

Day Pitney Leads Holders of \$4.6 Billion in Securitized Debt to Success in Conseco Chapter 11 Suit

At the time of Conseco, Inc.'s, Chapter 11 filing, the company wanted an expedited sale of its finance subsidiary, Conseco Finance Co. (CFC). This subsidiary, which provided more than half of the financing for the manufactured housing industry, was reported to be losing close to \$300 million per year.

When the case began, an outcome that protected the interests of our client, the largest of a group of institutional investors holding \$4.6 billion in securitized debt, was far from preordained.

“Bankruptcy is a game and it is not a genteel game,” says James Tancredi, partner in Day Pitney’s Distressed Assets Practice Group. “The Court responds to those with position and power.”

Alone, Conseco’s objectors would have neither the position, nor the power to make a stand. Together, our client and Day Pitney organized an Ad Hoc Securitization Holders’ Committee to protect the bondholders’ collective interests, with our team keeping the identities of nine of the committee’s major institutional investors confidential throughout the proceedings.

While the Committee represented disparate interests, Day Pitney team leadership established an atmosphere of collaboration and consensus that allowed the Committee to exercise market power and compelling legal persuasion. When the winning bid favored by the Committee was subjected to an end run by other parties, the Ad Hoc Committee and our multidisciplinary legal team remained focused, open-minded, and—most of all—strategic. With persistence, and a few carefully planned litigation and negotiation maneuvers coordinated nationwide, the Committee played a significant role in selecting the winning bidder, modifying the terms of sale, and ultimately gaining significant governance, price and servicing concessions.

The capital markets responded positively to the approved sale and settlement. At the completion of the proceedings, one commentator noted: *“We can now safely say that this resolution has allowed a ray of sunshine to peak through the dark cloud that has hovered over this [manufactured housing] industry during the past years.”*