



Mark Conlan

Director, Financial Restructuring & Creditors' Rights

Newark

One Gateway Center
Newark, New Jersey 07102-5310

New York

One Pennsylvania Plaza
37th Floor
New York, New York 10119-3701

Philadelphia

One Logan Square
130 N. 18th Street
Suite 1210
Philadelphia, Pennsylvania 19103-2757

mconlan@gibbonslaw.com

P: 973-596-4545 | F: 973-639-6356

Services: Financial Restructuring & Creditors' Rights

Industries: Liquor Licensing & Alcoholic Beverage Control

OVERVIEW

Mr. Conlan has extensive experience representing fiduciaries in insolvency proceedings, including debtors-in-possession, creditors' committees, and trustees in all aspects of bankruptcy cases, bankruptcy litigation, and debtor-creditor matters. Mr. Conlan has been recognized by *Chambers USA Guide to America's Leading Lawyers for Business* and *New Jersey Super Lawyers* as a leader in bankruptcy, restructuring, and creditor/debtor rights. According to the *Chambers USA Guide*, Mr. Conlan is commended by clients as a "workhorse and a straight shooter who does not litigate for the sake of it." Mr. Conlan has earned a "Preeminent" peer rating in Martindale-Hubbell for the highest level of professional excellence, as well as high ethical standing, with an average 4.9 rating out of 5 for legal knowledge, analytical capability, judgment, communication, and legal experience.

Mr. Conlan has extensive experience litigating fraudulent and preferential transfer actions. His current representations include former New Jersey Chief Justice James R. Zazzali in his capacity as the chapter 11 trustee and as the post-confirmation litigation trustee of the DBSI Estate Litigation Trust, where Mr. Conlan led the team of Gibbons lawyers that commenced more than 850 avoidance actions on behalf of the DBSI Estate Litigation Trust.

DBSI Inc. and its affiliates consisted of a conglomerate of hundreds of real estate entities with listed assets valued at over \$2.65 billion at the time of their bankruptcy filing in November 2008.

EXPERIENCE

Representative Recent Matters

- ***In re Birdsall Services Group, Inc., et al.***: Represented a New Jersey professional engineering and environmental consulting services firm and its affiliate as debtor-in-possession in the U.S. Bankruptcy Court for the District of New Jersey after the firm and several of its former executives were criminally indicted by the Office of the New Jersey Attorney General for allegedly violating

New Jersey's "pay-to-play" statutes. The State obtained a Seizure Order in state court through which it asserted absolute control over substantially all of the debtors' assets. Mr. Conlan represented the debtors at several contested hearings in the Bankruptcy Court over the debtors' use of cash collateral, which the State opposed. Recognizing the untenable financial situation the pending disputes with the State created, Mr. Conlan negotiated a prompt settlement of the State's civil forfeiture action on terms that allowed the debtors to resume business operations, thereby preserving their going concern value pending an asset sale.

- **James R. Zazzali as DBSI Estate Litigation Trustee (*Zazzali v. Swenson, et al.*):** Represented James R. Zazzali as Litigation Trustee for the DBSI Estate Litigation Trust ("ELT") in an adversary proceeding in the U.S. Bankruptcy Court for the District of Delaware (later transferred to the U.S. District Court for the District of Idaho) to avoid and recover certain transfers made by DBSI Inc. and its affiliated debtors to former insiders, the United States Internal Revenue Service, and 25 state taxing authorities, in satisfaction of the insiders' personal tax obligations. Shortly before trial was scheduled to commence against the IRS, the Idaho District Court granted the Trustee's motion for summary judgment avoiding the transfers to the IRS. The District Court rejected all of the IRS's legal defenses, noting that "[e]very legal theory offered by the Government to defend its right to retain this transfer seems to ignore the fact that the money at issue here is the proceeds of a widespread and devastating fraudulent scheme, stolen from scores of investors." The IRS appealed to the Ninth Circuit Court of Appeals. In its August 31, 2017 opinion, the Ninth Circuit unanimously affirmed the Idaho District Court's \$13.4 million judgment against the IRS.
- **James R. Zazzali, as DBSI Estate Litigation Trustee (*Zazzali v. Marty Goldsmith*):** Represented the Trustee of the DBSI Estate Litigation Trust ("ELT") in this adversary proceeding seeking to avoid and recover millions in alleged fraudulent transfers. To date, the defendant, a real estate developer in the Boise, Idaho area, has filed two motions to dismiss and four motions for summary judgment, all of which were successfully defeated. The matter was tried in the Idaho Bankruptcy Court in two phases in September 2017 and February 2018. On November 21, 2018, the Bankruptcy Court awarded judgment in favor of the Trustee in the amount of \$2.9 million.
- **James R. Zazzali, as DBSI Estate Litigation Trustee (*Zazzali v. AFA Financial Group, LLC, et al.*):** Represented the DBSI Litigation Trustee in an adversary proceeding in the U.S. Bankruptcy Court for the District of Delaware, naming approximately 105 securities broker-dealers as defendants. In the Complaint, the Litigation Trustee sought to avoid and recover thousands of alleged fraudulent transfers, consisting of approximately \$48 million in commissions paid to the defendant broker-dealers, in furtherance of the debtors' fraudulent scheme. After successfully defending multiple motions to dismiss, Gibbons resolved this adversary proceeding, having settled, dismissed, or obtained default judgment against all 105 of the defendants.
- **James R. Zazzali, as Litigation Trustee of the DBSI Estate Litigation Trust (*Zazzali v. 1031 Exchange Group*):** Commenced an adversary proceeding on behalf of the DBSI Litigation Trustee in the United States Bankruptcy Court for the District of Delaware naming approximately 380 real estate brokers as defendants, seeking to avoid and recover more than 850 alleged fraudulent transfers totaling approximately \$19 million, related to real estate commissions paid to real estate brokers in furtherance of the debtors' fraudulent scheme. Gibbons successfully defeated multiple defense motions to dismiss and has successfully settled, dismissed or obtained default judgments against all defendants.
- **Conrad Myers, as DBSI Liquidating Trustee and DBSI Real Estate Liquidating Trustee:** Represented Conrad Myers as the post-confirmation liquidating trustee for the DBSI Liquidating and DBSI Real Estate Liquidating Trusts. Under the liquidation trusts, the consolidated debtors' multimillion-dollar technology and real estate asset portfolios were liquidated for distribution to

creditors and victims of the debtors' fraudulent scheme. The real estate liquidation involved marketing, selling and auctioning a portfolio of more than 60 real properties, including retail shopping centers, a unique 12,000 square foot mansion, residential development projects and a golf course.

- **DBSI Insiders Criminal Prosecution:** Following the long-awaited indictments of the DBSI insiders and the 10-week criminal jury trial in the U.S. District Court for the District of Idaho, on April 14, 2014, four of DBSI's former executives were convicted on 44 counts of securities fraud. Since Zazzali's appointment in 2009, Mr. Conlan served as the Trustee's liaison with the FBI, IRS-CID and the U.S. Attorney in connection with their multi-year investigations of the insiders. After extensive negotiations with parties in interest, including the Office of the United States Attorney for the District of Idaho, Mr. Conlan obtained the release and turnover of approximately \$1.3 million in forfeited funds for the benefit of the beneficiaries of the DBSI ELT.
- **Official Committee of Unsecured Creditors appointed in the *Trump Entertainment Resorts, Inc., et al. Chapter 11 cases (the "Committee")*:** Mr. Conlan was a member of the Gibbons team that served as co-counsel to the Official Committee of Unsecured Creditors in the bankruptcy cases of Trump Entertainment Resorts, Inc. et al. in jointly administered cases filed in the U.S. Bankruptcy Court for the District of Delaware on September 9, 2014. From the outset, Gibbons pursued value-maximizing strategies for the benefit of unsecured creditors, who had been offered no distribution under the debtors' initial reorganization plan filed in late October 2014. These strategies included conducting an investigation of the secured lenders' liens, claims, and pre-petition conduct along with seeking standing to commence litigation against said lenders on behalf of the debtors' estates. After over four months of contested proceedings, Gibbons successfully negotiated a global settlement with the debtors and their secured lenders (affiliates of Carl Icahn), obtaining a \$3.5 million cash settlement for distribution to general unsecured creditors.
 - **Nathan A. Schultz, Trustee of TER Trust:** The TER Trust was a distribution trust for unsecured creditors created under the Third Amended Joint Plan of Reorganization filed by Trump Entertainment Resorts, Inc. and affiliated debtors. This plan was confirmed by the U.S. Bankruptcy Court for the District of Delaware on March 12, 2015. Gibbons served as counsel to Nathan A. Schultz as the Distribution Trustee for the TER Trust.
- **1100 River Road Associates, LLC, Fred A. Daibes, LLC, and Fred A. Daibes in *Irving H. Picard, as trustee for Bernard L. Madoff Investment Securities LLC v. 1100 River Road Associates, LLC, et al.*:** Mr. Conlan represented defendants in an adversary proceeding commenced by the SIPC Trustee for Bernard L. Madoff Investment Securities LLC in the U.S. Bankruptcy Court for the Southern District of New York, where the Trustee sought to avoid and recover in excess of \$8 million in alleged fraudulent and preferential transfers. Mr. Conlan was able to negotiate a favorable settlement of the Trustee's claims during mediation in a confidential amount to be paid over time.
- **Karen A. Giannelli, Trustee, *In re Mark and Mary Grace Sobel, Debtors*:** Mr. Conlan represented Karen A. Giannelli as bankruptcy trustee in the joint case of a medical doctor and his wife. The debtors' primary assets included several parcels of valuable real estate, estimated at \$30 million in aggregate value. The parcels consisted of two operating resorts located on Sanibel Island in Florida; a large, residential waterfront estate in Middletown, New Jersey; and a small professional office. Given the challenges of operating resort properties in Florida with a lender that was anxious to liquidate its collateral and debtors who were not cooperating, Gibbons negotiated with the secured lender for a buyout of the estates' interest in the Florida properties that the Trustee continued to operate until the closing.

- **Chapter 11 Trustee, Hit or Miss:** Represented the chapter 11 trustee in the liquidation of Hit or Miss Inc., a specialty women's clothing chain that operated 185 stores in 22 states. Mark Conlan filed numerous avoidance actions and prepared and prosecuted several omnibus objections to the allowance of administrative claims, reducing the estate's administrative claim liability by approximately \$1.7 million.
- **Robert M. Hanna, Statutory Receiver, St. Christopher's College of Medicine:** Represented the statutory receiver for three domestic business entities that previously operated St. Christopher's College of Medicine in Luton, England. The medical school lost its charter in 2006 after an unresolved dispute between the school's owners. The Superior Court of New Jersey, Chancery Division, Union County, appointed Mr. Hanna as the receiver in this case after it became apparent to the Court that hundreds of former students were unable to obtain their academic transcripts, diplomas and other educational records necessary to continue their medical training. Mr. Conlan handled the Receiver's administration of the receivership and the insolvency aspects of the case, including obtaining a claim bar date for creditors' claims, and arranging an auction sale of the liquidating entities' assets.

Published Decisions:

In re DBSI Inc., James R. Zazzali as Trustee for the DBSI Estate Litigation Trust v. United States of America, 869 F.3d 1004 (9th Cir. 2017)

Zazzali v. Swenson, et al., 561 B.R. 97 (D. Idaho 2016)

Zazzali v. Swenson, et al., 463 B.R. 709 (Bankr. D. Del. 2012)

Zazzali v. 1031 Exchange Group, et al., 467 B.R. 309 (Bankr. D. Del. 2012)

Zazzali v. 1031 Exchange Group, et al., 467 B.R. 767 (Bankr. D. Del. 2012)

Zazzali v. 1031 Exchange Group, et al., 476 B.R. 413 (Bankr. D. Del. 2012)

Zazzali v. AFA Financial Group, LLC, et al., 477 B.R. 504 (Bankr. D. Del. 2012)

Zazzali v. 1031 Exchange Group, et al., 478 B.R. 192 (Bankr. D. Del. 2012); and

Zazzali v. Ellison, 973 F.Supp.2d 1187 (D. Idaho 2013).

Unpublished Decisions:

Zazzali v. AFA Financial Group, LLC, et al., 2012 Bankr. LEXIS 1373 (Bankr. D. Del. March 30, 2012);

Zazzali v. Goldsmith, 2013 Bankr. LEXIS 1524 (Bankr. D. Idaho Apr. 11, 2013);

Zazzali v. United States of America, Case No. 1:13-CV-00497-MJP (D. Idaho March 31, 2015);

Zazzali v. State of Idaho, et al., Case No. 1:13-CV-00502-MJP (D. Idaho March 31, 2015).

EDUCATION

Seton Hall University School of Law (J.D., magna cum laude)

- Member, *Seton Hall Constitutional Law Journal*
- Recipient, Academic Award - Real Property

William Paterson University (B.A.)

PROFESSIONAL ADMISSIONS

State of New Jersey

Commonwealth of Pennsylvania

State of New York

State of Idaho

United States District Court for the District of New Jersey

United States District Court for the Eastern District of New York

United States District Court for the Northern District of New York

United States District Court for the Southern District of New York

United States District Court for the Western District of New York

United States Bankruptcy Court for the Western District of New York

United States District Court for the Eastern District of Pennsylvania

United States District Court for the Middle District of Pennsylvania

United States District Court for the District of Colorado

United States District Court for the District of Idaho

United States Bankruptcy Court for the District of Idaho

United States District Court for the Southern District of Texas

United States Court of Appeals for the Third Circuit

United States Court of Appeals for the Ninth Circuit

Supreme Court of the United States

PROFESSIONAL ACTIVITIES

Pennsylvania State Bar Association

New York State Bar Association

Idaho State Bar Association

American Bankruptcy Institute

New Jersey Brewers Association

National Association of Licensing & Compliance Professionals (NALCP)

Member, U.S. Bankruptcy Court, District of Delaware Mediation Panel

HONORS & AWARDS

Listed in *Chambers USA Guide to America's Leading Lawyers for Business*, Bankruptcy/Restructuring

Selected to the *New Jersey Super Lawyers* list, Bankruptcy: Business

Selected to the *New Jersey Super Lawyers Rising Stars* list, Bankruptcy: Business, 2008

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PUBLICATIONS & FEATURES

- "Second Circuit Adopts Two-Step Market-Based Approach to Chapter 11 Cramdown Interest Rates and Affirms Bankruptcy Court's Subordination of Certain Notes and Denial of "Make-Whole" Premium," *The Business Advisor*, Winter 2017
- "Sellers Must Show "Physical Possession" by a Debtor to Qualify for a 20-Day Administrative Expense Claims Under Bankruptcy Code Section 503(b)(9)," *The Business Advisor*, Summer 2017
- "LLC Operating Agreements in Bankruptcy: Are They Executory?" *New Jersey Law Journal*, February 20, 2017 (By: Mark Conlan, Lawrence A. Goldman)
- "DBSI Estate Litigation Trustee Wins \$13.4 Million Judgment Against IRS," *The Business Advisor*, Summer 2016 (By: Mark Conlan, Jennifer A. Hradil)
- "Retail Liquor License Renewals Now Due," *Real Property & Environmental Law Alert*, June 27, 2016 (By: Howard D. Geneslaw, Mark Conlan)
- "Trade Creditors Beware - Debtor's Setoff Rights Apply to Administrative Expense Claims (Including Claims asserted under 11 U.S.C. § 503(b)(9))," *Geneva Group International (GGI) Forum*, July 2015 (By: Natasha Songonuga, Mark Conlan)
- "Bankruptcy Law: At the Intersection of Bankruptcy and Forfeiture Laws," *New Jersey Law Journal*, February 3, 2014 (By: Mark Conlan, Brett S. Theisen)
- "Bankruptcy And State Forfeiture Laws Collide In Birdsall Services Group Chapter 11 Case," *The Business Advisor*, June 28, 2013 (By: Mark Conlan, Brett S. Theisen)
- "Operation Swill: New Jersey ABC and Division of Criminal Justice Raid 29 Bars and Restaurants That Allegedly Served Cheap Alcohol as "Premium" Brands," *Real Property & Environmental Law Alert*, May 24, 2013 (By: Brett S. Theisen, Mark Conlan, Howard D. Geneslaw)
- "Transactional Attys Eye Private Liquor Sale Plan In Pa." *Law360*, February 15, 2013 (Mark Conlan, quoted)
- "IP and Chapter 11 Intersection: Kodak Files for Bankruptcy," *IP Law Alert*, January 19, 2012 (By: Mark Conlan, Brett S. Theisen)
- "Pennsylvania's Alcohol Sale Privatization Debate: What Does It Mean for Retail Beer and Wine Sellers?" *Real Property & Environmental Law Alert*, January 18, 2012 (By: Mark Conlan, Brett S. Theisen)
- "Small Business Issues, Impact of 2005 Amendments," *New Jersey Bar Association Bankruptcy Law Section's Eighth Annual Bankruptcy Bench-Bar Conference Publication*, January 1, 2006

- "What Is New In The Bankruptcy Abuse Prevention And Consumer Protection Act of 2005," *The Metropolitan Corporate Counsel*, December 2005 (By: Dale E. Barney, Mark Conlan)
- "Creditors Must React Quickly When Debtors Default on Post-Petition Obligations," *The Business Advisor*, April 11, 2003
- "Representing Debtors in Chapter 11 Cases," *New Jersey Bankruptcy Manual (2014 Ed.)*, April 11, 2003

EVENTS

- Speaker, Gibbons Academy, "We Are in the Middle of Litigation and a Party Just Filed for Bankruptcy, Now What Do We Do?" March 13, 2013 (Featuring: Mark Conlan, Natasha Songonuga)
- Lecturer, Bench-Bar Conference of the New Jersey State Bar Association Bankruptcy Law Section, "Small Business Issues"

LEGAL EMPLOYMENT BACKGROUND

Prior to joining Gibbons in 2001, Mr. Conlan served as Associate Counsel for The Grand Union Company, Inc., where he worked as a member of the core executive team in all aspects of Grand Union's liquidating Chapter 11 cases and, ultimately, the sale of the company.