



SpencerFane®

David Pinkston

Of Counsel

Contact

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Overview

David uses creativity and decades of experience with the tools under state and bankruptcy law to bring resolution to legal problems and burdens, realize on assets, and help clients get back to growing their business and experiencing greater peace in their lives. Contract disputes and defaults are an unfortunate reality of doing business. For every client, such defaults by the other party are an obstacle to growth, at a minimum. With others, particularly small businesses, such defaults can be disastrous, creating constant stress and anxiety for the business owners.

Over the years, David has represented a broad range of local and national clients in a variety of commercial and bankruptcy litigation matters. These range from loan defaults to basic contract disputes to complex commercial litigation involving various aspects of the Uniform Commercial Code.

David approaches legal problems with the end in mind and aims for efficient, cost-effective solutions. He has represented local and national clients on a wide variety of bankruptcy matters, including non-dischargeability litigation, automatic-stay and discharge-violation issues, objections to plans of reorganization, claim objections, asset sales, trustee and committee representation, defending preference, fraudulent transfer, and other trustee avoidance actions as well as bankruptcy appeals to the Federal District Court, the Tenth Circuit Bankruptcy Appellate Panel, the Tenth Circuit Court of Appeals, and the U.S. Supreme Court. His clients have included almost every type of participant in the bankruptcy process, including creditors, debtors, trustees, competing Chapter 11 plan proponents, buyers, and defendants in trustee' avoidance actions.

David regularly assists and advises local, regional, and national clients with creditors' rights issues, including obtaining pre-judgment remedies, implementing receiverships for real property, dealing with conservatorships, addressing real property disputes (including both sides of commercial landlord-tenant issues), dealing with contract defaults, asset seizure, and enforcing account obligations and judgments. He assists clients with these matters in state court, federal court, and bankruptcy court as well as various Tribal Courts in Reservations in multiple states.

Education

- Brigham Young University – J. Reuben Clark School of Law, 1993 (J.D.), *cum laude*
- Brigham Young University, 1990 (B.A.), *cum laude and with honors*

Bar Admissions

- Utah

Court Admissions

- U.S. Court of Appeals for the Tenth Circuit
- U.S. District Court for the District of Utah
- Ute Indian Tribal Court
- Southern Ute Tribal Court
- Oglala Sioux Tribal Court

Community Involvement

- Boy Scouts of America, Venture Advisor; Varsity Advisor
- John Wesley Powell River History Museum, Board Member

Distinctions

- *Utah Business Magazine*, Utah Legal Elite
- *Best Lawyers in America*, Bankruptcy and Creditor Debtor Rights; Insolvency and Reorganization Law
- *BYU Law Review*, Lead Articles Editor

Memberships

- Utah Bar Association
- Utah Bankruptcy Lawyers Forum
- American Bankruptcy Institute
- National Association of Chapter 13 Trustees
- American Bar Association, Fidelity and Surety Law Committee
- Salt Lake County Bar Association
- Brigham Young University, Business Law, Former Adjunct Professor

Presentations and Publications

- "COVID-19 and 'Temporary' Contract Interruption," July 2020
- "To Tender or not to Tender – That is the Question," Western States Surety Conference, Seattle, April 2019
- "Uniform Commercial Code and Application to the Surety Industry," Pearlman Surety Conference, Washington, September 2018
- "UCC Article 9 Rights of the Surety, Pearlman Surety Conference," Seattle, 2018
- "The Fugitive – Evolving Tools for Pursuing Elusive Indemnitors," Western States Surety Conference, Seattle, April 2018

- "Indemnity Traps and Tools," Western States Surety Conference, Seattle, April 2017
- "Risk of Bad Faith Claims in Surety Law and Practice," Western States Surety Conference, 2015

Related Experience

- Assisted a major developer in successfully purchasing an abandoned steel mill in a hotly contested Chapter 11 bankruptcy.
- Represented numerous related creditors in large, involuntary, complex Chapter 7 case of the operator of a coal mine in Utah, defending dozens of trustee adversary proceedings, many of which were appealed to the U.S. Court of Appeals for the Tenth Circuit.
- Represented a Canadian company in auction and purchase of assets in Chapter 7 of a recreational-vehicle manufacturer.
- Represented secured creditors in recovering collateral in state court and bankruptcy court.
- Assisted lenders with foreclosures on commercial and consumer loans.
- Assisted clients with enforcement of judgments.
- Represented financial services clients in SBA loan defaults and disputes.
- Represented multiple landlords in a large Chapter 11 case of major restaurant franchisee / tenant.
- Represented various financial services clients in commercial and consumer bankruptcy cases, replevin, non-judicial foreclosure, loan defaults, contract disputes, and related matters.
- Represented various financial services clients in Tribal Courts in cases involving parties and collateral on reservations in multiple states.
- Represented the receiver of commercial property in finally wrapping up and making distributions to creditors in a receivership that had been pending for over 30 years.