

**Name: Benjamin D. Feder**

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| <b>I. Professional</b> | <b>Accrediting Agency or Jurisdiction</b> | <b>Date of Admission</b> |
|------------------------|---|--------------------------|
| Attorney               | Massachusetts                             | 1985                     |
| Attorney               | New York                                  | 1986                     |
| Attorney               | United States District Court, S.D.N.Y.    | 1990                     |
| Attorney               | United States District Court, E.D.N.Y.    | 2006                     |
| Attorney               | Connecticut                               | 2021                     |

| <b>II. Professional Organization</b> | <b>Date of Admission</b> | <b>Active/Inactive</b> |
|--------------------------------------|--------------------------|------------------------|
|--------------------------------------|--------------------------|------------------------|

American Bankruptcy Institute, 2006 - present (active member)

Turnaround Management Association, 2011 - 2016 (Member, Editorial Advisory Board, Turnaround Management Association's The Journal of Corporate Renewal, 2011)

**III. General professional experience:**

For most of my career I have had a transactional practice focused primarily on corporate bankruptcy and restructuring matters. I have represented lenders, debtors, bondholders, creditors' committees and other parties in interest in all phases of Chapter 11 and other cases under the Bankruptcy Code, and in out-of-court restructurings. My practice has often centered on the representation of indenture trustees and purchasers of troubled companies. I have appeared pro hac vice in bankruptcy cases in jurisdictions throughout the United States.

**IV. General pertinent experience:**

See below

## **V. Mediation training:**

American Bankruptcy Institute / St. John's School of Law 40 Hour Bankruptcy Mediation Training Program, December 2014, Certification of Completion

## **VI. Pertinent bankruptcy training:**

I typically work on matters ranging in size from lower mid-market companies to multi-billion dollar enterprises. My recent representations reflect this; in the last couple of years I have represented indenture trustees in large and complex cases such as *Basic Energy Services, Inc.*, Case No. 21-90002 (Bankr. S.D. Tex.) and *Valaris plc*, Case No. 20-34114 (Bankr. S.D. Tex.), and the creditors' committee in a mid-market case, *Medley LLC*, Case No. 21-10526 (Bankr. Del.). Other recent representations include *Tonopah Solar Energy*, Case No. 20-11884 (Bankr. Del.), in which I represented an acquirer of assets under a chapter 11 plan, and *Achaogen, Inc.*, Case No. 19-10884, in which I represented a purchaser of assets in a section 363 sale.

I have had the fortune of being involved in numerous large and fascinating cases over the years, such as *R.H. Macy & Co.* and *Owens Corning*, and in *Asia Global Crossing*, Case No. 02-15749 (Bankr. S.D.N.Y.), I represented the first mainland Chinese company to acquire a U.S. company through a sale in a Chapter 11 case. In *Barzel Industries, Inc.*, Case No. 09-13204 (Bankr. D. Del.), and *Contessa Premium Foods, Inc.*, Case No. 11-13454 (Bankr. C.D. Cal.), I served as debtors' corporate counsel.

While I focus much more on the transactional rather than the litigation aspects of bankruptcy and restructuring, I appear in court and argue motions on a fairly regular basis. Please see, for example, *Geltzer v. Our Lady of Mt. Carmel – St. Benedicta School*, 502 B.R. 124 (Bankr. E.D. N.Y. 2013); *In re Quality Stores*, 289 B.R. 324 (Bankr. W.D. Mich. 2002).

## **VII. General pertinent business or legal experience:**

### Recent Speaking Engagements:

Strafford Webinar on Credit Bidding in Bankruptcy Sales: Asserting and Defending Against Credit Bids, April 26, 2020

2016 Electric Reliability Council of Texas (ERCOT) Market Summit: Status and Update on the Energy Future Holdings Bankruptcy Case

2013 M&A Advisor Distressed Investing Summit: The U.S. Government As Gatekeeper For Distressed M&A Deals, March 6, 2013

Strafford Webinar on Credit Bidding in Bankruptcy Sales: Critical Issues Facing Lenders, <http://www.straffordpub.com/products/credit-bidding-in-bankruptcy-sales-critical-issues-facing-lenders-2012-07-24>.

### Business Experience:

I left the practice of law in 1995 and was a founder and managing member of Westchester Brewing Company, which was the first brewery to operate in Westchester County since the days of Prohibition. After a year spent developing the business plan and raising over \$1.3 million in startup debt and equity financing, it opened in September 1996 as a brewery and 150 seat restaurant. Although we exceeded \$1.5 million in annual revenue, we were unable to generate positive cash flow and Westchester Brewing Company filed for bankruptcy under Chapter 11 of the Bankruptcy Code in 1998. My partners and I sold the business and I returned to the practice of law.

### Publications:

- [“Driving While Unimpaired: Delaware Judge Issues Important Ruling in Hertz Chapter 11 Case on Treatment of Unimpaired Creditors, Allowance of Make-Whole Premiums and Postpetition Interest”](#) · *Pratt’s Journal of Bankruptcy Law*, May 2022
- [“New York Court of Appeals Splits from Second Circuit on Minority Bondholders’ Rights in out of Court Restructurings”](#) · *Pratt’s Journal of Bankruptcy Law*, March 2021
- [“Oil States Patent Dispute Will Affect Bankruptcy Courts”](#) · *Bankruptcy Law360*, January 2018
- [“A Possible Pathway Out Of The Stern V. Marshall Maze”](#) · *Bankruptcy Law360*, July 2017
- [“Millenium Lab Holdings—Ruling on Third Party Releases Highlights Continuing Constitutional Questions Regarding Power of Bankruptcy Courts”](#) · *Bankruptcy Law360*, May 2017
- [“Jevic Could Be Most Consequential Ch. 11 Decision In Years”](#) · *Bankruptcy Law360*, October 2016
- [“Asarco Ruling Continues To Rankle Bankruptcy Practitioners”](#) · *Bankruptcy Law360*, February 2016
- [“GM Judge Clearly Sets Out Permissible Faulty Switch Suits”](#) · *Bankruptcy Law360*, November 2015
- [“Mediation in Large Chapter 11 Cases”](#) · *American Bankruptcy Institute*, October 2015
- [“EFH Bankruptcy Yet To Face Its Biggest Hurdles”](#) · *Bankruptcy Law360*, October 2015
- [“EFH May Soon Become A Bankruptcy Mediation Success Story”](#) · *Bankruptcy Law360*, September 2015
- [“More Bad News For Bondholders On Make-Whole Premiums”](#) · *Bankruptcy Law360*, July 2015

- [“EFH Extends New York Make-Whole Rationale To Delaware”](#) · *Bankruptcy Law360*, April 2015
- [“GM Case Highlights Thorny Due Process, Bankruptcy Issues”](#) · *Bankruptcy Law360*, March 2015
- [“EFH Highlights Pitfalls For Large-Enterprise Fiduciaries”](#) · *Bankruptcy Law360*, January 2015
- [“A New Playing Field For Distressed Municipalities”](#) · *Bankruptcy Law360*, November 2014
- [“GM Litigation Raises Difficult Bankruptcy Questions”](#) · *Bankruptcy Law360*, September 2014
- [“Still Trying To Close The Stern v. Marshall Can Of Worms”](#) · *Bankruptcy Law360*, August 2014
- [“Another Case To Further Fisker’s Credit-Bid Uncertainty”](#) · *Bankruptcy Law360*, May 2014
- [“Absolute Priority Rule Absolutism? How Strict Interpretation of the Bankruptcy Code’s Cramdown Provisions Nearly Caused Hawker Beechcraft’s Plan Confirmation to Skid Along the Runway”](#) · *American Bankruptcy Institute’s Secured Credit Committee Newsletter*, March 2014
- [“Awaiting 2nd Circ. Spin on Bankruptcy Claims Trading”](#) · *Bankruptcy Law360*, September 2012
- [“River Road Decision Vindicates Philadelphia Newspapers Dissent”](#) · *Daily Bankruptcy Review*, July 2011
- [“Keeping Pace With Chapter 11’s ‘New Normal’”](#) · *The Journal of Corporate Renewal*, June 2011
- [“The 2<sup>nd</sup> Cir. Stance on DBSD”](#) · *Bankruptcy Law360*, October 2010
- [“Hardball in the Texas Rangers Chapter 11 Case”](#) · *Daily Bankruptcy Review*, September 2010
- “Third Circuit Decision in *Philadelphia Newspapers* Leaves Crucial Issues Unresolved” · *American Bankruptcy Institute (ABI) Asset Sales Committee Newsletter*, June 2010
- [“It’s Time to Bury Clear Channel \(And Certainly Not to Praise It\)”](#) · *Andrews Bankruptcy Litigation Reporter*, October 2009
- Co-Author, [“Overview of U.S. Bankruptcy Law and Procedure: Dealing with Customers in These Troubled Economic Times”](#) · *Kigyo Gaikyo News*, July 2009
- [“Acquiring Distressed Businesses In US Chapter 11 Cases – Riding A ‘Stalking Horse’ Bid To Victory”](#) · *Financier Worldwide*, February 2009

- "The Burst Bubble" · *The 2008 Bankruptcy Yearbook & Almanac from New Generation Research, Inc.*
- Co-Author, "Take This Cash & Shove It" · *abfjournal*, May 2008
- "Reticent Hedge Funds Chafe Under Bankruptcy Code" · *FINalternatives*, May 2008
- Co-Author, "Ninth Circuit Decision Could Substantially Boost Landlord Claims in Bankruptcy" · *Bankruptcy Litigation*, ABA Section of Litigation, Winter 2008
- "Judge To Litigious Hedge Funds: Put Up or Shut Up" · *Daily Bankruptcy Review Small-Cap*, August 2007
- "Distressed M&A - The New Chapter 11 Archetype" · *The 2007 Bankruptcy Yearbook & Almanac from New Generation Research, Inc.*
- "Questions Remain Under New Law" · *The National Law Journal*, March 2007
- "Deepening Insolvency - Pouring the Old Wine Out of the New Bottle?" · *ABI Finance and Banking Committee Newsletter*, December 2006
- "And a Child Shall Lead Them: Justice O'Connor, the Principle of Religious Liberty and Its Practical Application" · *Pace Law Review*, 1988