



# Beth Ann Bivona

*Partner*

*Buffalo*

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## Education

- Michigan State University, *Cum Laude*, JD
- University at Buffalo, *Cum Laude*, BS

## Practices & Industries

- Commercial Litigation
- Restructuring, Bankruptcy & Creditors' Rights

## Admitted to Practice

- Connecticut
- Michigan
- New York

## Court Admissions

- US Bankruptcy Court for the Eastern District of Michigan
- US Bankruptcy Court for the Eastern District of New York
- US Bankruptcy Court for the Northern District of New York
- US Bankruptcy Court for the Southern District of New York
- US Bankruptcy Court for the Western District of Michigan
- US Bankruptcy Court for the Western District of New York
- US Court of Appeals for the Second Circuit
- US Court of Appeals for the Sixth Circuit

## Biography

With over 20 years of legal experience, Beth primarily concentrates her practice on commercial disputes and insolvency matters involving corporations and other professional clients. She handles complex commercial and federal litigation as well as debtor and creditor counseling and financial workouts, and represents individuals and businesses in reorganization and liquidation cases. Beth also litigates dischargeability-of-debt and denial-of-discharge actions as well as adversary proceedings, and serves as counsel to trustees and creditors' committees. She asserts and protects the rights of secured and unsecured creditors, and advises them on working with distressed vendors or suppliers.

Beth routinely handles first-day hearings and contested motions in bankruptcy court, and has successfully presented cases for confirmation. She prosecutes and defends Chapter 5 causes of action, including preference and fraudulent-transfer actions, and Rule 2004 examinations. She also has extensive experience negotiating cash-collateral motions and various workouts in and outside bankruptcy.

An experienced equestrian rider, Beth brings her passion to representing barn owners, horse owners, trainers, riders, lessors, and lessees in equine matters such as agreements to buy, sell, or lease horses or riding facilities, insurance coverage issues, boarding contracts, landlord and tenant matters, property damage or injuries, employment contracts, and professional-liability issues. She also addresses corporate questions involving partnerships, incorporations, show management, and the sport's various governing bodies.

- US District Court for the Eastern District of Michigan
- US District Court for the Eastern District of New York
- US District Court for the Northern District of New York
- US District Court for the Southern District of New York
- US District Court for the Western District of Michigan
- US District Court for the Western District of New York
- US Supreme Court

## Bar Associations

- Bar Association of Erie County, Commercial and Bankruptcy Committee
- Central New York Bankruptcy Bar Association
- New York State Bar Association
- Women's Bar Association of Western New York

## Selected Memberships & Affiliations

- Barclay Damon Women's Forum
- American Bankruptcy Institute
- Delta Sigma Pi, Golden Council Member
- Upstate New York Turnaround Management Association, Board of Directors Member

## Representative Experience

- Handles workouts, restructurings, and arrangements both outside of and before US Bankruptcy Courts, including cases, adversary proceedings, and contested matters.
- Served as lead attorney representing a Chapter 7 trustee in obtaining sanctions against a business debtor and denying his discharge.
- Served as counsel to creditors in a contested individual business Chapter 7 with accompanying business cases in Chapters 7 and 11. Denied the debtor's individual discharge and negotiated the subordination of the other creditors' claims.
- Served as co-counsel to a transport company (filed along with 5 affiliates) in the \$4.8 billion pre-negotiated Chapter 11 reorganization of the international conglomerate providing student transportation, inter-city and municipal busing, and ambulance and emergency department management services.
- Served as co-counsel to a larger hauling company (filed along with 13 of its 15 direct and indirect subsidiaries) where its constituents held claims of approximately \$2.5 billion.
- Served as counsel to an oil-and-gas exploration and production business that owned and controlled approximately 130,000 acres of land in Central and Western New York.
- Prosecutes and defends complex litigation concerning fraudulent conveyances and preferential transfers.
- Successfully defended creditors in large preferential transfers, including cases in excess of \$1 million.
- Represents debtors in large Chapter 11 Section 363 asset sales.

- Obtained confirmation of Chapter 11 debtors' plans of reorganization.
- Commenced involuntary petitions against individuals and corporations.
- Represents Eastern Niagara Hospital as debtor-in-possession in a Chapter 11 proceeding pending in the Western District of New York.
- Successfully defended a client in a preference claim brought in the Sears bankruptcy. Even though the matter presented challenges on the facts, still negotiated a settlement that only involved a 45-percent payment of the amount challenged.
- Successfully obtained the dismissal of a \$2.3 million preference lawsuit on behalf of a client, a leader in the national commercial toll management industry. Successfully asserted defenses of a preference action, as set out in the bankruptcy statute, 11 U.S.C. § 547, through the lens of the client's business.
- Represented clients in a Chapter 11 bankruptcy case, which was converted into a Chapter 7 bankruptcy. Each client had a pre-needs deposit for funeral-related services.

## Prior Experience

- Damon Morey LLP, Partner
- US Federal District Court, Judicial Internship Clerk

## Selected Community Activities

- Girl Scouts of Western New York, Troop Leader
- Upstate New York Turnaround Management Association, Board Member
- Bryant & Stratton College, Former Business Law Adjunct
- D'Youville College, Former Business Law Adjunct

## Selected Honors

- *Buffalo Business First*, Legal Elite of Western New York, 2013, 2016-2017 and 2019
- Girl Scouts of Western New York, Women of Distinction, 2016
- Selected to *Super Lawyers* Upstate New York: Bankruptcy, 2013-2015
- *Buffalo Business First*, 40 Under 40, 2007
- *The Daily Record*, Western New York's Up-and-Coming Attorney, 2007

## Selected Speaking Engagements

- New York State Bar Association, “Bankruptcy Preferences/Fraudulent Transfers”
- Lorman Education Services, Bankruptcy Lecturer
- Cornell Cooperative Extension, “Legal and Insurance Issues in the Equine Industry” and “Horse Farm Legal Concerns”
- Bar Association of Erie County, Western New York Bankruptcy Conference, Former Organizer and Speaker; Program Chair; Annual Written Case Law Update on Consumer Bankruptcy Issues, Preparer
- New York State Bar Association, Elder Law & Special Needs Section, Medicaid Committee Meeting, “Preneed Funeral Arrangements”

## Selected Media

- New York State Bar Association *Collections and the Enforcement of Money Judgments*, “Effects of the Bankruptcy Act”

## Selected Alerts & Blog Posts

- First-Day Orders: You Snooze, You Lose
- Disclose, Disclose, Disclose: Second Circuit Reinforces Necessity of Disclosure in Bankruptcy Cases
- The Small Business Reorganization Act and Subchapter V for Small Business Debtors