



## Russell C. Silberglied

### Director

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Russell Silberglied practices both bankruptcy litigation and core chapter 11 work. Examples of Russ' bankruptcy litigation matters include breach of fiduciary duty suits, equitable subordination and recharacterization litigation, first and second lien litigation, valuation fights, and contested plan confirmation and DIP financing hearings. In core bankruptcy matters, Russ represents debtors and creditors in chapter 11 and chapter 15 cases. He also advises troubled companies on non-bankruptcy solutions.

In addition, Russ regularly advises boards of directors of troubled companies concerning their fiduciary duties and corporate governance issues. He frequently lectures and publishes articles on this topic.

*Chambers USA* praised Russ as “a brilliant litigator” who is “very conscientious, hard-working, detail-oriented and really smart.” Peers say he is “one of these guys who knows everything—an encyclopedia for case law” (*Chambers USA*).

### Experience

- Represented WMC Mortgage, LLC, one of the largest subprime lenders, as debtor's counsel. As part of this representation, also represented the special committee of WMC's board of directors in investigating and settling possible claims against its parent.
- Represented Phoenix Payment Systems, Inc., a/k/a EPX, as debtors' counsel in the \$50 million sale of substantially all of its assets to EPX Acquisition Company, LLC, an affiliate of North American Bancard, LLC. The purchase price exceeded all expectations at the commencement of the marketing process and the transaction was named the 2014 *M&A Advisor* "Distressed M&A Deal of the Year (\$25mm to \$100mm)."
- Represented F-Squared Investment Management as debtor's counsel in a Section 363 sale.
- Represented Homer City Generation in its prepackaged chapter 11 case.

- Represented Velocitel, Inc. in complex, multi-party litigation in the Open Range Communications bankruptcy case resulting in a favorable settlement with the United States (among others).
- Represented Tennenbaum Capital Partners in its successful defense at trial of claims brought by a creditors committee for breach of fiduciary duty, recharacterization and equitable subordination in the Radnor Holdings bankruptcy case.
- Other recent debtor representations include The Weinstein Companies, Takata, and Frederick's of Hollywood.

### **Publications**

- "Questions Remain About When to Appeal an Order, Citing Debtor's Need for a Breathing Spell," *American Bankruptcy Institute Journal*, April 2020
- "Claims Trading of Notes of a Debtor Might Become More Difficult After Woodbridge," *DailyDAC*, November 1, 2019
- "Happy Jack's Opinion Adds to Split of Authority Over Who Holds Priority Between a DIP Lender's Superpriority Claim and Administrative Expenses Incurred in a Subsequently Converted Chapter 7 Case," *Norton Journal of Bankruptcy Law and Practice*, August 2019
- "Creditors' Committee Cannot Obtain Derivative Standing to Sue Fiduciaries of an LLC," *American Bankruptcy Institute Journal*, April 2018
- "Was *ATP Oil* Correctly Decided? Fifth Circuit Affirms Dismissal of Challenges to Dividends Declared on Eve of Bankruptcy," *American Bankruptcy Institute Journal*, February 2018
- "*AE Liquidation*: WARN Act Comfort for Debtors Attempting a 363 Sale, or Just the 'Vladimir Putin Exception'?", *The Bankruptcy Strategist*, October 2017
- "When Are Goods "Received by the Debtor" for a Section 503(b)(9) Claim?," *DailyDAC*, August 7, 2017
- "Can an Executive Exert Control of Corporate Attorney-Client Privilege?," *DailyDAC*, April 17, 2017
- "Delaware's Long-Form Dissolution Statute: An Underutilized Alternative," *MorrisAnderson*, September 1, 2015
- "Litigating Fiduciary Duty Claims in Bankruptcy Court and Beyond: Theory and Practical Considerations in an Evolving Environment," *Journal of Business & Technology Law*, March 27, 2015
- "Second Circuit and Delaware Bankruptcy Court Take Different Views of Whether a Foreign Debtor Must Have Assets in the United States to Be Eligible for Recognition under Chapter 15," *Commercial Insolvency Reporter*, April 2014

- "Is a Foreign Debtor with No Assets in the U.S. Eligible for Chapter 15 Relief?," *The Bankruptcy Strategist*, February 2014
- "In What State Is the Harm Felt When a Derivative Suit Is Pursued By Creditors?," *The Bankruptcy Strategist*, December 2013
- "TOUSA, USACafes, and the Fiduciary Duties of a Parent's Directors Upon a Subsidiary's Insolvency," *Norton Annual Survey of Bankruptcy Law*, November 2011
- ""Don't Say They Didn't WARN You": Bankruptcy Court's High Threshold for Corporate Affiliates' WARN Act Liability," *Delaware Business Court Insider*, June 1, 2011
- "LLC's Are Different: Creditors of Insolvent LLC's Do Not Have Standing to Sue for Breach of Fiduciary Duty, But Can a Creditors' Committee Be Granted Standing?," *Norton Journal of Bankruptcy Law and Practice*, April 2011
- "Don't Throw Away Your Deepening Insolvency Materials Just Yet...Damages Under *Thabault v. Chait*, and Harmonizing *Brown Schools* with *Radnor Holdings* and Post-*CitX* Case Law," *Norton Journal of Bankruptcy Law and Practice*, August 2009
- "Who Owns Privileged E-Mails in a §363 Sale Case? Is Ownership Waived When the Debtor's Computer Servers Are Sold?," *American Bankruptcy Institute Journal*, February 2009
- "Did the Delaware Supreme Court Break the 'Directors' Shield'?", *The Bankruptcy Strategist*, August 2007
- "Section 546(c) and Reclamation Rights after BAPCPA: A Response to Wilson and LeHane," *American Bankruptcy Institute Journal*, April 2007
- "LTV and Post-Petition Deepening Insolvency: The Next Big Wave?," *American Bankruptcy Institute Journal*, February 2006
- "From Production Resources to Peoples Department Stores: A Similar Response by Delaware & Canadian Courts on the Fiduciary Duties of Directors to Creditors of Insolvent Companies," *Annual Review of Insolvency Law*, co-author Pamela L.J. Huff, 2006
- "Subject Matter Jurisdiction Over Pre-Petition State Law Claims," *The Bankruptcy Strategist*, January 2006

#### **Awards**

- *Chambers USA*, since 2009
- *The Best Lawyers in America*, since 2013
- *Super Lawyers*, since 2014
- *Who's Who Legal*, since 2016
- "Outstanding Young Restructuring Lawyer – 2005," *Turnaround and Workouts*

### **Leadership**

- Jewish Federation of Delaware, Vice President and Member of Board of Directors
- Jewish National Fund/Delaware Chapter, Board of Directors and Lawyers for Israel Co-Chair
- Lex Mundi, Bankruptcy, Insolvency and Restructuring Group, Former Chair

### **Education**

- J.D., University of Pennsylvania Law School, 1995
- B.S., with honors, Cornell University, 1992

### **Admitted to Practice**

- United States Court of Appeals, Third Circuit, 2002
- United States District Court, District of Delaware, 1996
- Delaware, 1996
- Pennsylvania, 1996

### **Pro Bono Activities**

Russ serves as the chair of Richards, Layton & Finger's Pro Bono and Community Service Committee. His pro bono and community services activities include:

- The Mariano Rivera Public Foundation, Board of Directors and Counsel
  - [View video about the Foundation's efforts](#)
- Jewish Federation of Delaware, Vice President
- Jewish National Fund/Delaware Chapter, Board of Directors
- Brandywine Youth Club – Baseball, former Commissioner (i.e., President) of an approximately 700-player Babe Ruth/Cal Ripken youth baseball league

### **Practices**

- Bankruptcy & Corporate Restructuring