

# BANKRUPTCY, RESTRUCTURING & COMMERCIAL LITIGATION

The attorneys in our Bankruptcy, Restructuring & Commercial Litigation Practice have extensive experience representing all types of parties in complex bankruptcy and insolvency matters, including related transactional matters, loan workouts and restructurings, and litigation proceedings. Our attorneys evaluate client matters promptly and develop and implement creative solutions to advance and protect clients' interests.

This team practices regularly before all federal and state courts in New York at the trial and appellate levels. Hodgson Russ was awarded a prestigious "Best Law Firms" Metropolitan Tier 1 ranking by *Best Lawyers/U.S. News & World Report* in the Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law, and Litigation - Bankruptcy categories.

Our experience includes:

- The assessment, development and preparation of workouts, restructuring arrangements, and compositions both inside and outside the context of pending bankruptcy proceedings and before the U.S. bankruptcy courts, including cases and adversary proceedings under Chapters 7, 11, 12, 13, and 15 of the U.S. Bankruptcy Code
- Protection of secured creditor collateral positions and enforcement of secured obligations
- Asset and business acquisitions from bankruptcy estates
- Actions under state and federal fraudulent conveyance laws
- Preference avoidance actions
- Asset protection planning for business entities and individuals
- Secured "Article 9" transactions, commercial paper, sales of goods, and other Uniform Commercial Code matters
- Director and officer liability
- Lender liability
- Commercial real property leases and eviction proceedings
- Representation of foreign representatives of debtors in cross-border Chapter 15 cases
- Financial institution loss prevention issues, including bank fraud and commercial paper

## Contact

James Thoman  
716.848.1361  
jthoman@hodgsonruss.com

## Professionals

### Attorneys

Carmine Castellano  
Jessica Chue  
Christian Soller  
James Thoman  
James Zawodzinski Jr.

## BANKRUPTCY, RESTRUCTURING & COMMERCIAL LITIGATION

- Federal and state insolvency-related tax, pension, and welfare benefit plan issues and proceedings
- Civil provisions of the Racketeer Influenced and Corrupt Organizations Act (RICO)
- Mortgage, Article 9, and mechanics' lien foreclosures; replevin actions; and statutory actions to recover chattels and other foreclosure matters
- Court-appointed receivership proceedings
- Obtaining and enforcing money judgments

Our attorneys represent:

- Debtors, both publicly and privately owned
- Financial institutions, including commercial banks, savings banks, and other private lenders, including asset-based and real estate lenders
- Indenture trustees and bondholders
- Secured and unsecured creditors
- Equity owners
- Creditors' committees
- Equity committees
- Trustees and examiners
- Court-appointed receivers
- Equipment lessors
- Commercial landlords and tenants
- Buyers of assets from bankruptcy and foreclosure sale proceedings
- The Securities Investor Protection Corporation

### **Experience**

Represented a corporation in a Chapter 11 bankruptcy matter.

Hodgson Russ represented the principal secured creditor of a major hotel that, following initiation of foreclosure proceedings, filed proceedings under Chapter 11. Following a lengthy trial, the firm succeeded in obtaining dismissal of the Chapter 11 proceeding and a foreclosure sale of the premises.

Represented a hospital in its capacity as a DIP lender in connection with a Chapter 11 case.

Hodgson Russ represented a full-service hospital as a debtor in possession in Chapter 11 proceedings. Following numerous hearings before the bankruptcy court, Hodgson Russ succeeded in confirming a plan for reorganization that provided a substantial distribution to creditors.

## BANKRUPTCY, RESTRUCTURING & COMMERCIAL LITIGATION

Receiver in a civil enforcement action brought by the Federal Trade Commission and the New York State Attorney General.

Counsel to Chapter 11 and Chapter 7 trustees in various bankruptcy matters.

Hodgson Russ represents a holding company that owns property which is filing for a Chapter 11 bankruptcy. The owners have asked the bankruptcy court to dismiss the Chapter 11 case to allow for a sale. A dismissal of the case would speed up a \$9.6 million sale to potentially make way for the construction of a \$50 million hotel.

Hodgson Russ represented the debtor in connection with the Chapter 11 proceedings of a national transporter of automobiles, for which it procured an order under section 1113 modifying its collective bargaining agreement.

Hodgson Russ has helped several companies successfully reorganize and recapitalize so that proprietary technology can be preserved and commercially developed. One of these companies makes a fashionable floatation garment that inflates only when exposed to water, another had proprietary chemical adhesives, and another had patents for nanotechnology.

Hodgson Russ represented the Chapter 11 trustee of a large office building in Buffalo, New York. The work performed by Hodgson Russ included litigation to avoid a multimillion-dollar mortgage on the premises, the termination of numerous leases, and the sale of the building following two rounds of bidding under section 363 of the Bankruptcy Code.

Hodgson Russ advised a client on all the legal aspects of the winding down of operations of a paper mill. Our work included the unwinding of the industrial development agency benefits, negotiation of sale contracts, and the related real estate dispositions, including timberlands, real estate tax matters related to the project, and related applications to the state agency in charge of long-range planning.

Hodgson Russ represented the largest creditor of the Chapter 11 proceedings of a commercial mortgage defeasance company. Our attorneys succeeded in causing the appointment of a Chapter 11 trustee, with whom our client has settled its claim.

Several Hodgson Russ attorneys provided U.S. securities counsel to a Canadian energy company in the sale of its finance affiliate. The \$359 million USD deal resulted in the energy company's emergence from bankruptcy.

Attorneys from Hodgson Russ acted as Chapter 11 bankruptcy counsel to a meat distribution company in its Chapter 11 bankruptcy proceedings. At the time of its filing, the company was one of the largest family-owned meat distribution companies in the country, with yearly revenues in excess of \$900 million.

Represented partner in a U.S. consumer products business in connection with the exit of the equal partner.

Hodgson Russ represented the owner of the real estate on which a popular New York ski resort is located in a successful Chapter 11 proceeding. Our attorneys defeated efforts by the bank mortgage lenders to liquidate the property, negotiated a new lease with a new operator, and confirmed a reorganization plan which allowed the ski resort to open in time for what has turned out to be one of their most successful ski seasons ever.

## BANKRUPTCY, RESTRUCTURING & COMMERCIAL LITIGATION

Turned what began as a commercial eviction proceeding into two real estate deals in which the manufacturing client purchased the buildings that were the subject of the eviction proceedings.

### **In the News**

Thought Leaders: Help is All Around

*Buffalo Business First*, July 24, 2020

Work-out attorneys may be busier than real estate attorneys

*Buffalo Business First*, May 27, 2020

Plan Emerges to Dismiss Rip Van Dam Bankruptcy and Sell Property for \$9.6 Million

*Albany Business Review*, August 21, 2019

Five Questions With Craig Lutterbein of Hodgson Russ

*Buffalo Law Journal*, October 15, 2014

Real Estate & Development Special Report: Zombie Houses

*Buffalo Law Journal*, March 17, 2014

Capital Region Bankruptcies Sink to Seven-Year Low

*Albany Business Review*, January 29, 2014

Ski Center Slaloms Toward Bankruptcy Finish Line

*Post Star*, December 18, 2013

Bankrupt Ski Mountain's Mortgage to Be Auctioned

*Albany Business Review*, October 21, 2013

McGuire Awarded Sheehan Site With \$2M Bid

*Buffalo Business First*, November 30, 2012

Last Chance for Hostess Brands: Mediation

*CNN Money*, November 20, 2012

### **Press Releases**

Fifty-Nine Hodgson Russ Attorneys Ranked in 2022 Edition of Upstate New York Super Lawyers

*Hodgson Russ Press Release*, August 23, 2022

71 Hodgson Russ Attorneys Ranked in 2023 Edition of *Best Lawyers in America*

*Hodgson Russ Press Release*, August 19, 2022

Hodgson Russ Receives Top Tier National and Metropolitan Rankings in 2022 Best Law Firms Listings

*Hodgson Russ Press Release*, November 15, 2021

## BANKRUPTCY, RESTRUCTURING & COMMERCIAL LITIGATION

Hodgson Russ Earns Five National-Level Rankings in *U.S. News & World Report*/Best Lawyers 'Best Law Firms' Report  
*Press Release*, November 18, 2015

### **Publications**

When a Borrower Files a Chapter 11 Bankruptcy: What Lenders Should Know  
*Hodgson Russ Bankruptcy, Restructuring & Commercial Litigation Alert*, November 11, 2020

Understanding Collection Options for Lenders Under Article 9 of the UCC  
*Hodgson Russ Bankruptcy, Restructuring & Commercial Litigation Alert*, October 23, 2020

Securing Payment or Forbearance in the Time of COVID-19  
*Hodgson Russ Business Litigation and Bankruptcy & Restructuring Alert*, June 22, 2020

CARES Act Impact on Bankruptcy Law  
*Hodgson Russ Bankruptcy, Restructuring & Commercial Litigation Alert*, April 8, 2020

Trademark Licensee Rights Expanded by Recent SCOTUS Decision  
*Hodgson Russ Intellectual Property Alert*, July 8, 2019

A Close Look at Creditor Roadblocks in Bankruptcy  
*Law360*, May 14, 2014

A Primer on UCC Article 9 Sales  
*Law360*, April 30, 2014

Admissible and Persuasive Valuations of Debtors-in-Possession  
*New York Law Journal*, May 20, 2013

Practical Lessons From the 'Tousa Saga'  
*New York Law Journal*, March 4, 2013

Throw the Keys on the Floor and Close the Door: When Simply Walking Away is more Economical than Filing a Chapter 7  
*Chapter 7 Commercial Bankruptcy Strategies*, 2013 ed., Aspatore Books, 2013

### **Presentations & Events**

Canada Practice Webinar Series  
November 17, December 1 & 15, January 5 & 19

The Movement to Restore Trust (MRT) Path Forward Symposium  
December 7, 2019

2015 TMA Mid-Atlantic Regional Symposium: Going Green - Laws, Claims, and Valuation  
Atlantic City, NJ, June 10, 2015

BANKRUPTCY, RESTRUCTURING & COMMERCIAL LITIGATION

Trapdoors in Commercial Lending

Buffalo, NY, September 11, 2012

Bankruptcy and Beyond: Healing the Troubled Company

New York, NY, May 23, 2012

Weathering the Storm: Insights and Strategies to Help Your Troubled Clients

Buffalo, NY, April 10, 2009

