



DOUGLAS J. PAYNE

FABIAN & CLENDENIN

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AREAS OF PRACTICE:

- Bankruptcy
- Complex Litigation

PRACTICE SUMMARY

Doug Payne is an attorney with over 25 years experience who has a proven record of success. His practice focuses on the areas of commercial litigation, real property, and representation of creditors and trustees in business bankruptcy cases. He has used his analytical abilities to help clients navigate complex business bankruptcy issues, as well as to successfully resolve litigation disputes.

Doug is a member of the Utah State Bar, and is admitted to practice before the United States District Court for the District of Utah, the Tenth Circuit Court of Appeals, and the United States Supreme Court. He is also a member of the Utah Bankruptcy Lawyers Forum, and has been actively involved in the Bankruptcy Section of the Utah State Bar. He is listed in Mountain States Super Lawyers.

PROFESSIONAL

- Attorney and Shareholder, Fabian & Clendenin, 1988-Present
- Attorney, Sessions & Moore, 1983-1988
- Admitted to Utah State Bar, 1983; Litigation Section; Bankruptcy Law Section; Exemptions Act Sub-Committee; Education Law Section
- Member, American Bankruptcy Institute
- Member, Salt Lake County Bar Association
- Recognized in Mountain States Super Lawyers as among the top bankruptcy lawyers in the state of Utah

EDUCATION

- J.D., University of Utah College of Law, 1983
- Utah Law Review, 1981-1983
- William H. Leary Scholar (Top 20)
- Honors B.A., Brigham Young University, 1979; Cum laude; Dean's List

COMMUNITY SERVICE

- Delegate to County and State Political Conventions
- Board Member, Murray Education Foundation, 2000-2006; Chairman, 2002-2004
- Volunteer leader, Boy Scouts of America; Granite Trails District Award of Merit, 2005
- Murray City Planning and Zoning Commission, 1995-2000; Chairman, 1998

REPRESENTATIVE PROJECTS

- **REAL PROPERTY** - Doug represented a landowner in a dispute over the scope of a canal company easement. A developer had used the canal right of way for construction. Doug obtained an injunction barring the developer from trespassing on his client's property.

Negotiated a favorable settlement for a junior lender in mechanic's lien litigation involving priority and validity of numerous mechanic's liens against a commercial waste disposal facility. The case included lien priority issues arising from the date of commencement of work, the effect of cessation of work and different construction phases on lien priority, and whether large pieces of equipment installed in the facility were fixtures or personal property.

Represented a seller of a parcel of land-locked property in a dispute over an access easement. Doug assisted in negotiating a consensual easement with the adjoining landowners and also worked to obtain a court order approving the easement in a bankruptcy involving one of the landowners.

- **BANKRUPTCY** - Doug represented a construction company in successfully reorganizing under Chapter 11 of the Bankruptcy Code. The representation included negotiations to resolve claims of taxing authorities and other creditors.

Represented a Chapter 11 bankruptcy trustee in obtaining confirmation of a Chapter 11 plan that pays all creditors in full. The representation involved defeating confirmation of a competing Chapter 11 plan filed by the principal defendant in an avoidance lawsuit being prosecuted by the Chapter 11 trustee and obtaining court approval for a complex sale of an asset to fund the trustee's Chapter 11 plan.

Doug has been lead counsel for creditors' committees in a number of bankruptcy cases. He successfully negotiated a plan in one Chapter 11 bankruptcy that paid unsecured creditors in full. While representing a special creditor's

committee in a large Chapter 11 bankruptcy case, Doug helped block a plan that would have substantially restricted the rights and adversely affected the claims of the constituent class of creditors and negotiated a provision that favorably treated such claims. He has also represented an unsecured creditors' committee in numerous avoidance actions to recover significant funds for a Chapter 11 bankruptcy estate.

Represented a closely-held business in defending a bankruptcy trustee's claims that the business had received a fraudulent conveyance from insider shareholders. Doug was able to negotiate a favorable resolution of the dispute outside of litigation.

Represented the owner of property with claims against a bankrupt debtor for environmental contamination to adjoining property. Doug successfully withdrew the related litigation from the Bankruptcy Court and consolidated it with a lawsuit pending in U.S. District Court.

Represented a major corporation in defending a significant preference claim asserted by a bankruptcy trustee. Doug asserted new value and ordinary course of business defenses on behalf of his client. He succeeded in getting an appellate court to reverse a bankruptcy court decision and rule in favor of his client.


Doug has advised a major utility company on its procedures for dealing with pre-petition customer security deposits and post-petition service to bankrupt utility customers. As a result of the advice, the utility revised its policies and significantly reduced the amount of losses in bankruptcy cases.

Doug represented a widow with a non-dischargeability claim against a bankruptcy attorney who had filed personal bankruptcy. He prevailed for his client at two levels of appeal. His client received full payment from the defendant after Doug obtained a favorable decision from the United States Court of Appeals for the Tenth Circuit.

- **LITIGATION** - Doug represented a subcontractor in complex litigation involving numerous parties under Utah's mechanic's lien and contractor bond statute. He was able to negotiate a favorable result for his client.

Assisted in representing a title insurance underwriter in defending a claim for escrow defalcation caused by one of the underwriter's local title agents. The court dismissed a claim for statutory liability against the underwriter.

Represented a client who, although not a judgment debtor, had his investment account improperly frozen through a prejudgment writ of garnishment. The garnishment was based upon unsubstantiated allegations that the client had



received a fraudulent conveyance from a company that owed money to the third party. Doug asserted that his client had been denied his due process rights and that the garnishment order was invalid; he obtained a release of the garnishment order, freeing the account.