

PARTNER

# Mark W. Powers

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## OVERVIEW

Mark Powers is a business lawyer concentrating his practice in creditors' rights, Chapter 11 bankruptcy cases, and complex business litigation in federal and state courts. He has extensive experience as lead trial attorney in the Bankruptcy, U.S. District and Massachusetts Superior Courts. Mark's clients are headquartered throughout the U.S. and abroad. Clients turn to him to resolve their business issues quickly and cost-effectively. His courtroom experience includes successful representations of clients – including banks, financial institutions, utilities, trade vendors, landlords, creditors' committees, bankruptcy trustees and business debtors – in the U.S. Bankruptcy Courts for the Districts of Massachusetts, New Hampshire, Maine, Delaware and the Southern, Northern and Eastern Districts of New York.

Mark represents clients in a range of industries, including financial services, clean energy, utilities, manufacturing, professional services, healthcare and the retail sector. He has extensive experience preparing and negotiating commercial documents in a broad range of business transactions. Mark's clients are often referred to him by other lawyers because of his niche in the marketplace and relationships he has formed with other professionals over the years. Mark's clients think of him as their business lawyer and trusted advisor, whether he is reviewing a contract or litigating a high-stakes dispute.

With over 30 years of experience, clients value Mark's depth of knowledge in business law. He has appeared as an expert commentator in several highly respected business publications, including *Bloomberg*, *The Deal* and *Massachusetts Lawyers Weekly*. "My clients appreciate that I take time to understand their businesses and goals," according to Mark, "and offer practical solutions."

## Besides work

Mark is an avid traveler, sports enthusiast, wine lover and political junkie.

## EXPERIENCE

### Lender Engagements in Restructurings & Workouts

- Community bank in a \$25M workout involving well-known consumer brand with 30 franchisee locations in eastern Massachusetts
- Regional bank in a \$20M workout of a continuing care retirement community located in eastern Massachusetts
- Private real estate lender in a Section 363 Credit Bid purchase of the borrowers' assets in a federal court Receivership free and clear of liens and encumbrances

- Local bank in Single Asset Real Estate Chapter 11 case, United States Bankruptcy Court, District of Massachusetts
- Successfully defended regional bank in a Chapter 11 case of a failed condominium development against claims of alleged lender liability
- Community bank in workout of historic tax credit transaction

### Landlord & Other Creditor Engagements in Chapter 11 Bankruptcy Proceedings

- Landlord in Chapter 11 case of David's Bridal, United States Bankruptcy Court, District of New Jersey
- Landlord in Chapter 11 case of Jenny Craig, United States Bankruptcy Court, District of Delaware
- Landlord in Chapter 11 case of The Christmas Tree Shop, United States Bankruptcy Court, District of Delaware
- Hydropower company as party to forward contracts in the Chapter 15 cross border cases of the Just Energy Group, United States Bankruptcy Court, Southern District of Texas
- Official Committee of Unsecured Creditors in Chapter 11 reorganization that resulted in a confirmed plan and a 50 percent distribution to unsecured creditors
- Successfully negotiated with bankruptcy trustee to protect intellectual property rights in Chapter 7 bankruptcy of architectural company in conjunction with the planned construction of 200 residential apartment units

### Bank & Commercial Litigation and Dispute Resolution

- Dismissed a plaintiff's Chapter 93A consumer protection claim against a Massachusetts savings bank
- Successfully opposed commercial tenant's motion to enjoin landlord from commencing eviction proceedings at an evidentiary hearing before the U.S. District Court, District of New Hampshire
- Successfully litigated valuation of failed condominium project, thereby permitting the bank to obtain relief from the automatic stay in a Chapter 11 bankruptcy
- Obtained Summary Judgment verdict in Discharge Litigation matter in the United States Bankruptcy Court, District of Massachusetts, under Section 523(a)(15) of the U.S. Bankruptcy Code
- Represented Utah-based savings bank in a claim for fraud in the inducement against an equipment lessor that made fraudulent misrepresentations in assigning the equipment lease
- Obtained approval (as a proponent) of a third-party plan of reorganization in Chapter 11 bankruptcy case in the U.S. Bankruptcy Court, Northern District of New York
- Foreclosed a \$150M first mortgage loan on a 100,000 sq. ft. office building in MetroWest Massachusetts
- Obtained an order "surcharging" the proceeds from the sale of a debtor's residence in a surcharge action
- Counsel to regional passenger airline in bankruptcy proceeding in the U.S. Bankruptcy Court, District of Massachusetts

### Advising Boards of Directors & Companies in Financial Distress

- Successfully represented outside directors of a restaurant chain in conjunction over claims arising from the sale of the business
- Successfully represented company's officers in a liquidating transportation company in response to claims concerning consumer prepayments

### Contracts and transactions

- Negotiated and documented a solar lease covering 100-plus acres for a religious nonprofit

## AFFILIATIONS

- Board of Trustees, Anna Maria College
- Lay Advisory Board, St. Joseph's Abbey, Spencer, Massachusetts
- Member, Board of Directors, Holy Cross Alumni Association

## PREVIOUS

- Co-Chair, Bankruptcy Law Section, Worcester County Bar Association
- President, Holy Cross Alumni Association (2009-2010)
- President, The Holy Cross Club of Greater Worcester

## HONORS

- *Best Lawyers in America* "Lawyer of the Year" for Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law, 2015, 2017 and 2024
- *Best Lawyers in America*, selected by his peers for inclusion in the fields of Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law (since 2013), Banking and Finance Law (since 2021), Litigation – Banking and Finance (since 2023) and Litigation – Bankruptcy (since 2023)
- Selected to Massachusetts *Super Lawyers* since 2016 for Bankruptcy: Business

## ARTICLES & TALKS

### ARTICLES

- "10 Things I know about ... Silicon Valley Bank's failure," *Worcester Business Journal*, 2023
- "Someone who owes you money files for bankruptcy. Now what?" *Worcester Business Journal*, 2019
- "Stakes Rise on Check Fraud," *Banking New England*, 2014
- "Treat Your Customers in a Commercially Reasonable Manner – Or Else! analysis of *The Renovator's Supply Co., Inc. v. Sovereign Bank*, 72 Mass. App. Ct.," *Bowditch*, 2008

### TALKS

- Novel Litigation Issues in the Aftermath of COVID-19, Massachusetts Continuing Legal Education, Inc., 2021
- *Lender Liability During COVID-19*, Worcester Regional Chamber of Commerce Financial Services Roundtable, 2020
- What to Do When Your Customer, Vendor, or Other Party Files for Bankruptcy, Senior Executive Circle Workshop, New England Business Association, 2019
- When Your Counterparty Files for Bankruptcy: Practical Creditor Strategies, New England Corporate Counsel Association, 2019
- Stakes Rise in Check Fraud, *Banking New England*, 2014
- Directors & Officers Liability Insurance Policies, New England Corporate Counsel Association, Inc., 2010
- Emerging From Bankruptcy: Sales of Assets Under Section 363(f)(5), Advising Businesses on Bankruptcy & Restructuring: Charting the Road Forward, MCLE, 2009

- Commercial Leases and Foreclosures, Massachusetts Mortgages, Foreclosures and Workouts, MCLE, 2008
- Subprime Issues, Worcester County Bar Association's Bankruptcy Law Section, 2008

## MEDIA MENTIONS

- “Virus Trifecta to Pressure Hospitals as Well as People’s Health” (*Bloomberg Law*)

## BAR ADMISSIONS

- Massachusetts

## EDUCATION

- J.D., University of Chicago Law School
- B.A., *magna cum laude*, College of the Holy Cross