Practices & Industries

Bankruptcy & Restructuring

Overview

Our Bankruptcy and Restructuring group serves the needs of creditors, investors and purchasers of debts and assets. Drawing on the combined experience of lawyers in our finance, bankruptcy, real estate, tax and business law practices, this group has been involved in major national and regional restructurings and insolvencies. Our practice is characterized by a proactive approach that emphasizes consensus building and the efficient achievement of "win-win" outcomes where possible, but which can, where required, include a very strong and aggressive litigation strategy.

Troubled Company Restructurings and Liquidations

We regularly counsel parties to distressed transactions on how to restructure the deal either within or outside the bankruptcy process. In times of restricted access to capital for emerging companies, our team of finance, bankruptcy, tax and corporate attorneys can assist companies, lenders, investors and other stakeholders in maximizing value, negotiating agreements and preserving inherent business value.

Representing Creditors and Other Stakeholders in Bankruptcy Proceedings and Litigation

Our bankruptcy and creditor rights experience allows us to provide advice to our clients in structuring securitizations, project finance transactions, commercial leases and other bankruptcy remote transactions in order to minimize the impact of bankruptcy. The strength and depth of our commercial trial practice gives us a strategic advantage in negotiating favorable outcomes in bankruptcy cases. When the objective requires high stakes litigation to prevail or to shift the leverage in a case, our bankruptcy and trial lawyers are experienced in managing the kind of diverse and complex litigation that arises in major bankruptcy cases, including contested plan confirmations, collateral valuation proceedings, claims objections, adversary proceedings and avoidance actions.

Nonperforming and Underperforming Structured Financings

Our extensive experience representing investors, issuers and others in structured financings – involving securitizations of commercial mortgage loans, franchisee loans, trade receivables, floor-plan financing, automobile loans, home equity loans, medical receivables, credit card receivables, utility stranded costs and numerous other financial assets – has helped us successfully represent parties to nonperforming and underperforming structured transactions. By deciphering complicated deal structures and analyzing important cash flow mechanics, we have helped our clients restructure these complex transactions. While we understand that servicing is often at the heart of a problem, we appreciate the rights and needs of differing classes of investors and their intercreditor issues, we work cooperatively to help the parties reach consensus, and we understand the consequences of failed bankruptcy remote structures for all parties involved, regardless of the ultimate source of the performance issues.

Distressed Real Estate

We have handled real estate restructurings and workouts, from large scale reorganizations such as the Colonial Realty debacle in Connecticut to single-asset Chapter 11 cases involving office buildings, shopping centers, restaurants, conference centers, apartment complexes, marinas and other special uses. We also have represented lenders and other parties in interest in contested confirmation battles, creditors' plans, deeds in lieu of foreclosure and complex restructurings to maximize value in distressed situations.

Workouts in the Airline Industry

We have represented secured and unsecured creditors, indenture trustees, and lessors of aircraft and engine parts in a number of airline bankruptcies, including serving as counsel to a member of the creditors' committees of American Airlines, Delta Airlines and Continental Airlines. We also represented significant creditor interests in Hawker Beechcraft, Northwest Airlines, TWA, Eastern Airlines, Pan Am, Braniff, Midway, Southern Air Transport, Shuttle America and others. We have taken significant roles in negotiating important aspects of plans of reorganization in some of these major cases.

Energy Industry and Electric Utility Restructuring

With a nationally recognized energy practice, we have decades of experience representing lenders, other creditors and debtors in bankruptcies and workouts across the energy industry. Our representations have included the acquisition of a large electric utility out of bankruptcy, counsel to a power pool in the bankruptcies of several large generators, and restructurings of independent power projects. We have addressed a broad range of issues in these engagements, including the replacement of project sponsors in power projects, the termination of power purchase agreements and the ramifications for power markets of the bankruptcy of multiple large market participants.

Hospitality Restructuring and Workouts

With in-depth knowledge of the hospitality industry, Day Pitney's Hospitality practice group provides clients a wealth of experience in numerous economic down cycles and in representing hotel and resort owners, lenders, managers, and brands to help them navigate restructurings, workouts and bankruptcies. Day Pitney attorneys understand the unique challenges faced by the hospitality sector, having substantial experience covering a broad range of transactional, litigation and operational issues. Our hospitality restructuring experience ranges from loan modifications to hotel bankruptcies, and from management renegotiation to receiverships.

Retail Industry Restructurings

We have served on committees in bankruptcy cases involving retail debtors and have participated in plan negotiations and litigated or negotiated resolutions on issues relating to leases, public bonds, mortgages, dispositions of assets, claims priorities and subordination, including participating and providing services to clients in the Chapter 11 proceedings of Aeropostale, Sears, Barneys, Ames Department Stores I & II, Caldor's, Bradlees, Federated Department Stores, Macy's, Filene's, Andy Jones, Countdown of CT and others.

Municipal and Tribal Restructurings

We have been a nationally recognized bond counsel since the early 20th century, and members of the municipal finance team represent and counsel states, municipalities, agencies, authorities, conduit borrowers, corporate trustees and banks, underwriters, and financial institutions that provide credit support to financing transactions in many types of matters, including restructurings. The depth of our municipal financing experience combined with our bankruptcy and complex litigation experience uniquely positions us to evaluate, advise on and implement strategic responses to the increased fiscal distress facing governments, communities and businesses.

Distressed Acquisitions

Our business and insolvency lawyers work together to assist creditors in controlling and disposing of collateral and to assist strategic or financial buyers in purchasing stock, loans and assets from distressed sellers.

Experience

No aspect of this advertisement has been approved by the highest court of any state. Prior results do not guarantee a similar outcome.

Troubled Company Restructurings and Liquidations

- Served as counsel to the receiver of a complex intellectual property company appointed by Delaware Chancery Court to implement merger and acquisition strategies and financial stabilization

- Served as debtor's special finance counsel in the $700 million recapitalization of International Place office towers in Boston and in the reorganization of a specialty finance lender in Connecticut
- Advised a family office with its distressed technology company investment, including bridge loans, loan restructuring and ultimate workout (outside of bankruptcy) to secure equity ownership of a target company
- Represented a diversified industrial concern in connection with the liquidation of an insolvent subsidiary
- Represented a cosmetics company in connection with the liquidation of an insolvent subsidiary

Representing Creditors and Other Stakeholders in Bankruptcy Proceedings and Litigation

- Represented secured creditors, major unsecured creditors, creditors' committees, equipment lessors and landlords in Chapter 11 proceedings throughout the United States
- Served as counsel to a title insurance company in connection with multijurisdictional lien priority and title insurance coverage issues in the Chapter 11 bankruptcy cases of Lehman Brothers Holdings Inc. and its related companies
- Served as counsel to a loan seller in clawback and indemnity litigation arising out of the Chapter 11 bankruptcy cases of Lehman Brothers Holdings Inc. and its related companies
- Served as counsel to a floor-plan lender in connection with the bankruptcy of a large automobile dealership group and related fraud litigation in the District of New Jersey
- Represented an insurance company in complex claim and collateral disputes in bankruptcy cases throughout the United States
- Served as counsel to estate-retained professionals in the bankruptcy cases of MTE Holdings, Refco, New York Racing Association, Feders, Boston Generating Company and Global Geophysical Services Inc.
- Represented a New Jersey-headquartered emerging pharmaceutical company with recovery of FDA registration and associated license rights out of Chapter 7 bankruptcy proceedings involving a joint venture partner
- Represented a foreign bankruptcy trustee in an ancillary bankruptcy proceeding, worldwide asset investigations and fraud litigation
- Represented a creditor purchasing promotional items in an action to prevent dischargeability of debt based on fraud and willful and malicious injury caused by the debtor
- Represented a lender defrauded by a seller of high-end pianos that concealed sales to avoid payment obligations under loan documents

Nonperforming and Underperforming Structured Financings

- Represented private placement investors in the successful restructuring of a door and window manufacturer, including collateralization of debt, negotiation of intercreditor arrangements with a senior bank group and early payoff of debt with full make-whole
- Represented private placement investors in the successful tax-efficient restructuring and wind-down of a $50 million project finance investment in five undersea cable maintenance vessels
- Represented ad hoc committees of holders of more than $5 billion of securitization notes in the Chapter 11 cases of Conseco Finance in Chicago and DVI Financial Services in Delaware

Distressed Real Estate

- Served as counsel to a secured lender in complex lien-priority litigation in commercial real estate bankruptcy in the United States Bankruptcy Court for the Eastern District of New York
- Served as counsel to a state agency as a secured lender in a complex real estate bankruptcy in the United States Bankruptcy Court for the District of Delaware

- Represented commercial landlords dealing with nonperforming tenants operating restaurants, to jointly develop and execute strategies to force performance or regain possession
- Represented lenders in workouts with developers in default of loan covenants
- Represented lenders dealing with nonperforming hotels, including negotiating loan modifications and pursuing foreclosure and the appointment of receivers after failed workouts
- Represented a floor-plan lender in a contested bankruptcy case filed by a marina seeking to continue operating without satisfying its loan obligations, including successfully representing the lender in its objection to the proposed plan of reorganization

Workouts in the Airline Industry

- Served as counsel to members of the creditors' committees in major airline bankruptcy cases, including Delta Airlines and United Airlines
- Represented the largest supplier to Hawker Beechcraft as a creditors' committee member in its Chapter 11 case in New York
- Represented aircraft finance parties, lessors and key suppliers in the American Airlines Chapter 11 case in connection with restructuring of multiple aircraft finance transactions, assumption of contracts, resolution of tax indemnity claims and resolution of intercreditor disputes
- Represented aircraft finance parties, aircraft and engine lessors, and key suppliers in the Delta Airlines, Northwest Airlines, Global Aviation Holdings, Gulfstream International Airlines, DayJet Corp., Eclipse Aviation, Aloha Airlines, and other aviation and aerospace bankruptcies

Energy Industry and Electric Utility Restructuring

- Represented debt and equity investors in the restructuring of 11 wind generating projects in three states related to the project sponsor's bankruptcy and liquidation
- Served as bankruptcy and FERC counsel to an electric utility in the termination of a power purchase agreement due to the generating project's bankruptcy
- Represented a secured lender to a hydroelectric generating project in a deed in lieu of foreclosure process and later sale of the project
- Represented a power market participant organization in multiple bankruptcies of generators participating in that power market
- Represented a group of creditors in the bankruptcy of an electric cooperative
- Working with a global private equity fund with U.S. taxable investors to restructure a European portfolio company in the energy sector, with a particular emphasis on planning for U.S. tax aspects of the restructuring

Hospitality Restructuring and Workouts

- Served as counsel to a secured creditor in a Chapter 11 bankruptcy involving four hotel properties located in New York City, culminating in the successful sale of the collateral
- Restructuring of a $55 million mortgage loan secured by a hotel and golf resort property in Savannah, GA
- Restructuring of financing secured by mortgages on six hotel and resort properties in Hawaii and California
- Receivership and workout of a $40 million loan secured by a resort property on the Big Island of Hawaii
- Bankruptcy of a hotel and resort property in Scottsdale, AZ
- Restructuring of $10 million in subordinated debt and the sale of equity interests in a convention hotel project in Atlantic City, NJ
- Restructuring of $7.1 million in mezzanine debt secured by a hotel property with Historic Tax Credits in St. Louis, MO

Municipal and Tribal Restructurings

- Served as counsel to the bond trustee in connection with the complex restructuring of $2 billion of debt of Foxwoods Casino Resorts
- Served as counsel to the bond trustee in connection with a workout and complex commercial foreclosure involving defaulted general obligation bonds of a special taxing district
- Represented agencies of the State of Connecticut as secured lender and issuer of bonds in workouts and receiverships of nursing home networks, hospitals and educational facilities
- Served as counsel to a quasi-state agency, as secured creditor, in a Delaware bankruptcy proceeding involving multiple commercial properties located in Connecticut

Distressed Acquisitions

- Represented buyers of patents, intellectual property rights, nanotechnology assets, real estate, aircraft components and operating businesses in Section 363 sales in New York, Delaware, Massachusetts, Connecticut and other jurisdictions
- Represented a diversified printing services company in connection with the purchase of distressed assets from a competitor
- Represented a European nutraceutical company in acquiring the business operations and assets of a U.S.-based competitor in a Section 363 sale
- Represented the acquirer by deed in lieu of foreclosure of an approximately 186,000-square-foot office complex in New Jersey
- Represented the acquirer by deed in lieu of foreclosure of a golf course and country club
- Represented the acquirer by deed in lieu of foreclosure of a large apartment community