware bankruptcy court. Office Depot de México purchased the equity of a non-debtor Mexican subsidiary of RadioShack Corporation and related intellectual property under section 363 of the Bankruptcy Code.
- **Mi Pueblo San Jose, Inc. and Cha Cha Enterprises, LLC** – Represented the private equity firm Victory Park Capital Advisors, LLC in the chapter 11 cases of affiliates Mi Pueblo San Jose and Cha Cha Enterprises, a California-based grocery store chain, filed in the Northern District of California bankruptcy court. Victory Park provided debtor-in-possession financing and acted as post-bankruptcy lender and equity sponsor to acquire majority ownership through the debtors' chapter 11 plans.
- **Giordano's Enterprises, Inc.** – Represented the private equity firm Garrison Investment Group LP in the chapter 11 cases of Giordano's Enterprises, a pizza restaurant owner, operator, and franchisor, filed in the Northern District of Illinois bankruptcy court. Garrison Investment Group submitting a bid for substantially all of the debtors' assets under section 363 of the Bankruptcy Code.

Technology

- **RentPath Holdings, Inc.** – Represent special committee of board of directors in the reorganization of RentPath Holdings, Inc., a digital marketing company, filed in the Delaware bankruptcy court. Assisted the special committee in its investigation to determine whether to pursue any potential claims, remedies, or other appropriate actions belonging to the RentPath enterprise and its assessment of potential claims.
- **Edgenet, Inc.** – Represented the private equity firm Parallax Capital Partners, LLC in the chapter 11 cases of Edgenet, a software company for retailer companies, filed in the Delaware bankruptcy court. Parallax Capital Partners acted as the stalking horse for the purchase of substantially all of the debtors' assets under section 363 of the Bankruptcy Code.

- **Maxcom Telecomunicaciones, S.A.B. de C.V.** – Represented the Latin American private equity fund Ventura Capital Privados S.A. de C.V. in the prepackaged chapter 11 cases of Maxcom Telecomunicaciones, a Mexican telecommunications company, filed in the Delaware bankruptcy court. Ventura Capital invested in Maxcom Telecomunicaciones through a prepackaged chapter 11 plan and a tender offer consummated in accordance with United States and Mexican securities laws.
- **DBSD North America, Inc.** – Represented an owner of communications “spectrum” and a satellite in the debtors’ chapter 11 cases filed in the Southern District of New York bankruptcy court, including multiple auctions for incumbent and new lenders to provide debtor-in-possession financing, significant litigation, and multiple chapter 11 plan processes.

Transportation

- **Confidential Transportation Maintenance Company** – Represented a privately owned transportation maintenance company in its restructuring and the sale of substantially all of its assets through a management buyout as well as the assignment for the benefit of creditors of its remaining assets.
- **UAL Corporation (United Airlines)** – Represented an airline in the debtors’ chapter 11 cases filed in the Northern District of Illinois bankruptcy court (in the largest airline bankruptcy), with involvement in each of the significant matters in the restructuring, including aircraft finance, labor and employment, and municipal bonds.
- **Trans World Airlines, Inc.** – Represented an airline in the debtors’ chapter 11 cases filed in the Delaware bankruptcy court, including a competitive process for providing debtor-in-possession financing, extensive litigation regarding labor and employment issues, and an active auction process for the sale of substantially all of the debtors’ assets under section 363 of the Bankruptcy Code.

Litigation Finance

- **Investment Advisor Providing Funding to Litigation Funder** – Represented an investment advisor and its joint venture partner in documenting a commitment of \$50 million of financing to an entity who provides litigation funding related to personal injury litigation.
- **Asset Management Firm Providing Funding to Law Firm** – Represented an asset management firm in performing due diligence and documenting \$8 million of financing to a law firm with a focus on mass tort litigation.
- **Confidential Company-Plaintiff Seeking Litigation Funding** – Represented a company suing its former joint venture partner in securing litigation funding and negotiating documentation for such funding.
- **Confidential Attorney-Plaintiff Seeking Litigation Funding** – Represented an attorney suing his former client in seeking litigation funding and negotiating documentation for such funding.

Admissions - Court

- 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

- Illinois
- New York

Education

- Harvard Law School
- University of Michigan

Professional Membership

- American Bar Association Business Bankruptcy Committee (Co-Chair, Use and Disposition of Property Subcommittee)
- American Bankruptcy Institute
- Turnaround Management Association

Alerts

- Congress passes \$484B coronavirus relief bill
- CARES Act: An early analysis of the historic Coronavirus Aid, Relief and Economic Security Act

Blog Posts

- Corporate directors and officers and fiduciary duties in the COVID 19 world: Same duties, but much more to do
- Coronavirus will lead to litigation funding boom
- CARES Act: Summary of provisions for midsized and large businesses
- CARES Act: Summary of SBA provisions
- Preparing for the economic fallout from the coronavirus

News

- "McDonald Hopkins creates litigation finance group"
- As Payless wades through bankruptcy again, creditors say hedge fund may be to blame
- McDonald Hopkins' new Litigation Finance Practice Group is one of the first of its kind and unique to the legal market
- Maximizing Recoveries from Post-Confirmation Litigation: Part II
- Maximizing Recoveries from Post-Confirmation Litigation: Part I

Podcasts

- Episode 31: Litigation finance field finds exciting new resource in Dispute Financing Library at NYU
- Episode 28: McDonald Hopkins Launches New Litigation Finance Practice Group, Part 2: What is Litigation Finance?

- Episode 27: McDonald Hopkins Launches New Litigation Finance Practice Group, Part 1: What is Litigation Finance?

External Publications

- “Litigation Finance Booming,” *Turnaround & Workouts* (2018)
- “Q&A with ... Marc Carmel,” *Law360* (2013)
- Recognized as one of the 40 Under 40 Central M&A Advisors (emerging leaders of the M&A, Financing, and Turnaround Industries), *The M&A Advisor* (2012)
- “If Jevic Is Your Problem, Litigation Finance Might Be Your Solution,” *American Bankruptcy Institute Journal* (2017)
- “Model Asset Purchase Agreement for Bankruptcy Sales,” *American Bar Association*, co-chaired task force and co-author (2017)
- “Advice for Directors and Officers of Distressed Corporations: Fiduciary Duties,” *InsideCounsel* (2015)
- “Advice for Directors and Officers of Distressed Corporations: Corporate Governance in Times of Financial Distress,” *InsideCounsel* (2015)
- “Advice for Directors and Officers of Distressed Corporations: Compensation and Benefits Issues to Consider,” *InsideCounsel* (2015)
- “Advice for Directors and Officers of Distressed Corporations: Strategies to Avoid or Minimize Liability,” *InsideCounsel* (2015)
- “Eleventh Circuit Holds that Term Lenders Do Not Have Standing to Enforce Funding Obligations of Revolving Lenders,” *Mondaq* (2013)
- “Fifth Circuit Decision May Reignite Debate on Artificial Impairment in Engineering a ‘Cramdown’ Plan of Reorganization,” *Mondaq* (2013)
- “Recharacterization from Debt to Equity: Do Bankruptcy Courts Have the Power?,” *The Bankruptcy Strategist* (2002)
- “Fiduciary Duties & the ‘Zone’ of Insolvency,” *The Bankruptcy Strategist* (2001)

Events

- Paving the Path to a Distressed M&A Acquisition | Wednesday, October 23, 2019

Speaking Engagements

- "McDonald Hopkins Litigation Finance Co-Head Talks Investment Strategy and Funding Arrangements," Debtwire Podcast, September 10, 2019