



Daniel R. Swetnam

Senior Counsel

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Dan Swetnam is a senior counsel at Ice Miller and focuses his practice on business restructuring and creditors' rights. He represents both debtors and creditors in bankruptcy and workout matters and has litigated plan confirmation issues, contract disputes, valuation issues, lease disputes, preference claims, motions for relief from stay and numerous other bankruptcy issues. He currently represents a public pension plan in connection with a participating employer's bankruptcy proceedings. He was selected as the *Best Lawyers®* Lawyer of the Year in Bankruptcy/Insolvency and Reorganization Law in Columbus, Ohio in 2020 and *Best Lawyers®* Lawyer of the Year in Bankruptcy Litigation in Columbus, Ohio in 2017. He is a member of the American Bankruptcy Institute and has been honored by inclusion in the Bankruptcy Law section of *The Best Lawyers in America®* for over 20 years and Chambers USA List of Leading Lawyers since 2010.

In November 2021, Ice Miller's bankruptcy and creditor/debtor rights, insolvency and reorganization practice was recognized by *U.S. News & World Report* and *Best Lawyers®* as both National Tier 1 and Metropolitan Tier 1 (Columbus, Ohio)

Dan's tried cases outside of bankruptcy include successfully defending changes to public pension retiree health benefits, shareholder disputes, state and federal court receivership matters, trust disputes, contract disputes and other business related matters.

Education

- The Ohio State University (B.A., 1979)
- University of Cincinnati College of Law (J.D., 1982)

Admissions

- United States District Court - Eastern District of Michigan
- United States District Court - Nebraska
- United States District Court - Western District of New York
- Ohio
- United States District Court - Northern District of Ohio

Services & Industries

- Bankruptcy & Restructuring
- Bankruptcy Litigation
- Corporate Reorganization & Workouts
- Creditors' Rights & Commercial Law
- Distressed Real Estate Litigation & Restructuring
- Financial Services Litigation & Counseling
- Lenders & Investors
- Litigation
- Receiverships & Fiduciaries

- United States District Court - Southern District of Ohio
- Supreme Court of the United States
- United States Court of Appeals - Sixth Circuit

Professional Affiliations

- Member, Ohio State Bar Association
- Member, Columbus Bar Association
- Member, American Bankruptcy Institute

Awards & Honors

- *Best Lawyers*® “Lawyer of the Year” in Bankruptcy and Creditor-Debtor Rights / Insolvency and Reorganization Law in Columbus, 2020
- *Best Lawyers*® “Lawyer of the Year” in Bankruptcy Litigation in Columbus, 2017
- *The Best Lawyers in America*®, Bankruptcy and Creditor-Debtor Rights Law and Bankruptcy Litigation, 2001-2026
- *Chambers USA* America's Leading Lawyers for Business - Bankruptcy/Restructuring, 2010-2026
- *Columbus CEO's Top Lawyers List*, Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law, 2023-2025
- *Ohio Super Lawyers*, 2004-2008, 2013-2015, 2017-2019
- *Super Lawyers, Corporate Counsel Edition*®, 2009, 2010
- *Who's Who in American Law*, 1993-present
- AV-Preeminent, Martindale-Hubbell, Peer Review Ratings

Community Involvement

- Grace Polaris Church, Deacon, 1993-2021; Audit Committee, 2016-present; Chair, 2018-present; Finance Committee, 2005-2011; and Counsel since the late 1980's
- Counsel to Worthington Christian Schools, Inc.
- Member, Judicial Liaison Committee, Bankruptcy Court, Southern District of Ohio, 2014-2016

Key Matters

Reported and Representative Cases

- Counsel to public retirement system in connection with Chapter 11 proceedings of participating nonprofit employer. Following a lengthy trial, the bankruptcy court held that the debtor is not a governmental unit (as defined in the Bankruptcy Code) and that the relationship between the debtor and the retirement system is an executory contract which the debtor could reject. The bankruptcy court's decision is reported at *Kentucky Employees Retirement System v. Seven Counties Services, Inc. (In re: Seven Counties Services, Inc.)*, 511 B.R. 431 (Bankr. W.D. Ky. 2014). The district court affirmed at *Kentucky Employees Retirement System v. Seven Counties Services, Inc.*, 550 B.R. 741 (W.D. Ky. 2016). On August 24, 2018, the Sixth Circuit affirmed (2-1) the conclusion that the debtor is eligible to be a chapter 11 debtor. *See* 901 F.3d 718 (2018). The Sixth Circuit also certified the question of whether the debtor's participation is contractual in nature to the Kentucky Supreme Court. On August 29, 2019, the Kentucky Supreme Court held that the debtor's participation is purely statutory in nature. The Kentucky Supreme Court's decision is reported as *Kentucky Employees Retirement System v. Seven Counties Services, Inc.*, 580 S.W.3d 530 (2019). On July 20, 2020, the Sixth Circuit ruled on the remaining issues on appeal. The Sixth Circuit held that Seven Counties was obligated to pay the statutory contribution obligations to KERS during the pendency of the bankruptcy. The Sixth Circuit also rejected all of Seven Counties additional arguments by which

it sought to cease participation in KERS. The Sixth Circuit remanded the case to the bankruptcy court to calculate the amount owed by Seven Counties during the period April 6, 2013 to February 5, 2015. The July 20, 2020 decision is reported as *Kentucky Employees Retirement System v. Seven Counties Services, Inc.*, 823 F. App'x 300 (6th Cir. 2020).

- Successfully represented public retirement system in connection with claims asserted by retirees with respect to health care benefits. Six day trial to the Court concluded on August 30, 2019. On October 21, 2019, the Court issued a Decision in favor of the public retirement system.
- Successfully represented lender in dispute with borrower and tenant of borrower, including issue related to tenant's claimed continued right to occupancy. Following a four day bench trial in July 2018, the court issued a decision in favor of the lender on all issues.
- Lead counsel to mezzanine lender in connection with the bankruptcy proceedings of a former franchisee of a chain of 30 fast casual restaurants. Litigated issues include claims of former franchisor related to post-termination rights, rights of mezzanine lender in leasehold interests and attempted sale of assets to mezzanine lender. Decision on these issues is reported at *In re Flour City Bagels, LLC*, 557 B.R. 53 (Bankr. W.D.N.Y., Sep. 2, 2016). Case was ultimately resolved by a Joint Plan.
- Represented over 20 separate public pension funds and public entities in fraudulent conveyance actions seeking to recover payments to selling shareholders arising out of the bankruptcy proceedings of Lyondell Chemical Co. and The Tribune Company. Successfully obtained dismissal of state law claims asserted in the Lyondell case against 15 of the funds on the basis of sovereign immunity. Remaining claims were subsequently dismissed, with prejudice.
- Represented supplier of merchandise in Stein Mart, Lord & Taylor and Ann Taylor bankruptcy cases.
- Represented trademark licensee in Sequential Brands bankruptcy case.
- Represented landlord in Sears and ApplianceSmart bankruptcy cases.
- Represented trade vendor in the "Toys R Us" bankruptcy case.
- Successfully represented successor trustee of revocable trust on issues related to trust interpretation and effort to remove successor trustee. *In re Guardianship of Mull*, 2015-Ohio-5440 (Seventh District, Dec. 17, 2015).
- Lead counsel to district energy system, Akron Thermal, Limited Partnership. Successfully represented Debtor in motion to assume lease and plan of reorganization. Both matters were vigorously contested, with lengthy hearings including multiple experts. Following substantial consummation of plan, filed a second Chapter 11 proceeding and have addressed many issues in connection with the interplay between the two cases. Reported decisions in the case are at:
 - *In re Akron Thermal, Limited Partnership*, 2009 WL 1707907 (N.D. Ohio, June 17, 2009)
 - *In re Akron Thermal, Limited Partnership*, 414 B.R. 193 (N.D. Ohio, February 19, 2009)
 - *In re Akron Thermal, Limited Partnership*, 2008 WL 1886171, 2008 Bankr. LEXIS 1358 (Bankr. N.D. Ohio, April 25, 2008)

Other Representative Cases

- Represented seller of marina located in Grand Haven, Michigan.
- Successfully represented lender in single asset limited partnership bankruptcy proceeding. Representation included successful challenge to confirmation in a three day confirmation hearing focusing upon feasibility of the debtor's proposed plan of reorganization. Confirmation was denied, relief from stay was granted and the lender was able to proceed with its state court foreclosure proceedings.
- Lead counsel in successful Chapter 11 reorganization of retail store chain with aggregate annual sales in excess of \$10,000,000. Issues in the case included analysis of business operations, treatment of leases and executory contracts, and presentation and confirmation of a plan of reorganization.
- Lead counsel in successful out of court workout of agricultural business with secured debt in excess of \$50,000,000. Project included negotiation and sale of business; negotiation of agreement with United States Environmental Protection Agency, Department of Justice and other government agencies; and negotiation and resolution with other creditor constituencies.

- Lead counsel for lender in connection with defalcation of funds by a title agent. Successfully resolved numerous issues, including interpretation of a closing protection letter. Also litigated claims against separate bank under the Uniform Fiduciaries Act. *Nations Title Insurance Co. of New York, Inc. v. William H. Bertram, Jr.*, 140 Ohio App.3d 157 (2000), appeal dismissed, 91 Ohio St. 3d 1246 (2001)
- Successfully represented TennOhio Transportation Co., in prosecution of preference claim and served as lead counsel in five day trial. Case focused on valuation of collateral (140 vehicle fleet of trucks) and the ordinary course of business defense. *In re TennOhio Transportation Co.*, 269 B.R. 775 (Bankr. S.D. Ohio 2001) and *TennOhio Transportation Co. v. Navistar Financial Corp. (In re TennOhio Transportation Co.)*, 269 B.R. 769 (Bankr. S.D. Ohio 2001)
- Lead counsel to publicly traded national bank in shareholder derivative action and related lawsuits. Negotiated comprehensive resolution of the derivative claims and claims upon both a directors and officers' policy and fidelity bond.
- Co-counsel in prosecution of action to recover for the benefit of unsecured creditors alleged fraudulent transfer of assets in pre-bankruptcy acquisition of a competitor.
- Successfully represented manufacturer in toxic tort action. Plaintiffs had claimed exposure to various airborne emissions, and claimed to suffer from "multiple chemical sensitivities." Served as lead counsel in Daubert hearing leading to exclusion of evidence relating to "multiple chemical sensitivities."

Published In

- Co-Author, "What a Public Retirement System Should Consider if a Municipality Seeks Chapter 9 Bankruptcy Relief," *October 2012 Benefits Magazine (WEB exclusive)*
- Co-Author, "Factors for a Public Retirement System to Consider if a Municipality Seeks Relief under Chapter 9 of the Bankruptcy Code," *National Conference on Public Employee Retirement Systems, PERSist*, Summer 2012
- Co-Author, "Lien on me: Recent decisions affecting the appointment and authority of receivers," *Ohio Lawyer*, May 2011

Thought Leadership

February 2, 2021

UPDATED: Bankruptcy Implications of New COVID-19 Legislation

December 2, 2020

Fiduciary Duties of Directors of Insolvent Nonprofit Corporations

June 23, 2020

Landlords Beware: Pandemic Alters Post-Petition Rent in Bankruptcy

June 11, 2020

Commercial Landlords' Guide to Navigating a Tenant in Bankruptcy

March 26, 2020

COVID-19 and Small Business Reorganization

Speaking Engagements

- "Directors and Officers Part II: Insurance Issues" Ice Miller Webinar, May 18, 2016

- "Key Legal Challenges Facing Churches Today," Christian Legal Society, 2010, 2011 and 2016
- Bankruptcy Law Institute, Columbus Bar Association, 2009