



**DUDE WHERE'S MY DEBTOR?
LESSONS LEARNED FROM DRF LOGISTICS, A CASE STUDY
IN REALLY KNOWING YOUR CUSTOMER**

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Credit Research
Foundation

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WHY KNOWING YOUR CUSTOMER MATTERS: UNDERSTANDING CONTRACTUAL PRIVITY

- **Who is on the Other Side?**
 - Privity of contract is central to determining who has enforceable rights and obligations under a contract.
 - Recovery is generally limited to the contract counterparty.
- **No Privity, No Claim**
 - Understanding the parties to a contract up-front can have a material effects on a creditor's distribution. This issue came to a head in the chapter 11 cases of DRF Logistics, LLC, *et al.*
 - If a creditor has contractual privity with a debtor, the creditor can likely assert a claim in the debtor's bankruptcy case for amounts due under the contract. This claim, if unsecured, will likely receive "pennies on the dollar."
 - If there is no contractual privity with the debtor, a creditor cannot assert a claim in the debtor's bankruptcy case for amounts due under the contract. Rather, the creditor will retain rights against the party that is named in the contract. These rights may be more valuable than an unsecured claim against the debtor, especially if the counterparty is solvent.
 - To the extent a purported creditor of the debtor is a creditor of a non-debtor third-party, that purported creditor should not be bound by the terms of a plan or its releases.

| OVERVIEW: WHO IS YOUR CUSTOMER, ANYWAY?

- Properly Identifying Customer Entities
- Changes in Customers' Corporate Structures
- Case Study (DRF Logistics, LLC)
- Best Practices and Preventive Measures





KNOW YOUR CUSTOMER



KNOW YOUR CUSTOMER: PROPERLY IDENTIFYING CUSTOMER ENTITIES

- **Fundamentals to Know Up-Front:**
 - **Name of the Counterparty**
 - Full, correct legal name of the entity
 - Not the trade name, division name, d/b/a, f/k/a
 - **Type of Entity**
 - Type of business entity
 - Limited liability company, corporation, general / limited partnership, sole proprietorship
 - **State of Incorporation**
 - Where is the entity legally organized?
 - Often different from physical location

KNOW YOUR CUSTOMER: ADDITIONAL KEY CONSIDERATION

- **Other Fundamental Data Points:**
 - **Capital Structure**
 - How did the entity historically finance its operations?
 - **Owner / Parent Company**
 - Where does the entity fall within the parent's corporate organization?
 - Does the entity have authority to contract?
 - **Subsidiaries**
 - **Material Affiliates**
 - **Assets**
 - Where are the assets held?



CHANGES IN CUSTOMERS' CORPORATE STRUCTURES



| CHANGES IN CORPORATE STRUCTURES

- **Sale**
 - Sale of a business entity
 - Sale of assets
 - Substantially all assets v. certain assets
- **Restructuring Transactions**
 - Non-bankruptcy / non-distressed
 - Insolvency
 - Bankruptcy reorganization
 - Bankruptcy § 363 sales
 - Assignment for the benefit of the creditors (ABC)

CHANGES IN CORPORATE STRUCTURE: SALES

Sale of Business Entity (“Stock Sale”)

- Post-closing, you are still doing business with the same legal entity, which retains the assets and liabilities that existed before closing, but . . .
- . . . *many factors will impact its creditworthiness both immediately after closing and in the future.*
 - Post-closing leverage
 - Debt financing the acquisition
 - Obligations under acquiror’s existing debt
 - Seller vs. Buyer risk tolerance levels
 - Growth trajectory / other acquisitions
 - Capital retention vs. upstreaming cash
 - Post-closing “silo” restructuring transactions

CHANGES IN CORPORATE STRUCTURE: SALES (CONT'D)

If your customer is . . .

- **A public company**, you might learn about a corporate restructuring transaction through...
 - An **SEC filing alert** based on keywords or
 - A Google (or other) **news service alert**
- **A private company**, you might not learn about a corporate restructuring transaction at all until it's too late, *unless you ask*.
 - Periodic updates via **Name Checklist**
 - Keep an eye on **context clues**
 - The transaction *might* show up in the news
 - Request **copies of transaction documents!**

CHANGES IN CORPORATE STRUCTURE: SALES (CONT'D)

Sales of Business Assets

- **All Assets:** Post-closing, your former customer is likely now a dormant shell with few or no assets.
 - If you start doing business with the buyer, you have a **new customer** to underwrite – **not a continuation**.
- **Some Assets:** You might continue doing business with the seller, start doing business with the buyer, or both.
 - Depending on the nature and extent of the assets sold, former customer's credit profile could be materially different post-closing – **effectively a new customer**.
 - Buyer is a **new customer** (unless they were an existing customer that made a strategic purchase).
- **Did the buyer assume liabilities?** The only way know is to review the transaction documents.
 - Look at the asset purchase agreement and disclosure schedules.
- **Watch out for sales to opco/propco structures.**
 - Could occur **at or after closing**.

CHANGES IN CORPORATE STRUCTURE: SALES (CONT'D)

Assignment for the Benefit of the Creditors (ABC)

- **What is it?** A voluntary, state-law insolvency process in which a distressed company (the assignor) transfers its assets to a third-party (the assignee), who then liquidates those assets and distributes the proceeds to the company's creditors.
- **Advantages:** ABCs are becoming increasingly popular for their speed, lower administrative costs, and shortened diligence and marketing process.
- **Drawbacks:** Because ABCs operate under state law, companies are not afforded the same benefits and protections as they would receive under the Bankruptcy Code.
 - No sales “free and clear” of secured debt without out the consent of lienholders or payments in full.
 - Unsecured Creditors may walk-away with nothing at the end of the process.
 - Anti-assignment provisions generally cannot be overridden.
 - No automatic stay.



CASE STUDY: DRF LOGISTICS, LLC



DRF LOGISTICS: BACKGROUND

- The Debtors in these chapter 11 cases were DRF Logistics, LLC and DRF, LLC.
- The Debtors were leading providers of domestic ecommerce parcel services as well as cross-border logistics (the “Global E-Commerce Business”).
- Prior to the chapter 11 bankruptcy:
 - ✓ DRF Logistics, LLC was named “Pitney Bowes Global Ecommerce Inc.”
 - ✓ DRF, LLC was named “Pitney Bowes Global Logistics LLC.”
 - ✓ Both entities were indirect subsidiaries of Pitney Bowes Inc. (“PBI” and with its affiliates, “Pitney Bowes”), which acquired the Debtors’ predecessor, Newgistics Inc. in 2017.
 - ✓ **PBI has a market capitalization of approximately \$2 billion.**
- Since 2017, the Debtors experienced significant losses, including significant annual reductions in their adjusted segment earnings before interest and taxes.
- The Debtors determined to pursue an in-court winddown, ***but only after effectuating a strategic transaction to sever the Global E-Commerce Business from the rest of PBI and its relevant affiliates.***



DRF LOGISTICS: THE PREPETITION TRANSACTION



- **The Names Change:**
 - July 25, 2024: Pitney Bowes Global Logistics LLC becomes DRF, LLC and redomesticates from a Delaware LLC to a Texas LLC.
 - August 7, 2024: Pitney Bowes Global Ecommerce Inc. becomes DRF Logistics, LLC and converts from a Delaware corporation to a Delaware LLC.
- **Hilco Transaction:**
 - On August 8, 2024, immediately before the chapter 11 petitions are filed, the following occurs:
 - An affiliate of Hilco Global, a financial services company, acquires an 81% voting interest in DRF Logistics for *de minimis* consideration.
 - A subsidiary of PBI retains a 19% voting interest and 100% economic interest.
 - DRF Logistics and DRF LLC are also released from guarantee obligations under Pitney Bowes International's unsecured funded debt.
- **No New Subsidiaries Were Created:**
 - Following the Hilco transaction, operated under the new entity names and continued to adhere to the terms of their previously existing agreements with their trade vendors.

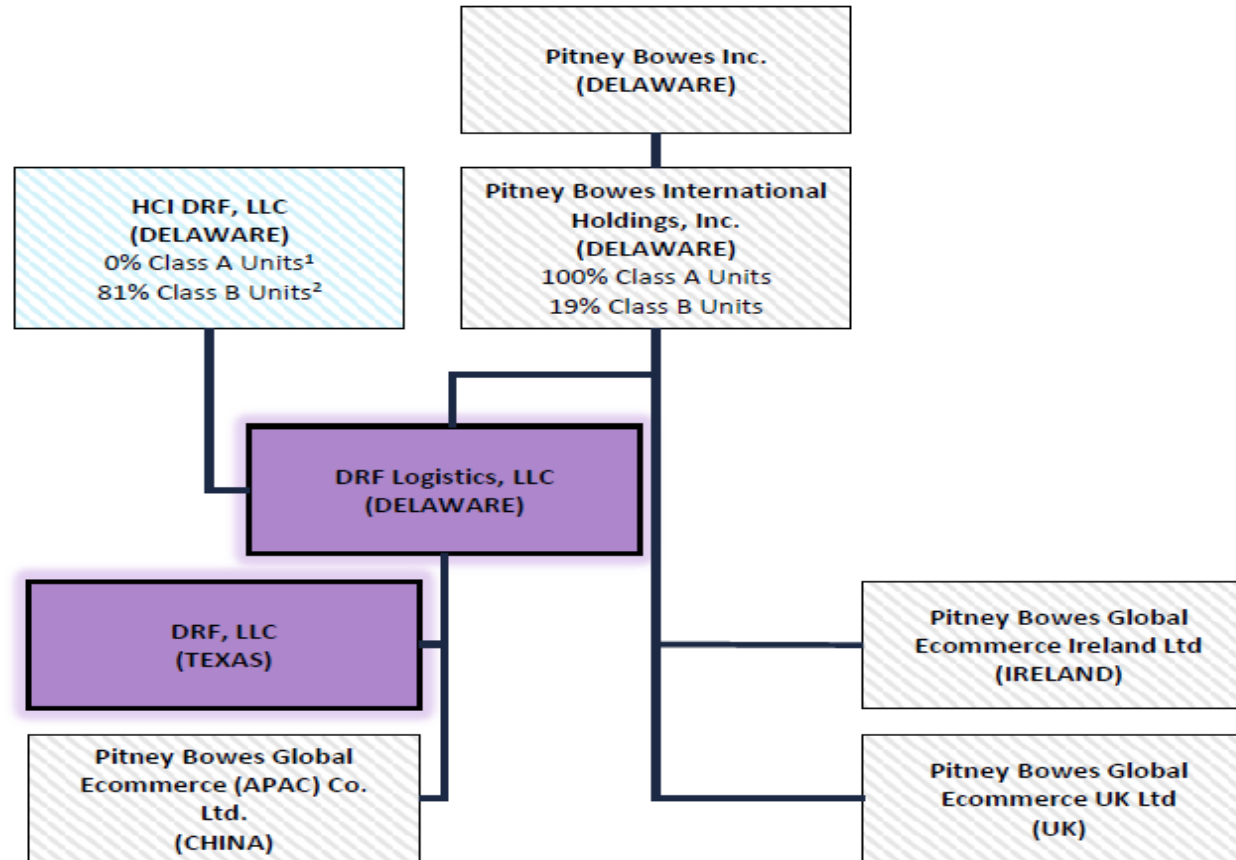
DRF LOGISTICS / PITNEY BOWES: CORPORATE ORGANIZATIONAL CHART

LEGEND

Hilco (Non-Debtor)

Non-Debtor Pitney Bowes Entity

Debtor



¹ Class A Units have economic rights but no voting rights.

² Class B Units have voting rights but no economic rights.

I DRF LOGISTICS: THE CHAPTER 11

- Immediately after the consummation of the Hilco transaction, DRF filed for Chapter 11 on August 8, 2024 in the United States Bankruptcy Court for the Southern District of Texas.
- DRF filed the Chapter 11 cases to winddown the DRF business pursuant to a plan of liquidation that was the product of negotiations with PBI and certain other creditors.
 - As part of the original chapter 11 plan, PBI agreed to fund \$3.3 million in distributions to the DRF's secured creditor and up to \$15.5 million to holders of general unsecured claims.
 - In exchange, PBI and its affiliates would obtain a third-party release from creditors that failed to opt-out of the releases.
 - The initial plan provided for distributions to general unsecured creditors in the **range of ~3%**.
- **Key questions raised by unsecured creditors:**
 - **Who is DRF?**
 - **Why am I part of this bankruptcy?**
 - **Why is Pitney Bowes not responsible for paying my unsecured claim in full? They have plenty of money!**

| DRF LOGISTICS: WHO WERE CREDITORS DEALING WITH?

Key Issues for Creditors

- Was DRF an “alter ego” of Pitney Bowes?
- Contractual Privity:
 - Whether creditors had claims against Pitney Bowes and not DRF where creditors solely had contracts with Pitney Bowes?
 - Creditors of Pitney Bowes should not be bound by any DRF plan terms and should be able to recover 100% of their claims directly from Pitney Bowes (as opposed to ~10% from DRF!).
 - Whether a creditor that had contractual privity with DRF and PBI should receive a larger recovery on account of its claim?



I DRF LOGISTICS: THE INVESTIGATION

- **The Committee's Investigation**

- The Committee launched an investigation to determine if certain purported creditors of the Debtors are really creditors of Pitney Bowes.
- Goals:
 - Maximize distributions to DRF's unsecured creditors and ensure the unsecured creditors pool is not diluted by creditors of Pitney Bowes;
 - Provide certain creditors the opportunity to recover against Pitney Bowes if there was no/some privity with DRF; and
 - Protect creditors of Pitney Bowes from third-party releases under the Plan.

- **What did the Committee Investigate?**

- Contractual privity
 - Over 28,000 documents from Pitney Bowes and DRF (*i.e.*, contracts & correspondences)
- Depositions of Pitney Bowes and DRF's representatives

I DRF LOGISTICS: THE CONTRACTS

The underlying contracts reflected various iterations of Debtor-related counterparties and terms:

- **Contracts with “Pitney Bowes Global Logistics LLC” and “Pitney Bowes Global Ecommerce Inc.”** These entities were renamed to DRF Logistics, LLC and DRF, LLC, and these contracts provided for direct privity with the Debtors.
- **Contracts with “Pitney Bowes Inc. and its affiliates.”** Certain of the contracts were executed by PBI or a non-debtor affiliate of PBI without specifically including the Debtors as a counterparty or obligating the Debtors in any other way.
- **Contracts with “Pitney Bowes Inc. and its affiliates” that required separate affiliate agreements.** Certain of the contracts were executed by PBI or a non-debtor affiliate of PBI and attached a separate form “affiliate agreement,” which would have clarified to which PBI affiliate the contract counterparty would be providing goods or services. In many cases, despite a form affiliate agreement being attached to and part of the initial contract, no affiliate agreements were subsequently executed.
- **Contract amendments that changed the counterparty prepetition.** Certain contracts executed by PBI or a non-debtor affiliate were amended prepetition to replace a non-debtor contract counterparty with one of the Debtor entities as the counterparty.

I DRF LOGISTICS: VALUE MAXIMIZED OUTCOMES

- The Committee concluded through its contractual privity analysis that many of DRF's purported creditors (listed in DRF's schedules as unsecured creditors) had valid basis to assert that Pitney Bowes was liable for creditor claims.
- The Committee's recommendations regarding treatment of general unsecured claims that were incorporated in approved Chapter 11 plan:

Creditor Category	Recovery Under Revised Chapter 11 Plan
Creditors who solely did business with and had contracts with DRF (Category 1 Creditors)	Category 1 creditors received approximately <u>19.5%</u> of their allowed amount of their claims
Creditors who did business with and/or have contracts with Pitney Bowes and DRF (Category 2 Creditors)	Category 2 creditors received approximately <u>52.5%</u> of their allowed claim
Creditors who solely did business with or solely had contracts with Pitney Bowes (Category 3 Creditors)	Category 3 Creditors were not impacted by the plan, and <i>should be satisfied by Pitney Bowes</i>

DRF LOGISTICS: TAKEAWAYS FROM THE CASE

- **Contractual Privity Impacts Credit Risk**

- Creditors that had a basis to assert that both a DRF entity and a Pitney Bowes entity were liable for the debt can receive as much as a 52.5% recovery.
- Creditors that only had contractual privity with the DRF entities will receive an approximate 19% recovery.

- **Stay Informed**

- Much of the Hilco transaction was kept under wraps, but some information was available/leaked. For example, PBI released the following 8-K before the August 8 Hilco transaction.

ITEM 7.01 REGULATION FD DISCLOSURE.

On July 26, 2024, certain media outlets reported that Pitney Bowes Inc. (“Pitney Bowes” or the “Company”) had sold its entire Global Ecommerce segment. On the same day, the Company’s representatives promptly informed these media outlets that the Company had not sold the segment, resulting in full or partial updates to relevant articles. For the avoidance of doubt, the Company is releasing the following statement today:

“Pitney Bowes is still working to conclude its strategic review of the Company’s Global Ecommerce segment. In the meantime, it has sold the segment’s fulfillment services business, which is a small piece of the segment.”



DRF LOGISTICS: TAKEAWAYS FROM THE CASE

- Stay Informed (Cont'd)

- The issues of contractual privity and whether Pitney Bowes was liable for certain creditors' debt were not readily apparent from the Debtors' pleadings. During the case, the Committee filed letters on the docket and required that a letter to creditors be included in the Debtors' plan solicitation package.
- Keeping an eye on the docket and any communications from an Official Committee of Unsecured Creditors can help keep creditors apprised of the nuances of the case and additional avenues for recovery. **Creditors' committees can be a great source of information!**

To: All Unsecured Creditors of DRF Logistics, LLC, *et al.*

Re: Creditors' Committee Investigation and Voting Recommendation in *In re DRF Logistics, LLC, et al.*, No. 24-90447 (CML) (Bankr. S.D. Tex.)

Dear Unsecured Creditors:

The Official Committee of Unsecured Creditors (the "Committee") of DRF Logistics, LLC, *et al.* (the "Debtors" or "DRF") submits this letter to all unsecured creditors concerning their decision to vote to accept or reject the *Debtors' Amended Joint Plan of Liquidation* [Docket No. 277] (as amended from time to time, the "Plan").

If you received a ballot to vote on the Plan, please note that the deadline to vote to accept or reject the Plan is November 8, 2024, at 4:00 p.m. (Central Time) (the "Voting Deadline"). Unsecured creditors can cast their vote on the Plan by completing and submitting the voting ballot prior to the Voting Deadline. The instructions for completing and submitting the ballot are included on the ballot.

(ii) Contractual Privity

Are you confused as to why you are listed as a creditor in DRF's chapter 11 cases? Perhaps your understanding is that you are a creditor of Pitney Bowes, not DRF. In that regard, the Committee is also investigating the extent by which certain purported creditors of the Debtors are not creditors of the Debtors because they solely have contracts with Pitney Bowes, and are, therefore, more appropriately creditors of Pitney Bowes (the "Contractual Privity Analysis"). The Contractual Privity Analysis is important because to the extent a purported creditor of the Debtors is a creditor of Pitney Bowes, that party should not be bound by the terms of the Plan or the proposed releases. Instead, that party should be permitted to recover directly from Pitney Bowes, who is not a Debtor in these chapter 11 cases and should be paying its creditors in full.³ The Contractual Privity Analysis is also relevant in determining (i) the size of the Debtors' unsecured claims pool, and (ii) whether the Plan's third-party releases of Pitney Bowes are appropriate, especially as to parties that are not creditors of these estates.



BEST PRACTICES AND PREVENTATIVE MEASURES



BEST PRACTICES AND PREVENTIVE MEASURES

- **Getting the Right Name**
 - Best Practices
 - Sources of Information
- **Terms and Conditions**
- **Risk Management – Back to Basics**
- **Guaranties**
 - Types of Guaranties
 - Selection of Guarantor
 - Legal Requirements

GETTING THE RIGHT NAME: BEST PRACTICES

New Customers

- Require key entity information on the credit application
 - Full, Correct Legal Name
 - State of Formation
 - Type of Entity
- **Missing / incomplete entity information = No Credit!**

Existing Customers

- Require periodic updates of entity information via a simple questionnaire
- Can be a standalone process or tied to periodic W-9 or sales tax updates if applicable
- Periodically self-audit customer status
 - Especially customers with large exposure, aged balances, risky industries

Both

- Verify **existence** and **good standing** via the applicable Secretary of State website – at the credit investigation *and* periodically thereafter
 - Many states are free; some charge a small fee
 - Some states require registration (username/password)
- Large accounts: Lien search, judgment search, docket alert

GETTING THE RIGHT NAME: SOURCES OF INFORMATION

- **Customer Itself**
- **Secretary of State Database**
- **SEC Filings (Public Companies)**
 - SEC Edgar: *Free*
 - Securities Mosaic / BamSEC – \$\$\$
- **Context Clues**
 - Names on checks, purchase orders, e-mail, letterhead, shipping documents, sales tax exemption certificate, W-9, etc.
- **Lien / Judgment / Docket Search and Alert**

I TERMS AND CONDITIONS

- **Change Notification**
 - Require customer to provide **timely notification of changes** to corporate structure
 - Legal Name
 - Entity Type
 - Ownership
- Provide **enforcement mechanisms** if customer fails to provide updated information / documents if requested
 - Credit Application
 - Guaranties

RISK MANAGEMENT: *NEVER FORGET THE BASICS*

- Watching for **red flags and warning signs of distress or fraud** can help to detect an actual or impending change in entity structure that could materially impair your ability to collect
- Signs of distress can provide a basis to . . .
 - Request updated financials
 - Request updated corporate structure information
 - Restrict credit lines
 - Transition customers to COD / CIA terms
 - Request parent / affiliate / personal guaranties
 - Terminate the customer's credit line (worst case)

| GUARANTIES

- **What is a Guaranty?**
 - An agreement by a third party (the guarantor) to answer for the debts of someone else (the debtor).
- **Types of Guaranties**
 - Guaranty of payment (*the preferred type!)
 - Creditor can pursue the guarantor **without first exhausting collection efforts** against the principal debtor.
 - Guaranty of collection
 - Creditor must **exhaust collection efforts** against the principal debtor before it can proceed against the guarantor!
- **Bankruptcy**
 - Even if the guarantor is part of a group of affiliated debtors that file together, recovery may be enhanced for creditors with guaranties.

QUESTIONS?





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St. John's University School of Law
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U.S. District Court for the Eastern
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U.S. District Court for the Western
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GIANFRANCO FINIZIO

Gianfranco Finizio focuses his practice on bankruptcy and insolvency matters. He represents a diverse range of clients including official committees of unsecured creditors, indenture trustees, debtors, bank agents, and other major secured and unsecured creditors in complex Chapter 11 bankruptcy cases, out-of-court restructurings, and other distressed situations. Gianfranco's extensive experience spans the pharmaceutical, healthcare, restaurant, and retail industries, to name a few.

Gianfranco has represented or currently represents creditors' committees in several high profile Chapter 11 cases, including DRF Logistics, Diamond Comics, Gold's Gym, One Table Restaurants, Taco Bueno Restaurants, Humanigen, Lannett Company, and American Apparel.

He frequently publishes articles on insolvency issues and presents at industry conferences, discussing emerging issues on bankruptcy-specific topics. Gianfranco was listed in the 2021, 2022 and 2023 editions of Chambers USA: America's Leading Lawyers for Business in the area of Bankruptcy/Restructuring. Gianfranco was recognized in 2023 as a "Rising Star" by American Lawyer's New York Law Journal. He was also honored by the American Bankruptcy Institute (ABI) in 2022 as one of its "40 Under 40" Emerging Leaders for his Insolvency Practice.

Committed to pro bono work, Gianfranco provides legal services to children in need through KIND (Kids in Need of Defense), a nonprofit that offers legal counsel to unaccompanied refugees and immigrant children. He also volunteers for Immigrant ARC's Friend of the Court program to assist pro se respondents in navigating the immigration court system.



KELLY E. MOYNIHAN

Kelly Moynihan focuses her practice on bankruptcy and insolvency matters. She represents official committees of unsecured creditors, indenture trustees, liquidating trustees, trade creditors, secured lenders, debtors, and other significant parties-in-interest in complex reorganizations and financially distressed situations. Her work spans such industries as retail, restaurants, healthcare, aviation, manufacturing, energy, and financial services, among others.

Recent creditors' committee representations in which Kelly has served as a team member include H-Food Holdings (dba Hearthside Food Solutions), DRF Logistics, the Roman Catholic Bishop of Oakland, and One Table Restaurants. She has also represented plan administrators and liquidating trustees in cases such as DRF Logistics, Proterra, and Patriot National.

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St. John's University School of Law
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Admissions

New York

U.S. District Court for the Eastern
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U.S. District Court for the Southern
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U.S. Supreme Court

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THANK YOU

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What's the biggest operational risk you're tracking in your A/R portfolio today?