The Impact of Increased Private Equity and Hedge Fund Activity on Chapter 11/Creditors Rights: The New Normal?

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Increased Frequency of Private Equity Firm and Hedge Fund Involvement in Chapter 11 Cases

- In Recent Years, Private Equity Firms and Hedge Funds Have Become Increasingly Frequent Players in High Profile Chapter 11 Cases

- Their Involvement Has
  - Changed Chapter 11 strategy and outcomes
  - Raised concerns about their control over the Chapter 11 process
WARNING SIGNS OF DISTRESSED COMPANY CONTROLLED BY PRIVATE EQUITY OR HEDGE FUND
Warning Signs Of Distressed Company Controlled by Private Equity or Hedge Fund

• PIK Notes
• Upcoming Large Principal or Interest Payment on Bond Debt
• Covenant Breach/Default on Debtor’s Loan Facility
• Debtor’s Entry Into Forbearance Agreement
Parties Eye Mid- to Late January for 21st Century Transaction Support Agreement

A transaction support agreement from 21st Century Oncology could be seen in mid- to late January, according to sources. The initial Jan. 4 deadline stipulated in previously amended forbearance agreements with noteholders passed last week without a public update from the company.

Initially on Dec. 6 last year, 21st Century entered into forbearance agreements with noteholders representing greater than 90% of the aggregate principal amount of notes outstanding and consenting lenders under its credit agreement. Both forbearances will go until Jan. 15. The initial deadline for the TSA was Dec. 15, 2016, but that deadline was later amended for Jan. 4. 21st Century, which provides radiation therapy and cancer care services, has struggled beneath an onerous debt load and money-losing operations.

An ad hoc group of first lien-only lenders in 21st Century is being advised by PJT Partners as financial advisor and Milbank Tweed as legal counsel, Reorg reported. Additionally, a lender group of cross-holders and bondholders is being advised by Houlihan Lokey and Stroock & Stroock, Reorg reported. The first lien group includes lenders under the revolver, including agent Morgan Stanley, along with other distressed funds holding first lien debt, with the Houlihan group including holders of much of the first lien debt, Reorg reported.
Warning Signs Of Distressed Company Controlled by Private Equity or Hedge Fund

• Downgraded Agency Credit Rating to Junk Status
  – Moody’s
  – Standard & Poor’s
  – Fitch
Warning Signs Of Distressed Company Controlled by Private Equity or Hedge Fund

- Delay in Release of Financial Information/Late SEC Filings
- Falling Prices on Secured Loan Debt
- Falling Bond Prices
  - Trading significantly under par
- Going Concern Notice in Financials
This updated version of Debtwire’s Workout Waiting Room welcomes two newcomers: Avaya and Sequa Corporation. Avaya joins the group after the company missed its FY16 (ended 30 September 2016) 10-K filing deadline. According to the communications company's credit agreement, Avaya had until 29 December to file its year-end financials. After missing this deadline, the company subsequently entered into a 30-day grace period which is set to expire on 28 January.

The second newcomer, Sequa Corporation, joins the roster after the aerospace and metals company missed a USD 12.3m coupon payment on the company's USD 350m 7% unsecured notes, which was originally due on 15 December 2016. The missed payment forced Sequa into a grace period that is set to expire on 14 January.

* * *

Avaya Filed Chapter 11 on January 19, 2017
Avaya unsecured notes decline on priming fears; Mid-Day Commentary

Avaya unsecured bonds weakened as investors digest expectations that the size of a DIP facility could swell to at least USD 750m, which could worsen bondholder recoveries, said two traders. The company is operating under a 30-day grace period for failure to file its audited 10-K in a timely fashion, and could file for Chapter 11 in the near term.

Debtwire first reported yesterday that the target size of the post-petition facility is now at least USD 750m, up from the USD 150m range for a one-year new money DIP loan. Citigroup, the administrative agent on Avaya’s bank debt, as well as an ad hoc group of first lien lenders have been vying to provide the bankruptcy loan.

Avaya’s USD 1.38bn 10.5% second lien bonds due 2021 traded at 16.9 today down from 20.75 on 13 January, according to MarketAxess.

Avaya Filed Chapter 11 on January 19, 2017
## Sample of Bond Pricing Trend

<table>
<thead>
<tr>
<th>Company Name</th>
<th>Teasheet</th>
<th>Industry</th>
<th>Ticker</th>
<th>Coupon (%)</th>
<th>Outstanding (USDm)</th>
<th>Maturity</th>
<th>Ranking</th>
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Warning Signs Of Distressed Company Controlled by Private Equity or Hedge Fund

- Change of Leadership (CFO or CEO)
- Resignation of Members of Board of Directors
- Appointment of New Board Members with Insolvency Background
Warning Signs Of Distressed Company Controlled by Private Equity or Hedge Fund

- Formation of Ad Hoc Bondholder Committee
- Retention of Chief Restructuring Officer
- Retention of Crisis Manager
- Retention of Bankruptcy Professionals
An ad-hoc group of iHeartCommunications USD 2.1bn 14% senior unsecured PIK notes due 2021 are organizing ahead of the potential for an exchange offer, said two sources familiar with the situation.

The group is in the early stages of taking shape, and is informally working with legal counsel White & Case, said the sources.

iHeart on 20 December offered holders of its USD 850m 10% senior unsecured notes due 2018 a deal to swap at par into new higher coupon 11.25% priority guaranteed notes due 2021. The company is at risk of receiving a going concern qualification from its auditors if it can’t get holders of the bonds, due in a year, on board with a deal.
FASTER CHAPTER 11 CASES
Speedier Chapter 11s

• Chapter 11 Cases Have Been Transformed from the 1980’s and early 1990’s
  – Increased frequency of prepackaged and pre-arranged chapter 11 plans
  – Sales in Chapter 11 cases have gone from being the exception in the 1980s – early 1990s to the norm

• Traditional Chapter 11 Restructurings
  – Fix business/operational problems first
  – Followed by Chapter 11 Plan Process
  – Exception rather than the norm
Speedier Chapter 11s

• In 2016, Average Chapter 11 Case Took 7.3 months, The Quickest Ever and Less Than Half the Average in 2013 (Bankruptcydata.com)

• Current Concern is Cases are Moving too Quickly and are Not Focusing on Fixing Business

• Speedier Chapter 11s Have Also Forced Junior Creditors, Including Trade Creditors, to Scramble to Protect Their Interests
Reasons For Speedier Chapter 11s

• Change in Nature of Lenders
  – In the past, primarily money center banks and asset-based lenders interested in preserving a borrower
  – What do banks now do?

• Private Equity Funds and Hedge Funds Have Replaced Banks as Senior Secured Lenders in Chapter 11 Cases
  – Less patient than money center banks and asset-based lenders
  – Focus on maximizing investment returns through quick chapter 11 process
  – Focus on swapping debt for equity
  – Increased emphasis on pre-bankruptcy planning outside of purview of bankruptcy court
  – Loan to own
Reasons For Speedier Chapter 11s

• Converting Debt to Equity Does Not Require Traditional Longer Chapter 11 Process
  – Debtor completes a significant portion of restructuring pre-petition

• Reduce Costs
  – Less disruption to Debtor’s business
  – Lower professional and other bankruptcy-related fees
Reasons For Speedier Chapter 11s

• Changes by Bankruptcy Abuse Prevention & Consumer Protection Act of 2005 (“BAPCPA”)
  – Chapter 11 More Expensive/Expanded Creditor Rights
    • Section 503(b)(9) Administrative Priority Claims for 20 Day Goods
    • Expanded rights of landlords, utilities and other creditor groups
  – Compressed Deadlines Established
    • 210-day limit for debtor to assume or reject commercial real property leases [big problem in retail chapter 11s]
    • 18-month limit on Debtor’s exclusive period to file plan
“Prepackaged” Chapter 11 Cases

- Debtor Files Chapter 11
- Prior to Filing, Debtor Has Agreement In Place With All Significant Stakeholders, Usually Holders of Significant Amount of Secured and/or Bond Debt
- Creditors (not Trade) Solicited and Vote on Prepackaged Plan Pre-Petition
- Trade Creditors Usually Paid In Full Upon Approval of Chapter 11 Plan or Earlier Pursuant to Court Order in Exchange for Trade Credit
“Prepackaged” Chapter 11 Cases

• Combined Hearing on Plan and Disclosure Statement Usually Between 30 – 60 Days After Chapter 11 Filing
  – Roust Corporation – world’s largest vodka producer got approval of their prepackaged plan and disclosure statement in less than 1 week

• Prepackaged Chapter 11 Plan Allows Proponents to Bind Dissenting Creditors
  – Vote by class – required majority to bind dissenting creditors – $2/3$nd’s in dollar amount – and 50% in number of creditors voting accept plan treatment
Disadvantages of “Prepackaged” Chapter 11 Cases

• Prepackaged Chapter 11’s Lend Themselves to Financial Not Operational Restructurings
• Time Period After Filing Relatively Brief
• Insufficient Time for Debtor To Downsize Through
  – Shutdown of unprofitable business/sale of assets
  – Rejecting unprofitable contracts
  – Renegotiating collective bargaining agreements
“Pre-negotiated” Chapter 11 Cases

• Bankruptcy Filed Before Plan Negotiations Concluded
  – Debtor reached agreement with certain (but not all) stakeholders (e.g., largest secured creditor(s)) on treatment of their claim(s) to be included in chapter 11 plan

• No Agreement With Other Creditor Classes (Including Trade Creditors)
  – Treatment
    • Payment in full of trade claims?
    • No or de minimis recovery on junior secured, unsecured and/or trade claims?
    • Critical vendors treated better than other trade creditors?
    • Are preference claims preserved or waived?
“Pre-negotiated” Chapter 11 Cases

• Pre-negotiated Chapter 11 Cases Run Far Longer than Prepackaged Chapter 11 Cases
  – Typically completed in 100-150 days
  – Caesars took nearly 2 years

• Recent Example Affecting Chemical Industry: *Momentive Performance Materials Holdings* in U.S. Bankruptcy Court, Southern District of New York
  – Took 150 days
  – Trade claims paid 100% in cash
  – Preference claims waived
Plan Support Agreements

- Plan Support or Lockup Agreement Provides Roadmap for Chapter 11 Case

- Plan Support
  - Consenting creditors agree to
    - Vote for plan treatment consistent with terms of plan support agreement
      - Distributions to creditor classes
      - Trade creditor treatment? TBD?
    - Support confirmation of plan consistent with plan support agreement
Plan Support Agreements

- Milestones – Termination of Plan Support Agreement if Debtor Fails To Meet Deadlines for
  - Approval of DIP financing and exit financing
  - Sale deadlines
  - Filing of chapter 11 plan and disclosure statement
  - Approval of disclosure statement
  - Approval of plan
  - Effective date of plan
Plan Support Agreement

- Other Provisions
  - Agreement to pay fees of plan support agreement parties
  - No shop provision in sale case
  - Fiduciary out?
  - Settlement of claims that could impact creditor recoveries
  - Releases in favor of plan support parties
Plan Support Agreements

• Creditors’ Committee Can:
  – Oppose DIP financing
  – Oppose Debtor’s assumption of plan support agreement/Chapter 11 plan
    • Challenge valuation
    • Challenge plan feasibility
    • Releases of plan support agreement parties
    • Director and officer issues?
  – Move for appointment of chapter 11 trustee or for ability to file competing chapter 11 plan
  – Seek additional value for distribution to unsecured creditors
  – Bury preference claims
Quickie Section 363 Sales

• Debtor Uses Section 363 to Sell (Subject to Bankruptcy Court Approval)
  – Entire Business
  – Groups of Assets
  – Business Lines
  – Liquidation vehicle – All Assets Through Going Out of Business Sales (“GOB’s”)

• No Requirement For a Plan or Solicitation of Votes for Sale Approval
• Typical Marketing Process
  – Preparation of marketing materials
  – Marketing of Debtor’s business/assets
  – Goal – Debtor identifies stalking horse bidder(s) prior to seeking court approval of sale process
Quickie Section 363 Sales

- Bidding Procedures, Auction, Sale Approval
  - Form of Asset Purchase Agreement negotiated, includes purchased assets, assumed liabilities and bid/auction procedures
  - Stalking horse negotiates for bid protections, typically includes “break-up fee” and/or “expense reimbursement” usually ranging from 2-5% of proposed purchase price
  - Once stalking horse bid is signed up, Debtor files motion seeking 2 hearings/orders
  - First Hearing – Debtor seeks court approval of bid and auction procedures and bid protections for stalking horse bidder
Quickie Section 363 Sales

• Prior to Auction, Other Interested Prospective Purchasers Must Submit “Qualified Bids” Consisting of:
  – Executed asset purchase agreement
  – Irrevocable offer with purchase price greater than stalking horse purchase price
  – Evidence of financial wherewithal, and
  – Payment of good faith deposit – usually 10% of bid price

• Auction Conducted Where “Highest and Best” Bid is Selected
Quickie Section 363 Sales – Sale Approval

• Debtor Presents Highest and Best Bid to Bankruptcy Court For Approval at Second Hearing – The Sale Hearing
  – Standard for court approval – easy to satisfy business judgment
  – Sale order includes many buyer protections
    • Sale free and clear of liens, claims and encumbrances
    • Assignment of contracts/creditor cure claims
Quickie Section 363 Sales

• Credit Bid – Secured Lender
  – Is prequalified to participate in process
  – Might in some circumstances choose to serve as stalking horse bidder
  – Can credit bid up to the full face amount of its secured claim
    • Even though secured lender purchased the claim at a substantial discount
  – Can discourage competitive bidding if amount of secured claim exceeds value of assets
• Credit Bid Cheaper and Quicker Alternative to Swapping Debt for Equity Via Plan Process
Quickie Section 363 Sales Risks to Unsecured Creditors

• Unsecured Creditors’ Committee Can Object to Terms of Proposed Bidding Procedures, Protections for Stalking Horse Bidder and Sale
  – Expedited sale process not designed to maximize recovery
  – No shop provisions
  – Break-up fee unreasonably high
  – Bid procedures chill competitive bidding
  – Goal: Slowing down the process to facilitate marketing efforts

• Creditors’ Committee Can Object to Credit Bid
  – Risk of chilling sale process
  – Does it cover unencumbered assets? Lien challenges?
Quickie Section 363 Sales Risks to Unsecured Creditors

• Risk of Administrative Insolvency – Insufficient Assets To Pay All Administrative Claims, Including Post-petition Trade Credit and Section 503(b)(9) 20 Day Goods Priority Claims

• Risk of Little Or No Recovery To Unsecured Creditors

• Preference Claims Preserved, Waived, Sold to Buyer?
Creditors’ Committee’s Role In Enhancing Recovery For General Unsecured Creditors

• Review of Pre-Petition Security Interests
  – Mistakes could be costly for secured creditors

• Investigation and Prosecution of
  – Fraudulent conveyance claims
  – Lender liability claims
  – Preference claims
  – Claims and against Debtor’s officers and directors
  – Equitable subordination and recharacterization claims
Reichhold Holdings – A Case Study

• Leading Global Suppliers of Intermediate Products For Composites and Coatings Industry Operating in North America, South America, Europe, Middle East and Asia

• Filed Chapter 11 on September 30, 2014 as a Sale Case

• As of Filing Date, First Lien Debt – $64.3 million; Second Lien Senior Secured Notes – $255 million

• Funds Holding Most of Second Lien Debt Provided Chapter 11 Financing and Served As Stalking Horse Bidder for U.S. Operations
Reichhold Holdings – A Case Study

• Robust Auction; Senior Secured Noteholder Group Was Winning Bidder
  – Bidding started at $98.2 million
  – Highest bidder: Stalking Horse Bid - $146,749,000 which included credit bid of $46 million

• Sale Approved By Bankruptcy Court

• Liquidating Chapter 11 Plan Approved on January 13, 2016
  – Anticipated general unsecured creditor recovery – less than 5% of claims per disclosure statement
Make-Whole/Prepayment Premiums

• Bond Indentures and/or Credit Agreements Often Restrict Borrower’s Ability to Prepay Secured Debt
  – “Make-Whole” or prepayment premium provisions require borrower to pay a fee upon early loan repayment (prior to maturity date in note or other documents) to compensate lender for loss of future interest payments

• “Make-Whole” Payments Might be Very Large, Reducing or Wiping Out Recovery to General Unsecured Creditors
Make-Whole Premiums

• Debtor and/or Creditors’ Committees and Secured Lenders Frequently Litigate Whether “Make-Whole” or Prepayment Premium Amounts are Payable When a Debt Is Repaid Early During the Bankruptcy Case By Virtue of Automatic Acceleration of Debt Per Loan Documents Triggered by Bankruptcy Filing
  – Per recent court decisions, debtor’s obligation to pay “make-whole”/prepayment premium depends on language of credit documents
  – Loan documents frequently do not specify that “make-whole”/prepayment premium amounts become immediately due upon a bankruptcy default or automatic acceleration
Make Whole In *Momentive Performance Materials Holdings* (“MPM”)

- **Optional Redemption Provision**
  - Notes redeemable at MPM’s option prior to 10/15/2015 at redemption price of 100% of principal *plus prepayment premium* and interest due on redemption date

- **Acceleration Provision**
  - Upon occurrence of event of default on bankruptcy filing with respect to MPM, principal, plus premium, *if any*, and interest automatically becomes due
Make Whole In *Momentive Performance Materials Holdings* ("MPM")

- MPM Filed Chapter 11 in U.S. Bankruptcy Court, Southern District of NY

- MPM’s Chapter 11 Plan Provided Full Payment of Secured Lienholder’s Claims, but Not Make-Whole Premiums
  - Make-whole premiums exceeded $200 million
  - Senior lienholders objected to the plan, in part, based on non-payment of make-whole premiums

- MPM Also Commenced Suit Against Senior Lienholders for Declaration That No “Make-Whole” Premiums Were Owing
Make Whole In *Momentive Performance Materials Holdings* (“MPM”)

- Bankruptcy/District Court Holdings Denied Payment of Make-Whole Premiums
  - Plan payments to senior lienholders were not optional redemption
    - Under New York law, early payment of debt owing based on acceleration clause is not a redemption
  - Plan payments were not prepayment of senior lienholders’ claims
    - Debt acceleration advanced maturity date
    - Only exception to this rule under New York law: Where the indenture contains *a clear and unambiguous* provision for payment of make-whole in event of acceleration of debt resulting from debtor’s chapter 11 filing
      - Lacking in MPM case
      - Words “premium, if any” in acceleration provision not sufficient to require payment of make-whole post acceleration
  - On appeal to Second Circuit Court of Appeals
Third Circuit Court of Appeals Decision In Energy Future Holdings (EFIH) Chapter 11 Case Upholding Make-Whole

- Indenture Governing First Lien and Second Lien Notes Contained
  - Redemption provision requiring payment of make-whole premiums if EFIH opted to redeem notes prior to 12/1/2015
  - Acceleration provision containing no express provision for payment of make-whole on acceleration

- Prior to Bankruptcy Filing, EFIH Disclosed Its Intention to Refinance Its First and Second Lien Notes In Bankruptcy Without Paying Make-Whole Amounts
Third Circuit Court of Appeals Decision In Energy Future Holdings (EFIH) Chapter 11 Case Upholding Make-Whole

- Third Circuit Court of Appeals Held First and Second Lien Noteholders were Entitled to Make-Whole Payments Totaling Approximately $670 Million
  - Court relied on express provision of indenture
  - Redemption provision provided for payment of make-whole and EFIH’s post-petition refinancing was “optional redemption”
    - EFIH voluntarily accelerated the notes by filing chapter 11
    - EFIH elected not to reinstate the notes in its chapter 11 plan
    - EFIH opted to refinance and pay off the notes and opposed first and second lienholders’ efforts to rescind the acceleration and reinstate the notes
  - Nothing in the acceleration provision negated imposition of make-whole premium per redemption provision
Questions?

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Practice

With more than 30 years of proven experience, Ken is the first call for companies seeking a strategic plan for recovery from financial distress.

Ken advises on the full spectrum of restructuring solutions, including Chapter 11 reorganizations, out-of-court workouts, financial restructurings, and litigation. He works closely with debtors, creditors’ committees, lenders, landlords, and others in such diverse industries as paper and printing, food, furniture, pharmaceuticals, health care, and real estate.

For each matter, Ken starts by developing a strategic direction based on a clear understanding of his client’s needs. His goals are to preserve the business or business relationship, to minimize disruption, and to move quickly toward a workable solution. His success is reflected both in his long list of accolades—including top rankings from Chambers USA (2008-2016) and The Deal’s “Bankruptcy Insider”—and the fact that the majority of his practice is referral-based. Clients laud Ken’s practical approach and sensitivity to the needs of their business, as well as his strong track record of successful outcomes.

In his spare time, Ken serves on several philanthropy and nonprofit boards primarily devoted to health care and education.

Education

- Columbia University (M.B.A., 1980)
- Benjamin N. Cardozo School of Law (J.D., 1979)
- Cornell University (B.S., 1975)
Affiliations

- American Bar Association
- New Jersey State Bar Association
  - Chairman, Bankruptcy Law Section
  - Section on Creditor and Debtor Relations
- New York State Bar Association
  - Corporation, Banking & Business Law Section
- Business Bankruptcy Committee
- Bankruptcy Lawyers Bar Association
- Commercial Law League of America
- Turnaround Management Association
- American Bankruptcy Institute Court Administration and ADR Committee
  - Co-Chair
- United Jewish Federation
  - Trustee
- American Jewish Congress
  - Trustee
- R.W. J. Barnabas Health
  - Trustee
  - Audit Committee
  - Compliance Committee
  - Strategic Planning Committee
  - Hospice
- Lincoln Center Business Council
- Visiting Nurse Association Health & Hospice
  - Member of the Board

Articles/Interviews Featuring Kenneth A. Rosen

- Kenneth A. Rosen offers a commentary in GlobeSt.com regarding the required timing for retailers to make crucial real estate decisions in chapter 11 under Bankruptcy §365(d)(4). GlobeSt.com, December 21, 2016
- Kenneth A. Rosen is quoted in Bloomberg regarding the consignment conflict amongst vendors, lenders and the retailer in the bankruptcy of Sports Authority Inc. Bloomberg, July 29, 2016
- Kenneth Rosen is featured in the latest episode of the Debtwire legal analyst practitioner podcast series discussing recent developments in retail bankruptcies and restructurings. Debtwire, July 22, 2016
- Kenneth A. Rosen comments in The Deal Pipeline regarding the sharp increase in chapter 11 filings of private equity-backed companies in 2016. The Deal Pipeline, June 17, 2016
- In the New Jersey Law Journal, Kenneth Rosen discusses the volatile commodities market and its effect on bankruptcy work. New Jersey Law Journal, April 22, 2016
In The Daily Meal, Ken Rosen comments on Fairway Market’s potential bankruptcy filing due to growing competition from upscale grocery stores. The Daily Meal, April 18, 2016

Kenneth A. Rosen is quoted in the Wall Street Journal, as he compared the different results of the retail bankruptcies of Hancock Fabrics Inc. and G Street Fabrics. Wall Street Journal, April 14, 2016

Kenneth A. Rosen is quoted in Law360 regarding a judge’s rejection of the UCC’s request to extend the deadline of Horsehead Holdings LLC’s Chapter 11 proceedings. Law360, April 6, 2016


Kenneth A. Rosen comments in USA Today, KGW.com, and Examiner Gazette regarding the implications of Sports Authority’s filing for Chapter 11 bankruptcy protection. USA Today, KGW.com, Examiner Gazette, March 3, 2016

Kenneth A. Rosen is quoted in Law360 regarding the pending confirmation of a plan allowing New York City Opera to exit bankruptcy. Rosen represents the opera company, which filed for Chapter 11 protection in October, 2013. Law360, January 8, 2016


Kenneth A. Rosen and Nicholas Vislocky write in GlobeSt.com regarding the unique bankruptcy process and obligations for shopping center retail tenants filing for Chapter 11. GlobeSt.com, January 8, 2016

Kenneth A. Rosen comments in Bloomberg regarding the uncertainty of the energy industry, and the effects on exploration and production companies and retailers. Bloomberg, January 6, 2016

Kenneth A. Rosen and Keara Waldron write in GlobeSt.com regarding the variety of options landlords have when a tenant files for bankruptcy under the provisions of the Bankruptcy Code. GlobeSt.com, December 14, 2015

Kenneth A. Rosen comments in WGRZ.com that low interest rates are allowing certain retailers under the threat of dissolution to remain open, at least through the fourth quarter 2015. WGRZ.com, November 21, 2015

Kenneth A. Rosen is quoted in The NonProfit Times regarding the financing arrangements of East Orange General Hospital its Chapter 11 bankruptcy proceedings. The NonProfit Times, November 12, 2015

Kenneth A. Rosen is quoted in nj.com regarding the bankruptcy filing of East Orange General Hospital. Rosen commented on the importance of preserving the health care options and job opportunities within the community of East Orange. NJ.com, November 11, 2015

Kenneth A. Rosen is quoted in CNBC regarding the complexity of issues for retailers in bankruptcy due to significant changes in the U.S. Bankruptcy Code. CNBC, October 22, 2015

Kenneth A. Rosen is quoted in The Record regarding A&P creditors’ right to investigate the company’s finances of large payouts to top executives during the year leading up to its bankruptcy filing. The Record, October 1, 2015

Kenneth A. Rosen is quoted in The Star Ledger regarding Barnabas Health’s notification to a bankruptcy judge of plans to bid on troubled Saint Michael’s Medical Center in Newark. Rosen represents Barnabas Health, New Jersey’s largest hospital chain. The Star Ledger, August 20, 2015

Kenneth A. Rosen is quoted in Troubled Company Reporter regarding a lawsuit filed by the Official Committee of Unsecured Creditors in Standard Register’s Chapter 11 case against the company’s board and officers and equity firm. Troubled Company Reporter, August 19, 2015

The Daily Deal quotes Kenneth A. Rosen in its feature story regarding current trends in the oil industry. The publication ranks Rosen as one of the most active bankruptcy attorneys in the country during the second quarter of 2015. The Daily Deal, July 20, 2015

Kenneth A. Rosen is featured in The Deal Pipeline regarding the advantages of Article 9 transactions over bankruptcy filings. Rosen is ranked as one of the most active bankruptcy attorneys in the country, according to the publication. The Deal Pipeline, April 17, 2015

Lowenstein Sandler LLP Selected to Represent Official Committee of Unsecured Creditors of Gourmet Express March 31, 2015
Speaker Bio – Kenneth A. Rosen (cont’d)

- Lowenstein Sandler LLP Selected to Represent Official Committee of Unsecured Creditors of Standard Register  March 25, 2015
- Kenneth A. Rosen is interviewed on The Deal Pipeline regarding the rising number of bankruptcy filings in the retail sector. The Deal Pipeline, March 17, 2015
- Kenneth A. Rosen comments in Law360 regarding the prohibitive costs involved in filing for Chapter 11 bankruptcy protection for many smaller and middle-market debtors. Law360, March 11, 2015
- Kenneth A. Rosen is quoted in The American Lawyer regarding the competing bids for ownership of New York City Opera’s assets. Rosen represents the 70 year old iconic institution in its Chapter 11 bankruptcy. The American Lawyer, January 26, 2015
- Kenneth A. Rosen is quoted in The Deal Pipeline regarding the current state of affairs in the field of legal restructuring, the high costs involved in the Chapter 11 process, and the shrinking numbers of filings in 2014. The Deal Pipeline, January 23, 2015
- Kenneth A. Rosen is interviewed by The Deal Pipeline regarding the upcoming auction of New York City Opera’s assets, and the mission to retain its vision of providing opera to the people of New York. The Deal Pipeline, January 13, 2015
- Kenneth A. Rosen is quoted in The American Lawyer on the pending resolution of New York City Opera's bankruptcy filing with an asset purchase agreement. Rosen represents the opera, which hopes to evaluate bids in January. The American Lawyer, December 9, 2014
- Kenneth A. Rosen comments in WQXR: Operavore regarding the sale of remaining assets of New York City Opera. WQXR, November 25, 2014
- Kenneth A. Rosen comments on developments in New York City Opera’s bankruptcy proceedings in Bloomberg. Rosen represents the opera company, which filed for Chapter 11 protection in October, 2013. Bloomberg, November 17, 2014
- Ken Rosen and his twin Sandy are profiled in the Wall Street Journal Bankruptcy Beat: Bankruptcy Brothers The Wall Street Journal, October 2, 2014
- Kenneth A. Rosen comments in Law360 regarding the settlement agreement between bankrupt children’s product manufacturer Kid Brands Inc. and the unsecured creditors’ committee. Rosen represents the debtor in its Chapter 11 bankruptcy proceedings. Law360, August 5, 2014
- Kenneth A. Rosen comments in The Deal Pipeline regarding the results of Love Culture Inc.’s July 30 auction of its inventory. Rosen is debtor counsel to the women’s clothing retailer, which filed for Chapter 11 protection on July 16. The Deal Pipeline, August 1, 2014
- Kenneth A. Rosen was mentioned in Debtwire regarding Love Culture Inc.’s scheduled auction under its Chapter 11 protection proceedings. Debtwire, July 29, 2014
- Kenneth A. Rosen was mentioned in Law360 and Debtwire in connection with Love Culture Inc.’s challenge over the validity of an asset purchase agreement for the company’s domain name and related holdings by a director. Law360; Debtwire, July 29, 2014
- Lowenstein Sandler LLP Selected to Represent Official Committee of Unsecured Creditors of Crumbs Bake Shop July 28, 2014
- Kenneth A. Rosen is featured in The Deal Pipeline, responding to a creditor’s accusations that New York City Opera is stalling the process for a sale transaction under Chapter 11. The Deal Pipeline, July 9, 2014
- Kenneth A. Rosen is highlighted in Law360 and Debtwire.com in connection with his representation of juvenile products distributor Kid Brands in its Chapter 11 proceedings. Law360; Debtwire.com, June 20, 2014
- Lowenstein Sandler Retained as Unsecured Creditors’ Counsel in Coldwater Creek Chapter 11 Case April 25, 2014
- Kenneth A. Rosen is mentioned in Law360 in connection with his representation of the Official Committee of Unsecured Creditors of Coldwater Creek Inc. Law360, April 25, 2014
Speaker Bio – Kenneth A. Rosen (cont’d)

- Kenneth A. Rosen comments in The Deal Pipeline regarding the liquidation of Ashley Stewart Holdings Inc.’s assets under Chapter 11 protection. Rosen represents Gordon Brothers Group LLP, which won the bid to conduct store closings. The Deal Pipeline, March 10, 2014
- Kenneth A. Rosen is quoted in The Deal Pipeline regarding the auction procedures of the women’s clothing retail business Dots LLC, which filed for Chapter 11 bankruptcy protection. The Deal Pipeline, February 12, 2014
- Kenneth A. Rosen comments in the Wall Street Journal on potential buyers interested in Dots LLC, which has filed for Chapter 11 bankruptcy protection. Wall Street Journal, February 3, 2014
- In DowJones, Kenneth A. Rosen and Nicole Stefanelli comment on the potential merger opportunities for New York City Opera. DowJones, October 14, 2013
- Kenneth A. Rosen comments in Law360 and Bloomberg as New York City Opera discusses merger opportunities with a “potential suitor” to preserve parts of the 70 year old iconic institution. Law360, Bloomberg, October 10, 2013
- Lowenstein Sandler Selected to Represent Creditors’ Committee in Exide Technologies’ Bankruptcy June 20, 2013
- In The Deal Pipeline, Kenneth Rosen and Sharon L. Levine are highlighted for representing the creditors’ committee in the Oreck Corp. bankruptcy. The Deal Pipeline, May 28, 2013
- In Law360, Kenneth A. Rosen, Sharon L. Levine, and S. Jason Teele are highlighted for representing the creditors’ committee in the Chapter 11 case of Southern Air. Law360, December 12, 2012
- Lowenstein Retained as Creditors’ Counsel in Two Chapter 11 Cases November 30, 2012
- Lowenstein Retained as Creditors’ Counsel in Zacky Farms Chapter 11 Case October 19, 2012
- Lowenstein Retained as Creditors’ Counsel in Journal Register Chapter 11 Cases September 2012
- Kenneth Rosen, John Sherwood, Wojciech Jung and Eric Horn are highlighted for representing SDA, Inc. and its affiliates in their Chapter 11 cases. The Deal Pipeline, June 7, 2012
- Lowenstein Sandler Partner Kenneth Rosen Elected Chairman of NJSBA Bankruptcy Law Section May 18, 2012
- John K. Sherwood, Kenneth A. Rosen and Wojciech F. Jung are highlighted for representing Ocean Place Development LLC in its Chapter 11 bankruptcy case. The Deal Pipeline, November 8, 2011
- "Lowenstein Tops Daily Deal’s List of Law Firms Representing Unsecured Creditors," September 12, 2011
- "Kenneth Rosen comments on the Chapter 7 liquidation of women’s apparel brand Ellen Tracy. Lowenstein Sandler represents the creditors in the case." Crain’s New York Business, August 14, 2009
- "Kenneth Rosen comments on lenders’ response to the increased number of bankruptcies during the recession." Business Week, June 23, 2009
- “Lowenstein Advises Syms in Chapter 11 Bankruptcy Acquisition of Filene’s Basement,” June 19, 2009
- “Lowenstein Sandler Investment Management and Bankruptcy Groups Named to Legal 500,” June 2009
- “Kenneth A. Rosen discusses the U.S. Bankruptcy Court’s approval of interim financing provided by Kimco Services Corp. and Kimco Capital Corp. to R&S Parts and Service Inc. in wake of its recent Chapter 11 filing.” Daily Deal, August 15, 2006
- “Lowenstein Sandler PC To Serve As Counsel to Unsecured Creditors’ Committee in Pliant Corp. Case” January 13, 2006
- "Lowenstein Sandler PC Ranked #2 Law Firm in the U.S. To Unsecured Creditors," Bankruptcy Insider, August 10, 2005
- "Kenneth A. Rosen is quoted in an article about Pegasus Communications’ ‘Committee objecting to the liquidation plan of Pegasus Satellite Television,” The Deal, April 15, 2005
Speaker Bio – Kenneth A. Rosen (cont’d)

Publications

- “Diversification Key For Mall Developers As Retail Landscape Evolves,” Kenneth A. Rosen, Eric Chafetz, Retail Dive, February 7, 2017
- “Real Estate Consultants, Chapter 11 And The Changing Retail Environment,” Kenneth A. Rosen, Retail TouchPoints, November 11, 2016
- “Practitioner Views: Lowenstein Sandler’s Ken Rosen on Changing Retail Reorganizations,” Kenneth A. Rosen, Debtfire, October 21, 2016
- “Viewpoint: Focus on CROs and Conflicts Counsel to Deal With Conflicts,” Kenneth A. Rosen, WSJ PRO Bankruptcy, August 1, 2016
- “Information Wish List to Evaluate a First-Day Asset Sale Motion,” Kenneth A. Rosen, ABI Committee Newsletter, June 2016
- “When It’s Time to Hire a Chief Restructuring Officer,” Kenneth A. Rosen, CFO, May 23, 2016
- “Retail Bankruptcies and the Circle of Life,” Kenneth A. Rosen, Retailing Today, March 7, 2016
- “Risks for Chapter 11 Debtors Selling to Large Retailers,” Kenneth A. Rosen, Business Credit, September/October 2015
- “Is It Good for Unions to Be on Creditors’ Committees?,” Kenneth A. Rosen, American Bankruptcy Institute Labor & Employment Committee Newsletter, June 2015
- “Where Have All the Chapter 11s Gone and Who’s to Blame?,” Kenneth A. Rosen, Bloomberg BNA Bankruptcy Law Reporter, April 23, 2015
Speaker Bio – Kenneth A. Rosen (cont’d)

- “Finally Something Good Comes from Asbestos Contamination,” Kenneth A. Rosen, Real Estate Finance Journal, 1995
- “The Forced 1111 (b) Issue in Real Estate Bankruptcy,” Kenneth A. Rosen, Real Estate Finance Journal, 1994

Bar Admissions

- 1980, New York
- 1979, New Jersey
Bruce S. Nathan, Partner in the firm's Bankruptcy, Financial Reorganization & Creditors' Rights Department, has more than 30 years' experience in the bankruptcy and insolvency field, and is a recognized national expert on trade creditor rights and the representation of trade creditors in bankruptcy and other legal matters. Bruce has represented trade and other unsecured creditors, unsecured creditors' committees, secured creditors, and other interested parties in many of the larger Chapter 11 cases that have been filed, and is currently representing the liquidating trust and previously represented the creditors' committee in the Borders Group Inc. Chapter 11 case. Bruce also negotiates and prepares letters of credit, guarantees, security, consignment, bailment, tolling, and other agreements for the credit departments of institutional clients.

Bruce was co-chair of the Avoiding Powers Committee that worked with the American Bankruptcy Institute’s Commission to Study the Reform of Chapter 11 and also participated in ABI's Great Debates at their 2010 Annual Spring Meeting, arguing against repeal of the special BAPCPA protections for goods providers and commercial lessors, and was a panelist for a session sponsored by the American Bankruptcy Institute ("ABI") and co-sponsored by Georgetown University Law Center. Bruce also regularly speaks at conferences held by the National Association of Credit Management, its international affiliate, An Association of Executives in Finance, Credit and International Business ("FCIB"), Credit Research Foundation ("CRF"), and many credit groups on bankruptcy, insolvency, and creditor's rights issues; is a member of NACM's Government Affairs Committee, a regular contributor to NACM's Business Credit, a contributing editor of NACM's Manual of Credit and Commercial Laws, and co-author of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: An Overhaul of U.S. Bankruptcy Law, published by NACM; and has contributed to CRF's Journal, The Credit and Financial Management Review.

Bruce is also a co-author of "Trade Creditor Remedies Manual: Trade Creditors' Rights under the UCC and the U.S Bankruptcy Code" published by the American Bankruptcy Institute ("ABI") at the end of 2011, has contributed to the ABI Journal, and is a former member of ABI's Board of Directors and former Co-Chair of ABI's Unsecured Trade Creditors Committee.

Bruce is recognized in the Bankruptcy & Creditor/Debtor Rights section of Super Lawyers (2012-2014) and in the 2014 Super Lawyers Business Edition. In March 2011, Bruce received the Top Hat Award, a prestigious annual award honoring extraordinary executives and professionals in the credit industry.

Education

- University of Pennsylvania School of Law (J.D., 1980)
- Wharton School of Finance and Business (M.B.A., 1980)
- University of Rochester (B.A., 1976), Phi Beta Kappa
Affiliations

- New York State Bar Association
- American Bar Association
  - Commercial Financial Services Committee
  - Business Bankruptcy Committee
- American Bankruptcy Institute
  - Former Member, Board of Directors
  - Former Chair, Unsecured Trade Creditor Committee
  - Regular Contributor to American Bankruptcy Institute Journal’s “Last in Line” Column
  - Speaker at 2007 Annual Spring Meeting: “Fifty Ways to Leave Your Debtor: Lesser Known Remedies For Jilted Creditors”
  - Panelist at “Chapter 11 At The Crossroads: Does Reorganization Need Reform?” A Symposium on the Past, Present and Future of U.S. Corporate Restructuring, on November 16-17, 2009, sponsored by ABI and co-sponsored by Georgetown University Law Center
  - Participated in the Great Debates at ABI’s Annual Spring Meeting held on April 30, 2010 on whether Congress should eliminate the special BAPCPA protections for providers of goods and lessors (arguing against repeal)
  - Task Force on Preferences
  - Chair, Task Force on Reclamations
  - Uniform Commercial Code Committee and Task Force - Revised Article 9 Primer
- American Bankruptcy Institute’s Commission to Study the Reform of Chapter 11
  - Co-chair, Avoiding Powers Advisory Committee
- Commercial Law League of America
- Association of Commercial Finance Attorneys
- National Association of Credit Management
  - Contributor to Business Credit - National Association of Credit Management Magazine
  - National Bankruptcy and Insolvency Group
  - Lecturer, National Association of Credit Management and Affiliates and Credit Groups on Bankruptcy, UCC Article 9, Consignments, Letter of Credit law and other credit-related issues
- Member of FCIB, an Association of Executives in Finance, Credit and International Business. Presented at The 4th China International Credit and Risk Management Conference, Shenzhen, China, September 21, 2007, and FCIB Teleconference, December 13, 2007, on key provisions of People’s Republic of China’s 2006 Law on Enterprise Bankruptcy, similarities to and differences with the U.S. Bankruptcy Code, and upcoming implementation challenges
- Media Financial Management Association
  - Member
  - Frequent Lecturer
  - Contributor to “The Financial Manager” on Creditors’ Rights Issues
- Lecturer, Executive Enterprises Inc. the Bank Lending Institute and the Banking Law Institute on Commercial Loan Workouts & UCC Issues
- Past Contributor
  - Credit Today
  - National Credit News
Articles/Interviews Featuring Bruce S. Nathan

- Bruce S. Nathan is quoted in NACM eNews regarding the effect of prepackaged and prearranged chapter 11 plans on unsecured creditors. NACM eNews, January 26, 2017
- Bruce S. Nathan is quoted in Business Credit, attributing the increase of prepackaged Chapter 11 cases as a response to changes in the bankruptcy code in 2005 and the recession in 2008. Business Credit, June 2016
- Bruce Nathan comments in NACM eNews regarding the U.S. Supreme Court’s affirmance of the elimination of limits on creditors’ ability to garner a spousal guarantee. NACM eNews, March 24, 2016
- Bruce S. Nathan is quoted in NACM eNews regarding the tenuous financial condition of certain large retailers, and the risks facing credit professionals in 2016 when making their credit decisions in sales to such retailers. NACM eNews, January 21, 2016
- Bruce S. Nathan is quoted in NACM eNews, predicting that the recent rate hike and future hikes by the Federal Reserve should increase the number of bankruptcy filings. NACM eNews, December 17, 2015
- Bruce S. Nathan is quoted in NACM eNews regarding the new official forms, including the new proof of claim form, used in bankruptcy cases, which became effective December 1. NACM eNews, December 10, 2015
- Bruce S. Nathan is quoted in NACM eNews concerning the increasing number of unsuccessful retail bankruptcy reorganizations. NACM eNews, November 19, 2015
- Bruce S. Nathan is quoted in NACM eNews regarding the risk of a future bankruptcy filing when a company buys a financially distressed company and in the process overleverages itself. NACM eNews, November 12, 2015
- Bruce S. Nathan is quoted in NACM eNews regarding the growing competition for retailers such as A&P and other independent retailers from big box retailers, including Walmart and Target., NACM eNews, August 27, 2015
- Bruce S. Nathan is quoted in NACM eNews concerning the potentially deleterious effects of navigating in and out of bankruptcy court too quickly. NACM eNews, June 25, 2015
- Bruce S. Nathan comments in NACM eNews regarding the Supreme Court’s ruling that bankruptcy courts may not award attorneys’ fees for work performed in defending their fee application in court. NACM eNews, June 18, 2015
- Lowenstein Sandler LLP Selected to Represent Official Committee of Unsecured Creditors of Gourmet Express. NACM eNews, March 31, 2015
- Bruce S. Nathan comments in the May 2014 Financier Worldwide Magazine on identifying early warning signs concerning a financially distressed customer and suggested steps vendors should take to mitigate their losses. Financier Worldwide Magazine, May 2014
- Lowenstein Sandler Retained as Unsecured Creditors’ Counsel in Coldwater Creek Chapter 11 Case. NACM eNews, April 25, 2014
- Bruce S. Nathan is mentioned in Law360 in connection with his representation of the Official Committee of Unsecured Creditors of Coldwater Creek Inc. Law360, April 25, 2014
- In NACM’s eNews for December 12, 2013, Bruce Nathan comments on how the recent Supreme Court ruling regarding forum-selection clauses continues to allow opportunities for subcontractors in contract negotiations. NACM’s eNews, December 12, 2013
- In NACM’s eNews for September 19, Bruce Nathan comments on how increased environmental regulations are putting financial strain on coal mines and causing many to shut down. NACM’s eNews, September 19, 2013
- In NACM’s eNews for August 29, Bruce Nathan comments on problems in the retail industry that are of growing concern to creditors including retailers that are overleveraged, have inadequately responded to e-commerce and made poor management decisions. NACM’s eNews, August 29, 2013
- In NACM’s eNews for August 22, Bruce Nathan comments on how the constitutionality of the Detroit bankruptcy... NACM’s eNews, August 22, 2013
- Bruce Nathan comments on reasons for the decline of commercial Chapter 11 filings over the past year and prior years in NACM eNews, August 8, 2013. NACM eNews, August 8, 2013
Speaker Bio – Bruce S. Nathan (cont’d)

- In NACM’s e-News for July 25, Bruce Nathan comments on the complexity of Detroit’s Chapter 9 bankruptcy filing, its effect on other cities facing the same problems as Detroit and its impact on trade creditors. NACM’s e-News, July 25, 2013
- In The Deal Pipeline, Sharon L. Levin, Jeffrey Prol and Bruce Nathan are highlighted for representing the official committee of unsecured creditors in the Handy Hardware Wholesale, Inc. bankruptcy. The Deal Pipeline, June 21, 2013
- Bruce Nathan comments on how an MF Global Holdings Ltd. trustee’s suit against Jon Corzine and other former MF Global Holdings officials for high-risk actions leading to the company’s bankruptcy may lead to an additional recovery for creditors. NACM’s eNews, April 25, 2013
- “Bruce Nathan comments in NACM’s eNews for April 18, 2013 on how interest rate hikes and high debts plaguing “big box” retailers may foreshadow bankruptcies in the industry and how anticipating bankruptcy helps mitigate creditors’ risks.” NACM’s eNews, April 18, 2013
- “In NACM’s eNews, for April 4, 2013, Bruce Nathan comments on U.S. Bankruptcy Judge Christopher Klein’s ruling that Stockton, California meets the threshold for eligibility on its Chapter 9 municipal bankruptcy petition.” NACM’s eNews, April 4, 2013
- “Lowenstein Retained as Creditors’ Counsel in Zacky Farms Chapter 11 Case.” October 19, 2012
- “In an article on the National Association of Credit Management web site, Bruce Nathan comments on the Alabama Supreme Court’s ruling to uphold Jefferson County’s right to declare municipal bankruptcy in the largest Chapter 9 filing in U.S. history.” NACM ENews, April 26, 2012
- “On NACM.org, Bruce Nathan and Scott Cargill discuss the Lehman Brothers bankruptcy case.” NACM.org, December 8, 2011
- Bruce Buechler, Bruce Nathan and Paul Kizel are highlighted for representing the Official Unsecured Creditors Committee of Borders Group Inc. On August 10, 2011, Judge Martin Glenn approved the bidding procedures for the sale of Borders’ intellectual property and real estate leases. The Daily Deal, August 11, 2011
- “Bruce Nathan comments on how the debtor’s right to choose the venue for Chapter 11 proceedings is part of the Bankruptcy Code’s system of check and balances between debtors’ rights and creditors’ rights.” Standards & Poors LCD Distressed Weekly. March 25, 2011
- “Bruce Nathan, Bruce Buechler and Paul Kizel are highlighted for representing the Official Committee of Unsecured Creditors of Borders Group Inc.” Westlaw News & Insight, March 14, 2011
- “Bruce S. Nathan discusses litigation surrounding creditors committee selection in light of recent changes to the U.S. Bankruptcy Code.” Dow Jones, August 9, 2006

Publications

- “Court Ruling A Reprieve for Bankruptcy Reclamation Rights?,” Bruce S. Nathan, David M. Banker, Barry Z. Bazian, Business Credit, November/December 2016
- “Mind Your Ts and Cs (Terms & Conditions),” Bruce S. Nathan, Lowell A. Citron, Chad S. Pearlman, Business Credit, September/October 2016


Speaker Bio – Bruce S. Nathan (cont’d)

- "Electricity as a Good or a Service: Some “Shocking” Developments,” Bruce S. Nathan, Eric Chafetz, Business Credit, November/December 2013
- "Extending the Statute of Limitations for Preference Actions? The Seventh Circuit Rules!," Bruce S. Nathan, Terence D. Watson, Business Credit, July/August 2013
- "Critical Vendor Treatment? No Sure Thing!," Bruce S. Nathan, Business Credit, June 2013
- "Electricity is a Good Subject to Section 503(b)(9) Priority Status: A Shocking Development?," Bruce S. Nathan, Business Credit, April 2013
- "Drop Shipment Claims Denied Section 503(b)(9) Priority Status,"” Bruce S. Nathan, Business Credit, February 4, 2013
- "Altering Unsecured Creditors' Committee Membership: No Easy Chore!," Bruce S. Nathan, Business Credit, June 2012
- "Preference Relief for Real Estate Material and Service Providers," Bruce S. Nathan, Business Credit, May 2012
- "Using Public Information to Identify and React to the Early Warning Signs of a Financially Distressed Customer," Bruce S. Nathan, Scott Cargill, Business Credit, April 2012
- "Another Preference Victory for the Trade: New Value Paid Post-Petition Does Count!," Bruce S. Nathan, Business Credit, February 2012
- "Paid New Value Reduces Preference Liability Yet Again!," Bruce S. Nathan, Business Credit, January 2012
- "Who Pays the Freight? Interplay Between Priority Claims and a Debtor’s Secured Lender," Bruce D. Buechler, Bruce S. Nathan, American Bankruptcy Institute Journal, November 2011
- "Is There a Small Preference Venue Limit? Yes and No!," Bruce S. Nathan, Business Credit, November/December 2011
- "Another Ordinary Course of Business Preference Defense Double Feature ," Bruce S. Nathan, Business Credit, July/August 2011
- "Joint Check Agreements: Who’s on First?," Bruce S. Nathan, Business Credit, June 2011
• "Reclamation Catch-22: Darned If You Do, Darned If You Don't," Bruce S. Nathan, David M. Banker, Business Credit, May 2011
• "Yet Another Favorable Court Decision Upholding the Ordinary Course of Business Preference Defense," Bruce S. Nathan, Business Credit, April 2011
• "Counting Section 503(b)(9) Administrative Expense Claims as Part of a Creditor's New Value Defense to a Preference Claim: Can You Have Your Cake and Eat It Too?," Bruce S. Nathan, Business Credit, March 2011
• "Electricity as Goods Entitled to Section 503(B)(9) Priority Status: A Boom for Utilities," Bruce S. Nathan, Business Credit, February 2011
• "Critical Vendor Update," Bruce S. Nathan, Business Credit, January 2011
• "Proving the Subjective Component of the Ordinary-Course-of-Business Defense," Bruce S. Nathan, American Bankruptcy Institute Journal, November 2010
• "A Preference Ordinary Course of Business Defense Double Feature," Bruce S. Nathan, Business Credit, September/October 2010
• "Do Fully Funded Section 503(b)(9) Administrative Expense Claims Count as Additional New Value to Reduce Preference Liability? A Contrary View!," Bruce S. Nathan, Business Credit, July/August 2010
• "Section 503(b)(9) Administrative Expense Claim Developments: The Beat Goes On!," Bruce S. Nathan, Business Credit, June 1, 2010
• "Vendors Beware: The Risk of a Debtor's Unauthorized Post-petition Payments For Post-petition Goods or Services," Bruce S. Nathan, Business Credit, May 2010
• "Creditors' Committee Disclosure Obligations Updated: The Use of Internet Websites," Bruce S. Nathan, Business Credit, April 2010
• "The Interplay Between Section 503(b)(9) Administrative Expense Claims and Preference Claims," Bruce S. Nathan, Business Credit, March 2010
• "Section 503(b)(9) Goods Supplier Priority - Beware of the Debtor's Setoff Rights," Bruce S. Nathan, Business Credit, February 2010
• "Hooray for Delaware - A Tale of Two Decisions," Bruce S. Nathan, Business Credit, January 2010
• "Recent Case Law Developments Concerning Section 503(b)(9) 20-Day Goods Priority Claims," Bruce S. Nathan, Business Credit, November/December 2009
• "The 20-Day Goods Priority Claim Under Bankruptcy Code Section 503(b) (9)," Bruce S. Nathan, Credit Research Foundation, October 2009
• "Compelling Postpetition Trade Credit: Navigating Uncharted Waters," Bruce S. Nathan, American Bankruptcy Institute Journal, October 2009
• "Compelling Bankruptcy Trade Credit: The Great Unknown," Bruce S. Nathan, Business Credit, September/October 2009
• "The Limits of Consignment Rights When Consigned Goods Are Manufactured Into Finished Product," Bruce S. Nathan, Business Credit, July/August 2009
• "Credit Card Payments as Preferences: The Sixth Circuit Joins the Bandwagon," Bruce S. Nathan, Business Credit, June 2009
• "Demystifying Chapter 15 of the Bankruptcy Code," Bruce S. Nathan, Business Credit, June 2009
• "Triangular Setoff: A Viable Remedy or a Thing of the Past?," Bruce S. Nathan, Business Credit, April 2009
• "Is Debtor's Credit Card Payment a Preference," Bruce S. Nathan, Business Credit, March 2009
• "Effective Seller Remedies When Confronting a Financially Distressed Buyer Prior to Bankruptcy," Bruce S. Nathan, Business Credit, February 2009
Speaker Bio – Bruce S. Nathan (cont’d)

- "Courts Remain Split over Whether a Debtor's Credit Card Payment is an Avoidable Preference," Bruce S. Nathan, ABI Journal, October 2008
- "Release of State Mechanic's and Other Lien Law Rights As a Defense to Preference Claims? Yes and No!," Bruce S. Nathan, Business Credit, October 2008
- "Overseas Bear Stearns Hedge Funds Denied Chapter 15 Relief," Bruce S. Nathan, Business Credit, July/August 2008
- "Mechanic's Liens and the Bankruptcy Code," Bruce S. Nathan, Business Credit, June 2008
- "Is a Debtor’s Credit Card Payment a Preference?," Bruce S. Nathan, Business Credit, May 2008
- "PACA Trust Destroyed by Written Agreement Extending Payment Terms," Bruce S. Nathan, Business Credit, April 2008
- "The Risks of a Single Creditor Involuntary Bankruptcy Petition; Tread Extra Carefully!," Bruce S. Nathan, Business Credit, October 2007
- "Credit Transactions May Be Eligible for the Section 547 (c)(1) Contemporaneous Exchange for New Value Defense to Preference Exposure: The Third Circuit Court of Appeals Speaks," Bruce S. Nathan, Business Credit, July/August 2007
- "Recent Favorable Preference Rulings for Construction Material and Service Suppliers," Bruce S. Nathan, Business Credit, June 2007
- "Reclamation Rights Under BAPCPA: The Same Old Story," Bruce S. Nathan, Business Credit, April 2007
- "Joint Check Arrangement Does Not Protect Against Preference Exposure," Bruce S. Nathan, Business Credit, January 2007
- "Bailment Or Consignment: It Makes A Difference!," Bruce S. Nathan, Business Credit, November/December 2006
- "Being Fully Secured Defeats Preference Exposure," Bruce S. Nathan, Business Credit, July/August 2006
Speaker Bio – Bruce S. Nathan (cont’d)

- "Involuntary Bankruptcy Petition Upheld: Media Providers’ Claims Against Advertising Agency NOT Subject To Bona Fide Dispute," Bruce S. Nathan, Business Credit, June 2006
- "Section 506(c) Waiver Enforceable; Good News for DIPs and Other Secured Lenders," Bruce S. Nathan, American Bankruptcy Institute Journal, October 2005
- "Real Estate Material and Services Suppliers, Rejoice!," Bruce S. Nathan, Business Credit, October 2005
- "A Preference Defense Quartet: Four Recent Court Decisions To Mull Over," Bruce S. Nathan, Business Credit, September 2005
- "A Standby Letter of Credit Payment Within the Preference Period is Not a Preference," Bruce S. Nathan, Business Credit, June 2005
- "Critical Vendor Orders After Kmart: A New Lease on Life," Bruce S. Nathan, Business Credit, May 2005
- "Reclamation Rights vs. Floating Inventory Lien: A Victory At Last!," Bruce S. Nathan, Business Credit, April 2005
- "Reclamation Rights Trumped by UCC’s Floating Inventory Security Interest," Bruce S. Nathan, American Bankruptcy Institute Journal, November 2004
- "Battered And Coated French Fries As A Fresh Vegetable Eligible For PACA Protection: Are You Kidding?," Bruce S. Nathan, Business Credit, November/December 2004
- "A New Defense Against Preference Claims?," Bruce S. Nathan, Credit Today, October 2004
- "Are Reclamation Claims Heading for Oblivion Where the Debtor Has a Secured Inventory Lender?," Bruce S. Nathan, Business Credit, September 2004
Speaker Bio – Bruce S. Nathan (cont’d)

- "PACA Rights Destroyed by Oral Agreement Extending Payment Terms," Bruce S. Nathan, Business Credit, June 2004
- "Can Sanctions Be Imposed For Improperly Prosecuted Preference Actions?," Bruce S. Nathan, Business Credit, May 2004
- "Section 502(d) Preclusion of Preference Claims: A New Defense or a Dry Hole?," Bruce S. Nathan, American Bankruptcy Institute Journal, May 2004
- "Critical Vendor Payments Denied by Kmart Ruling," Bruce S. Nathan, Scott Cargill, Lowenstein Sandler, April 2004
- "Are Reclamation Rights Preserved Where Debtor's Secured Dip Lender Pays Off Prepetition Secured Inventory Lender? Yes and No!," Bruce S. Nathan, Business Credit, March 2004
- "Extra, From the Appellate Corner - Hot Off the Presses: Delaware Appellate Court Affirms Priority of Trade Creditor's Stoppage of Delivery Rights Over Buyer's Inventory Secured Lender," Bruce S. Nathan, Business Credit, March 2004
- "Preferences, Reclamation and PACA in One Case: A Three-Ring Circus," Bruce S. Nathan, Business Credit, February 2004
- "PACA Trust Survives E-Mail Exchange Extending Payment Terms," Bruce S. Nathan, Business Credit, January 2004
- "Letter of Credit Beneficiary Beats Issuing Bank Based on Conforming Documents and Untimely and Improper Dishonor," Bruce S. Nathan, Business Credit, July/August 2003

Bar Admissions
- 1981, New York
Practice

Mary has a broad range of experience advising clients on bankruptcy and restructuring matters. Her practice involves all aspects of in-court and out-of-court restructuring of financially distressed businesses, including the representation of corporate debtors, official and unofficial creditors’ committees, significant stakeholders, and third-party purchasers.

Mary recently represented Binder & Binder, the nation’s largest Social Security and veterans’ disability advocacy firm, and 23 related entities in their Chapter 11 cases. She has been involved in numerous other high-profile Chapter 11 cases and out-of-court restructurings across a range of industries, including energy, communications, media, paper and printing, and transportation. Her current and recent clients include Binder & Binder (NY), Love Culture, Big M (parent company of Mandee’s and Annie Sez), Roomstore, American Community Newspapers, and Ponderosa Pine Energy Partners.

Mary also represents creditors’ committees in numerous Chapter 11 cases, with a focus on identifying and obtaining value for general unsecured creditors. Recent committee representations include Taylor-Wharton Industrial, Holsted Marketing, Blitz U.S.A., Hayes Lemmerz, Lear Automotive, Marcal Paper Mills, and Ronson.

Mary also served as Special Counsel to the Hoboken Municipal Hospital Authority (the only municipal hospital authority in the state of New Jersey), leading a team from Lowenstein Sandler in the successful sale of the authority’s assets and the resolution of a potential $60 million bond default by the city of Hoboken.
Education
- Seton Hall University School of Law (J.D., 1994)
- Saint Peter's College (B.S.), Business Management

Affiliations
- Member, American Bankruptcy Institute
- Member, National Association of Credit Managers
- Member, Turnaround Management Association
- Barrister, New Jersey Bankruptcy Inn of Court (past vice-president)
- President, Women in Federal Practice in New Jersey, Inc.

Articles/Interviews Featuring Mary E. Seymour
- Lowenstein Advises Syms in Chapter 11 Bankruptcy Acquisition of Filene's Basement June 19, 2009
- Mary E. Seymour is quoted on the second win for cash collateral by electricity wholesaler Ponderosa Pine Energy Partners Ltd The Daily Deal, May 11, 2005

Publications
- "Creditors' Committees Power is Affirmed," Jeffrey D. Prol, Mary E. Seymour, Bankruptcy Watch, September 2003

Bar Admissions
- 1994, New Jersey