



Emil A. Kleinhaus

Partner, Restructuring and Finance

P: 212.403.1332

F: 212.403.2332

EAKleinhaus@WLRK.com

Emil A. Kleinhaus is a partner at Wachtell, Lipton, Rosen & Katz. He represents clients in litigation at the trial and appellate levels, with a focus on issues relating to bankruptcy, insolvency and creditors' rights. His areas of expertise include chapter 11 reorganizations, fraudulent transfer and fiduciary claims, and disputes under credit agreements and indentures. He also has extensive experience with cross-border insolvency proceedings.

Emil has been involved in numerous significant matters. He represented JPMorgan Chase in the successful defense of multi-billion dollar actions brought by the trustee for Bernard Madoff's brokerage firm and by the Lehman Brothers bankruptcy estate. He was lead trial and appellate counsel for Education Management in litigation relating to its \$1.5 billion restructuring. On behalf of Education Management, he argued and won a [precedent-setting appeal in the *Marblegate* case](#) from a judgment under the Trust Indenture Act. Emil was also lead trial counsel for secured lenders to Toys "R" Us in various contested matters, and he was lead trial counsel for TPG, KKR and Goldman Sachs in connection with the contested chapter 11 plan of Energy Future Holdings. He was lead counsel for Codere and Hibu in their successful chapter 15 proceedings in the U.S. bankruptcy court. He has also represented creditors, companies and directors in various other chapter 11 cases, civil lawsuits and out-of-court transactions.

Emil is the author of more than a dozen publications, including "[Prepayment Clauses in Bankruptcy](#)," 15

Am. Bankr. Inst. L. Rev. 537 (2007), "[Debt Repayments as Fraudulent Transfers](#)," 88 Am Bankr. L. J. 307 (2014), and "[The Enforceability of Ipso Facto Clauses in Financing Agreements](#)," 23 Norton J. Bankr. L. & Prac. 193 (2014). He is a contributing author to Collier on Bankruptcy. He is co-chair of the Bankruptcy Litigation Committee of the Federal Bar Council and was chair of the New York City Bar Association's Subcommittee on Fraudulent Conveyance Law.

Emil has been identified as a "star" by *Benchmark Litigation* and as a "Rising Star" in the Bankruptcy category by *Law360*. In 2018, Emil received the James H. Fogelson Emerging Leadership Award from the Lawyers Division of the UJA Federation of New York. He is also a member of the UJA Lawyers Division's Executive Committee.

Emil received a B.A., *summa cum laude* and Phi Beta Kappa, from Yale College, and a J.D. from Yale Law School, where he was an Articles Editor of the *Yale Law Journal*. Following law school, he served as a law clerk for Chief Judge Michael B. Mukasey of the United States District Court for the Southern District of New York and for Judge José A. Cabranes of the United States Court of Appeals for the Second Circuit.

Clerkships

Honorable José A. Cabranes, United States Court of Appeals, Second Circuit, 2003 – 2004

Honorable Michael Mukasey, United States District Court, Southern District of New York, 2002 – 2003

Recent Publications

[Prepayment Clauses In Bankruptcy](#), in 15 Am. Bankr. Inst. L. Rev. 537 (2007).

[Debt Repayments as Fraudulent Transfers](#), in American Bankruptcy Law Journal, Volume 88 Issue 3 (2014).

[The Enforceability of Ipso Facto Clauses in Financing Agreements: American Airlines and Beyond](#), in Norton Journal of Bankruptcy Law and Practice Vol. 23, No. 2 (2014).

[Corporate Bankruptcy and Restructuring: 2018-2019](#), in Harvard Law School Forum on Corporate

Governance and Financial Regulation, February 17, 2019.

[Default Activism in the Debt Markets](#), in Columbia Law School's Blog on Corporations and the Capital Markets, November 26, 2018.

[The Rise of the Net-Short Debt Activist](#), in CFO, August 6, 2018.

[Restructuring and Finance Developments - Federal District Court Reinstates Fraudulent Transfer Challenge to Lyondell LBO](#), in Bank and Corporate Governance Law Reporter, Volume 57 Number 6, February 2017.

[Corporate Bankruptcy and Restructuring 2016/2017](#), in Columbia Law School's Blog on Corporations and the Financial Markets, January 20, 2017.

['Codere': A New Model For Cross-Border Restructurings](#), in *New York Law Journal*, January 15, 2016.

[U.S. Court of Appeals Reaffirms High Standard for Failure-of-Oversight Claims against Directors](#), in Harvard Law School Forum on Corporate Governance and Financial Regulation, dated January 15, 2016.

[Let's Rethink Moore v. Bay](#), in ABI Journal, Volume 34 No. 9, September 2015.

[Supreme Court Permits Bankruptcy Courts to Issue Final Judgments with Parties' Consent](#), in Harvard Law School Bankruptcy Roundtable, June 9, 2015.

[Delaware Court of Chancery Revisits Creditor Derivative Standing](#), in Harvard Law School Forum on Corporate Governance and Financial Regulation, May 13, 2015.

[Update on Directors' and Officers' Insurance in Bankruptcy](#), in The Harvard Law School Forum on Corporate Governance and Financial Regulation, September 24, 2014.

[Federal District Court Holds That U.S. Bankruptcy Code Does Not Permit Recovery of Extraterritorial Transfers](#), in The Harvard Law School Forum on Corporate Governance and Financial Regulation, July 15, 2014.

[Recognition of Offshore Insolvency Proceedings: 'Fairfield Sentry'](#), in *New York Law Journal*, May 7, 2013.

[Mandatory Withdrawal of the Bankruptcy Reference in Brokerage Liquidations: Madoff and MF Global](#), in Pratt's Journal of Bankruptcy Law