

ASSOCIATE

David A. Mawhinney

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OVERVIEW

David Mawhinney advises businesses and individuals in areas of commercial litigation, restructuring, and insolvency. He has represented regional and international companies, secured lenders, critical vendors, and equity sponsors in bankruptcy proceedings throughout the United States. In addition to debtor-side chapter 11 restructurings, David has extensive experience representing mortgage servicers in both corporate and consumer bankruptcy cases, and has defended all manner of trustee “claw back” lawsuits.

In 2019, David was named among the American Bankruptcy Institute’s “Top 40 Under 40” insolvency professionals.

BEFORE BOWDITCH

David came to Bowditch from a Boston law firm, where he worked in both the commercial litigation and restructuring and insolvency groups for six years. Prior to that, he served as law clerk for the Honorable Frank J. Bailey of the United States Bankruptcy Court for the District of Massachusetts. In 2012, while a law clerk, David helped develop what has become an annual program for the district and appeals court clerks of the First Circuit called “Introduction to Bankruptcy Law and the Bankruptcy System.” This session provides a general overview of bankruptcy law, procedure, and jurisdiction, featuring insolvency practitioners and bankruptcy judges.

Prior to entering law school, David worked as a professional actor in New York City.

EXPERIENCE

Recovery for critical vendor in chapter 11

A game developer requested representation in the administratively insolvent chapter 11 proceedings of a large toy retailer. Advising our client to opt out of a critical settlement with creditors, we were able to secure significantly better recovery.

Successful appeal of chapter 13 plan

Secured the reversal of a bankruptcy court confirmation order approving a plan that would have compelled our mortgage servicer client to take title to real property in Massachusetts. The appeal turned on a novel and unsettled interpretation of the Bankruptcy Code’s chapter 13 provisions. See *In re Sagendorph*, 562 B.R. 545 (D. Mass. 2017).

Secured lender “credit bid” in section 363 sale

Guided lender client through the successful acquisition of a multi-unit apartment complex in Worcester, Massachusetts via a sale under section 363 of the Bankruptcy Code.

Company restructurings

Obtained confirmation of the chapter 11 plan of a Tier 1 automotive supplier, with a hundred-year history in Massachusetts. Previous debtor-side representations include the 2015 reorganization of an oil & gas exploration company with extensive leasehold interests in the southern United States, and the 2014 reorganization of national retailer Brookstone.

Claw Back Litigation

Represented numerous investors, former shareholders, creditors, and corporate insiders in fraudulent transfer and preference actions brought by bankruptcy trustees in courts across the United States.

AFFILIATIONS

- Member, Framingham Strategic Initiative & Financial Oversight Committee (SIFIOC)
- Boston Bar Association, Bankruptcy Law Section Steering Committee, Education Subcommittee Co-Chair
- New York State Bar Association
- Member, National Conference of Bankruptcy Judges 2018 Next Generation Program

ARTICLES & TALKS

ARTICLES

- “Understanding Landlord and Tenant Rights in Bankruptcy,” *Banker & Tradesman*, May 17, 2020
- “Did Your Contract Anticipate the Arrival of Coronavirus?” *CFO*, March 5, 2020
- “Small Business Debtor Reorganization: An Overview of Chapter 11’s New Subchapter V,” September 23, 2019
- “PG&E Bankruptcy Court Rejects FERC’s ‘Concurrent’ Jurisdiction over PPA Rejection,” July 2, 2019
- “Defense of Class Action Litigation in Federal Court,” 2018
- “FirstEnergy: Bankruptcy Court Asserts Primacy Over FERC; Approves Rejection of Power Purchase Agreements,” September 4, 2018
- “Requirements for Massachusetts Homestead Exemption: Can Debtors Exempt Principal Residence Occasionally Rented as Short-Term Lodging?,” June 25, 2018
- “Dismissing FDCPA Lawsuit, Sixth Circuit Calls Out Congress for Creating Statutory Remedies Where No Harm Has Occurred,” March 12, 2018
- “No Safe Harbor for ‘Overarching Transfer’: Trustee Can Avoid Payments Passing Through Financial Institutions,” March 1, 2018
- “Silence is Not Consent: SunEdison Court Rejects Third Party Releases by Passive Consent,” November 30, 2017
- “Upcoming Amendments to Bankruptcy Rule 3002 to Impact Bankruptcy Filing Practices for Mortgagees,” August 9, 2017
- “Balancing Act: Supreme Court Rules That Filing a Proof of Claim for Stale Debt Does Not Violate the Fair Debt Collection Practices Act,” May 24, 2017

- “Reaching Non-Debtor Assets: Substantive Consolidation and Reverse Veil Piercing,” 19th Annual New England Bankruptcy Law Conference 2017
- “Scope Of The Amendments To Bankruptcy Rule 3002.1,” Law360, May 23, 2016
- “Take Notice of This Change: Supreme Court Adopts Recommended Amendments to Bankruptcy Notice of Payment Change Rule,” May 19, 2016
- “Early Exits for Appellees: How to Win Without Really Trying,” Boston Bar Association Bankruptcy Bench Meets Bar, May 2016
- “Massachusetts Court Finds Private Equity Funds Liable for Portfolio Company’s Pension Obligations,” April 6, 2016
- “A Guaranty Is Only As Good As The Person Who Signs It: Enforcing Commercial Lending Guaranties In Massachusetts,” March 14, 2016
- “Real Estate Title Practice in Massachusetts” (3rd Ed. 2016) Chapter 11 – Bankruptcy
- “Section 363 Sale Order Enjoining Successor Liability Claims Not Subject to Subsequent Attack by State Agencies,” December 18, 2014
- “Asset Sales in Chapter 11,” 16th Annual Conference New England Bankruptcy Law, Massachusetts Continuing Legal Education, 2014
- “First Circuit: Private Equity Sponsor Liable for Portfolio Company Pension Underfunding,” August 6, 2013

TALKS

- “[2020 Bankruptcy Bench Meets Bar: Part 2](#),” Boston Bar Association webinar, June 25, 2020
- “[Lender Liability During COVID-19](#),” Worcester Regional Chamber of Commerce Financial Services Roundtable webinar, May 12, 2020
- Panelist, “[‘1st Look’ at the Impact of COVID-19 on Business Bankruptcy Practice](#)” MCLE New England Webinar, April 27, 2020
- “Bankruptcy Basics: From Filing to Discharge & Beyond,” National Conference of Bankruptcy Judges, April 25, 2019
- “FinTech in the Commonwealth: Regulatory and Privacy Considerations,” Boston Bar Association, March 21, 2019
- “Overview of Federal Policy on Student Loans and Debt Relief,” Boston Bar Association, October 3, 2018
- “How Safe Are the ‘Safe Harbors’? How to Protect Your Investment Funds and Trades From Bankruptcy Clawback After the Supreme Court’s Recent Merit Management Ruling,” Webinar, July 2018
- “Short Sales: Selling Free and Clear in Chapter 13,” 28th Annual Bankruptcy Bench Meets Bar Conference, May 24, 2018
- “Blockchain and Cryptocurrency,” Boston Bar Association, May 8, 2018
- “Bankruptcy 101: Intro to Bankruptcy Law for Attorneys Who Don’t Practice Bankruptcy Law,” Boston Bar Association, March 15, 2017
- “Introduction to Bankruptcy Law and the Bankruptcy System,” Presented to the Law Clerks of the First Circuit and U.S. District Court by the Honorable Frank J. Bailey, Chief Judge, U.S. Bankruptcy Court for the District of Massachusetts, October 2012-2018

BAR ADMISSIONS

- Massachusetts

- New York
- U.S. District Court for the District of Massachusetts
- U.S. District Court for the Southern District of New York
- U.S. District Court for the Eastern District of New York

EDUCATION

- J.D., Boston College Law
- M.F.A., Moscow Art Theater
- B.A, Boston College