Bankruptcy, Restructuring & Creditors' Rights
We understand our clients’ business and address the commercial and financial impacts of bankruptcy—as a creditor or debtor.

Eversheds Sutherland has decades of experience representing debtors and creditors in bankruptcy and restructuring matters.

Eversheds Sutherland represents creditors and debtors in an extensive range of bankruptcy and insolvency proceedings, and out-of-court workouts.

Understanding the complexities of financial distress and potential solutions is only one part of the equation; each industry has unique commercial features that affect workouts. One of the keys to Eversheds Sutherland’s success is industry-specific knowledge. Because we are familiar with these subjective characteristics, we’ve been able to play major roles in national Chapter 11 reorganizations involving energy, entertainment, wireless telecom, mortgage lending and retail companies.

Eversheds Sutherland takes a team approach in addressing the rights of various parties in bankruptcy proceedings or restructuring transactions. We have established strong professional and personal relationships with the other major law firms practicing in the field and the financial and commercial advisers who participate in workouts. Knowing these participants allows Eversheds Sutherland to address all aspects of a situation quickly and effectively. Our reputation as formidable litigators is well-known and often helps avoid the expense of confrontational proceedings.

Why Eversheds Sutherland
Creditor and debtor experience. Eversheds Sutherland’s lawyers represent both creditors and debtors in virtually all types of bankruptcy situations. This gives us insight into the way other parties in a bankruptcy are likely to act and what they hope to achieve. This strategic advantage strengthens our clients' positions whether they are creditors or debtors.

Industry knowledge. Our bankruptcy practice plays to our business strengths by focusing on those fields where we have a great deal of industry knowledge and experience. It is not enough to understand the complexities of finance; our lawyers also know the business context of the specific industries in which our clients operate: automotive, energy, entertainment, finance, wireless telecom, timber, construction, mortgage lending and retail.
**Workout spectrum expertise.** Our lawyers are familiar with all of the various methods of resolving insolvencies. They are adept at state insolvency proceedings and federal bankruptcies, experienced at consensual restructurings and UCC liquidations and foreclosures. They have succeeded in aiding clients with these resolution methods both domestically and internationally.

**Litigation ability.** Eversheds Sutherland has decades of experience in the litigation that often arises between creditors and debtors, including fraudulent transfer, lien priority, preference and Chapter 11 litigation. Of most recent note is our pro bono client’s 2013 victory in the Supreme Court of the United States in *Bullock v. BankChampaign, N.A.*, which was argued before the Court by our partner Thomas M. Byrne. The court agreed with our client’s interpretation of the term “defalcation” found among the exceptions to bankruptcy discharge. In ruling for our client, the Court rejected the holdings of all of the lower courts and the contrary arguments of, among others, the U. S. Solicitor General. One of the most important cases in our firm’s history was the 1934 equity receivership of Hoosac Mills in the Massachusetts District Court and in which we prevailed before the Supreme Court in 1936. From the 1930s through the biggest and most complicated Chapter 11 cases today, our bankruptcy attorneys are adept at meeting clients’ objectives in complex litigation in courts at all levels.

**Nuts and Bolts**
In addition to representing clients in the specific matters outlined above, we have experience in:

- **REO assets**
  - Representing lenders and purchasers in the purchase and sale of loans and REO assets acquired by note sales, foreclosures or deeds in lieu of foreclosure
- **Tenant bankruptcy**
  - Representing landlords in connection with tenant bankruptcy cases and related co-tenancy issues
- **Enforcement actions**
  - Representing lenders and borrowers in collection and guarantee enforcement actions involving the entire capital and credit stack, including troubled joint ventures and mezzanine loan defaults
- **Specialized transactions**
  - Advising on specialized distressed asset transactions, such as hospitality and “fractured condo” deals, and strategic divestitures of underperforming assets
- **Securitized debt**
- Representing master servicers, special servicers and providers of debt, mezzanine and equity capital with respect to performing and non-performing securitized loans, CDOs and CLOs
  - Workouts
  - Negotiating out-of-court consensual restructurings of debt
  - Dispute resolution
  - Litigating, arbitrating and/or mediating a variety of complex disputes, from real estate disputes to settlement values of interest rate swaps
  - Cross-border insolvencies
  - Our attorneys have been actively involved in numerous Chapter 15 cases under the Bankruptcy Code, and are comfortable coordinating with local counsel in various foreign countries to achieve results in cross-border insolvency proceedings.
  - Asset acquisitions
  - Counseling clients in asset acquisitions through section 363 sales and/or the plan of reorganization process, including the analysis of strategic bid alternatives
  - DIP lenders
  - Assisting lenders in protecting—and sometimes improving—their rights through the extension of DIP financing arrangements
  - Post-petition transactions with the estate
  - Our lawyers can enter into major transactions, such as structured finance deals and first-lien hedging programs, with debtors reorganizing under Chapter 11.
  - Enforcement of setoff/recoupment rights
  - The ability to exercise contractual setoff or recoupment rights is a significant concern to many clients. We can maximize creditors’ ability to offset amounts owed, notwithstanding an increasingly challenging response in the courts
  - Valuation of trading contracts
  - Many of our clients enter into trading contracts to hedge their exposure and for other commercial purposes. In the event of a counterparty bankruptcy, our team is experienced at guiding clients through each step of the process for terminating and valuing the settlement payments under such contracts.
  - Major executory contracts: assumption, assignment and termination
  - We advise clients who are counterparties on major contracts with the debtor, such as construction, supply, intellectual property and franchise agreements.

Take Action
Eversheds Sutherland clients benefit from our knowledge of their industries—insight that extends beyond the complexities of finance and
allows us to more effectively address their commercial situation, whether as creditor or debtor.

**Experience**
Argued and won Bullock v. BankChampaign, N.A. (2013) in the U.S. Supreme Court, which established the meaning of the "defalcation" exception to a bankruptcy discharge.

Represented South Mississippi Electric Power Association in power plant acquisition complicated by a bankruptcy.

Represented one of the nation’s largest manufacturers in all bankruptcy cases involving its nationwide dealer network.

Represented several energy trading creditors in the SemGroup bankruptcy.