

## Monique Jewett-Brewster

Shareholder

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- **Industries**

- Banking & Financial Services
- Industrial & Manufacturing
- Retail
- Technology

- **Services**

- Bankruptcy
- Financial Institutions & Creditors' Rights
- Litigation
- Real Estate
- Appellate

## Overview

Monique Jewett-Brewster is Chair of the Financial Institutions and Creditors Rights Practice Group and a member of Hopkins & Carley's Litigation Department in the San Jose office. Monique has over twenty years of experience advising creditor clients in every aspect of insolvency law, including without limitation, in the workout, restructuring and enforcement of commercial loans and in business bankruptcy cases nationwide. Her clients include:

- Financial institutions
- Private money lenders
- Equipment leasing companies
- Asset purchasers
- Commercial landlords and tenants

### Hopkins & Carley

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- Receivers and trustees
- Credit unions
- Judgment creditors

She also counsels the City of Oakland in its bankruptcy matters.

Monique is only one of 14 attorneys in the United States, Canada and Mexico to have been selected for and inducted into the American College of Commercial Finance Lawyers ("ACCFL")'s 2023 class of Fellows. The ACCFL Fellows are practicing lawyers, jurists and academics licensed to practice law who have maintained excellent character, achieved preeminence in the field, and made substantial and sustained contributions to the promotion of learning and scholarship in commercial finance law through teaching, lecturing, published writings or continuing legal education.

Monique is honored to have served as the 2018-19 Chair of the Business Law Section of the California Lawyers Association (CLA), the largest statewide voluntary bar association in the country. An insolvency lawyer for the entirety of her law career, Monique also formerly served as Co-Chair, Publications Chair and E-Bulletin Editor in Chief of the Insolvency Law Committee (ILC) of the Business Law Section of the State Bar of California.

Monique is also a former attorney member of the prestigious Bench Bar Liaison Committee of the United States Bankruptcy Court for the Northern District of California, and director of the Bay Area Bankruptcy Forum.

After completing two externships with former bankruptcy judge Kathleen P. March, Esq., the Hon. Alan M. Ahart (ret.) and the Hon. Ellen Carroll (ret.) during her studies at the University of Southern California Gould School of Law, Monique completed a two-year post-graduate clerkship with the Hon. Meredith A. Jury, U.S. Bankruptcy Judge for the Central District of California (ret.). Monique is also a 2012 recipient of the Hon. Cornelius Blackshear Presidential Fellowship presented by the National Conference of Bankruptcy Judges.

Monique is passionate about increasing diversity, equity and inclusion in the legal profession. In 2020-21, Monique served as the inaugural Chair of the CLA's Diversity Outreach Committee, which works to increase diversity in the student pathways to careers in the legal field. Monique also served on the Board of the Black Women Lawyers of Northern California, and is a past member of the California Minority Counsel Program (CMCP)'s Ambassadors Council, which works to expand CMCP's outreach and promote the advancement of business attorneys of color.

With a love of sharing knowledge, Monique has presented on the subjects of commercial finance and business bankruptcy for the State Bar of California (later CLA)'s Business Law Section; Continuing Education of the Bar (CEB); California Bankruptcy Forum; Bar Association of San Francisco; Alameda County Bar Association; California Minority Counsel Program; California

Bankers Association; Western Bankers Association; and Tennessee Bar Association, among other organizations.

Monique is also a prolific author, having served as a contributing author to Westlaw's Commercial Finance Newsletter as a member of the CLA Business Law Section's ad hoc authors committee, and authored a chapter on the impact of bankruptcy on real property title and sales included in CEB's Real Property Ownership and Taxation practice guide. Monique also has drafted several legal development alerts of value to her commercial creditor clientele.

Finally, Monique was instrumental to the launch of Hopkins & Carley's *Bankruptcy Bytes* and *Money Matters* video series in 2020, both of which designed to introduce commercial creditors to complicated legal concepts related to their ability to recover defaulted debt. As of the close of 2022, these creditors' rights video series have been viewed over 70,000 times.

## Experience

- After initiating loan enforcement litigation, represented investment advisory firm managing over \$330 million in assets in the successful negotiation and documentation of discounted payoff agreement with distressed real estate developer borrower, with recovery totaling in excess of \$9.5 million, including principal, default interest, and attorneys' fees.
- Facilitated disposition of lender client's collateral under Uniform Commercial Code Article 9, which resulted in client's receipt of over \$370,000 from the settlement of a commercial tort claim constituting its collateral.
- Successfully defended against federal equity receiver's attempt in SEC Ponzi-scheme case to hold bank client in contempt for purportedly failing to comply with the court's orders regarding administration of the receivership entity's ACH processing.
- Obtained a full payoff of lender client's loan, including principal, default interest, and attorneys' fees, through bankruptcy sale of assets fewer than 60 days postpetition, where loan was secured by overseas accounts receivable and extremely large high tech manufacturing equipment located in a leased facility out of state.
- Represented church lender with respect to defaulted multi-million dollar construction loan to borrower church secured by blanket lien on all of borrower's real and personal property, and negotiated and documented a complex lease-option purchase agreement that allowed borrower to remain in the church premises subject to the terms and conditions agreed to by the parties.
- After software as a service (SaaS) company borrower defaulted on lender client's business line of credit secured by, *inter alia*, borrower's accounts receivable, prosecuted loan enforcement and collections action against borrower and principal guarantors in state court, and advocated for lender in the three related Subchapter V Chapter 11 cases filed by borrower and the two guarantors, leading to the negotiation and confirmation of consensual Chapter 11 plans in each bankruptcy case.
- Represented successful purchaser of Chapter 11 debtor's packing machinery business unit and related assets free and clear of liens in a competitive auction, and subsequently documented and facilitated the time-sensitive sale closing.
- Facilitated judicial and non-judicial foreclosure proceedings concerning commercial real estate collateral located in five different states for credit union client, resulting in payoff of all five loans in full.
- Drafted all transactional documents required to modify a multi-million dollar tax-exempt loan issued by a state municipal

authority.

- Represented receiver in successfully selling real property of the receivership estate pursuant to a charging lien in order to partially carry judgment into effect.
- Negotiated and collected a six-figure settlement for municipality client in complex litigation involving a state court-appointed receiver, a bankrupt entity landlord that filed for Chapter 11 bankruptcy protection, a bankruptcy court-appointed Chapter 11 Trustee, a class action suit with dozens of class members, and several related tenant suits against the landlord, among others.
- Regularly advocates for commercial lender clients by litigating and pursuing provisional remedies to enforce outstanding debts, including obtaining writs of attachment against individual guarantors of commercial real estate secured debt, and writs of possession/claim and delivery to obtain possession of clients' tangible, personal property collateral.
- Regularly advocates for commercial creditor clients by pursuing Uniform Commercial Code Article 2 buyer and seller default remedies.
- Regularly advocates for creditor clients in bankruptcy cases by defending preference and fraudulent conveyance actions, negotiating the proposed use of cash collateral, objecting to, or facilitating, the assumption and assignment of executory contracts and unexpired leases, and prosecuting proofs of claims.

## Insights

### Selected Publications

- "Automatic Stay in Bankruptcy Proceeding Did Not Prevent Judgment Creditor from Renewing Judgment While Case Was Pending, But Ten-Year Renewal Period Was Extended" [*Rubin v. Ross*, 2021 WL 2283771 (Cal. App. 4<sup>th</sup> Dist. 2021)], 2021-24 Comm. Fin. News. NL 48, published in Westlaw's [Commercial Finance Newsletter](#), June 2021
- "New Law Changes Homestead Exemption," Hopkins & Carley Creditors Rights Client Alert, October 2020
- "Bankruptcy Appellate Panel Confirms Authority to Annul Stay Retroactively," Hopkins & Carley Creditors Rights Client Alert, October 2020
- "COVID-19 Update: The CARES Act Expands Access to Bankruptcy Relief," Hopkins & Carley Creditors Rights Client Alert, March 2020
- "California Court of Appeal Holds Provision Limiting Liability in Lease is No Longer Enforceable After the Lease is Subsequently Assigned to Foreclosing Lender" [*Gietzen v. Covenant RE Management, Inc.*, 40 Cal. App. 5<sup>th</sup> 331, 2019 WL 4635154 (2d Dist. 2019)], 2019-32 Comm. Fin. News. NL 63, published in Westlaw's [Commercial Finance Newsletter](#), October 2019
- "Bankruptcy Court Rules Default Interest is Not a Penalty Where Triggered by Maturity Default," Hopkins & Carley Creditors Rights Client Alert, May 2019
- "Ninth Circuit Rules That Trustees May Recover Bank Deposits Irrespective of the Bank's Possessory Setoff Rights in Such Deposits," Hopkins & Carley Creditors Rights Client Alert, April 2017
- "Bankruptcy Impact on Title & Sales," chapter published in the Continuing Education of the Bar – California (CEB), [Real Property Ownership and Taxation Practice Guide](#), February 2017
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"Appellate Court Rejects Guarantor's 'Sham Guaranty' Defense to Guaranty Enforcement," Hopkins & Carley Creditors Rights Client Alert, October 2016

- "Post Bankruptcy Settlement Proceeds Constitute 'Proceeds' of Bank's Prepetition Real Property Collateral," Hopkins & Carley Creditors Rights Client Alert, July 2016
- "Court Confirms Bankruptcy Filing Prevents Expiration of Judgment Creditor's 'ORAP' Lien," Hopkins & Carley Creditors Rights Client Alert, March 2016
- "*Stern v. Marshall*: The End of Bankruptcy Courts As We Know Them, or Just a Minor Correction to the Bankruptcy Code?," Business Law News, Business Law Section of the State Bar of California, co author, December 2012
- "An Introduction to California Receivership Law," Continuing Education of the Bar – California (CEB), California Business Law Practitioner, co author, August 2010
- "Chapter 11 Petition Filed Before Expiration of Holdover, At-Will Tenancy Constitutes 'Bad Faith' Filing," Pratt's Journal of Bankruptcy Law, March 2008
- "Future Asbestos-Related Claims Estimated To Ensure Voting is Commensurate with Claimants' Economic Interest," Reed Smith LLP Creditors Rights Client Alert, July 2007
- "Secured Creditor's Carve-Out Does Not Violate Bankruptcy Code," Reed Smith LLP Creditors Rights Client Alert, October 2006
- "Failure to Describe Easements Does Not Create Executory Contract," Reed Smith LLP Creditors Rights Client Alert, August 2006
- "Bank Not Liable as an 'Employer' Under WARN Act or 'Fiduciary' Under ERISA," Reed Smith LLP Creditors Rights Client Alert, April 2006
- "NY Court: Lender Owes No Duty of Disclosure to Borrower's Investors," Reed Smith LLP Creditors Rights Client Alert, April 2006

## Selected Speaking Engagements

- "Defaults and Forbearance Agreements," Joint Subcommittee Meetings of the Loan Workouts Subcommittee, Lender Liability Subcommittee and Real Estate Finance Subcommittee, American Bar Association, Business Law Section, Commercial Finance Committee, April 2023
- "Subchapter V Greatest Hits!," with the Hon. Jennifer E. Niemann, California Bankruptcy Forum, May 2022
- "Advanced Automatic Stay Issues," with the Hon. M. Elaine Hammond, Bar Association of San Francisco, Commercial Law and Bankruptcy Section, September 2021
- "Risk Management and Bankruptcy Exposure: Strategies in the Era of COVID-19," Western Bankers Association Regulatory Compliance Conference, October 2020
- "The New California Homestead Exemption: Scenarios on its Effect," with the Hon. Scott C. Clarkson, Los Angeles Bankruptcy Forum, October 2020
- "Practical Courtroom Tips for Lawyers," with the Hon. Hannah Blumenstiel, Bar Association of San Francisco, Commercial Law and Bankruptcy Section, May 2019
- "Recent Developments Affecting Real Estate Secured Lending," State Bar of California, Business Law Section, July 2017

- “Fraudulent Transfers: When Bankruptcy Trustees Attack!,” with the Hon. Hannah Blumenstiel, Bar Association of San Francisco, Commercial Law and Bankruptcy Section, September 2016
- “Creditors’ Rights and Remedies,” Continuing Education of the Bar – California (CEB), July 2016
- “Preparing for a Downturn: What Commercial Landlords and Tenants Should Know About Bankruptcy,” Association of Corporate Counsel, Bay Area Chapter, April 2016
- “*Much Ado About Nothing?* Lien Stripping in Chapter 7 Bankruptcy and the Supreme Court’s *Caulkett* Decision,” Bar Association of San Francisco, Commercial Law and Bankruptcy Section, July 2015
- “Maximizing the Value of Intellectual Property in Bankruptcy,” Association of Corporate Counsel, Bay Area Chapter, June 2015
- “Hot Topics in Commercial and Real Estate Lending,” California Bankers Association, Bank Counsel Seminar, May 2015

## Professional Activities

- American Bar Association, Business Law Section, Commercial Finance Committee, Loan Workouts Subcommittee, Chair
- American College of Commercial Finance Lawyers (ACCFL), Fellow
- Turnaround Management Association, Northern California Chapter, Member
- California Minority Counsel Program, Ambassadors Council, Member
- California Lawyers Association, 2018-19 Chair, Business Law Section
- California Lawyers Association, Business Law Section, Executive Committee, Advisor
- State Bar of California, Business Law Section, Vice-Chair of Publications, Diversity Coordinator and Standing Committee Coordinator
- State Bar of California, Business Law Section, Insolvency Law Committee Co Chair, Co-Vice Chair, Publications Chair, E-Bulletin Editor-in-Chief
- National Coalition of 100 Black Women, Silicon Valley Chapter, Public Policy Committee, Member
- Black Women Lawyers of Northern California, Board of Directors, Director
- United States Bankruptcy Court for the Northern District of California, Bench-Bar Liaison Committee, Member
- California Bankruptcy Forum Conference, Young Insolvency Professional Program Co Chair and program producer
- Bay Area Bankruptcy Forum, Board of Directors, Director
- International Women’s Insolvency and Restructuring Confederation, Northern California Chapter, Member
- Financial Women of San Francisco (formerly the Financial Women’s Association of San Francisco), Board of Directors, Director, Secretary and Chair of Scholarship Committee
- Girl Scouts of Northern California, Camp CEO, Mentor

## Bar Admissions

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- State Bar of California (2001)

## Court Admissions

- U.S. Court of Appeals for the Ninth Circuit
- U.S. Court of Appeals for the Eleventh Circuit
- U.S. District Court for the Northern District of California
- U.S. District Court for the Eastern District of California
- U.S. District Court for the Central District of California
- U.S. Bankruptcy Court for the Northern District of California
- U.S. Bankruptcy Court for the Eastern District of California
- U.S. Bankruptcy Court for the Central District of California
- U.S. Bankruptcy Court for the Southern District of California

## Education

- J.D., University of Southern California School of Law
- B.A., Politics (minor in Japanese), University of San Francisco