



## TIMOTHY W. BRINK

Partner

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### CHICAGO

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Chicago, Illinois 60606

Tim focuses his practice on bankruptcy, restructuring, insolvency and creditors' rights matters. He regularly represents secured and unsecured creditors, investors, suppliers, customers, landlords, tenants, insurers and other parties in all aspects of chapter 11 reorganization and chapter 7 liquidation cases and in preference, fraudulent transfer and other litigation under the Bankruptcy Code.

Tim frequently advises clients in out-of-court loan workouts and distressed transactions. These have included sales under section 363 of the Bankruptcy Code, state law Assignment for the Benefit of Creditors proceedings and Companies' Creditors Arrangement Act cases in Canada, public and private sales and strict foreclosures under Article 9 of the Uniform Commercial Code, transaction structuring and enforcement of creditors' rights under Article 2 and Article 9 of the Uniform Commercial Code, and creditors' rights litigation, ranging from receivership, to replevin and judicial foreclosure, to commercial mortgage foreclosure litigation.

Tim also represents insurers, reinsurers, claims administrators and premium financing lenders in commercial policyholder bankruptcy cases and state court insolvency proceedings across the country.

Before joining MPS, Tim was a partner at a global Am Law 100 law firm. Before that, he was a partner and member of the executive committee of another Am Law 100 law firm. Tim began his practice in California.

### PRACTICE AREAS

Bankruptcy and Restructuring

### EDUCATION

J.D., University of Michigan Law School

M.B.A., Stephen M. Ross School of Business, University of Michigan

B.S.E., summa cum laude, General Motors Scholar, Mechanical Engineering, University of Michigan

### ADMISSIONS

Illinois

California

United States Court of Appeals for the Third and Ninth Circuits

Bankruptcy Appellate Panel for the Ninth Circuit

United States District Court for the Central and Eastern Districts of California

United States District Court for the District of Colorado

United States District Court for the Northern and Central Districts of Illinois

United States District Court for the Eastern and Western Districts of Michigan

United States District Court for the Western District of Washington

United States District Court for the Eastern and Western Districts of Wisconsin

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## EXPERIENCE

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An international healthcare REIT, as landlord to an operating behavioral healthcare facility, in opposing its tenant's attempt to assume and assign its lease to a new operator via a section 363 sale in a chapter 11 bankruptcy case in Miami, as a result of which the new operator agreed to improved lease terms and credit enhancements.

A real estate investment fund, as landlord to a national fast casual restaurant chain, in connection with its tenant's assumption and assignment of its lease to an experienced restaurant chain operator pursuant to a section 363 sale in the tenant's chapter 11 bankruptcy case in Delaware.

A global animal healthcare company in connection with the purchase of a major manufacturing and distribution center from the founder/owner of an energy drink business that was a debtor in a chapter 11 bankruptcy case in Miami that asserted a disputed leasehold interest.

A national industrial compressed air contractor in connection with the purchase of the assets of a regional industrial HVAC contractor via joint Canadian CCAA proceedings in Quebec and chapter 15 "cross-border" bankruptcy proceedings in Delaware.

A rural internet, voice and television service provider in connection with the sale of its cellular service business to a national cellular service provider, the buyer's subsequent chapter 11 bankruptcy case filed in order to reject above-market cell tower leases, and the "reorganized" buyer's investigation and threatened filing of a multi-million fraudulent transfer lawsuit against seller.

A specialized plastic injection molded products supplier in connection with a preference lawsuit filed by a liquidating trustee in the chapter 11 bankruptcy case of a national dairy company in the Southern District of Texas, which was successfully settled in exchange for payment of less than 5% of the trustee's \$750,000 demand.

A telecommunications services provider in the acquisition of a former business partner's controlling equity interest in a telecommunications technology company pursuant to a section 363 sale in the former business partner's chapter 7 bankruptcy case in the Eastern District of New York.

An electronics manufacturer in connection with the purchase of the assets of a printed circuit board and wire harness assembler in a combined sale by the assignee in target's Illinois assignment for the benefit of creditors proceeding and target's secured lender pursuant to a private UCC Article 9 foreclosure sale.

Numerous trade creditors in connection with the sales of their claims against customers that filed chapter 11 bankruptcy cases in 2020 as a result of COVID-19 lockdowns, including Hertz Corporation and LATAM Airlines.

A liability insurer in the chapter 11 bankruptcy case in the Southern District of Florida of a regional civil engineering construction contractor facing numerous personal injury and wrongful death claims arising out of pedestrian bridge collapse in Miami, Florida, which included the negotiation, documentation and confirmation of a plan establishing a trust for the benefit of tort claimants and a channeling injunction protecting insurers and other parties funding the trust.

A commercial insurer in the chapter 11 bankruptcy case in the Northern District of Texas of a regional waste and recycling collection services company, which included negotiating for and obtaining court approval of an agreement to maintain the debtor's insurance coverage in place through completion of a section 363 sale process in exchange for payment of all pre- and post-petition premium and establishment of an escrow for future deductible reimbursement obligations.

A commercial insurer in the chapter 11 bankruptcy case in the Eastern District of California of a national transportation and logistics services provider serving the US Postal Service, UPS and other major mail and package delivery services, which included the successful prosecution of a joint motion to authorize the debtor to assume all legacy insurance policies and collateral agreements, provide additional collateral to secure legacy obligations, and enter into new insurance policies and provide a new, multi-million dollar collateral package to secure go-forward obligations.

An excess liability insurer in the chapter 11 bankruptcy case in the Northern District of Alabama of a firearms manufacturer facing numerous personal injury and wrongful death claims.

A commercial bank, as secured lender to a McDonald's franchisee, in the successful resolution of a lien priority dispute with several other secured lenders, leading to bankruptcy court approval of a multi-lender settlement recognizing the bank's senior liens and payment in full of the bank's claim, including attorney's fees and expenses, in connection with the franchisee's chapter 11 bankruptcy and the sale of the franchisee's business under section 363 of the Bankruptcy Code.

A private equity investor, as stalking horse bidder, in connection with a section 363 sale in the chapter 11 bankruptcy of a custom plastic injection molding business, resulting in bankruptcy court approval — and payment to the client after being out-bid at the auction — of a break-up fee of nearly five percent of the amount of its stalking horse bid.

## TIMOTHY W. BRINK

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### MEMBERSHIPS

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American Bankruptcy Institute  
American Bar Association  
Turnaround Management Association

### PUBLICATIONS

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"Third Circuit Rejects Triangular Setoffs as Not Satisfying Mutuality Requirement of § 553 of the Bankruptcy Code," American Bankruptcy Institute Unsecured Creditors Committee Newsletter, October 2021.

"Delaware District Court Overturns Bankruptcy Court Decision Disallowing Unsecured Claim for Post-Petition Contractual Attorneys' Fees," ABA Business Law Section, Business Law Today, March 2019.

"Bankruptcy Relief Is Unavailable to a 'SARE' Debtor That Leases Space to a Marijuana-Related Business," American Bankruptcy Institute Real Estate Committee Newsletter, June 2017.

"Your Policyholder Just Filed Bankruptcy – What Next?" Daily Herald Business Ledger, September 29, 2016.

"Recent Bankruptcy Court Decision Further Constrains Lenders' Ability to Prevent a Borrower's Bankruptcy Filing," American Bar Association Business Bankruptcy Committee Newsletter, July 2016.

"The Right to Credit Bid in Bankruptcy Sales Faces Renewed Challenges After the Supreme Court's RadLAX Decision," American Bar Association Commercial Law Newsletter, Summer 2015.

"An Update on Payment of Unsecured Creditors' Professional Fees and Expenses in Chapter 11 Cases," American Bankruptcy Institute Unsecured Trade Creditors Committee Newsletter, July 2015.

"How Bankruptcy Attorneys can Operate Effectively in Unfamiliar Territory: A Primer on Insurance Insolvency," Co-Author, American Bankruptcy Institute Journal, December 2014.

"Emerging Trends and Lingering Criticisms: A CRO Retention Update," Co-Author, American Bankruptcy Institute Journal, September 2013.

"The U.S. Supreme Court Recognizes Secured Creditors' Credit Bidding Rights," Butterworths Journal of International Banking and Financial Law vol. 27, no. 8, September 2012.

### AWARDS

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Leading Lawyer, Business Bankruptcy, 2015-2016

General Motors Scholar, University of Michigan, College of Engineering