

## Practice Area

# Bankruptcy, Restructuring, and Creditors' Rights

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The attorneys in Jennings Strouss' bankruptcy, restructuring, and creditor's rights practice pride themselves on their creativity, which they couple with a pragmatic approach to the resolution of bankruptcy and creditor-debtor issues. A testament to the firm's experience and expert representation is being ranked a Metropolitan Tier 1 in Phoenix, Arizona in the 2022 edition of *U.S. News - Best Lawyers*® "Best Law Firms" for Bankruptcy and Creditor-Debtor Rights/Insolvency and Reorganization Law.

Our attorneys' experience includes a full range of representation in all aspects of commercial bankruptcy, restructuring, and creditors' rights. That experience, combined with the depth and breadth of the firm's corporate and business, real estate, healthcare, employment, and intellectual property practices, enables the firm to assist clients in virtually any financially-distressed situation, from either the debtor or creditor perspective.

Focusing on the interests to be advanced or protected, our attorneys identify issues, gather facts, conduct research, and create a strategy in support of the positions advocated by, and in the best interest of, our clients. These strategies include identifying and maximizing the strengths of our client's position and the weaknesses of the adversary's position and effectively presenting those positions to the court and opposing counsel and party. The primary goal is to create the best possible setting for a successful negotiation or, secondarily, for litigation if a settlement cannot be achieved.

Jennings Strouss attorneys have a depth of expertise in a multitude of industries, whether representing creditors, creditors' committees, trustees, or debtors. This expertise is valuable because it enables them to focus on issues quickly and take appropriate action in an expeditious and cost-efficient manner.

When appropriate, our attorneys collaborate across firm practices to assemble teams that have the experience and skills necessary to handle particular matters. For example, matters involving the collection of secured and unsecured debt may require the involvement of attorneys knowledgeable on the Uniform Commercial Code and tax issues. In cases that involve complex litigation, attorneys in the firm's litigation practice may be called upon to assist with the preparation and trial.

Our attorneys stay current on cutting-edge developments in bankruptcy law through membership in the American Bankruptcy Institute, periodicals, attendance and participation at bankruptcy-related seminars, and, individually, by such activities as membership of the State Bar of Arizona's Bankruptcy Section, leadership roles in the Turnaround Management Association, and participation in the National Conference of Bankruptcy Judges, American Bankruptcy Institute conferences, and other national meetings of bankruptcy judges and practitioners.

## Areas of Expertise

### Appellate and Published Decisions

Our attorneys have represented clients in appeals in the U.S. Supreme Court, the Ninth Circuit Court of Appeals, the Bankruptcy Appellate Panel for the Ninth Circuit, and the District Court for the District of Arizona.

### Appellate Decisions

- *In re Circle K Corp.*, 127 F.3d 904 (9th Cir. 1997), petition for Writ of Certiorari to the Supreme Court: Represented landlord in case of first impression regarding issue on the debtor's ability to assume a real property lease
- *In re Garlikov*, 992 F.2d 224 (9th Cir. 1994): Represented debtor in case of first impression regarding the exemption of a debtor's pension plan
- *In re Oklahoma PAC Ninth Circuit BAP and Ninth Circuit*: Represented debtor in case regarding real estate endeavor
- *In re MJS Holdings, Arizona District Court*: Represented debtor in case regarding improper dismissal
- *In re R.E.D.I. Co. Ninth Circuit BAP*: Represented appellee debtor in dispute regarding previous counsel representation

### Published Decisions

- *In re Spring Ford Industries, Inc.*, 2004 WL 1291223 (Bankr. E.D. Pa. 2004)
- *In re Cadiz Properties*, (Bankr. N.D.Tx. 2002); co-authored petition for writ of certiorari to United States Supreme Court in *In re Circle K Corp.*
- *In re Lundell*, 223 F.3d 1035 (9th Cir. 2000)
- *In re Arden Properties*, 248 B.R. 164 (Bankr. Ariz. 2000)
- *In re Bryant Universal Roofing, Inc.* 218 B.R. 948 (Bankr. Ariz. 1998)
- *In re Circle K Corp.*, 127 F.3d 904 (9th Cir. 1997)
- *In re Elia*, 198 B.R. 588 (Bankr. D. Ariz. 1996)
- *In re American Continental Corp.*, 142 B.R. 894 (D. Ariz. 1992)
- *In re McClain Airlines*, 80 B.R. 175 (Bankr. D. Ariz. 1987)

### Asset Purchasers and Investors

Bankruptcies often involve the purchase of assets or the infusion of capital. We have structured numerous acquisitions in bankruptcy cases, as well as represented a multitude of clients purchasing assets or stock from bankruptcy estates.

### Representative Engagements

- *In re Wilcare*. Represented purchaser of assets from large nursing home and hospice care facility

owner and operator

- *In re Western Medical*. Counsel to purchaser of assets from durable medical equipment company
- *In re Einstein Noah Bagels*. Arizona counsel to purchaser in connection with \$160 million purchase of assets from debtor

## **Creditors' Committees**

The firm has extensive experience in representing Chapter 11 creditors' committees. Jennings Strouss attorneys have the ability to assimilate issues quickly and take appropriate action in an expeditious and cost-efficient manner. Many of the tasks a creditors' committee must undertake involves forensic investigation regarding fraud or breach of fiduciary duty on the part of company principals or third parties. Our attorneys have vast experience in conducting this research and pursuing litigation when necessary. They also maintain important contacts with various accounting and turnaround firms that can provide valuable assistance.

## **Representative Engagements**

- In re Trend Homes (significant Arizona home builder)
- In re Jake's Granite Supplies (significant supplier of granite materials)
- In re Symphony Builders (Arizona home builder)
- In re Donahue Partners (Sunvek roofing)
- In re Nutracea (public company - international distribution and processing of rice bran)
- In re Thornwood Furniture Manufacturing, Inc. (furniture manufacturer)
- In re Arete Holdings, LLC (sleep therapy companies)
- In re AZ-Tech Radiology & Open M.R.I., L.L.C. (MRI clinics)
- In re Swift Air, L.L.C. (charter airline company)
- In re Pet Resorts, Inc. (pet services)
- In re Eurofresh, Inc. (agriculture)
- In re Florence Hospital at Anthem, LLC (hospital)
- In re Electric Transportation Engineering Corporation (d/b/a ECOtality North America), et al. (electric vehicle charging)
- In re Souper Salad (operator of numerous restaurants throughout the Southwestern United States): Despite lack of unencumbered assets, Jennings Strouss negotiated a plan with distribution to unsecured creditors
- In re All Star Gas (\$60 million propane gas distributorship): Despite lack of unencumbered assets, Jennings Strouss negotiated a plan with distribution to unsecured creditors
- In re TFS (Three Five Systems) (electronic manufacturing services): Successful negotiation of 87.5% distribution to unsecured creditors
- In re Triumph Corporation (multi-million automotive parts manufacturing company): Despite the difficult operational setting, Jennings Strouss successfully negotiated a plan with distribution to unsecured creditors
- In re PMS (Phoenix Memorial Hospital) (hospital and related non-profit organizations): Jennings Strouss negotiated the sale of a hospital and distribution to unsecured creditors

- In re Einstein/Noah Bagel (national operator of 460 restaurants and specialty retail stores): Represented interest of \$125 million in bond debt
- In re LMA Properties (real estate investment and sales company): Successful in obtaining the appointment of a trustee and in settlement for unsecured creditors

## **Complex Debtor Reorganizations and Workouts**

Jennings Strouss attorneys have represented public and private companies' partnerships and individual Chapter 11 debtors in significant cases involving sizeable financial services, real estate holdings, regional and national retail chains, healthcare concerns, manufacturing businesses, and airlines.

Many of the attorneys experienced the tremendous surge in bankruptcy filings in the late 1980s, early 1990s. As a result, they have extensive knowledge of debtor representation and can efficiently represent enterprises and ventures of all sizes.

## **Representative Engagements**

- Representation of the Equity Interest Holders Committee in the SkyMall Chapter 11 case
- In re Phoenix Manufacturing Partners LLC: Representation of aerospace industry manufacturing company in Chapter 11 reorganization
- Representation of the National Bank of Arizona in its collection and bankruptcy work
- Representation of BMW Financial Services in consumer bankruptcies
- Representation of Vanderbilt Mortgage and Finance, Inc. in consumer bankruptcies
- Representation of Summit Healthcare in its collection and bankruptcy matters
- Counsel to America West Airlines
- In re Osborn Scientific Group: Served as counsel to Chapter 7 trustee in major action to recover fraudulent transfers and damages for usurpation of intellectual property
- In re Megafoods: Representation of the post-confirmation Chapter 11 grocery store chain's estate representative in preference and related litigation
- In re Mortgages Ltd.: Representation of the largest private mortgage lender in Arizona, with a nearly \$1 billion loan portfolio, in its vast and complex Chapter 11 bankruptcy
- In re FX4, LLC, et al.: Representation of Arizona's largest Arby's restaurant franchisee in its Chapter 11 reorganization
- In re Desert Gardens IV, LLC: Representation of a 435 unit residential apartment complex in its Chapter 11 reorganization
- In re Hugo Paulson, et al.: Representation of five Nevada LLCs and their principal in a complex, multi-state real estate and partnership jointly administered Chapter 11 cases
- In re McClain Airlines, Inc.: Chapter 11 reorganization of a regional airline company
- In re Robert L. Hansen Enterprises, Inc. dba Budget Rent-A-Car of Northern Arizona: Restructuring of largest car rental agency in Northern Arizona
- In re LME: Served as debtor's counsel in one of largest real estate bankruptcies filed in Arizona
- In re National Petroleum Marketing: Structured liquidation of refinery
- In re Heartland Dairy: Restructuring of large dairy

- In re Styling Technology: Special counsel to the debtor, a multi-million international manufacturer, and distributor of salon products
- In re Empire Metals: Reorganization of metals recycling business

### **Complex Insolvency-Related Litigation**

Our attorneys are on the cutting edge of litigating complex insolvency-related matters brought against third-party advisors and officers and directors. They have engaged in preference and fraudulent transfer litigation in forums throughout the country.

### **Secured Creditors and Major Unsecured Creditors, Lessors and Landlords**

Jennings Strouss represents financial institutions, major lessors, and other creditor entities and individuals in all types of debtor and creditor and bankruptcy-related issues, including foreclosures, collections and garnishments, landlord and tenant matters, and leasing issues.

### **Representative Engagements**

- In re America West Airlines: Counsel to largest unsecured creditor and major credit card issuer
- In re Spring Ford Industries: Counsel to major Mexican commercial real estate lessor

### **Trustees and Receivers**

Our attorneys have represented numerous trustees in bankruptcies and receivers in state court cases.

### **Representative Engagements**

- In re Casey: Represented Chapter 7 trustee in collection of multi-million dollar judgment
- In re HDP Partners, LLC: Served as Chapter 11 Trustee and counsel in liquidation of mobile television production entity
- In re Osborn Scientific Group: Served as counsel to Chapter 7 trustee in major action to recover fraudulent transfers and damages for usurpation of intellectual property
- In re Mountain Mining: Served as counsel to Receiver in state court action involving large mining company

**Focusing on the interests to be advanced or protected, our attorneys identify issues, gather facts, conduct research, and create a strategy in support of the positions advocated by, and in the best interest, of our clients.**

## Professionals



Hodges, Kerry  
Member



Imbornoni, Brian  
Member



Keltner, Gary G.  
Special Counsel



Newell, Joel F.  
Associate



Novak, Robert J.  
Member



Pursell, Jimmie W.,  
Jr.  
Member