



# Scott Fleischer

He | Him | His

*Partner*

New York

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## Education

- Hofstra University, *Cum Laude*; *Hofstra Law Review*, Senior Associate Editor, JD
- Syracuse University, *Cum Laude*, BA

## Practices & Industries

- Commercial Litigation
- Hotels, Hospitality & Food Service
- Restructuring, Bankruptcy & Creditors' Rights

## Admitted to Practice

- New York
- New Jersey

## Court Admissions

- US Court of Appeals for the Second Circuit
- US District Court for the District of New Jersey
- US District Court for the Eastern District of New York
- US District Court for the Southern District of New York

## Biography

Landlords turn to Scott when their retail and restaurant tenants file for bankruptcy or default under their lease. Businesses of all sizes and types rely on Scott before and during a bankruptcy case to protect and enforce their rights, and they especially appreciate his practical, business-oriented advice that's easy to understand.

When representing several landlord clients in the same case, Scott offers economies of scale while also providing customized guidance based on individual preferences. Having worked on virtually every recent major retail bankruptcy case across the country, he knows the major players and efficiently works through complex tasks with common issues while focusing on achieving the client's specific goals.

Scott was drawn to bankruptcy law because of how well the practice fits with his style, as its unique blend of litigation and transactional work lends itself to negotiated results with an emphasis on efficiency. For example, Scott advised a client in connection with novel arguments a tenant made in their bankruptcy case, and instead of jumping into the fray, he recommended letting the process play out with other parties first. After the outcome Scott anticipated materialized, he was not only able to achieve a great result but also saved the client money by staying patient.

Prior to dedicating much of his practice to advising landlords in retail bankruptcies, Scott represented creditors' committees, Chapter 7 trustees, individual creditors, debtor affiliates, and other constituents in complex bankruptcy matters. His wide-ranging experience gives him the tools to handle all types of bankruptcy engagements along with non-bankruptcy commercial litigation, such as helping landlords pursue evictions and recoveries from their tenants.

## Selected Memberships & Affiliations

- ICSC (Innovating Commerce Serving Communities, f/k/a International Council of Shopping Centers), Member
  - Greater New York City Chapter, 2024 Marketplace Council Next Generation, Chair
  - Greater New York City Chapter, 2022–2023 Next Generation, Member
  - New Jersey/Pennsylvania/Delaware Chapter, 2019 Next Generation Planning Committee, Member

## Representative Experience

### Representative Cases

- Represented real estate owners and managers in the bankruptcy cases of their tenants nationwide, including Rite Aid, YouFit Health Clubs, Bed Bath & Beyond/buybuy BABY, Cineworld (Regal), JCPenney, Party City, David's Bridal, Forever 21, Sears/Kmart, Payless, Toys "R" Us, Ascena (Ann Taylor, Lane Bryant, Justice, Lou & Grey), Chuck E. Cheese, Tailored Brands (Jos. A Bank, K&G, Men's Wearhouse), A&P, J. Crew, Ruby Tuesday, Pier 1, Aèropostale, GNC, Hertz, Guitar Center, Francesca's, Tuesday Morning, Brooks Brothers, Claire's, Tops Friendly Markets, Gymboree, Christmas Tree Shops, Stein Mart, Ignite Restaurant Group (Joe's Crab Shack), Bon-Ton, Sports Authority, Modell's, Southeastern Grocers (BI-LO, Winn Dixie), rue21, Bertucci's True Religion, BCBG, PacSun, Independent Pet Partners, New York & Company, Destination Maternity, Charming Charlie, Vitamin World, Bertucci's, YouFit, Christopher & Banks, Bar Louie, L'Occitane, Shopko, Charlotte Russe, Quiksilver, hhgregg, Avenue, A'Gaci, Vestis Retail Group, Eastern Outfitters, Sarar, Joyce Leslie, Innovative Mattress Solutions, Bon Worth, Hancock Fabrics, Aligned Modern Health, Ellen+Grace, Emtee Cleaners, and Foot Solutions.

### Retail and Restaurant Bankruptcy

- Successfully pursued post-bankruptcy lease obligations from defaulting debtor-tenants.
- Advised 20 clients with over 200 combined leases regarding the disclosure statement, plan of reorganization, lease amendments, and cure negotiations in a retail-restructuring mega case.
- Handled cure negotiations resulting in over \$750,000 in payments, including attorneys' fees, from one debtor covering five leases.
- Achieved significant improvements to bidding procedures for the sale of debtors' assets following objections and/or negotiations.

- Successfully brought a motion for a debtor's immediate surrender of their leased premises.
- Negotiated a successful resolution while defending an adversary proceeding filed against a landlord to recoup an alleged tax overpayment.
- Submitted bids and attended auctions on behalf of landlords seeking lease terminations.
- Filed motions to lift the automatic stay to allow creditors' pursuit of debtors outside of bankruptcy court.
- Successfully defended objections to filed claims in the post-plan confirmation phase.
- Used pre-trial discovery to prevent and condition the assignment of clients' leases by prospective assignees on adequate assurance grounds.
- Obtained a sizable pre-trial settlement from a restaurant debtor in satisfaction of its obligation to cure defaults under the lease related to the condition of the premises.
- Procured the return of a liquor license owned by the landlord through a complex corporate structure.
- Served as New Jersey local counsel to creditors in multiple high-profile cases.

#### **Bankruptcy**

- Served as counsel to SaaS companies as Chapter 11 debtors, advising on the complex sale process and all day-to-day tasks.
- Acts as New Jersey counsel to a cryptocurrency holder in a mega case.
- Represented creditors' committees by challenging the proposed sale processes and DIP financing terms, analyzing the debtors' first-day motions, and commenting on the plan and disclosure statement.
- Serves as counsel to a general contractor in the Chapter 11 and subsequent Chapter 7 cases of a pharmaceutical company in Delaware.
- Represented debtor affiliates valued at over \$1 billion in the Chapter 11 cases of their parent companies, including the pursuit of an objection to the appointment of a Chapter 11 trustee through trial.
- Handled all day-to-day matters for Chapter 7 trustees, including facilitating the Section 363 sale process, pursuing avoidance actions, preparing Rule 9019 motions, attending hearings and Section 341 meetings, analyzing and objecting to proofs of claim, and recovering property of the estate.
- Represents petitioning creditors seeking involuntary petitions against real estate borrowers and guarantors.

- Represented several law firms as creditors in a US Bankruptcy Court for the Southern District of New York mega case.

### **Commercial Litigation**

- Obtained numerous orders for eviction and monetary damages for commercial landlords of shopping centers and office buildings.
- Advised the receiver of a 233,000 sq. ft. office building in Somerset County, New Jersey.

## **Prior Experience**

- Kelley Drye & Warren, LLP, Associate
- LaMonica Herbst & Maniscalco, LLP, Associate

## **Selected Honors**

- *Best Lawyers: Ones to Watch in America®*: Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law, 2023–2024
- Selected to *Super Lawyers* New York Metro Rising Stars: Bankruptcy: Business, 2022–2023

## **Selected Speaking Engagements**

- ICSC+U.S. Law Conference, "Bankruptcy Differences – 'Traditional' Chapter 11 vs. Subchapter V," Moderator
- ICSC+U.S. Law Conference, "Pandemic-Influenced Changes to the US Bankruptcy Code and Practice," Moderator
- ICSC+U.S. Law Conference, "To Collect or Not to Collect: That Is the Question (for Landlords When Their Tenants File for Bankruptcy)," Moderator
- Bankruptcy Court for the Eastern District of New York, "Nuts and Bolts of Bankruptcy Procedure"

## Selected Media

- *CRE Fast Five: Secret Sauce*, "Landlord Strategies for Retail Bankruptcies"
- *USLAW Magazine*, "Retail Tenant Troubles: Pre-Bankruptcy Planning"
- Law360, "Which Pandemic-Era Retail Bankruptcy Changes Will Stick?"
- *USLAW Magazine*, "Retail Bankruptcies Raise Collection Questions for Landlords"
- Law360, "Retail Bankruptcies Raise Collection Questions For Landlords"

## Selected Alerts & Blog Posts

- Feeling Rejected by the Cap? Lease Rejection Damages Explained
- Unsecured Creditors' Committees: What Are They and Should You Participate?

## Selected Press Releases

- Barclay Damon Announces 2024 Partner Elevations
- Barclay Damon Attorneys Selected to 2023 New York Metro Super Lawyers and Rising Stars Lists
- 154 Barclay Damon Attorneys Listed in 2024 Editions of *The Best Lawyers in America*® and the *Best Lawyers: Ones to Watch in America*®
- Barclay Damon Attorneys Selected to 2022 New York Metro Super Lawyers and Rising Stars Lists
- 130 Barclay Damon Attorneys Listed in 2023 Editions of *The Best Lawyers in America*® and the *Best Lawyers: Ones to Watch in America*™
- Attorney Scott Fleischer Joins Barclay Damon

## Selected Publications

- Bankruptcy Basics for Retail Landlords
  - Issue 21—"Post-Confirmation Process in Retail Tenant Chapter 11 Bankruptcies"
  - Issue 20—"Common Issues and Filings in Retail Tenant Bankruptcies"
  - Issue 19—"Plan and Disclosure Statement in Retail Tenant Bankruptcies"
  - Issue 18—"Filing Proofs of Claim in Retail Tenant Bankruptcies"

- Issue 17—"Relief From the Automatic Stay in Retail Bankruptcies"
- Issue 16—"Retail Landlords Strike Back!: Enforcing Rights Against Tenants in Chapter 11 Bankruptcy Cases"
- Issue 15—"Subchapter V Retail Bankruptcy Cases: Part 2"
- Issue 14—"Subchapter V Retail Bankruptcy Cases: Part 1"
- Issue 13—"Store-Closing Sales and Going-Out-of-Business (GOB) Sales"
- Issue 12—"Retail Real Property Leases: Lease Rejections"
- Issue 11—"Retail Real Property Leases: Lease Amendments"
- Issue 10—"Retail Real Property Leases – Assumptions/Assignments: Adequate Assurance"
- Issue 9—"Retail Real Property Leases: Cure of Defaults"
- Issue 8—"Real Property Leases: Debtor Obligations in Retail Bankruptcy Cases"
- Issue 7—"Lease Disposition Timing in Retail Bankruptcy Cases"
- Issue 6—"Lease Disposition Options in Retail Bankruptcy Cases"
- Issue 5—"Chapter 11 vs. Chapter 7 Retail Bankruptcy Cases"
- Issue 4—"Case Outcomes in Chapter 11 Retail Bankruptcies"
- Issue 3—"Major Players"
- Issue 2—"Impact of the Automatic Stay"
- Issue 1—"First Day Motions: Part 1"
- Issue 1—"First Day Motions: Part 2"

## Selected News

- Scott Fleischer Interviewed on *CRE Fast Five: Secret Sauce*
- Attorneys Published in Winter 2023 *USLAW Magazine*
- Attorneys Published in *USLAW Magazine*
- Law360: Retail Bankruptcies Raise Collection Questions for Landlords