



## Mark G. Ledwin

Partner

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Mark Ledwin focuses his practice on bankruptcy, creditors' rights and complex commercial litigation in state and federal courts. Mark's cost-effective approach to litigation centers on up-front analysis and identification of the critical issues in a case with the goal of achieving early resolution.

In addition to representing banks and other traditional creditors, Mark has developed a unique concentration assisting carriers with the resolution of insurance coverage and claims issues in bankruptcy. Mark has appeared in numerous bankruptcy cases across the country on behalf of secured and unsecured creditors, including creditors' committees. He also handles a range of commercial litigation matters, including mortgage foreclosures, note and guaranty actions, consumer class actions, and defensive lender liability cases.

Mark is a frequent author and speaker on bankruptcy issues. He has published several articles in the *Bankruptcy Developments Journal* of Emory University and the *PLUS Journal*. He also has lectured at Mealey's litigation seminars, the New York State Judicial Conference, Pace University School of Law CLE Program, National Forum for Environmental and Toxic Tort Issues, Westchester/Fairfield Counties Chapter of the American Corporate Counsel Association, and has addressed the legal and claims departments of numerous companies.

### Traditional Creditors

Mark has represented numerous creditors, including banks, finance companies, equipment lessors, landlords and trade creditors, in bankruptcy, commercial litigation and collection matters in state and federal courts. These matters have involved issues related to the automatic stay, adequate protection, cash collateral stipulations, executory contracts, secured and unsecured claim objections, avoidance actions, and contested plan confirmations.

### Services

- Bankruptcy
- Commercial Litigation
- Financial Services
- Life, Health, Disability & ERISA
- Professional Liability & Services
- Canada

### **Insurance Carriers**

Over the years, Mark has developed particular experience representing insurers in coverage disputes in bankruptcy courts, including cases involving environmental, mass tort/asbestos, and directors and officers' liabilities. He also represents insurers as traditional creditors in bankruptcy cases with respect to the collection of premiums and the defense of preferential transfer and fraudulent conveyance actions.

### **Education**

- Ohio Northern University College of Law (J.D., 1989)
  - with high distinction; Ohio Northern University Law Review
- State University of New York at Geneseo (B.A., 1986)

### **Bar Admissions**

- New York

### **Court Admissions**

- U.S. Court of Appeals, Second Circuit
- U.S. Court of Appeals, Sixth Circuit
- U.S. Court of Appeals, Eleventh Circuit
- U.S. District Court, Eastern District of Michigan
- U.S. District Court, Western District of Michigan
- U.S. District Court, Southern District of New York
- U.S. District Court, Eastern District of New York
- U.S. District Court, Western District of New York
- U.S. District Court, Northern District of New York

### **Professional Affiliations**

- American Bar Association, Business Law Section
- New York State Bar Association, Commercial & Federal Litigation Section
- American Bankruptcy Institute

### **Awards & Honors**

- AV® Preeminent™ Rated by Martindale Hubbell
- Phi Kappa Phi Honor Society
- The Willis Society

# Representative Matters

## Traditional Creditors

*In re Millenium Leather:* Acted as bankruptcy counsel for a bank under a multimillion-dollar commercial loan to a leather goods manufacturer. After the borrower defaulted, litigation was commenced in state court. Borrower then filed for Chapter 11 bankruptcy relief in New Jersey. We fended off an injunction action filed by the borrower in the bankruptcy case, opposed confirmation of a proposed plan of reorganization with terms adverse to the bank's interests, and then negotiated a workout that was included in an amended plan that was ultimately confirmed by the bankruptcy court. The workout resulted in a new deal in which the bank would be paid in full, including interest and attorneys' fees, and secured by new and better collateral.

*In re Ocean Petroleum, Inc.:* Acted as lead bankruptcy counsel for a bank seeking to recover more than \$650,000 that was mistakenly paid to a secured creditor that had made an automated clearing house (ACH) debit from the debtor's bank account on the same day the debtor filed for bankruptcy. Debtor's account had insufficient funds to cover the debit, but a computer glitch allowed the debit to go through without being reversed. The novel issue presented concerned the applicability of the "NACHA Rules and Guidelines" (an industry guideline without the force of law) to a mistaken ACH debit transaction. Bankruptcy court granted the bank's summary judgment motion; secured creditor appealed to the district court and lost.

*In re RFI Realty:* Act as lead bankruptcy counsel for the primary secured creditor in a complex Phoenix bankruptcy filed by the owner-remediator of an 800 acre parcel of environmentally impaired real property situated in Southern California. Complex issues concerning the value of the secured claim and the liability for hundreds of millions of dollars in remediation expenses were largely settled.

*In re Sea Launch Company:* Acted as lead counsel to a satellite manufacturer in this Delaware bankruptcy case concerning a crane accident that severely damaged a satellite while it was being prepared for launch at the debtor's land launch facilities in Kazakhstan. Representation included conducting Rule 2004 discovery, objecting to the disclosure statement and plan, and successfully resolving an objection to our clients' \$17 million unsecured claim.

*In re Delta Air Lines:* Acted as co-counsel to a statutory committee of retired pilots in Delta's Chapter 11 bankruptcy proceedings filed in the Southern District of New York. At issue was whether the retired pilots' employee benefits would get cut a little or a lot; we settled somewhere in between.

*In re WorldCom:* Acted as lead counsel to the reorganized debtors in the prosecution and settlement of all preference claims in one of the largest bankruptcy cases ever filed.

*In re Nuexco Trading Corp. /Oren Benton:* These Chapter 11 bankruptcy cases pending in

Denver involved the demise of worldwide uranium trading magnate Oren Benton and the largest personal bankruptcy ever filed in Colorado. Work on these matters included representing a British utility with a multimillion-dollar secured claim in various enriched uranium located in England, France, Germany and Russia. These claims generated litigation in both Colorado and Europe; the primary issues centered on how to perfect a security interest in uranium stockpiled in a foreign country. As a representative on the creditors' committee and a post-confirmation oversight committee for a liquidating trust, also participated in the sale of Mr. Benton's one-third interest in the Colorado Rockies professional baseball club and multiple assets.

*In re Mirant Corp.*: Resolved the claims of various local New York taxing authorities in the Chapter 11 bankruptcy filed by energy giant Mirant Corp. in Fort Worth, TX. The issue was largely whether the tax certiorari proceedings should be venued in New York state court or Texas bankruptcy court. We won the venue fight in New York, but lost when Mirant got a second bite at the apple in Texas. Matter ultimately settled.

*In re Loewen Group*: Represented several funeral home owners from Lansing, MI, that had sold their interests to Loewen prior to its Chapter 11 bankruptcy filing in Delaware. The funeral home owners retained mortgages on the real properties that were sold. The issue concerned whether Loewen had breached some esoteric provisions of the sales contract that would allow the sellers to foreclose on the mortgages. We filed a declaratory judgment action in the Delaware bankruptcy court, had the Delaware District Court withdraw the reference, and then transfer the case to the funeral directors' home court in the Western District of Michigan in Lansing. Loewen ultimately settled on reasonable terms.

*Bluebird Partners v. First Fidelity Bank, et al.*, 259 A.D.2d 273, 686 N.Y.S.2d 5 (1st Dep't 1999): Acted as lead counsel for a prominent New Jersey law firm that was counsel to one of the trustee banks in this action concerning claims of negligence and attorney malpractice asserted by bondholders of bankrupt Continental Airlines against certain indenture trustees and their counsel. The alleged damages exceeded \$100 million. The issue presented was whether the bondholders had privity to assert malpractice claims against the attorneys for the indenture trustees. The trial court dismissed for a lack of privity, and the First Department affirmed; leave to appeal was denied by the Court of Appeals. Plaintiff then filed a series of new actions against the law firm defendants, which moved to dismiss on *res judicata* grounds. That motion was granted by the trial court and affirmed on appeal by the First Department. Despite the dismissal of the law firms twice on appeal, the case went on for many more years due to potential direct claims by the trustees against their own attorneys.

### **Insurance Carriers**

*Wolfson v. EFG Bank*: Represented the fidelity insurer of a Channel Islands trust company in various recovery actions arising out of the trust company's failed multimillion-dollar investment on behalf of the heirs to the Burberry clothing fortune in what turned out to be an international ponzi scheme. Generally supervised the recovery actions brought in Texas, New York and London, including the liquidation of several small jets and exotic cars, and the prosecution of certain professional malpractice claims.

*In re Ephedra Products Liability Litigation*: Represented the insurer of the largest retailer of nutritional supplements in the United States in connection with the successful resolution of hundreds of ephedra-related personal injury and wrongful death claims that were consolidated in an MDL proceeding in the Southern District of New York. After the FDA banned ephedra, hundreds of product liability claims were filed against the manufacturers and retailers of ephedra products by alleged victims of heart attacks, strokes and the like. The massive claims caused virtually every major ephedra manufacturer in the United States and Canada to file for bankruptcy protection. Because non-debtor retailers did not receive the benefit of the automatic stay applicable only to the debtor-manufacturers (but had indemnification claims against and often shared insurance with the manufacturers), non-debtor section 105(a) injunctions were required to preserve the available insurance and other assets. More than 500 tort claims eventually were sent to mediation and resolved by the debtor-manufacturers, the retailers and their insurers. This resulted in the successful funding of numerous plans of reorganization or liquidation for the manufacturers. In exchange for the millions of dollars contributed by the retailers and their insurers to fund the plans, they received the benefit of broad section 105(a) injunctions.

*Cooper v. Royal Ins. Co. (In re CHS Electronics, Inc.)*, 58 Fed. Appx. 835, 2003 U.S. App. LEXIS 6638 (11th Cir. 2003): Acted as lead counsel for the D&O insurers in this case concerning their rights to use the proceeds of a liability insurance policy to settle a multimillion-dollar securities class action brought against the insured directors and officers, but not against the insured debtor corporation. The bankruptcy trustee as successor to the debtor corporation asserted his own claims against the directors and wanted to freeze the policy proceeds pending the resolution of his claims. The bankruptcy court allowed the payment of the settlement from the insurance proceeds notwithstanding the trustee's unliquidated claims. See *In re CHS Electronics, Inc.*, 261 B.R. 538 (Bankr. S.D. Fla. 2001). The district court affirmed on appeal in an unpublished decision. The trustee then filed a direct action against the D&O insurers seeking to delay the funding of the securities class action settlement and a determination that there was coverage for his claims against the directors even though those claims had yet to be fully litigated. The district court dismissed the action on *res judicata* grounds. Eleventh Circuit affirmed in part concerning the funding of the settlement, but reversed the dismissal of any other potential claims that the trustee might have against the insurers.

*In re Allegheny Health, Education and Research Foundation (AHERF)*: Acted as lead bankruptcy counsel for one of the D&O insurers in connection with the Chapter 11 bankruptcy of AHERF, a large research hospital and HMO provider located in Pittsburgh, PA. This was the largest not-for-profit health care bankruptcy ever filed in the United States. A few months before filing for bankruptcy, AHERF increased its D&O liability insurance coverage from \$50 million to \$200 million. In the action against AHERF's D&O insurers to rescind the newly acquired coverage, the issues concerned the materialness of the alleged false misrepresentations in the policy applications and the reasonableness of the insurers' reliance on them. Matter ultimately settled.

*In re Camall Co.*, 16 Fed. Appx. 403, 2001 U.S. App. LEXIS 17243 (6th Cir. 2001): Acted as lead counsel for the insurer in this case concerning claims by a bankrupt manufacturer of phentermine, part of the "phen-fen" diet drug. The debtor asserted that the proceeds of its liability insurance policies were property of its bankruptcy estate subject to the

automatic stay and thus had to be turned over immediately to the bankruptcy estate for its use, even though the underlying personal injury litigation claims were still in their infancy. The bankruptcy court denied the debtor's turnover motion, agreeing that there was no basis in the bankruptcy code or the insurance contract for an immediate turnover of the policy's proceeds. Unsuccessful appeals were taken by the debtor to the district court and the Sixth Circuit.

## Client Wins

### **Cash & Ledwin Obtain Final Judgment Against Credit Union Ex-CEO in Excess of \$7.3 Million**

Joshua Cash (Partner-New York, NY) and Mark Ledwin (Partner-White Plains, NY) commenced an action in 2023 on behalf of the National Credit Union Administration (NCUA) against the ex-CEO of a Credit Union, under New York's Faithless Servant Doctrine. The NCUA argued that the ex-CEO should forfeit \$7,323,557 in compensation and a \$1.5 million collateral assignment split-dollar insurance policy because of his criminal convictions, alleged financial improprieties, and policy violations. The ex-CEO's misconduct began during the height of the taxicab industry and ultimately led to his conviction in 2021, after the Credit Union was liquidated by the NCUA. As a result of the criminal trial, the ex-CEO was sentenced to 46 months in prison and was ordered to pay \$2 million in restitution (he currently remains incarcerated in Otisville, NY). The improprieties included accepting illegal gratuities from taxi medallion owners and brokers, approving tens of millions of dollars in the Credit Union's loans to its detriment, and accepting luxury vacations and gifts without the approval of the Credit Union's board.

Judge Nina R. Morrison of the U.S. District Court for the Eastern District of New York approved the final judgment based on the Federal Magistrate's report and recommendation after the NCUA was successful on its motion for partial summary judgment on liability. The final money judgment amounts to \$7,323,557.15, which is the total amount of the ex-CEO's salary from February 10, 2011, until his termination of employment in 2016 (and provides for an equitable lien on the ex-CEO's interest in his life insurance policy, up to the amount of the money judgment). Together with an early settlement obtained from the Credit Union's ex-General Counsel for nearly \$1 million, the NCUA stands to recover more than \$8 million.

### **Ledwin, Granata, and Duque Secure Summary Judgment for Insurance Company Client in Breach of Contract Case**

Mark Ledwin (Partner-NY), Valeria Granata (Partner-Los Angeles), and Natalia Duque (Of Counsel-Los Angeles) prevailed on a motion for summary judgment in the Superior Court of California, Los Angeles County, on behalf of the firm's insurance company client. In this heavily litigated breach of contract case, the Wilson Elser team argued that while the workers' compensation insurance policy in question was enforceable, the defendant had breached the insurance contract by failing to pay our client the required premiums. Despite the defense counsel's disputing the premium payment failure, Valeria's lengthy and persuasive oral argument resulted in the court granting Wilson Elser's motion for summary judgment, alleviating the need for trial, slated to start in just a few weeks.

