



→ Aaron J. Malo

Partner

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Aaron J. Malo is a partner working in the Finance and Bankruptcy Practice Group of the firm's Orange County office. He also serves as co-leader of the firm's Bankruptcy Litigation Team and a member of the firm's Compensation Committee.

Areas of Practice

Aaron's practice focuses on bankruptcy and litigation issues. He primarily represents creditors, including lending institutions, equity groups, financial services corporations, equipment lessors, landlords, and real estate developers. Aaron has extensive experience in all aspects of bankruptcy and workout proceedings, and has served as lead trial counsel for significant jury and bench trials in both state and federal courts. Additionally, Aaron has developed a specialized practice counseling clients on all aspects of high stakes landlord/tenant issues, taking many such matters to trial. He frequently writes, teaches and lectures on bankruptcy, litigation and creditors' rights issues. Previously, Aaron taught bankruptcy law at the Orange County campus of Golden Gate University's Graduate School of Taxation.

Aaron has a strong commitment to community service and the provision of pro bono legal services. He has served on the Public Law Center's board of directors since 2006, served on that organization's executive board since 2013, and served as president of the PLC's board of directors in 2017. Aaron leads the Orange County office's pro bono efforts, in which capacity he helped pioneer a new collaboration between Sheppard Mullin, the Public Law Center and Children's Hospital of Orange County that serves the families of ill children seeking treatment at CHOC. Aaron has handled significant pro bono cases protecting the interests of veterans, immigrants, and exploited persons.

Aaron is among the leaders of the Southern California bar. In 2021 he received the Anti-Defamation League's Marcus Kaufman Jurisprudence Award, a recognition presented annually to attorneys who make outstanding contributions to the legal profession and to the community. In 2019, Aaron received the Peter M. Elliott Award, an award given annually to a lawyer who demonstrates substantial knowledge of bankruptcy law, possesses the high level of honesty, integrity and ethics, and who serves to improve access to justice. In addition, Aaron served a four year term as a lawyer representative to the Ninth Circuit Judicial Conference (2010-2014). In that capacity, Aaron attended the Central District of California Judicial Conference and Ninth Circuit Chief Bankruptcy Judges conferences each year. He was invited to speak about modern bankruptcy case solicitation practices as the Ninth Circuit Chief Bankruptcy Judges Conference in San Diego in 2012. In addition, Aaron has served on the Orange County Bankruptcy Forum's board of directors since 2007, was among the founding members of the Central District of California Bankruptcy Bar Advisory Committee (founded in 2009), joined the board of directors of the Orange County chapter of the Federal Bar Association in 2019, and was recently

reappointed to serve a second term on the Central District of California Attorney Admissions Fund Board.

Honors

Lawyer of the Year, *Best Lawyers*, 2023

Marcus Kaufman Jurisprudence Award (presented by the Anti-Defamation League) 2021

Peter M. Elliott Award (presented by the Orange County Bankruptcy Forum) 2019

Best Lawyers in America, Litigation, *Best Lawyers*, 2018-2023

Southern California Super Lawyer, Bankruptcy, 2008-2023

Rising Star, *Super Lawyers Magazine*, 2005, 2006

Experience

Bankruptcy and Bankruptcy-related Litigation:

In re Bobka. Represented a large automobile finance company that was sued by a vehicle lessor who filed a Chapter 7 bankruptcy case, assumed her lease with the finance company, declined to reaffirm the debt associated with the assumed lease. The consumer then sued the financing company for attempting to collect on debt she claimed to have discharged through her bankruptcy case. Successfully defeated all claims at all levels of the litigation process, culminating in a published decision from the Ninth Circuit Court of Appeal – the first Circuit Court level decision addressing the interaction between Sections 365 and 524 of the Bankruptcy Code. (Bankruptcy Court for the Southern District of California, District Court for the Southern District of California, Ninth Circuit Court of Appeal.)

In re Berkeley Delaware Court. Represented senior secured lender in connection with second Chapter 11 filing by a Northern California real estate project developer. Had the case deemed a single asset real estate case, over objection of the debtor. Obtained relief from stay to foreclose. Had the case converted to Chapter 7. Settled litigation with the Chapter 7 Trustee over the objection of the debtor. Successfully defeated petition for writ enjoining the settlement which was affirmed in a published decision from the Ninth Circuit Court of Appeal. (Bankruptcy Court for the Southern District of California, District Court for the Southern District of California, Ninth Circuit Court of Appeal.)

In re MMFX Technologies Corporation. Represented the debtor in its Chapter 11 bankruptcy case. Negotiated forbearance agreement with secured creditor. Ran and completed sale of substantially all the debtor's assets. Confirmed Chapter 11 plan.

In re Akhtarzad. Represented Chapter 11 Trustee in a contentious multi-year bankruptcy case involving a purported Ponzi scheme. Negotiated settlement with one of two primary claim holders. Negotiated terms for and ultimately confirmed a consensual Chapter 11 plan. (United States Bankruptcy Court for the Central District of California.)

In re American Suzuki Motor Corporation. Represented insurance company owned by a major financial institution that provided extended warranty coverage to consumers who purchased Suzuki passenger vehicles. Negotiated settlement with the debtor that provided for a termination of go-forward sale of extended warranty coverage for sales of Suzuki vehicles and collared the risk/liability on existing extended warranty coverage. (United States Bankruptcy Court for the Central District of California.)

In re Strouds Acquisition Corporation. Represented subordinated debt holders and senior equity holder (and individual and a charitable foundation) in contentious bankruptcy case where the Official Committee of Unsecured Creditors sued for breach of fiduciary duty and a host of other theories. Settled the dispute pursuant to a comprehensive settlement agreement approved by the bankruptcy court that bound all stakeholders. (United States Bankruptcy Court for the Central District of California.)

In re Nathan Linder & Leo Wills. Represented lending institution that provided multi-million dollar line of credit to assist Innovative Display Works, Inc. (a leading manufacturer of market display refrigeration units). The principals of IDW (Linder and Wills) filed personal Chapter 11 cases and threatened to put the company into bankruptcy, as well. Through a negotiated settlement, the lender restructured the debt, obtained a complete release, and ultimately collected all of the sums owing under the loan facility, including its legal fees. (United States Bankruptcy Court for the Central District of California.)

In re Quality Home Loans. Represented boutique investment bank serving the home mortgage industry who was owed millions of dollars by the debtor. Negotiated a resolution between the debtor and all of its warehouse lenders pursuant to which a securitization transaction was completed while the borrower remained in bankruptcy. The transaction was backstopped by a private equity company and essentially retired the debts owed to our client at par.

Complex Civil and Class Action Litigation:

Engel & Engel Litigation. Represented equipment finance division of a large national bank after its prior counsel allegedly committed it to making significant payments to a forensic accounting firm. Avoided a jury trial by litigating the lender's judicial estoppel defense prior to proceeding with the fraud claims asserted by the forensic accounting firm, and prevailed with a defense verdict after a three day bench trial. (Los Angeles County Superior Court.)

Montana v. Corzine. Represented noted interior designer Nancy Corzine in a series of litigation matters commenced by her adult daughter who sought title to a multi-million dollar condominium and an ownership in Ms. Corzine's international design business. There were three different Los Angeles County Superior Court actions, and many writs and appeals. All actions resolved at the trial court (including a jury trial) were resolved in favor of Ms. Corzine, and ultimately the cases were settled for nuisance value on terms that were highly advantageous to the client. (Los Angeles County Superior Court; California Court of Appeal Second District.)

Renaissance Litigation. Represented equipment finance division of a large national bank after its prior counsel failed to foreclose on personal property collateral in a commercially reasonable manner, confronted the prospect of waiving any right to collect from guarantors, and faced the prospect of terminating sanctions, as well as a finding that its senior management had perjured themselves. After taking over the litigation, the sanctions were reversed, and the case was settled on favorable terms that paid the clients millions of dollars over time. (Orange County Superior Court; California Court of Appeal Fourth District.)

Brogdon v. Structured Investments, LLC. Class action brought by pensioners against the company, alleging that Structured Investments violated California's Unfair Competition Law, California's usury law, California's Consumer Legal Remedies Act, U.S.C. § 1601, et seq. (Federal Truth in Lending Act), 16 C.F.R. § 444.2(a)(3) (Credit Practices requirements of the Federal Trade Commission), and 37 U.S.C. § 701(c) and 38 U.S.C. § 5301(a)(3)(C) (prohibitions of assignments of certain military benefits) in connection with the company's Annuity Utilization Agreements. Settled the case over objection from counsel representing a competing class of claimants (see below), and negotiated a modification of Structured Investments' agreement with consumers. (Orange County Superior Court, Complex Panel.)

Henry v. Structured Investments, LLC. Class action brought by the National Consumer Law Center and a boutique class action firm in Northern California. After several years of litigation, emasculated the class by stipulating to class certification in a competing class action. (Orange County Superior Court, Complex Panel.)

The Mortgage Store v. LendingTree Loans. Class action in which the plaintiffs (lenders who subscribed to LendingTree's lead generator program) sued LendingTree based upon that company's decision to route certain leads to its own lending company, Home Loan Center, Inc. Plaintiffs made a \$250,000,000 settlement demand. Successfully challenged the adequacy of several proposed class representatives and ultimately defeated the case through summary judgment. Successfully defended the trial court's dismissal of the case in the California Court of Appeal. (Orange County Superior Court, Complex Panel; California Court of Appeal, Fourth District.)

Gaines v. Home Loan Center. Class action in which the plaintiffs (consumers who utilized Home Loan Center's "TrueCost" fixed fee home financing product) claimed that they were misled regarding the funds collected by Home Loan Center. Challenged class certification and ultimately defeated the case through summary judgment. (District Court for the Central District of California.)

Emil Shokohi Litigation. Represented lender who took title to a real estate project in Berkeley, California, only to end up in litigation with a low income inhabitant of that project represented by the East Bay Community Law Center. Defended the lender in a series of lawsuits filed in Alameda County Superior Court, successfully opposing the imposition of an injunction that would have precluded the lender from charging market rents for the project. Negotiated the purchase of a claim under 11 U.S.C. § 549 from the Chapter 7 Trustee in the bankruptcy case filed by the project developer, and used that assignment to have critical issues transferred to the United States Bankruptcy Court for the Northern District of California for adjudication. Prevailed on the Section 549 claim in connection with a summary judgment motion. Case now on appeal. (Alameda County Superior Court, Bankruptcy Court for the Northern District of California, Ninth Circuit Court of Appeal.)

Sears Holdings Corporation/MJW Development Litigation. In connection with the sale of its regional distribution center in the Boyle Heights neighborhood of Los Angeles, Sears obtained a below market long-term lease for property out of which it operated a retail store and automotive center. We represented Sears in a dispute with the landlord under that lease when the landlord sought to terminate Sears' go-forward lease rights. After lengthy and contentious state court and arbitration proceedings, dispute was settled pursuant to confidential terms, including a significant payment to Sears.

Santa Barbara Ranch Litigation. Represented lending institution who took title to an 1,100 acre oceanfront property north of Santa Barbara, and sought to sell the same. The lender was sued by its former borrower, who previously owned the property in a high profile lawsuit in which the lender and one of its senior executives was accused of serious misconduct. Negotiated a resolution of the dispute whereby the former borrower received an option to repurchase the property at a strike price sufficient to make the lender whole on the obligations owed to it, while at the same time allowing the lender to maintain development right for the property.

Emerald Bay Investment Trust III Litigation. Represented corporate trustee in connection with dispute over the trustee's authority to sell the trust's most significant asset – a one of a kind beachfront property in Emerald Bay. Three lawsuits ensued, including a lawsuit filed by the contemplated purchaser seeking to compel closure of the sale, a lawsuit filed by the trust's beneficiary for breach fiduciary duty, and a lawsuit by the real estate broker who felt he had earned a commission on the proposed sale. Negotiated a global settlement of the dispute with all stakeholders pursuant to which the property was sold and the trustee received all fees to which it was entitled, including reimbursement of substantially all of its legal fees.

Corporate Governance Litigation – Shareholders/Stakeholders/Members:

Advanced Machine & Stretchform International, Inc. Represented senior equity holder and subordinated debt holder (mezzanine debt lender) in dispute with other/subordinated equity holders, board of directors, and senior debt holders that included a shareholder derivative suit. Sold assets of the company over objection from competing secured creditors. Threatened suit against D&O insurer to fund settlement with competing stakeholders. Obtained court approval of global settlement over objections from former board members and corporate officers/directors. (Los Angeles County Superior Court. Hennepin County District Court (Minnesota).)

Strouds Acquisition Corporation. Represented subordinated debt holders and senior equity holder (and individual and a charitable foundation) in contentious litigation that resulted in the company filing for bankruptcy. Settled the dispute pursuant to a comprehensive settlement agreement approved by the bankruptcy court that bound all stakeholders. Also represented the senior equity holders in related lawsuit brought by Strouds unsecured and secured creditors in the aftermath of the bankruptcy case. Obtained dismissal of that lawsuit. (Los Angeles County Superior Court. Orange County Superior Court. United States Bankruptcy Court for the Central District of California.)

Structured Investments, LLC. Represented privately held company in a complex series of lawsuits, including two class actions (one from investors/members and one from customers) and three related bankruptcy cases. Resolved the litigation after putting the company and its shareholders into bankruptcy, discharging certain debts, and restructuring other financial obligations. (Orange County Superior Court. United States Bankruptcy Court for the Central District of California.)

Halcyon Tea, LLC. Represented minority equity holder (an individual member) in derivative suit against other members and new corporation they formed that competed with the prior company that they closed over objection of our client. Settled the lawsuit pursuant to confidential settlement agreement whereby the new company purchased our client's minority interest in the prior company. (San Diego County Superior Court.)

LMKI, Inc./Myrient, Inc. Represented founder, former chairman of the board, and former majority shareholder (all one individual) of technology company in a series of lawsuits brought by the company and certain minority equity holders. The corporation and certain minority shareholders sued corporation's founder after the company's application for listing on NASDAQ was declined and company still owed significant financial obligations to its founder. Reached global settlement of all claims pursuant to a confidential settlement agreement. Company was subsequently listed on NASDAQ, and then delisted. (Orange County Superior Court.)

Southwest Civil Engineering, Inc. Represented minority equity holders (two individuals) based upon self-dealing by existing management and majority shareholder that rendered the corporation nearly insolvent. Settled lawsuit on confidential terms pursuant to which the company purchased our clients' combined equity interests in the company. (Orange County Superior Court.)

Equity Housing Fund XIV, LP. Represented partnership in lawsuit against its former general partner and certain limited partners. The partnership developed and operated a 200+ unit apartment complex in Houston, Texas. The prior general partner and certain limited partners engaged in self-dealing, ultimately stealing millions of dollars from the partnership. Obtained full repayment of all converted sums. (Los Angeles County Superior Court.)

Pro Bono Work:

Nintendo Litigation. Represented a college student who was sued for hundreds of thousands of dollars for modifying Nintendo gaming consoles. We obtained a settlement for our client that allowed him to avoid any significant economic impact and continue with his studies.

Syrop Litigation. Defended disabled veteran with PTSD when Leisure World attempted to evict him from his home and refused to accommodate his disability. After a year of litigation, the senior living community dismissed its claims against Mr. Syrop, agreed to undergo sensitivity training so that its staff would know how to address disabled persons, provided Mr. Syrop with reasonable accommodations for his disability, paid Mr. Syrop \$100,000, and paid \$50,000 to the Public Law Center of Orange County.

Toribio Litigation. Represented non-English speaking janitors exploited by a major credit card issuer who sought to collect on previously discharged consumer credit card debt. We obtained reimbursement of all amounts paid to the credit card issuer on the discharged debt and helped to initiate a national investigation of credit card issuer conduct.

Saldana/Soria Litigation. Represented non-English speaking clients who were victimized by a scam that exploited undocumented Orange County residents. We sued a bilingual real estate professional who had stolen the life savings of our clients. On the eve of trial, we settled the case with the real estate professional taking money out of her retirement account in order to reimburse all funds collected from the victims of her scheme.

Pro Se Litigant Clinic. On the third Thursday of each month, Sheppard Mullin staffs the Public Law Center's pro se litigation clinic conducted out of the Ronald Reagan Federal Courthouse in Santa Ana.

Bankruptcy Reaffirmation Clinic. Summers of 2012-2019 at the Santa Ana Division of the Bankruptcy Court for the Central District of California. This is part of Sheppard Mullin's summer associate program. We provide education on debt reaffirmation issues to pro per debtors.

Articles

- What Do The 2005 Bankruptcy Amendments Mean For The Healthcare Industry?
06.22.2005
- Bankruptcy Considerations In Intellectual Property Licensing - Concerning The Unthinkable
03.04.2005
- Senior Housing Options
03.12.2004
- You Lost At Trial, So What?
08.21.2000
- Tenant Bankruptcies: What Commercial Landlords Need To Know
04.17.2000

Speaking Engagements

Speaker, *Bankruptcy 101: A Primer on Reorganization, Liquidation, and Creditor Issues in a Post-Covid World*, presented jointly by the Orange County Bankruptcy Forum and the Orange County Asian American Bar Association, May 27, 2020

Speaker, *Business Bankruptcy Developments in 2019*, presented at the Western Bankers Association, Bank Counsel Seminar, October 10, 2019

Memberships

Federal Bar Association/Orange County (board of directors 2018 to present)

California Bar Association (member 1995-present; Business Law Section, Financial Institutions Committee 2001-2003; chairman of the Subcommittee on Committee on Commercial Lending 2001; chairman of the Subcommittee on Litigation 2002, 2003)

Public Law Center of Orange County (President 2017, Vice-President 2016; Secretary/Treasurer 2015, board of directors 2006-present; executive board 2013 to 2019)

Member, California, Los Angeles, and Orange County Bankruptcy Forums (member 1995 to present; board of directors OCBF 2007-2015, 2017 to present)

Ninth Circuit Lawyer Representative (2010-2014)

Central District of California Bankruptcy Bar Advisory Committee (in 2009-2010)

Central District of California Attorney Admissions Fund (2017 to present)

Financial Lawyer's Conference (member 2000 to present)

American Bankruptcy Institute (member 1997 to present)

American and Orange County Bar Associations (1995 to present)

Practices

Bankruptcy and Restructuring

Alternative Dispute Resolution

Asset Based Lending

Bankruptcy Litigation

Class Action Defense

Commercial Lending and Financial Transactions

Commercial Mortgage Backed Securities ("CMBS")

Debtor in Possession (DIP) Financing

Distressed Acquisitions Under Bankruptcy Code
§ 363

Equipment Leasing

Financial Services Litigation

Litigation

Municipal and Public Entity Restructuring

Private Wealth and Fiduciary Litigation

Private Wealth and Fiduciary Litigation
Securities Litigation
Syndicated Credit Facilities

Education

J.D., University of California, Hastings, 1995, Managing Editor, *Hastings International and Comparative Law Review*,
Hastings Public Interest Law Foundation

A.B., Stanford University, 1992, *with honors*

Clerkships

Interned with the Federal Trade Commission's Bureau of Economics and the Securities and Exchange Commission's Division of Enforcement.

Admissions

California

U.S. Court of Appeals for the Sixth Circuit

U.S. Court of Appeals for the Ninth Circuit

U.S. District Court for the Central, Eastern, Northern, and Southern Districts of California