

DAVID L. BARRACK

Relevant Experience, Significant Decisions, Publications and Speeches

SIGNIFICANT REPORTED DECISIONS:

CBF Indústria de Gusa S/A et al. v. AMCI Holdings, Inc., 846 F.3d 35 (2nd Cir. 2017)(*cert. denied 2017*)(precedent-setting decision on enforcement of foreign arbitral award under the Federal Arbitration Act and New York Convention through veil-piercing and alter-ego claims)

Picard v. Fairfield Greenwich Ltd., 762 F.3d 199 (2nd Cir. 2014)

In re Lavigne, 114 F.3d 379 (2nd Cir. 1997)

Hirsch v. Arthur Anderson & Co., 72 F.3d 1085 (2nd Cir. 1995)

F.D.I.C. v. Colonial Realty Co., 966 F.2d 57 (2nd Cir. 1992)

Maximillian & Co. v. Catalyst Investment Group (In re Endico, Inc.), (BAP No. UT-09-013 March 2, 2010)

In re Centennial Textiles, Inc., 220 B.R. 177 (Bankr. S.D.N.Y. 1988)

In re Centennial Textiles, Inc., 220 B.R. 165 (Bankr. S.D.N.Y. 1998)

REPRESENTATIVE EXPERIENCE:

Director/Officer, Fiduciary Duty, Fraud and Fraudulent Conveyance Litigation

Represented receiver of the Ascot Fund, Ltd, a feeder fund to Madoff in the Madoff bankruptcy case defending in excess of \$500 million in claw back claims

Representing seven Brazilian pig iron ore mines in enforcement of \$50 million International Chamber of Commerce award against US entities and individuals

Defended Zionist women's not-for profit organization which provides medical relief in Israel from Madoff Trustee's \$137 million claw back claims

Represented international telecommunications company and its affiliates in defense of \$30 million in claw back litigation in Chicago

After a four-week bench trial, obtained dismissal of all claims against general counsel and officer of failed company in \$350 million breach of fiduciary duty and fraud case

Favorably settled breach of fiduciary duty claims against former equity owner, officer and director of national mall retailers, Museum Co. and San Francisco Music Box Co.

Defended an American branch of a European bank in Enron bankruptcy case that invested in LJM2 in preference litigation to recover partnership distributions

Represented owners of coal mine in defense of breach of fiduciary duty allegations and equity and debt restructure

Represented Chapter 7 trustee for Colonial Realty Co. prosecuting scores of cases and recover tens of millions of dollars of breach of fiduciary duty, preference and fraudulent conveyance claims:

Corporate Restructuring and Committee Representation

Represented a Calgary based oil sands producer and marketer of bitumen and holder of 440 million barrels of proved and provable bitumen reserves. The company filed a Canadian bankruptcy case to convert \$1 billion

of debt to equity. Represented the company in New York litigation with the administrative agent for \$130 million of secured notes.

Represented CEXIM, the largest secured creditor, in one of the largest international shipping bankruptcy cases ever filed. CEXIM financed Overseas Shipholding Group ("OSG") and affiliated companies' purchase of five large ships which were manufactured by Chinese shipbuilding companies. The OSG case involved over 100 affiliated companies and involves a myriad of complex and jurisdictional, and international industry and insolvency laws

Represented The Scooter Store as special counsel in Chapter 11 filing against Medicare and Medicaid with respect to the government's effort to set off accounts payable due to debtor which were necessary to fund Chapter 11

Represented the Carlisle Collection, the largest direct seller of high-end women's apparel in the United States with over \$100 million in yearly revenue, through a Chapter 11 asset sale under Section 363 of the Bankruptcy Code to a joint venture formed by Tom James Company and Royal Spirit, Ltd.

Represented developmental-stage pharmaceutical company that develops cancer treatment drugs in a Chapter 11 proceeding

Representation of U.K. investment bank and Luxembourg asset fund in bankruptcy and state court litigation, and appellate proceedings in connection with investments in a U.S. technology company

Represented Jones Act shipping company in Chapter 11 case and led a trial team in bankruptcy court litigation with its hedge fund equity and lender partners over rights to construct and operate five petroleum carriers

Represented the largest privately held U.S. mailing list broker and servicing company in corporate finance transaction and Chapter 11 filing

Represented investment fund in enforcing defaulted mortgages in two related bankruptcy cases involving assisted-living facility, including filing creditors' plan of reorganization

Represented a renowned New York athletic club in Chapter 11 filing to prevent foreclosure by a vulture fund; tried contested confirmation hearing of mortgagors' plan until stopped mid-trial by order of mandamus from District Court; debtor's plan subsequently confirmed

Represented equity holders' committee in prepackaged Chapter 11 filing where defrauded shareholders received majority of new equity in restructured company; confirmed plan in 90 days and established trust to pursue hundreds of millions of dollars in secreted assets

Represented creditors' committee (with over 60,000 creditors) in international bankruptcy case of U.K. business that operated a deceptive consumer rebate program

Represented creditors as parties to executory contracts and suppliers in Enron, Calpine, Delta, Northwest, Frontier, Delphi, Kmart and Adelphia cases

Represented swap counter-parties in the Enron and Lehman Brothers Chapter 11 case

Asset Sales and Acquisitions

Represented fund and individual parties who ventured with Cerebus to purchase substantially all assets of AMF Bowling through a plan of reorganization, including an ability to utilize net operating loss carry forwards

Represented venture fund in non-judicial foreclosure of secured debt of Gargoyles, Inc., a sunglasses manufacturer, and then sale of business to Foster Grant

Represented Israeli telecommunications company in acquisition of VOIP company's assets, including intellectual property

Represented private equity fund in acquisition of software company under Chapter 11 plan of reorganization

Represented French venture fund in effort to purchase intellectual property for chip emulating assets of a Chapter 11 debtor

Represented venture fund in purchase of U.S. telecommunications company's assets and post-acquisition litigation

Represented software and hardware manufacturer in effort to purchase competitor's assets; litigated to prevent secured creditor and equity holder from obtaining bidding advantages through inflated claims

Examiner and Trustee Representation

Represented Chapter 11 examiner in investigation of breaches of fiduciary duty, fraud and secretion of assets of Lancer Partners' domestic and offshore hedge funds, with alleged value of \$800 million

Represented examiner with expanded powers of oil and gas company; succeeded on fraudulent conveyance and breach of fiduciary duty claims, settled claims with affiliated entities and confirmed Chapter 11 plan

Represented examiner in Chapter 11 case of the largest privately owned medical and hazardous waste transportation company in New York metropolitan area through confirmation of plan of liquidation

Represented Chapter 7 trustee of Colonial Realty Co., a Ponzi scheme case with more than \$3 billion in real estate assets owned by 64 syndicated limited partnerships; obtained first impression decisions in Second Circuit Court of Appeals on enforcement of automatic stay against quasi-governmental entity and defining outer limits of trustee's right to prosecute claims on behalf of creditors; oversaw prosecution of 1,200 adversary proceedings to recover preference and fraudulent conveyances

Represented trustee seeking to recover fraudulently transferred business and other assets after failed leverage buyout; reported decision on determining insolvency under New York Debtor and Creditor Law and transfers to insiders

Mass Tort

Represented claims administrator of Dow Corning Settlement Trust, a \$3 billion trust formed to pay claims of breast implant plaintiffs

Other

Represented national mall developer in Caldor, Inc., Family Golf, Inc., Peitrie, Inc. and Ames, Inc. Chapter 11 cases; in Caldor, recovered \$2.4 million for client while most other sellers recovered nothing

SPEECHES:

"Ponzi Clawback Litigation: Trends and Strategies in 2016" Speaker, The Knowledge Group, March 23, 2016

"Holdup By the Holdouts?: An Examination of International Legal Developments and Court Decisions Affirming the Equal and Ratable Treatment of Sovereign Bond Holders Under Pari Passu Clauses," Program Chair and Speaker, ABA Section of International Law 2014 Spring Meeting, New York, April 3, 2014

"Termination With Extreme Prejudice -- How the Insolvency of Your Intellectual Property Licensor Can Kill Your Business," Speaker, ABA Section of International Law 2013 Fall Meeting, London, United Kingdom, October 19, 2013

"IP Contract and International Bankruptcy: Dealing with Rejection and Failure - And the Answer Isn't to See Your Psychiatrist," Speaker, New York State Bar Association, International Section, New York Global Week, May 16, 2013

"Cross-border Restructuring and Insolvency - The Asia Perspective: The Maritime Sector Chapters 11 and 15 of the U.S. Bankruptcy Code," Speaker, Norton Rose (Asia) LLP, Tokyo Seminar, January 23, 2013

"Morphing Pre-Petition Financing into Post-Petition Financing, Recent Developments," Speaker, Association of Insolvency & Restructuring Advisors, November 19, 2012

"The Assets Went Where and I Have to Do What to Get Them Back?," Program Chair and Speaker, ABA Section of International Law Fall 2012 Meeting, October 18, 2012

"IP Contracts and International Bankruptcy: Dealing With Failure And Intellectual Rejection - And the Answer Isn't to See Your Psychiatrist," Program Chair, Moderator and Speaker, ABA Section of International Law Spring 2012 Meeting, April 18, 2012

"Intellectual Property Issues in Bankruptcy: How to Protect Your Rights," Speaker, Fulbright & Jaworski, L.L.P., February 28, 2012

"International Insolvency Proceeding in an Uncertain Financial World: Harmonizing the Rights and Obligations of Multinational Debtors, Creditors, Management and Equity Holders," Moderator and Speaker, 2011 Moscow Dispute Resolution Conference, September 12, 2011

"Out of Cash But Not Opportunity - What Opportunities Exist for a Troubled Lifesciences Company?," Speaker, New York Biotechnology Association Annual Meeting, April 6, 2011

"Insolvency Practitioners in the Dock: How to Manage Risk," Speaker, INSOL Singapore International Annual Regional Conference, March 15, 2011

"Court Administration/Alternative Dispute Resolution: Alternative Dispute in Bankruptcy Proceedings - Increasing Its Use and Effectiveness," Moderator, American Bankruptcy Institute's Annual Winter Conference in California, December 5, 2009

"The Subprime Mortgage Crises: Causes, Forecasts and Legal Implications," Moderator, The Harvard Club, April 4, 2008

"Special Purpose and Bankruptcy Remote Vehicles," Moderator and Speaker, Moody's Corporation, November 1, 2007

"Safe Harbor Provisions for Swaps and Repurchase Agreements," Moderator and Speaker, Moody's Corporation, October 18, 2007

"Intellectual Property Issues in Bankruptcy: How to Protect Your Rights," Moderator and Speaker, Fulbright & Jaworski L.L.P., June 6, 2007

"Issues in Bankruptcy That Can Hurt You, Current Preference Issues," Moderator and Speaker, Fulbright & Jaworski L.L.P., March 20, 2007

PUBLICATIONS:

Chapter 11 Bankruptcy and Restructuring Strategies, 2015 ed.: Leading Lawyers on Navigating Recent Trends, Cases, and Strategies Affecting Chapter 11 Clients (Inside the Minds) David L. Barrack, "Bankruptcy's Impact on Your Company's Intellectual Property Rights"

Co-author with David B. Charme, "Recent Lehman Brothers Decision Causes Consternation in Capital Markets and Shows Limits on the Reach of Comity in U.S. Bankruptcy Courts," *The International Lawyer*, Volume 46, Number 1, Spring 2012

Co-author with Camisha L. Simmons, David B. Schwartz and David B. Charme, "Mandatory Prerequisites to Chapter 11 Relief under § 365(o) for Bank Holding Companies," *American Bankruptcy Institute Journal*, Volume XXXI, No. 2, March 2012

Co-author with Beret Flom, "Grupo Mexicano: Had Picard Resurrected the Right to Pre-Judgment Attachments?," *American Bankruptcy Institute Journal*, Volume XXX, Number 5, June 2011

Co-author with David A. Rosenzweig and Beret Flom, "Second Circuit Rules that Gifting by Secured Creditors to Junior Interests Violates Absolute Priority Rule," *Fulbright Briefing*, February 11, 2011

Co-author with Jami Mills Vibbert and Johnathan C. Bolton, "English High Court Recognizes, Enforces U.S. Court Judgments in Adversary Proceedings," *American Bankruptcy Institute Journal*, Volume XXIX, Number 9, November 2010

Co-author with Johnathan C. Bolton, "Lehman Brothers Decision Broadens Reach of *Ipsa Facto* Provisions," *American Bankruptcy Institute Litigation Committee Newsletter*, Volume 7, Number 5, April 2010

Co-author with Andrea B. Schwartz, "Recent Delaware Chancery Court Decision May Be "Wake-Up" Call for Shareholders to Play Larger Role in Corporate Bankruptcies," *American Bankruptcy Institute Public Companies & Claims Trading Committee Newsletter*, Volume 5, Number 5, October 2008

Co-author with Andrea B. Schwartz, "Shareholders Retain Significant Rights in Bankruptcy," *The Journal of Corporate Renewal*, August 2008

Co-author with David A. Rosenzweig, Andrea Schwartz and Jason L. Boland, "Intellectual Property Issues in Bankruptcy," Presented by Evelyn H. Biery at the 14th Annual Global Restructuring Conference, Stockholm, Sweden, April 14, 2008

Co-author with Johnathan C. Bolton, "Using Summary Judgment to Establish a Fraudulent Conveyance Bankruptcy," *American Bankruptcy Institute Litigation Committee Newsletter*, Volume 3, Number 3, June 2007

"Recent Mass Tort Bankruptcy Cases Help to Define the Outer Limits of Bankruptcy Powers," *American Bankruptcy Institute Mass Torts Committee Newsletter*, Volume 3, Number 3, June 2005