



## 2021 MVP

# Joshua Sussberg

Joshua A. Sussberg of Kirkland & Ellis LLP spent the last year dealing with a run of bankruptcy cases as the COVID-19 pandemic ravaged the retail sector, successfully reorganizing industry giants like JCPenney in a challenging environment, earning him a spot as one of Law360's 2021 Bankruptcy MVPs.

### His biggest accomplishment of the last year:

When COVID-19 reached the U.S. in early 2020 it hit retailers hard, as government-mandated business restrictions caused revenue to dry up almost overnight.

Industry scion JCPenney, for one, hit Chapter 11 in May 2020 after its yearlong effort to restructure an overleveraged balance sheet was threatened. Sussberg and his colleagues at Kirkland led the representation in an environment that could have spelled doom for the department store chain, which had more than 850 locations and 85,000 employees.

Through his deft negotiation skills, Sussberg was able to guide the company through the bankruptcy process, ultimately shepherding a plan that preserved

more than 60,000 jobs and put JCPenney in a strong position from which to emerge.

"In retail, it's never a fait accompli that the company is going to restructure," he said. "This one, more than most, had its ups and down in the face of an unprecedented pandemic. Being able to be a part of a team to navigate those uncharted waters ... was a huge accomplishment."

The plan saw JCPenney's assets split into an operating silo and a property-owning silo, with the operations sold to a joint venture of Simon Property Group and Brookfield Property Group and the transfer of 166 properties owned by the debtor to its first-lien lenders through a real estate investment trust-structure.

The bankruptcy judge overseeing the case called the result "unbelievable" given the circumstances, and said Sussberg and his team had proven

the court wrong for expressing doubt about the prospects of the case when it began.

### His biggest challenge of the last year:

Aside from the economic turmoil wrought by the spread of COVID-19, Sussberg said a new challenge emerged as millions of people were suddenly thrust into a remote working environment. Bankruptcy attorneys, and the courts in which they operate, were not immune to the shift, having to learn to operate in a new virtual work landscape.

While it presented a new challenge, Sussberg said a positive development of the shift was that members of the public had much more access to bankruptcy proceeds.

Options had always been available for the public to engage with the proceedings in bankruptcy court, but

Sussberg said the virtual access now available led to some hearings having more than 500 participants dialing in via phone or videoconference.

“That’s not something we had seen before the pandemic. It’s great that people are able to participate, but you end up getting a lot of different people appearing on their own behalf,” Sussberg said. “Obviously they have gripes and concerns as they should when a company is not able to satisfy all its obligations. That created an element that’s certainly different and challenging.”

He said managing the expectations of such a diverse body of constituencies with only a cursory knowledge of the bankruptcy process was a new challenge to which he had to adapt.

In the JCPenney case in particular, Sussberg said dozens of shareholders became active in the proceedings as they strived to understand why the investments they had made in the company — some decades ago as part of their retirement funds — were going to lose their value.

“As quick as we are to judge, I think it’s much more important to put yourself in their shoes, understand where they’re coming from, and try to explain the circumstances and make people feel like they at least understand what is out there, even if they don’t like it,” he said.

### **His proudest moment of the last year:**

Sussberg’s victories aren’t limited to the courtroom; he emerged

**“ [The restructuring of JCPenney]...had its ups and down in the face of an unprecedented pandemic. Being able to be a part of a team to navigate those uncharted waters...was a huge accomplishment.”**

healthy from a battle with a rare form of lymphoma recently. His fight against the disease didn’t end with his own clean bill of health, though.

This summer, he was honored with the “Man of the Year” title by the Leukemia & Lymphoma Society in recognition of his fundraising efforts for the organization, which raked in more than \$1.7 million to help in the fight against blood cancers. The honor, and the way Sussberg was able to achieve it, highlights his colleagues’ ability to come together outside the courtroom for philanthropic endeavors, he said.

“[The restructuring community] is just an unbelievable network of people. It happens to be a very charitable group of folks,” he said. “Through a large part of that restructuring community, we were able to raise \$1.7 million dollars that can be used for blood cancer research and help, ultimately, find a cure for blood cancer.”

Even though he and his fellow bankruptcy professionals often find themselves as adversaries within the confines of the court, Sussberg said their ability to join forces for a good cause gives him great pride.

“The network we all have is really able to come together and do great things,” he said. “I’m certainly proud to be a member of that community, always.”

### **His advice for young bankruptcy attorneys:**

Sussberg chose restructuring as his area of focus after he found that every other specialty bored him, he said. For newcomers to the practice, he advises them to work first on developing their confidence through repetition.

“For any young lawyer, no matter the practice, it’s your job to be a sponge and gobble up every single opportunity that is afforded so you get better every day,” he said. “You’ve got to treat every single assignment, even the ones that are the most bizarre, as if it’s the most important. If you do, you’ll get the most out of it and get better.”

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