



## Thomas R. Fawkes

### Partner

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Thomas Fawkes practices in the areas of bankruptcy, creditors' rights, and financial restructuring.

Tom represents official committees, unsecured and secured creditors, debtors, financial institutions, post-confirmation trustees, and asset purchasers in chapter 11 and chapter 7 bankruptcy cases, out-of-court restructurings, and liquidation proceedings throughout the United States. He has represented clients in matters including plan confirmations, preference, fraudulent transfer and other bankruptcy litigation, cash collateral and debtor-in-possession financing, section 363 sale transactions, real estate and equipment leasing disputes, and claims reconciliation. Tom also assists clients in structuring their commercial transactions to mitigate the risk of future bankruptcy and insolvency issues.

Tom has been recognized on a national scale for his professional accomplishments, particularly his representation of creditors' committees in chapter 11 cases, as well as creditors and other parties in notable bankruptcies. He is recognized by Chambers USA as one of the leading bankruptcy and restructuring attorneys in Illinois, with sources describing him as "really tenacious, thorough and knowledgeable." One of only 12 attorneys selected nationwide, Tom was named an "Outstanding Young Restructuring Lawyer" by the editors of Turnarounds & Workouts in 2013.

Tom is a native Chicagoan and, therefore, a long-suffering fan of the Chicago Bears, despite the fact that they have not won a Super Bowl since he was in grade school. He is happily married with a precocious 6-year-old son, and he enjoys world travel, cooking, playing golf poorly, and homebrewing in his spare time.

### Education

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- Northwestern University School of Law (J.D., cum laude, 2002); Order of the Coif
- Loyola University Chicago (B.A., summa cum laude, 1999)

### **State Admissions**

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- Illinois, 2002
- New York, 2009

### **Federal Admissions**

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- United States Court of Appeals, Sixth Circuit
- United States District Court, District of Colorado
- United States District Court, Northern District of Illinois
- United States District Court, Northern District of Indiana
- United States District Court, Eastern District of Michigan
- United States District Court, Eastern District of New York
- United States District Court, Southern District of New York
- United States District Court, Eastern District of Wisconsin
- United States District Court, Western District of Wisconsin
- United States District Court, District of Minnesota
- United States District Court, Northern District of New York
- United States District Court, Western District of New York

### **Service Areas**

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- Bankruptcy
- Insolvency & Workout
- Business Litigation
- Commercial Asset Recovery & Protection
- Real Estate
- Educational Institutions

## Experience

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- Represented Official Committees of Unsecured Creditors in over 50 chapter 11 bankruptcy cases in federal bankruptcy courts across the United States and in almost every major industry, including food, foodservice, restaurants and agriculture, manufacturing, healthcare and medical devices, firearms and ammunition, energy, mining, and construction/engineering
- Representation of trade creditors and landlords in many of the largest chapter 11 cases filed in the United States
- Representation of post-confirmation and chapter 7 trustees, involving complex claims reconciliation and prosecution of avoidance actions and other estate causes of action
- Prosecuted and defended over \$100 million worth of preference and fraudulent transfer claims in bankruptcy cases
- Prosecuted breach of fiduciary duty claims against officers, directors and shareholders of bankruptcy entities, including a \$30 million action in the U.S. Bankruptcy Court for the District of Delaware
- Representation of debtors, including manufacturing concerns, real estate development companies, and restaurant groups, in out-of-court restructurings and workouts, including UCC Article 9 foreclosures, receiverships, and assignments for the benefit of creditors
- Representation of plaintiffs and defendants in commercial litigation matters, including real estate mortgage foreclosure actions and complex breach of contract disputes

## Publications & Events

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### SPEAKING ENGAGEMENTS

- National Association of Credit Management (NACM): A frequent presenter at conferences, industry trade credit group meetings, legal symposia, and webinars hosted by the National Association of Credit Management (NACM), Tom has given over 100 presentations on a wide variety of bankruptcy and creditors' rights legal topics. He has been selected to speak at the NACM Credit Congress (the NACM's national convention) every year since 2014.
  - » "Caution: Beware of Potholes in Chapter 11 Bankruptcy," Commercial Law League of America (CLLA) National Convention, Chicago, Illinois (May 2024)
  - » "Impacts of AI on the Corporate Credit Department," Credit & Financial Development Division (CFDD) and NACM Connect Recreational Vehicle Manufactured Housing Credit Group (May 2024)
  - » "Developing a Credit Policy," NACM Connect and Commercial Law League of America (CLLA) (March 2024)
  - » "Antitrust Considerations for the Credit Department" (September 2022)
  - » "Understanding a Small Business Reorganization Under New Subchapter V of the Bankruptcy Code," Atlanta, Georgia (September 2022)
  - » "Mergers & Acquisitions and the Impacts on Your Credit Department," Clearwater Beach, Florida (September 2022)
  - » "Mergers & Acquisitions and the Impacts on Your Credit Department," St. Louis, Missouri, and Kansas City, Kansas (April 2022)
  - » "Anatomy of a Fraudulent Transfer," Rolling Meadows, Illinois (March 2022)
  - » "Enforcement of Security Agreements" (October 2021)
  - » "Mergers & Acquisitions and the Impacts on Your Credit Department (April 2021)
  - » "Bankruptcy Trends Post-Covid" (March 2021)
  - » "PPP Loan Program and the Impact on the Coming Economy" (March 2021)
  - » "Credit Applications and Other Legal Documents in a Post-COVID World" (January 2021)
  - » "The Credit Professional's Guide to Navigating COVID-19," Webinar (April 2020)
  - » "Creating the Perfect Credit Policy"
  - » "Tales from the Trenches: Lessons and Stories from Cases Past!", Credit Congress, Las Vegas, Nevada (2020)
  - » "Legal Options for Dealing with Delinquent Customers"
  - » "The Small Business Reorganization Act and Its Impact on the Bankruptcy Preference Landscape"
  - » "Bankruptcy Basis"
  - » "Credit Terms Pushback"
  - » "Fraud Protections"
  - » "Validity and Enforceability of Electronic Signatures"
  - » "Death, Divorce, Disaster and Divestiture"
  - » "Prepping for a Recession"
  - »

- “Dominate the Opposition: Effectively Using Experts in Creditors’ Rights Litigation,” Credit Congress, Aurora, Colorado (2019)
- » “Social Media for the Credit Professional”
- » “Settlement Agreements and Confessions of Judgment,” Credit Congress, Phoenix, Arizona (2018)
- » “Advanced Chapter 11 Practice: Strategies for Minimizing Losses and Maximizing Recoveries in a Customer Bankruptcy,” Credit Congress, Phoenix, Arizona (2018)
- » “Legal Forms and Documentation,” Credit Congress, Las Vegas, Nevada (2015)
- “Your Client, Customer, or Vendor Is in Financial Distress. Now What?”, Association of Corporate Counsel (January 2023)
- “Retailer Bankruptcies are Looming: Best Practices for Doing Business with a Financially Troubled Retailer,” The Toy Association (January 2023)
- “Ways to Protect Your Company Through the Ongoing Supply Chain Crisis,” Tucker Ellis In-House Counsel Summit (October 2022)
- “Legal Options for Dealing With Delinquent Customers,” Hitachi Americas Credit Managers Meeting (October 2022)
- “Equipment Leases Versus Sales: Your Intent Might Differ from Reality in a Customer’s Bankruptcy,” “Best Practices for Doing Business with a Financially Troubled Customer Pre-Bankruptcy,” and “Best Practices for Doing Business with a Financially Troubled Customer in Bankruptcy,” 2022 CAT Dealer Finance Conference, Henderson, Nevada (October 2022)
- “Top Bankruptcy Cases and Decisions,” American Bankruptcy Institute 29<sup>th</sup> Annual Central States Bankruptcy Workshop, Lake Geneva, Wisconsin (June 2022)
- “Creating and Raising Liquidity During the Pandemic,” FEI Chicago (August 2020)
- “How the CARES Act and Small Business Reorganization Act Streamlined the Bankruptcy Code,” Tactical Tuesdays Webinar, Adamy Valuation and DWH (April 2020)
- “Protecting Your Business in an Economic Downturn,” encoursa Webinar (March 2019)
- “Anatomy of a Chapter 11 Case,” 33rd Annual Bankruptcy Conference, Federal Bar Association, Iowa Chapter, Des Moines, Iowa (2014)
- “Legal Forms and Documentation,” National Association of Credit Management, multiple conferences and regional meetings (2014, 2013)
- “Validity and Enforceability of Electronic Signatures,” National Association of Credit Management National Construction, Auto Glass and Architectural Metals Credit Groups (2014)
- “Chapter 11 Plan Analysis for the Credit Professional,” National Association of Credit Management Upstate New York Credit Conference (2014)
- “Professional Responsibility in Bankruptcy Cases,” Chicago Bar Association, Chicago, Illinois (2013)
- “Where’s the Beef? Restructuring and Chapter 11 Issues in the Restaurant, Franchise and Food Industries,” American Bankruptcy Institute Central States Bankruptcy Workshop, Lake Geneva, Wisconsin (2012)
- “Pre-Bankruptcy Planning, Credit Protection and Restructuring Agreements,” 9th Annual Negotiating and Drafting Major Business Agreements Conference, Chicago, Illinois (2009)

## **PUBLICATIONS**

- “Chapter 19, Recharacterization of Debt to Equity,” Co-Editor, *Commercial Bankruptcy Litigation, Second Edition*, Thomson Reuters (2021)
- “CARES Act, SBRA and Anticipated Wave of Subchapter V Filings,” *American Bankruptcy Institute Journal* (August 2020)
- “Expanded Chapter 11 Access a Critical Part of CARES Act for Small Businesses,” *ABF Journal* (May 2020)
- Small Business Reorganization Act and Its Impact on the Bankruptcy Preference Landscape,” *NACM Business Credit* (January 2020)
- “Recharacterization of Debt to Equity,” *West Commercial Bankruptcy Litigation 2d* (2014-2019 editions)
- “Negotiable Instruments,” *NACM Manual of Credit and Commercial Laws* (2017-2019 editions)
- “DIP Financing Agreements: The Effect of Pre-Petition Indemnification Provisions,” *The Bankruptcy Strategist*, Vol. 30, Number 5 (March 2013)
- “Third Circuit Revives Committee’s Deepening Insolvency and Breach of Fiduciary Claims,” *The Bankruptcy Strategist*, Volume 29, Number 2 (December 2011)
- “2010: A Return of the Dynamic Section 363 Auction?,” *Financier Worldwide* (March 2010)
- “Threats and Opportunities in the Retail Sector,” *Financier Worldwide* (March 2009)
- “Revisiting Till: Has a Consensus Emerged in Chapter 11s?,” *ABI Journal* (July/August 2008)
- “The Proposed E.U. VAT on Electronically Transmitted Services: Enforcement and Compliance Issues,” 22 N.W. J. Int’l L. & B. 47

## **MEDIA**

- “Last Ditch – Modern Times Braces for Receivership Sale, Possible Liquidation,” *Good Beer Hunting* (April 2022)
- “Tucker Ellis Adds Bankruptcy Partner in Chicago,” *Law360* (March 2020)

## **Honors**

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- Chambers USA
  - » Bankruptcy/Restructuring (Illinois) (2018, 2019)
- Turnaround Atlas Chapter 11 Reorganization Deal of the Year, Small Mid Markets (2014)
- Outstanding Young Restructuring Lawyer, Turnarounds & Workouts (2013)
- Large Transaction of the Year, Turnaround Management Association Chicago/Midwest Chapter (2009)

## **In the Community**

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### **PROFESSIONAL ORGANIZATIONS**

- National Association of Credit Management
- American Bankruptcy Institute
- Turnaround Management Association
- Commercial Law League of America

### **COMMUNITY ORGANIZATIONS**

- Comcast SportsNet Sports Awards (benefiting March of Dimes), Organizing Committee
- Memory Rock (benefiting the Alzheimer's Association), Organizing Committee
- La Rabida Children's Hospital Annual Golf Outing, Organizing Committee