



## Scott N. Opincar

Member

Cleveland

P: 216.348.5753

### Practice Focus

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- Strategic advisory and restructuring
- Business counseling
- Creditors' rights
- Franchising, licensing, and distribution
- Distressed M&A
- Private equity
- Receivership
- Creditors' committees
- Commercial finance

Scott is a member of the Strategic Advisory and Restructuring Department, concentrating his practice in the areas of bankruptcy (primarily Chapter 11 reorganizations), business counseling and strategic advisory services, commercial law and creditors' rights, workouts, Uniform Commercial Code transactions, distressed mergers and acquisition, and receiverships (both state and federal).

Scott is also chair of the firm's Franchise, Licensing and Distribution Practice Group. He facilitates franchise and distribution relationships. Scott's clients include both franchisors and franchisees. He frequently counsels clients concerning franchise law, franchise agreements, franchise disclosure documents, long-term contracts, and licensing agreements. Scott has extensive experience in the restaurant industry.

Additionally, Scott is the former chair and a current member of McDonald Hopkins' Professional Development Committee.

Scott earned a J.D. from Cleveland State University College of Law in 1994. He received a B.A. from the University of Akron in 1991. Scott is licensed to practice in the state courts in Ohio, in various United States District Courts, and the Sixth Circuit Court of Appeals.

*Chambers USA* ranks Scott as a leader in the field of Bankruptcy/Restructuring. *Chambers* notes that he "receives plaudits for his deep experience in advising distressed businesses, creditors and financial institutions on bankruptcy issues. His practice sees him regularly handle issues such as transactional work, refinancing mandates and corporate restructurings." "A known thought-leader." "He is very practical and deal-oriented."

### Representative Cases/Matters

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### **Reported Cases:**

- In re Pittsburgh-Canfield Corporation, 305 B.R. 688 (Bankr. N.D. Ohio 2003); affirmed by *Yenkin-Majestic Paint Corporation v. Wheeling Pittsburgh Steel Corporation*, 309 B.R. 277 (B.A.P. 6th Cir. 2004)
- *Interstate Gas Supply, Inc. v. Wheeling Pittsburgh Steel Corporation*, 283 B.R. 231 (Bankr. N.D. Ohio 2002)

### **Experience:**

#### **Representation of Companies, Secured Lenders, Trustees, and Creditors' Committees in Chapter 11 Bankruptcy Cases in the following industries:**

##### **Metals/Steel:**

- Wheeling-Pittsburgh Steel Corporation, manufacturer of flat rolled, semi-finished, and hot-rolled steel products for a variety of industries (Debtors' Counsel)
- Republic Engineered Products, leading manufacturer of specialty bar quality steel bars and other engineered products (Debtors' counsel)
- Barzel Industries, manufacturer of steel products with 15 facilities in the U.S. and Canada (Counsel to the Creditors' Committee)
- Empire Die Casting, provider of aluminum die castings and machining (Counsel to DIP Lender)
- Auburn Metals Processing, a scrap and metals separation provider (Counsel to Secured Lender)

##### **Auto**

- Devlieg Bullard II, aftermarket supplier and distributor of auto parts (Debtor's Counsel)
- B&C Corporation, tier I and II automotive parts supplier, castings and forgings (Counsel to Creditors' Committee)
- Amcast Industrial, leading cast aluminum wheel manufacturer to the auto industry (Counsel to the Creditors' Committee)
- Federal Forge, Tier II automotive supplier, castings and forgings (Counsel to the Creditors' Committee)
- FormTech Industries, Tier I and II automotive supplier, casting and forgings (Counsel to the Creditors' Committee)
- ProCare Automotive Solutions, 82 service and repair locations (Counsel for the Creditors' Committee)
- Jernberg Industries, leading manufacturer of highly engineered parts for various power-train and wheel-end applications (Counsel for the Creditor's Committee)
- Excello Engineered Systems, Tier I supplier of die cut, molded, and laminated watershields for the automotive industry (Counsel for the Creditors' Committee)
- Johnson Rubber Company, Tier I and II automotive parts supplier (Counsel to Equipment Lessor)

##### **Franchise**

- Generation Next Franchise Brands, franchisor of automated food vending machines (Debtor's Counsel)
- Quaker Steak and Lube, owner, operator, and franchisor of over 65 casual dining restaurants (Debtors' Counsel) operating in 20 states and in Canada
- Duke and King Acquisition, franchisee of 92 Burger King restaurants (Debtors' Counsel)
- Unique Ventures Group, franchisee of 28 Perkins restaurants (Counsel to Chapter 11 Trustee)
- AppleILLINOIS, franchisee of 33 Applebee's restaurants in Illinois (Counsel to the DIP Lender and Pre-

Petition Secured Lender)

- Counsel to various bidders/purchasers in sales of restaurant chains in bankruptcy cases throughout the country

### **Healthcare**

- Franciscan Communities St. Mary of the Woods, a continuing care retirement community (Counsel to the Creditors' Committee)
- Elements Behavioral Health, leading operator of addiction and pain treatment facilities (Counsel for Purchaser and DIP Lender)
- Royal Manor Management, an operator of assisted living and skilled nursing facilities (Counsel for Secured Lender)

### **Other Industries:**

- SG Blocks, publicly traded builder of modified shipping containers (Counsel to DIP Lender and Plan Sponsor)
- FirstEnergy Solutions Corp, operator of multiple fossil and nuclear power generating facilities (Counsel to Ad Hoc Group of Pass Through Certificates)
- Greystone Holdings, petroleum and trucking company (Debtors' Counsel)
- AFA Foods, ground beef processor with over \$1 billion in annual revenue (Counsel to the Creditors' Committee)
- Suarez Corporation, a manufacturer and distributor of various consumer products (Counsel to the Creditors' Committee)
- Waco Scaffolding and Equipment, supplier of scaffolding and equipment (Counsel to the Creditors' Committee)
- U.S. Concrete, a concrete supplier to the construction industry (Counsel to the Creditors' Committee)
- Medina Glass Block, leading supplier of glass block products (Counsel to the Creditors' Committee)
- Whitlatch & Co., a homebuilder (Counsel to the Creditors' Committee)
- Ideal Electric Company, a supplier of electric motor and generator technology products (Counsel to the Creditors' Committee)
- Central Brass Manufacturing Company, a producer of solid brass faucets and fixture fittings (Counsel to the Creditors' Committee)
- GENVAC Aerospace, designer and supplier of high-performance thin film coatings (Counsel to the Creditors' Committee)
- Western Reserve, owner of multiple commercial real properties (Counsel for Secured Lender)
- Crown Metal Finishing, provider of coatings and metal finishes (Counsel to Chapter 11 Examiner)

### **Representation of Receivers, Secured Lenders, and other parties in state and federal court receiverships:**

- Sakthi Automotive Group, a leading Tier I auto supplier (Counsel to Secured Lender in a federal court receivership)
- Dream Centers Education Holdings, for-profit colleges and universities (Counsel to Purchaser of Certain Assets)
- Automatic Welding, a welding company (Counsel to the Receiver)

- Cleveland Imported Groceries and Wines, food and wine distributor (Counsel to the Receiver)
- Ohio Energy Specialties, an electricity broker (Counsel to the Receiver)
- T&J Acceptance Corp., a J.D. Byrider franchisee (Counsel to the Receiver)
- Columbia Prospect, an owner of real property formerly operated by a university (Counsel to the Receiver)
- Arrow Machine Products Company, a manufacturer of screws and bolts (Counsel to the Receiver)
- Computer Systems Company, a software company (Counsel to the Receiver)
- Whistlestop Restaurant (Counsel to the Receiver)
- Melvin Waxman, case involved receivership property located in China and Hong Kong (Counsel to the Receiver)
- Taylor Chair Company, an office furniture manufacturer (Counsel to the Purchaser)
- Aurora Golf and Country Club, sale of golf course (Counsel to the Receiver)
- Ravenna Aluminum, a manufacturer of aluminum products used in the auto industry (Counsel to the Company)
- Comm Steel, a steel fabrication company (Counsel to the Secured Lender)
- General Bag Corporation, manufacturer of bags used by the U.S. Postal Service (Counsel to the Secured Lender)
- Lakeside Marine, boat broker and owner of marina (Counsel to the Secured Lender)
- Lakeside Scrap Metals, scrap company (Counsel to the Secured Lender)
- Mueller Electric Company, a manufacturer of electric clips and components (Counsel to Secured Lender)

### **Representation of institutional and direct lenders in workouts, secured party sales, and sales of debt:**

Scott represents financial institutions, secured lenders and other creditors in a variety of in-court and out-of-court workouts. He has extensive experience in formulating and implementing financial restructurings in bankruptcy-related matters and non-bankruptcy-related matters. Scott's experience includes negotiating and documenting debtor-in-possession financing agreements, cash collateral agreements, structuring workout and forbearance agreements, prosecuting and defending state and federal court litigation actions, commencing receiverships, secured party sales, and taking other actions under the Uniform Commercial Code.

### **Recent Secured Party Sales:**

- California based manufacturer of specialty consumer products with over \$260 million of secured debt
- California based farming equipment lender
- Leading manufacturer of tool bending equipment for steel tubing
- Furniture manufacturing company
- Manufacturer and lessor of key cutting machinery
- Electrical supply company
- Manufacturer and distributor of commercial tarps
- Leading manufacturer of tubular lighting poles
- Fulfillment and distribution company with multiple locations

### **Representation of franchisors, franchisees, and other parties in franchise law matters:**

Scott counsels clients on franchise disclosure documents, franchise agreements, area development agreements, gift card programs, leases, financing transactions, licensing and trademark matters, royalty

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payments, franchise disputes, and distribution matters. Scott has significant experience working with financially distressed franchisors and franchisees in workout and financial restructuring transactions. He has represented franchisors, franchisees, and buyers in numerous Chapter 11 bankruptcy cases throughout the country, with a particular focus on the restaurant industry. Scott also works with buyers and sellers of franchised businesses in traditional and financially distressed merger and acquisition transactions.

### Admissions - Court

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- Sixth Circuit Court of Appeals
- U.S. District Court for the Eastern District of Wisconsin
- U.S. District Court for the Northern District of Illinois
- U.S. District Courts for the Eastern and Western Districts of Michigan
- U.S. District Courts for the Northern and Southern Districts of Ohio
- US District Court for the Western District of Pennsylvania

### Admissions - State

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- Ohio

### Education

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- Cleveland State University College of Law
- University of Akron

### Honors and Awards

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- Named one of the *Best Lawyers* in America (2022-2023)
- Selected for inclusion in *Ohio Super Lawyers* (2010, 2012-2022)
- Selected for inclusion in *Ohio Rising Stars* (2006)
- Named leader in Ohio Bankruptcy/Restructuring - *Chambers USA* (2012-2021)

### Professional Membership

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- Cleveland Metropolitan Bar Association (2012 Chair of the Commercial and Bankruptcy Law Section, Chair of 2009 Chapter 11 Seminar)
- Turnaround Management Association, President of the Ohio Chapter (2015-2016), past Ohio Board Member and National Board Member
- Ohio State Bar Association (Council of Delegates 2000-2004 and 2004-2006)
- International Franchise Association

### Public Service and Volunteerism

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- Holy Name High School, Chair of the Board of Advisors and Board of Advisors Member, Chair of Strategic Planning and Development Initiative

### Alerts

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- US Treasury posts additional guidance on Paycheck Protection Program
- SBA issues final interim rule for Paycheck Protection Program
- CARES Act: An early analysis of the historic Coronavirus Aid, Relief and Economic Security Act
- Restructuring Professionals - Is it time to rewrite your retention agreements?
- Ohio's receivership laws receive dramatic changes

### Blog Posts

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- Class action lawsuit against Burger King related to no-hire agreement is revived
- California enacts FAST Act into law
- Survey for Franchisees on the Impact of Inflationary Pressures on Franchised Businesses
- Supreme Court rules Taco Bell franchisee waited too long to compel arbitration of employee wage dispute
- Senate declines to advance the Relief for Restaurants and Other Hard Hit Small Business Act of 2022
- FTC considers new rule to address deceptive or unfair marketing using earnings claims
- Relief for Restaurants and Other Hard Hit Small Business Act of 2022 passes the House
- Timing and finality requirements for appealing federal court receivership orders
- Restaurant operator files class action lawsuit against Google for allegedly deceptive online food ordering practices
- Ohio's Revised Limited Liability Act – Considerations for secured lenders
- New Ohio law eases rules on homebrewers and revises other liquor laws
- IFA releases 2022 Franchising Economic Outlook
- What you need to know about gift cards
- The PRO Act and its potential impact on the franchise industry
- Proposed legislation would provide an additional \$60B to the Restaurant Revitalization Fund grant program
- SBA closes Restaurant Revitalization Fund
- Ohio launches \$155 million in grants to Ohio businesses
- Portal is open for \$28.6B Restaurant Revitalization Fund Grants
- SBA launches portal to begin accepting Shuttered Venue Operators Grant applications on April 8
- Congress approves \$28.6 billion Restaurant Revitalization Fund
- Impact of SBA PPP loans on loan covenants
- The Biden Administration and its impact on franchising in 2021
- Disclosing financial performance representations in franchise disclosure documents during the COVID-19 pandemic
- US Treasury issues guidance on the Paycheck Protection Program
- CARES Act: Summary of SBA provisions
- Navigating through economic instability and COVID-19: SBA economic injury disaster loans
- The impact of the coronavirus on restaurants
- Proposed revisions to tip credit regulations will impact employers
- New Fair Warning Act of 2019 would impact more small businesses
- Restaurant Performance Index - April
- Domino's Pizza's website and app must be accessible to the blind

- Is your trade dress and décor protected by trademark laws?
- Revenue from contracts with customers rule becomes effective for non-public and public franchisors
- Understanding financial covenants in loan documents
- Applebee's second largest franchisee wins crucial franchise termination dispute
- Beware of partial and elliptical disclosures to stockholders in M&A transactions
- New tip pooling rules scale back 2011 Obama-era Regulations
- 4 FAQs related to the sale or transfer of liquor permits in Ohio receivership and bankruptcy cases
- 2018 franchise business economic outlook
- SBA establishes new franchise directory
- Lis Pendens and its Impact on Buyers and Sellers of Real Property
- Republicans hold a majority on NLRB for first time in 9 years
- A receiver is neither a Chapter 11 trustee nor a debtor-in-possession
- Can you take back your franchise contract?
- Are negotiations before a franchise agreement was finalized admissible?
- What makes a liquidated damages provision reasonable?
- Franchisor not intended beneficiary for mandatory mediation in franchisee equity dispute
- Wendy's 3-year battle with franchisee resolved through sale of 140 restaurants
- Who pays capital gains taxes in corporate Chapter 11 liquidating asset sales?
- 2 approaches to the sale of assets in liquidating Chapter 11 cases
- Federal court upholds Volvo's auto dealer bonus program
- Cancellation of debt income and its impact on loan workouts
- Amendments to Ohio's Law Governing Motor Vehicle Franchise Agreements Take Effect on September 14, 2016
- Is the restaurant industry in a recession?
- Have you protected your lien rights?
- Specific issues impacting oil and gas bankruptcy cases
- Is a receiver liable for federal income taxes?
- 3 bankruptcy options for small business owners
- 6 steps restaurant operators need to take to prepare for the proposed new overtime rules
- 6 hot issues facing the franchise industry in 2016
- Do Court-Appointed Receivers Have Judicial Immunity in Ohio?
- Small Business Bankruptcy Cases: A Viable Option
- The House passes the Save American Workers Act despite the threat of a veto

## News

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- 50 McDonald Hopkins attorneys recognized in the 2023 editions of The Best Lawyers in America® and Best Lawyers: Ones to Watch in America™
- McDonald Hopkins recognized in Chambers USA 2022 rankings
- McDonald Hopkins attorneys selected to 2022 Ohio Super Lawyers and Rising Stars Lists
- 50 McDonald Hopkins attorneys recognized in The Best Lawyers
- McDonald Hopkins recognized in Chambers USA 2021 Rankings
- 15 McDonald Hopkins attorneys selected to 2021 Ohio Super Lawyers and Rising Stars list

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- McDonald Hopkins recognized in Chambers USA 2020 Rankings
- McDonald Hopkins recognized in Chambers USA 2019 rankings
- Seventeen attorneys at McDonald Hopkins named 2019 Ohio Super Lawyers and Rising Stars
- McDonald Hopkins Recognized by Chambers USA 2018
- 22 attorneys at McDonald Hopkins named 2018 Ohio Super Lawyers and Rising Stars
- McDonald Hopkins Recognized by Chambers USA 2017
- TMA Ohio Chapter announces 2016 award winners
- 24 attorneys at McDonald Hopkins named Ohio Super Lawyers and Rising Stars
- Seven McDonald Hopkins Attorneys Recognized by Chambers USA 2015
- "State courts grow in popularity as forums for liquidations," Scott Opincar quoted in The Deal

### External Publications

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- Author, "The Challenges of Restructuring Continuing Care Retirement Communities," Turnaround Management Association Newsletter, April 2012
- Co-Author, "Identifying Restructuring Concerns for Troubled Franchisees," Turnaround Management Association Newsletter, June 2010
- Co-Author, "The ISDA Agreement - Key Document Considerations in Today's Market," The RMA Journal, December 2009
- Author, "Swap Agreements, Forward Contracts and the Bankruptcy Code Provisions That Apply to Them," Turnaround Management Association Newsletter, June 2009
- Author, "The Bankruptcy Reform Act Two Years Later," Cleveland Bar Journal, February 2008
- Author, "Recent Changes to Ohio's Mechanic's Lien Laws," Cleveland Bar Journal, October 2007
- Co-author, "Sales Free and Clear and Real Property Interests," Dow Jones Daily Bankruptcy Review, February 2007
- Various blog articles and posts

### Events

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- Workout Banker Panel 2022 | Tuesday, April 12, 2022
- Stabilizing Your Business In The COVID-19 Era | Wednesday, March 25, 2020
- Paving the Path to a Distressed M&A Acquisition | Wednesday, October 23, 2019
- Tariffs and Their Impact on Business | Thursday, April 25, 2019
- 2019 Business Outlook | Thursday, January 31, 2019
- Debt Collection, Bankruptcy & the Ohio Receivership Law | Saturday, December 1, 2018
- Economic Summit | Wednesday, November 14, 2018
- Receiverships in Ohio: Understanding the new legislative amendments | Wednesday, April 29, 2015

### Speaking Engagements

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- "Turnaround Industry Outlook," TMA MidAmerica Regional Conference, September 2021
- "Workout Bankers Panel," TMA Northern Ohio Chapter, April 2021
- "TMA Ohio Bankers Panel," May 2020



- “Golden Shares and Bankruptcy Remote Entities,” Cleveland Metropolitan Bar Association, October 2018
- "Structured Dismissals and Chapter 11 Exit Strategies," Cleveland Metropolitan Bar Association, June 2016
- "Treatment of Executory Contracts in Bankruptcy," Cleveland Metropolitan Bar Association, May 2012
- "Recent Court Cases Impacting Bankruptcy," Turnaround Management Association Meeting, March 2012
- "Ethical Considerations in Pursuit of Client Representations," Cleveland Metropolitan Bar Association, May 2011
- “Creditors' Remedies,” Ohio State Bar Association seminar, March 2011
- “Negotiating Bankruptcies, Workouts, and Turnarounds,” Cleveland Metropolitan Bar Association and Turnaround Management Association program, November 2010
- “Creditors' Remedies,” Ohio State Bar Association seminar, May 2010
- “Representing the Average Creditor In and Out of Bankruptcy,” Ohio Bar Association seminar, November 2009
- “Auto Dealers in Today’s Market: Where the Rubber (Leaves the Lot) and Meets the Road,” Turnaround Management Association Meeting, April 2009
- “Alternatives to Bankruptcy,” Turnaround Management Association’s 12th Annual Business Workshop, December 2008
- “Director Liability,” Turnaround Management Association’s 11th Annual Business Workshop, December 2007
- “Representing the Average Creditor In and Out of Bankruptcy,” Ohio Bar Association seminar, May 2007
- “Real Estate Interests That Are Impervious to Bankruptcy,” American Bankruptcy Institute’s Spring Conference, Washington, D.C., April 2007
- “The Economy of 2007,” Turnaround Management Association’s 10th Annual Business Workshop, December 2006
- “Representing the Average Creditor,” Ohio State Bar Association seminar, May 2006
- “Significant Provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,” National City Bank, Cleveland, Ohio, October 2005
- “How Bankruptcy Impacts Workouts,” Cleveland Bar Association, Cleveland, Ohio, September 2005
- “Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 -- Chapter 1,” Cleveland Bar Association, Cleveland, Ohio, July 2005