



David M. Posner

Partner

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Services

Bankruptcy & Financial
Restructuring

Industries

Financial Services
Retail & Consumer Goods

David Posner focuses his practice on bankruptcy and insolvency matters, and represents companies, creditors' committees, chapter 11 trustees, acquirers, financial institutions, and other significant parties-in-interest in complex reorganizations and financially distressed situations as well as debtor/creditor rights, and commercial litigation. In addition, he has substantial litigation experience representing both plaintiffs and defendants in complex commercial litigation inside the context of complex reorganization cases, and in state and federal courts across the country. Mr. Posner has been involved in all aspects of pre-trial proceedings, preliminary injunction hearings, motion practice, applications, mediation, objections, and other contested matters. He has tried both jury and non-jury trials in bankruptcy, state, and federal courts.

Prior to joining the firm, Mr. Posner was a member of the Insolvency and Creditors' Rights group of a New York City law firm where he represented creditors' committees in chapter 11 reorganization proceedings, commercial corporations, and financial institutions as both secured and unsecured creditors in chapter 11 reorganization proceedings, and in litigations pending before federal courts. Mr. Posner also worked extensively representing clients in the areas of lender liability, debt collection, judgment enforcement, and bankruptcy appellate practice. Previously, Mr. Posner was a partner in the Lending, Bankruptcy and Creditors' Rights group in the New York City office of an international law firm where his emphasis was in the areas of bankruptcy, creditors' rights, business restructuring, asset-based lending, and commercial litigation.

While attending law school, Mr. Posner was Senior Editor of the *Syracuse Law Review*.

Mr. Posner is listed in the 2021 edition of *Chambers USA: America's Leading Lawyers for Business* in the area of Bankruptcy/Restructuring and was recognized by *Chambers USA: America's Leading Lawyers for Business* as "experienced, thoughtful and has the ability to remain calm under pressure. He is a master negotiator; he is able to see the big picture and is adept at finding the significant and granular details. He is a highly skilled oral advocate – his arguments are clear and concise. He is a great problem solver and effective communicator." Mr. Posner was recognized by *The Best Lawyers in America*® in 2021 and 2022 for Bankruptcy Litigation. He was recognized as a New York Metro "Super Lawyer" in the area of Business Bankruptcy in 2021 and the four years immediately preceding by *Super Lawyers* magazine. He is a recipient of the Large Company Turnaround Award

in 2020 by the Turnaround Management Association (TMA).

Experience

Currently represent creditors' committee in chapter 11 cases of a yoga business with over 60 locations across the United States and approximately \$10 million in secured debt and \$5.4 million in unsecured debt. Despite the debtors assets being sold for less than the secured debt, the Debtors and the Committee filed a joint chapter 11 plan that is projected to provide a cash return to unsecured creditors. *In re YogaWorks, Inc.* (Bankr. D. Del.).

Represented the official committee of unsecured creditors in chapter 11 cases of iconic fitness brand Gold's Gym, which owns, operates and holds franchise agreements for nearly 700 locations worldwide. Following the creditors' committee's request that the debtors conduct a postpetition marketing process prior to seeking confirmation of a prenegotiated chapter 11 plan with its majority equity owner, the debtors consummated a \$100 million sale at the height of the COVID-19 pandemic that is projected to provide unsecured creditors with a 100% recovery, plus interest. *In re GGI Holdings, LLC* (Bankr. N.D. Tex.).

Represented the official committee of unsecured creditors in chapter 11 cases involving leading direct-to-consumer retailer of name-brand and private label, and non-branded fashion, home, and entertainment merchandise. As of the petition date, the debtors had approximately \$500 million in total secured debt. After extensive negotiations with the creditors' committee and other parties in interest, the Debtors confirmed an amended chapter 11 plan of reorganization that provides unsecured creditors with markedly higher cash recoveries. *In re Bluestem Brands, Inc.* (Bankr. D. Del.).

Represented the official committee of unsecured creditors in the chapter 11 cases involving the provider of oil and gas services including the mine to wellhead frac sand. As of the petition date, the debtors had approximately \$500 million in total secured debt. After negotiations with the creditors' committee, the secured lenders and other parties in interest, the Debtors confirmed an amended chapter 11 plan of reorganization that provides unsecured creditors with a cash distribution and an interest in a litigation trust. Currently representing the litigation trustee. *In re Vista Proppants and Logistics, LLC* (Bankr. N.D. Texas).

Represented the official committee of unsecured creditors in the chapter 11 cases involving a frac sand miner, processor, and deliverer with more than \$280 million in secured debt and over \$550 million in unsecured debt. *In re Emerge Energy Services, LP* (Bankr. D. Del.).

Represented an indenture trustee for approximately \$350 million in second lien debt instruments in cases involving one of the country's largest department stores companies that sought to liquidate all 256 of its stores. Certain of the second lien holders, an investment bank and a nationally recognized liquidator formed a joint venture that the trustee is a member of that purchased the assets and liquidated them for the benefit of the second lien holders. *In re The Bon-Ton Stores, Inc.* (Bankr. D. Del.).

Represented an indenture trustee for approximately \$250 million in unsecured debt instruments in cases involving a fashion wholesale and retail company. The debtors' intellectual property assets were purchased by



Authentic Brands Group as part of an auction process. Certain valuable claims against the former Directors, Officers, and Shareholders were placed in a litigation trust. Currently represent the indenture trust as a member of the litigation trust board and a plaintiff in certain litigation that seeks to recover over \$1.4 billion. *In re Nine West Holdings, Inc.* (Bankr. S.D.N.Y.).

Represented an indenture trustee for approximately \$1.1 billion in unsecured debt instruments in chapter 11 cases involving a publicly traded oil and natural gas company. The indenture trustee was a member of the official committee of unsecured creditors. *In re Breitburn Energy Partners, LP* (Bankr. S.D.N.Y.).

Represented the official committee of unsecured creditors in chapter 11 cases involving the provider of diagnostic health services with over approximately \$900 million in total liabilities. The cases involved two *qui tam* litigations and a complex investigation into the pre- and postpetition conduct of the debtors and the secured lenders. Following the filing of a standing motion and draft complaint, the Committee negotiated an amended chapter 11 plan of reorganization that provided unsecured creditors with a greater cash recovery. *In re Trident Holding Company, LLC* (Bankr. S.D.N.Y.).

Represented the official committee of unsecured creditors in the chapter 11 cases of a QSR company that culminated in confirming a chapter 11 plan of reorganization in approximately 45 days. The chapter 11 plan provides, among other things, a going concern entity and a cash return to unsecured creditors. *In re Taco Bueno Restaurants, Inc.* (Bankr. N.D. Tex.).

Represented the official committee of unsecured creditors for insurance technology and outsourcing firm Patriot National, Inc. As of the petition date, the debtors had approximately \$223 million in secured debt and certain of its directors and officers were the subject of various breach of fiduciary duty claims. Following an extensive investigation into potential estate claims and causes of action, the Committee negotiated a global settlement with the debtors and the secured lenders whereby unsecured creditor recoveries were substantially enhanced through a post-effective date litigation trust. Currently represent the litigation trustee. *In re Patriot National, Inc.* (Bankr. D. Del.).

Represented the official committee of unsecured creditors of a large horticulture company with approximately \$118 million of secured debt. Substantially all of the Debtors' assets were sold to the secured lender and the Debtors confirmed a chapter 11 plan of liquidation. *In re Color Spot Holdings, Inc.* (Bankr. D. Del.).

Represented the official committee of unsecured creditors in the chapter 11 case of an oil industry well service provider. *In re Universal Well Service Holdings, Inc.* (Bankr. N.D. Tex.).

Represented the official committee of unsecured creditors for a grocery co-op. Debtors listed approximately \$262 million in total assets and approximately \$292 million in total liabilities. Following the filing of a standing motion and draft complaint, the Committee negotiated a global settlement with the secured lenders providing, among other things, millions of dollars in potential value to unsecured creditors. *In re Central Grocers, Inc.* (Bankr. N.D. Ill.).



Represented the official committee of unsecured creditors for clothing manufacturer, retailer, and wholesaler employing more than 4,600 workers in and around downtown Los Angeles, California (and 8,500 employees worldwide). The debtors listed approximately \$200 million in assets and \$398 million in liabilities as of the petition date. *In re American Apparel, Inc.* (Bankr. D. Del.).

Represented the official committee of unsecured creditors in the chapter 11 cases of firearms manufacturer with more than \$100 of secured debt and \$250 million of unsecured debt. The cases resulted in confirmation of a plan that, among other things, substantially delivered the Debtors' balance sheet, provided substantial value to unsecured creditors in the form of cash, notes, or the right to subscribe to a rights offering, and preserved the Debtors' historic firearms business and hundreds of jobs. *In re Colt Holding Co., LLC* (Bankr. D. Del.).

Led the engagement in this chapter 11 case. At outset of case, provider of clinical laboratory and anatomic pathology services to skilled nursing facilities, physicians, physician offices, medical groups, and a hospital, operating 11 laboratory facilities and 27 offices in seven states, with 1,034 employees. Both business lines were sold in chapter 11. (Bankr. D. Del.).

Led the engagement in this chapter 11 case of leading provider of youth apparel and streetwear under the "Ecko Unltd." and "Unltd." brands with gross sales of approximately \$50 million at the time of filing. The company was sold to an insider and confirmed a chapter 11 plan of reorganization. (Bankr. D. N.J.).

Represented significant creditor in chapter 11 case of nation's seventh largest airline; at outset of case, last reported net revenues in excess of \$6.5 billion. (Bankr. E.D. Va.).

Led the engagement in this chapter 11 case of a women's lifestyle specialty apparel retailer supported by an e-commerce business; at outset of case operated 218 stores and reported net sales of approximately \$208 million. (Bankr. D. Del.).

Led the engagement in this chapter 11 case of one of the nation's largest providers of fiber network transport services providing the transport of voice, video, and data traffic for six of the top eight wireless carriers in the United States. The company confirmed a chapter 11 plan of liquidation that transferred the majority of the equity ownership to the bondholders. (Bankr. N.D. Tex.).

Co-led the engagement in this chapter 11 case of designer, marketer, distributor and manufacturer of industrial, transportation and automotive products and systems including the EZ Pass system. Company is both an OEM and a Tier 1 manufacturer and supplier in the heavy transportation/power transmission segments and the air intake and cooling systems segments and it also designs and manufactures electronic toll collection equipment, LED and other electronic display systems for trains, buses and planes. (Bankr. S.D.N.Y.).

Led the engagement in this chapter 11 case of privately held company operating 57 grocery stores in Georgia, Alabama, and Mississippi with 2,850 employees and approximately \$42 million in debt at the time of filing. (Bankr. N.D. Ala.).

Co-led the engagement in this chapter 11 case of public company; at outset of case, next-generation mobile satellite service operator which provides mobile satellite coverage throughout the United States and Canada using integrated satellite-terrestrial smart phones and other devices, with assets of approximately \$1 billion. The case resulted in a sale to an affiliate of Dish Network and a confirmed chapter 11 plan or liquidation. Post-confirmation continued to represent the Liquidating Trustee in connection with the claims reconciliation and resolution process as well as other issues necessary to distribute the sale proceeds. (Bankr. S.D.N.Y.).

Represented significant creditor who was a member of the Creditors' Committee in chapter 11 case of public company ranked number 36 on *Fortune's* list of 500 companies, nation's second largest discount retailer and the third general merchandise retailer, employing approximately 240,000 associates worldwide, with net sales of approximately \$37 billion and EBITDA of \$1.4 billion at outset of cases. (Bankr. N. D. Ill.).

Represented a significant creditor who was a member of the Creditors' Committee in this chapter 11 case of public company; nation's fourth largest airline, with net revenues in excess of \$11 billion at outset of cases. (Bankr. S.D.N.Y.).

Co-led in the engagement in this chapter 11 case of a privately held women's retail store selling value-priced fashion apparel, shoes and accessories at approximately 400 stores throughout the Midwest, East and South United States, with approximately \$293.7 million in sales at the time of filing. (Bankr. D. N.J.).

Chapter 11 case of privately held global quick serve restaurant with approximately 2,034 branded restaurants located in every U.S. state, Puerto Rico, Canada, and 29 additional countries around the world; with funded debt in excess of \$625 million as of the Petition Date. (Bankr. D. Del.).

Led the engagement in this chapter 11 case of privately held global, multi-brand media and direct marketing company with 500 employees worldwide and funded debt obligations of approximately \$534 million at the time of filing. The company confirmed a plan of reorganization that substantially reduced its debt burden. (Bankr. S.D.N.Y.).

Involved in complex valuation issues and litigation in this chapter 11 case of private company; at outset of case, last reported net revenues of approximately \$977 million, the nation's largest steak-buffet restaurant chain servicing approximately 2.7 million customers per week and employing approximately 22,800 employees nationwide. (Bankr. D. Del.).

Co-led the engagement in this chapter 11 case of public company; at outset of case, information technology group providing multi-pronged services to manage, among other things: referrals, claims status inquiries, electronic remittance advices and conventional claims processing for the healthcare industry (i.e., physicians, hospitals, billing associations, healthcare payers and technology providers). The assets were sold in a 363 sale process for substantially more than the stalking horse bid. (Bankr. D. Del.).

Represented significant power company creditor and contract party in bankruptcy of owner and operator of

various power-generating facilities, primarily in the United States, which operations include competitive energy production and cogeneration facilities, thermal energy production and energy resource recovery facilities. (Bankr. S.D.N.Y.).

Co-led the engagement in this chapter 11 case of private company; one of the largest manufacturers and distributors of residential windows and patio doors in the United States; had approximately \$531 million in net sales at the outset of the cases. (Bankr. D. Del).

Represented significant creditor in chapter 11 case of the nation's seventh largest airline; at outset of case, more than 34,000 employees and servicing almost 200 destinations in North America and Europe, and total assets of approximately \$8.8 billion. (Bankr. E.D. Va.).

Co-led the engagement in this chapter 11 case of owner and operator, at time of filing, of a total of 316 Disney Stores in the United States, employing approximately 8,233 employees. A majority of the stores were reacquired by Disney and the company confirmed a chapter 11 plan of reorganization. (Bankr. D. Del.).

Co-led the engagement in this chapter 11 case of a leading, global Italian quick service restaurant concept with approximately 5,170 employees, 1,045 restaurants throughout 42 countries, and annual revenues in excess of \$300 million at the time of filing. (Bankr. S.D.N.Y.).

Co-led the engagement in this chapter 11 case of privately held global, multi-brand media and direct marketing company with 3,000 employees worldwide, annual sales of approximately \$2.2 billion and prepetition debt of approximately \$2.2 billion at the time of filing. The company confirmed a chapter 11 plan that reduced its debt burden and transferred the majority of the equity ownership to the bondholders. (Bankr. S.D.N.Y.).

Education

Syracuse University College of Law J.D. (1988) *cum laude*

Syracuse University B.A. (1984) Political Science and Philosophy, *magna cum laude*

Admissions

New York (1989)

Court Admissions

U.S. Court of Appeals for the Second Circuit

U.S. Court of Appeals for the Third Circuit

U.S. District Court for the District of Connecticut

U.S. District Court for the Eastern District of New York

U.S. District Court for the Southern District of New York

U.S. District Court for the Western District of Michigan



Professional & Community Activities

American Bankruptcy Institute, Member
Unsecured Trade Creditors Committee, Co-Chair (2010-2013)

Turnaround Management Association, New York City Chapter Education Committee, Member
American Bar Association, Bankruptcy Sub-Committee of the Business Law Section, Member
New York State Bar Association, Member

Insights

[News Releases](#)

Kilpatrick Townsend Attorneys Honored in the 2022 Edition of *The Best Lawyers in America*
August 19, 2021

[News Releases](#)

Kilpatrick Townsend Achieves Record-Breaking Recognition from Chambers USA 2021
May 24, 2021

[News Releases](#)

Eighteen Kilpatrick Townsend Attorneys Recognized as 2020 New York Super Lawyers and Rising Stars
October 1, 2020

[News Releases](#)

Record-Breaking Recognition for Kilpatrick Townsend in *The Best Lawyers in America*® 2021
August 20, 2020

[In The News](#)

David Posner Recognized in 2020 Turnaround & Transaction of the Year Awards
August 13, 2020

[Perspectives](#)

KT Client Success | Kilpatrick Townsend Makes Gold's Gym Value Sparkle in Bankruptcy Proceeding; Increases Recovery for Unsecured Creditors from \$225,000 to Approximately \$30 Million
August 6, 2020

[Perspectives](#)

6 Key Takeaways | Takeaways from Mission Product vs. Tempnology for Brand Licensing and Franchising



February 7, 2020

[News Releases](#)

Record Number of Kilpatrick Townsend Attorneys Named 2019 New York Metro Super Lawyers
November 1, 2019

[Publications](#)

In the Business of Going Out of Business: What Unsecured Creditors Need to Know About Liquidation Agreements
October 11, 2018

[News Releases](#)

Twenty Kilpatrick Townsend Attorneys Named 2018 New York Super Lawyers
September 28, 2018

[Perspectives](#)

Kilpatrick Townsend Leverages Multimillion Dollar Bankruptcy & Financial Restructuring for Indenture Trustee for Second-Lien Noteholders
May 8, 2018

[In The News](#)

Kilpatrick Townsend's David Posner Serves as Counsel to Wilmington Savings Fund Society in Acquisition of Rights to Bon-Ton Stores' Assets
April 19, 2018

[Publications](#)

Intellectual Property: It's Not Generally Intangible Any Longer — It is an Important Source of Value that Should be Considered When Extending Credit
April 6, 2018

[Publications](#)

An Evolving Cacophony: Escheatment Laws and Credit Manager Risk
April 2, 2018

[Perspectives](#)

Kilpatrick Townsend Closes \$207 Million Acquisition for AT&T



March 19, 2018

Alerts

Mission Product Holdings, Inc. v. Tempnology LLC: First Circuit on a "Mission" – Reverses Bankruptcy Appellate Panel

January 22, 2018

Publications

4 Top Takeaways Recent Trends Involving Intellectual Property in Bankruptcy

December 14, 2017

In The News

Kilpatrick Townsends Larry Prosen Quoted by Law360, Concerns About Frivolous GAO Protests Likely Overblown

November 27, 2017

Alerts

5 Key Takeaways: Unclaimed Property – Escheatment by Any Other Name

August 7, 2017

Events

Unclaimed Property: Escheatment by Any Other Name

July 27, 2017

Webinars

Unclaimed Property: Escheatment by Any Other Name

July 27, 2017

In The News

KT is...Trending, November 5-11, 2016

November 11, 2016

In The News

Kilpatrick Townsend's Media Report, October 22 - November 4, 2016

November 7, 2016



[In The News](#)

Kilpatrick Townsend's Media Report January 8-14, 2016

January 14, 2016

[In The News](#)

Kilpatrick Townsend's Media Report October 9-15, 2015

October 16, 2015

[In The News](#)

Kilpatrick Townsend's Media Report September 11-24, 2015

September 25, 2015

[In The News](#)

Kilpatrick Townsend's Media Report August 14-27, 2015

August 28, 2015

[In The News](#)

Kilpatrick Townsend's Media Report August 7-13, 2015

August 14, 2015

[In The News](#)

Kilpatrick Townsend's Media Report July 31-August 6, 2015

August 7, 2015

[In The News](#)

Kilpatrick Townsend's Media Report July 10-16, 2015

July 17, 2015

[In The News](#)

Kilpatrick Townsend's Media Report June 26 - July 9, 2015

July 10, 2015

[In The News](#)

Kilpatrick Townsend's Media Report June 19-25, 2015

June 26, 2015



[News Releases](#)

Kilpatrick Townsend Grows Bankruptcy and Financial Restructuring Practice in New York

June 23, 2015

[Publications](#)

Do Recent Court Decisions Limiting a Secured Creditor's Right to Credit Bid Provide Unsecured Creditors with a New Weapon to Create Leverage?

April 1, 2015