



# David W. Dykhouse

Of Counsel

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David Dykhouse combines extensive experience (in counseling, transactions and litigation) with the avoidance, treatment and exploitation of economic distress. Mr. Dykhouse has a knowledge of many major industries, including pharmaceuticals, media and publishing, petroleum refining and marketing, retailing, derivatives and other complex financial products, real estate development and technology, as well as the non-profit sector. For many years he has advised and represented industrial companies, financial institutions and charitable organizations in connection with the present or possible future financial distress of business counterparties, as well as representing them in bankruptcy and other trial and appellate courts throughout the United States. Mr. Dykhouse chaired the firm's creditors' rights practice group for over thirty years, and lectures, writes and serves on advisory committees regarding the Bankruptcy Code and the Uniform Commercial Code.

Mr. Dykhouse was a partner of the firm from November 1, 1982 to December 31, 2016.

Prior to joining Patterson Belknap, Mr. Dykhouse served as Law Clerk to the Hon. Samuel J. Roberts, Supreme Court of Pennsylvania.

## Admissions

- U.S. Court of Appeals, First Circuit; Second Circuit; Third Circuit
- U.S. District Court, Southern, Eastern and Northern Districts of New York; Northern District of Illinois
- New York

## Professional Activities

**HONORS:** Recognized in *The Best Lawyers in America*<sup>®</sup> and *Super Lawyers* in the areas of Bankruptcy and Creditor-Debtor Rights / Insolvency and Reorganization Law and Litigation-Bankruptcy.

**MEMBERSHIPS:** Association of the Bar of the City of New York (Chair, Commercial Law and Uniform State Laws Committee, 2006-2009, Member, 2002-2009, 2018-; LIBOR Replacement Legislation Working Group and UCC and Cryptocurrencies Working Group (current); Committee on Alcoholism and Substance Abuse, 2003-2006; Committee on Bankruptcy and Corporate Reorganization, 1980-1985); New York State Bar Association (Committee on Multinational Reorganizations and Insolvencies, 1987-2001); American Bar Association (Committee on Legal Opinions; UCC Subcommittee on Secured Transactions; Business Bankruptcy Subcommittees on Avoiding Powers and Executory Contracts); American Bankruptcy Institute (various committees)

## Education

- University of Pennsylvania Carey Law School (J.D., *magna cum laude*, 1974)
  - Order of the Coif
- Calvin University (A.B., 1971)

## Representative Matters

### **Financial Guarantor**

Lead representation in *Deutsche Bank AG v. Ambac Credit Products LLC*, 2006 WL 1867497 (S.D.N.Y.), *LaSalle Bank N.A. v. BNP Paribas, London Branch et al.*, 08 Civ. 6134 (S.D.N.Y. 2010), *NPS LLC v. Ambac Assurance Corp.*, 706 F. Supp. 2d 162 (D. Mass. 2010), *Ambac Assurance Corp. v. Adelanto Public Utility Authority*, 696 F. Supp. 2d 396 (S.D.N.Y. 2010), 2011 WL 5553444 (S.D.N.Y. 2011), 2013 U.S. Dist. LEXIS 4703 (S.D.N.Y. 2013), 2013 U.S. Dist. LEXIS 124190 (S.D.N.Y. 2013), and 2014 U.S. Dist. LEXIS 29236 (S.D.N.Y. 2014), *Baylor College of Medicine v. Ambac Financial Group, Inc.*, Civ. No. H-09-3678 (S.D. Tex. 2010), *Confederated Tribes of the Warm Springs Reservation v. Ambac Assurance Corp.*, 2010 WL 4875657 (D. Ore.), *Ambac Financial Services, LLC v. Bay Area Toll Authority*, 2010 WL 4892678 (S.D.N.Y.), *Ambac Assurance Corp. v. Countrywide Home Loans, Inc.*, 2015 BL 456098 (N.Y. Sup. Ct. Oct. 22, 2015), modified in part and affirmed, 150 A.D. 3d 490 (1st Dep't 2017), on remand 2018 BL 485077 (N.Y. Sup. Ct. Dec. 30, 2018) (successor liability side), *Knox Hills LLC v. Ambac Assurance Corp.*, AAA Case No. 01-15-0004-1154 (2016), and advice and representation of Ambac and other monoline insurers in disputes regarding derivatives.

### **Major New York Performing Arts Organization**

Represented a co-borrower in secured bridge loan that enabled the renovation of a large concert venue to be accelerated by nearly two years.

### **Federal Reserve Bank of New York**

Representation of Maiden Lane III LLC in *Bank of America v. AIG Financial Products Corp. et al.*, 2010 U.S. Dist. LEXIS 130463 (S.D.N.Y.), affirmed in part and dismissed in part, 2013 U.S. App. LEXIS 6866 (2d Cir. 2013).

### **Large Pharmaceutical & Consumer Products Company**

General nationwide representation in bankruptcy proceedings and advice concerning creditors' rights and commercial transactions for 41 years; examples:

- representation of client and, in that capacity, leadership of an unofficial committee representing most of the U.S. and international pharmaceutical industry in *In re Comprehensive Clinical Development, Inc., et al.*, Case No. 13-17273-JKO (Bankr. S.D. Fla.), which conceived, organized and financed the solution of interlocking issues pertaining to the storage of sensitive pharmaceutical testing records; and representation of client in the similar *In re PRACS Institute San Antonio, LLC, et al.*, Case No. 13-50743 (Bankr. W.D. Tex.).
- purchase of binational business and related technology and worldwide patents from sellers recently emerged from Canadian CCAA and Chapter 15 proceedings
- complex loan to pharmaceutical development company secured by patents
- debtor-creditor advice regarding project for the development of artificial sweetener product
- development and implementation of a program to protect its interests in tools, dies and molds placed in the possession of vendors and contract manufacturers and representation in the bankruptcy cases of such vendors and manufacturers

- securing amounts owed by customers
- protecting interests in manufacturing equipment and custom products while they are work-in-process in the possession of manufacturers
- creditors' rights advice regarding patent and technology licenses and counterparty financial difficulties
- numerous bankruptcy cases throughout the U.S. (including *Enron*, *Fleming*, *Foxmeyer*, *Winn-Dixie*, *Saint Vincents* and *Liberty Medical*) in various capacities, including creditor, creditors' committee member or chairman, preference defendant and asset purchaser
- sales of bankruptcy claims

***Similar Advice and Representation***

Lesser in scope or time, for several large media companies (broadcast and cable TV, newspaper, magazines and books), a greeting card company, several major foundations and other non-profit entities, a mobile telephone manufacturer and numerous European exporters to the United States.

***Major German Industrial Company***

Lead counsel in the four-way restructuring of \$135 million contract for the assembly of railcars of Boston T.

***Major Media Conglomerate***

Involvement in all aspects of the nationwide resolution through Chapter 11 of numerous class actions and other claims of consumer fraud in connection with sweepstakes operation, described in *In re American Family Enterprises*, 256 B.R. 377 (D.N.J. 2000).

***Major Media Conglomerate***

Resolution through Chapter 7 (including litigation with trustee) of a failed joint venture.

***Major Media Conglomerate***

Representation in Chapter 11 of failed licensee (described generally in *In re Patient Education Media Inc.*, 210 B.R. 237 (Bankr. S.D.N.Y. 1997)) and related creditor litigation (*see Dinaco, Inc. v. Time Warner, Inc.*, 346 F.3d 64 (2d Cir. 2003)).

***Creditors' Committees***

Representation of official committees of unsecured creditors in Chapter 11 cases of media buying and barter company (including protracted litigation and appeals; *see generally The Mediators, Inc. v. Manney*, 190 B.R. 515 (S.D.N.Y. 1995), and 105 F.3d 822 (2d Cir. 1997)).

***Major Independent Oil Refining & Marketing Co.***

Lead counsel in successful Chapter 11 reorganization involving \$200 million in restructured debts (including issuance of \$165 million of indentured secured notes).

***Major Foundations***

Advice regarding security and creditors' rights issues in connection with the largest and second largest art sales in history.

***New York Real Estate Developer***

Representation in bankruptcy, litigation and arbitration with co-developer of \$400 million real estate project.

***Supermarket Chain Affiliates***

Representation of affiliates of a major supermarket chain in the Chapter 11 reorganization of the chain and in their own Chapter 11 cases.