

JAMES T. BURGHARDT

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Personal and Educational Background:

Born February 21, 1951 in Baltimore, Maryland; admitted to bar 1980, Colorado.

Princeton University (A.B., cum laude, 1973), Woodrow Wilson School of Public and International Affairs.

University of Denver College of Law (J.D., 1980). Recipient, American Jurisprudence Awards in Corporations and Partnerships.

Successful completion of the following 40-hour advanced mediation/negotiation programs:

- American Bankruptcy Institute/St. John's University Bankruptcy Mediation Training (2014)
- Harvard Law School Advanced Mediation Workshop (Robert Mnookin, 2000)
- CDR Associates (Boulder, CO) Mediation Process Workshop (1996)
- Harvard Law School Negotiation Workshop (Roger Fisher, 1995)

Inducted into the Colorado Chapter of the National Academy of Distinguished Neutrals, 2016.

Professional Background:

Over 15 years of experience as a mediator of complex commercial, bankruptcy, corporate, and real estate disputes and litigation. More than 37 years of experience as an attorney in these areas of practice before becoming a full-time mediator in January 2018.

Attorney with Moye White LLP in Denver for entire legal career 1980-2017. Member of firm Management Committee most years 1986-2017; firm Managing Partner 2005-2013.

Investment banker (municipal bonds) with Van Kampen, Wauterlek & Brown, Chicago (1973-1977).

Representative Engagements in Mediations and Business/Bankruptcy Reorganizations

- Mediator in Chapter 11 case involving over \$100 million in debt, addressing interrelated disputes between and among debtor and major creditors, including objections to proposed reorganization plan, motion to convert to Chapter 7, contested matters, adversary proceeding to determine nondischargeability of debt (including treble damages), and state court lawsuits in two states. All disputes resolved in Settlement Agreement that included 37 signatories.
- Mediator of confidential pre-litigation dispute among members of large family-owned entity with significant retail visibility in metropolitan community, regarding ownership, succession, business valuation, personal liability, and other issues.

- Mediator in two adversary proceedings involving Chapter 11 trustee's claims for breach of duties of care, good faith, and loyalty, breach of fiduciary duty, fraudulent conveyance, and unjust enrichment against former officers, directors, and affiliates of the debtors, asserting some \$20 million in damages.
- Mediator in "business divorce" between partners in entities whose primary assets were intellectual property and confidential client information.
- Mediator of dispute between contracting parties regarding alleged breach vs. right to consummate \$7.5 million commercial real estate purchase and sale agreement.
- Mediator of disputes in individual Chapter 11 case regarding objection to confirmation of proposed reorganization plan, avoidable transfer litigation, and objection to professional fee application.
- Mediator between co-owners of closely-held business, one of whom wanted to retire and sell his interest in the business to the other, regarding transition and valuation issues.
- Mediator in individual Chapter 11 case, involving objection to confirmation of proposed reorganization plan, potential motion to convert, potential denial of discharge, and related claims.
- Mediator in pre-litigation dispute between IP provider and large national corporate IP user involving claims and counterclaims for breach of contract and related issues for approximately \$1 million.
- Mediator in state court lawsuit involving fraudulent transfer claims against judgment debtors for over \$1.4 million, potential bankruptcy, and nondischargeability issues.
- Mediator in \$1 million-plus preferential transfer litigation between plan agent for Chapter 11 reorganized debtor and major prepetition supplier
- Mediator for California "business divorce" between company founder/entrepreneur and key employees wishing to take over the business.
- Mediator in bankruptcy adversary proceeding involving claims of nondischargeability based on fraud and embezzlement of corporate assets.
- Mediator in three related adversary proceedings in corporate Chapter 11 case involving large transfer avoidance claims by bankruptcy trustee against three major corporate creditors.
- Mediator in pre-litigation dispute between national lender and real estate developer facing bankruptcy in absence of negotiated solution to \$2.25 million debt.
- Mediator in adversary proceeding and appeal arising from prepetition state court judgment for fraud against principal of business debtor. Settlement included resolution of additional issues arising in underlying bankruptcy case.
- Service on panel established by Faculty of Federal Advocates for mediation referral program in the U.S. Bankruptcy Court for the District of Colorado. Some cases handled *pro bono* for one or both parties, according to program guidelines.

- Bankruptcy counsel for several environmental organizations in three of the largest coal company bankruptcy cases in US history; participated in negotiated resolutions that resulted, for the first time, in full commercial bonding coverage of the companies' reclamation obligations.
- Bankruptcy counsel for an Indian tribe in the largest coal company bankruptcy case in US history, resulting in a negotiated resolution of claims that advanced the tribe's economic, cultural, and environmental objectives.
- General corporate counsel, expert witness, and consulting counsel for holding company, its owner, and its subsidiaries, including five short-line railroad companies, in sale of their major real estate assets and resolution of federal and state court litigation, bankruptcy, and business disputes in Colorado and several surrounding states.
- Bankruptcy and special counsel to foreign-owned Colorado corporation holding title to mountain resort hotel in Colorado. Primary legal negotiator for Chapter 11 sale of hotel and adjacent land to another major resort owner.
- Lead counsel to official creditors' committee (representing over 1,000 bondholders) in metropolitan district's second Chapter 9 case, resulting in successful restructure of approximately \$47M in defaulted bond indebtedness.
- Co-counsel to official creditors' committee in corporate Chapter 11 case involving approximately \$1.2 billion in debt.

Honors, Memberships:

2018: Designated a "Super Lawyer" for the 11th time.

2017: Recipient of "People's Choice – Best Bankruptcy Lawyer" award by *Law Week Colorado* in its annual Barrister's Best edition.

2017: Selected for inclusion in the 24th Edition of *The Best Lawyers in America* for work in Bankruptcy and Creditor-Debtor Rights / Insolvency and Reorganization Law

2016: Inducted into the Colorado Chapter of the National Academy of Distinguished Neutrals.

2014: Appointed by 10th Circuit Court of Appeals to serve on Bankruptcy Judgeship Merit Selection Panel (two Judges, three attorneys) to recommend candidates to 10th Circuit to fill upcoming vacancy on Colorado Bankruptcy Court.

2013: Recipient of "People's Choice – Best Mediator" award by *Law Week Colorado* in its annual Best In Show edition.

2007–2010: Participant in development of mediation pilot program in Colorado Bankruptcy Court.

2005-2013: Managing Partner of Moye White LLP (approximately 50 attorneys; annual election) until identifying and recommending successor, enabling return to full-time practice with emphasis on mediation and business bankruptcy.

2000–2004: Appointed by Chief Judge of U.S. District Court for Colorado to serve on three successive Bankruptcy Judgeship Merit Selection Panels (one Judge, five attorneys), to recommend candidates to 10th Circuit Court of Appeals to fill vacancies on Colorado Bankruptcy Court.

1991-1994: Appointed by Chief Judge of U.S. District Court for Colorado to serve as member of Civil Justice Reform Act Advisory Group.

Member: National Academy of Distinguished Neutrals; the Mediation Association of Colorado; American Bankruptcy Institute.

Presenter:

2017: Presenter at Bankruptcy Court “brown bag lunch series” program on when, why, and how to use mediation in bankruptcy cases.

2014: Panelist/speaker on “Hot Topics” panel at American Bankruptcy Institute’s Annual Rocky Mountain Bankruptcy Conference.

2013: Speaker at several Colorado Bar Association Bankruptcy Subsection meetings on topics of interest, including bankruptcy mediation.

2007: Panelist/speaker on challenges facing second lien/subordinated financings after a commercial borrower’s bankruptcy, at American Bankruptcy Institute’s Annual Rocky Mountain Bankruptcy Conference.

2005: Panelist/Speaker on defense of preference claims at American Bankruptcy Institute’s Annual Rocky Mountain Bankruptcy Conference. [This panel won the first “Best of ABI” award, and as a result repeated its presentation to a live national teleconference audience several months later.]

1991-1999: Lecturer, "The Bankruptcy Update for Bankers and their Legal Counsel," Professional Education Group (full-day seminar conducted for state banking associations in 20 states); "Problem Loan Workouts: What Every Lender Needs to Know," Professional Education Group, 1991-99 (full-day seminar conducted for state banking associations); "The Bankruptcy Reform Act of 1994 - What Lawyers and Lenders Need to Know," Professional Education Group, 1995 (half-day seminar); "Principles of Bankruptcy," Continuing Legal Education in Colorado 1994.

References available upon request.

Last updated: April 1, 2018