

**MORRISON  
FOERSTER**



**2014**

**BUSINESS RESTRUCTURING +  
INSOLVENCY YEAR IN REVIEW**

# INSIDE

- 3 A Year in Review
- 4 Our Engagements
- 8 Pro Bono Matters
- 12 Awards + Recognition
- 13 Our U.S. Team
- 14 Our International Team
- 15 Publications

# A YEAR IN REVIEW

Dear Clients and Friends:

We are pleased to say that 2014 was another successful year for Morrison & Foerster's Business Restructuring & Insolvency Group. Despite continuing market headwinds, the last year brought our group new engagements on some of the most significant and watched distressed situations since the financial crisis.

In 2014 we were retained to represent the official committee of unsecured TCEH creditors in the chapter 11 cases of Texas power company **Energy Future Holdings Corp.** and its affiliates in the largest chapter 11 case filed in 2014. We were also engaged to represent an ad hoc group of holders of tax-based bonds (composed of 30 financial institutions) issued by the **Commonwealth of Puerto Rico** and certain of its instrumentalities in connection with Puerto Rico's efforts to improve its fiscal situation.

These engagements follow on the heels of our game changing roles as counsel to **Residential Capital**, the debtor in the largest chapter 11 case filed in 2012; the chapter 11 trustee for **MF Global** in the largest chapter 11 case filed in 2011; the creditors' committee for **Ambac Financial** in one of the largest financial services bankruptcies ever; the creditors' committee for the **Los Angeles Dodgers** in the largest and most successful restructuring of a sports franchise in U.S. history; and two of the **largest banks in Iceland** through Iceland's fiscal crisis.

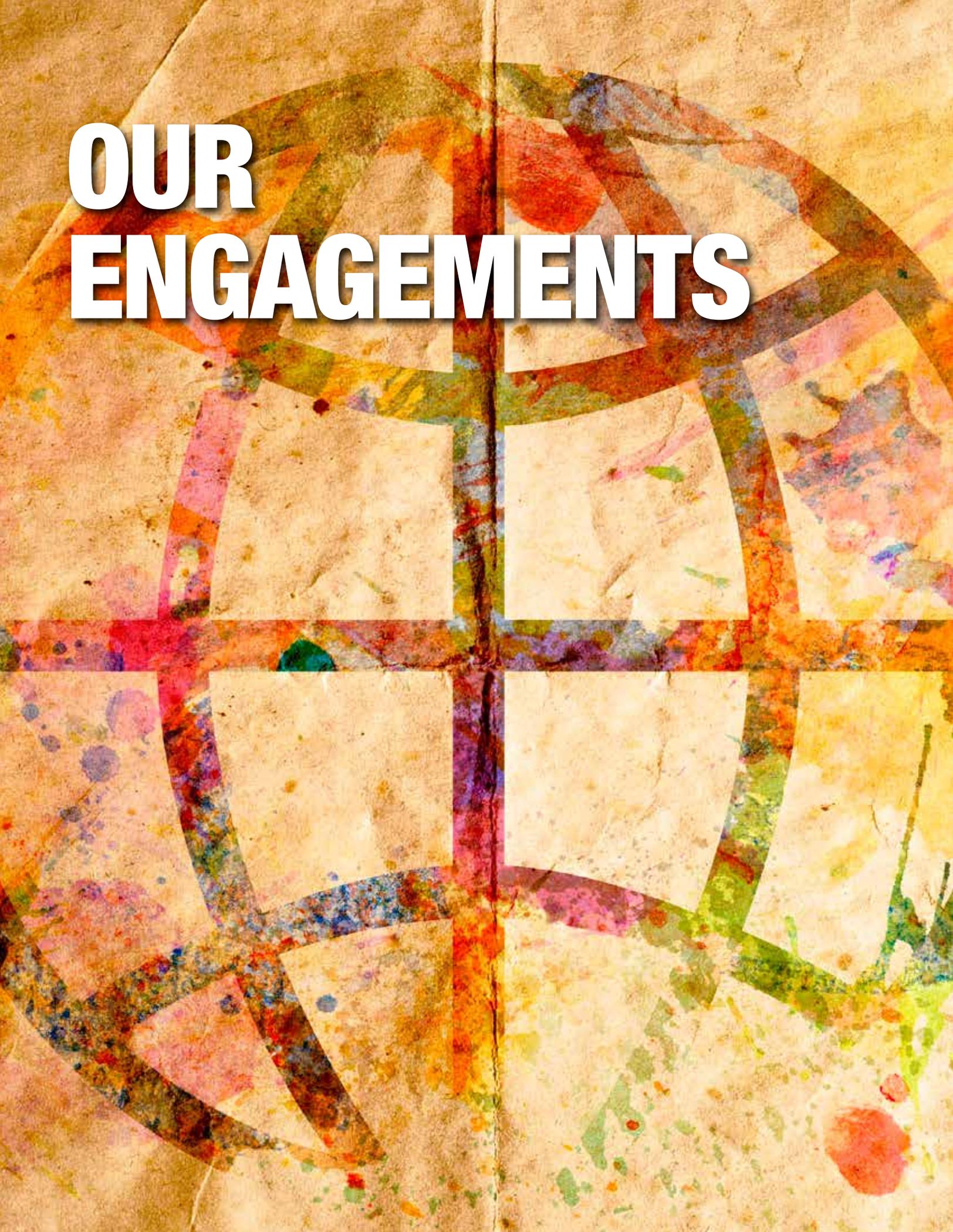
What has made the past few years particularly unique for us is the diversity of roles we have played in so many major distressed situations. We represent official and ad hoc committees of creditors, individual secured and unsecured creditors, debtors, chapter 11 trustees, lenders, and, since former U.S. Bankruptcy Judge James Peck joined us in March 2014, we have a thriving mediation practice. We also have a robust, full service secondary markets trading practice devoted to trading distressed debt, par debt, and portfolios of debt assets.

Few restructuring groups can lay claim to such a diverse practice, and this range of experience is what sets us apart — we understand the way constituents on all sides of the table think, putting us in the best position to represent each of our clients.

As always, we are forever grateful for your support and we look forward to working with you in the year ahead.

Thank you.

– The Business Restructuring + Insolvency Group of Morrison & Foerster



# **OUR ENGAGEMENTS**

**We have worked on many high-profile and interesting matters domestically and abroad. These are some of the highlights:**

### **Energy Future Holdings Corp.**

We are lead counsel to the official committee of TCEH unsecured creditors for Energy Future Holdings Corp. and its debtor affiliates in their chapter 11 cases. The debtors are one of the largest power producers in Texas and their bankruptcy arose from the failure of one of the largest leveraged buyouts in history — a reported \$45 billion acquisition in 2007. At the time of the bankruptcy filing in April 2014, the debtors held in excess of \$40 billion in debt.

Early in the case, on behalf of the TCEH creditors' committee, we successfully opposed the debtors' second lien DIP facility that was the cornerstone of the debtors' restructuring support agreement, which contemplated a chapter 11 plan that would result in virtually no recovery for our clients and certain other unsecured creditors. The opposition to the second lien facility caused the debtors to ultimately withdraw that motion and terminate the restructuring support agreement.

The committee continues to work to identify alternative restructuring possibilities that will benefit its constituents. We are also leading investigations on behalf of the committee into the 2007 LBO and various intercompany transactions, which have totaled over \$2 billion in the past year alone. The outcome of these investigations will have a major impact on the resolution of the case.

### **Puerto Rico Fiscal Crisis**

We represent an ad hoc group of holders of tax-based bonds issued by the Commonwealth of Puerto Rico and certain of its instrumentalities. The group, holding, in the aggregate, more than \$300 billion in assets under management, consists of 30 financial institutions and is led by a steering committee of five firms. The members of the group collectively hold more than \$4 billion aggregate face amount of Puerto Rico municipal bonds. The group aims to support the Commonwealth's efforts to improve its fiscal situation, which includes balancing its budgets and ring-fencing the financial issues facing its distressed public corporations, such as those responsible for providing electricity, sewer and other essential public services. To do so, the group is prepared to make capital available to assist with any short- or long-term liquidity needs of the Commonwealth.

In addition, MoFo is counseling the group with respect to the Commonwealth's recent enactment of bankruptcy laws providing its public corporations with protections similar to those under chapter 11 of the Bankruptcy Code. This legislation arose from the fact that these public corporations are not eligible for chapter 9 or chapter 11 relief. Our work includes advising the group with respect to lawsuits challenging this new law filed by the Oppenheimer Funds, Franklin Funds, and Blue Mountain Capital Management, which have resulted in a federal district court recently ruling that the law is unconstitutional, and the Commonwealth filing an appeal of this ruling to the First Circuit. We have also advised the group with respect to issues associated with new legislation enacted by the Commonwealth to enable its Government Development Bank to strengthen its liquidity.

## **USEC, Inc.**

We represented Toshiba Corp. in pre-filing negotiations and the chapter 11 case of USEC, Inc. USEC, now called Centrus Energy Corp., supplies low enriched uranium to commercial nuclear power plants for use in nuclear reactors worldwide.

Following the 2011 tsunami in Japan, enriched uranium prices dropped by 40%. USEC faced an impending debt maturity date, and the U.S. Department of Energy would not definitively agree to continue funding USEC's research and development of commercial activities related to the development of gas centrifuge technology.

USEC elected to engage with creditors, including Toshiba (a preferred shareholder and strategic business partner of USEC) and a group of convertible noteholders in an attempt to achieve a consensual chapter 11 restructuring that would reduce its debt obligations and give it a platform to shed unnecessary or unprofitable businesses. Following several months of discussions, we were able to negotiate a plan support agreement outlining a plan of reorganization, which would allow Toshiba to remain strategically involved with the reorganized USEC while providing some recovery for Toshiba on account of its initial investment.

USEC filed for chapter 11 protection in Delaware in March 2014, and, thanks to the pre-petition work of the parties, the case was largely uncontested. A plan was confirmed in September 2014 without objection, providing Toshiba with new common stock in the reorganized company and new notes that will provide Toshiba with a stream of interest payments going forward. In addition, Toshiba entered into a supplementary strategic

relationship agreement with USEC that reflects the continuing relationship between the parties.

## **Madoff Clawback Proceedings**

We represent the liquidators of multiple Cayman Islands investment funds, as well as individuals and other foreign investment funds, in proceedings in the Bankruptcy Court for the Southern District of New York. We are defending against claims seeking to clawback and recover significant sums claimed to be "Customer Property," which were allegedly received directly or indirectly from Bernard L. Madoff Investment Securities LLC (BLMIS) before the discovery of the Madoff Ponzi scheme. Our clients have been sued for more than \$600 million and have direct and indirect claims against the Madoff estate that exceed \$1 billion.

## **Technology Properties Limited**

We are bankruptcy counsel to numerous intellectual property licensees in the San Jose based chapter 11 bankruptcy case of patent troll Technology Properties Limited, including licensees Alcon, Blackberry, DirecTV, Fujitsu, Mattel, Nikon, and others. We have fought to preserve and protect our clients' intellectual property rights, including by repeatedly defeating attempts to strip licensees' rights in various plan proposals and other challenges. We have negotiated and achieved comprehensive protections for licensees in the debtor and committee's joint plan of reorganization, which has recently been confirmed.

## **Lehman Brothers Japan**

We represent Lehman Brothers Japan (LBJ) and its affiliates as creditors in Lehman's U.S. chapter 11 case and the related SIPA proceedings

involving Lehman Brothers Inc. (LBI). The nature of the affiliated cross-border relationships and often conflicting legal systems complicated the resolution of the inter-affiliate disputes. LBJ asserted claims against the U.S. Lehman entities in excess of \$1 billion. Ultimately, MoFo was able to assist LBJ in resolving its disputes with each of the Lehman chapter 11 debtors, as well as the LBI SIPA estate. The latter disputes were resolved through a settlement agreement providing for allowed LBJ customer and unsecured claims against the LBI SIPA estate in excess of \$500 million. That settlement agreement was approved by the bankruptcy court in February 2014.

### **Saad Investments Company**

Our London team continues to work with the liquidators of the Cayman Islands company Saad Investments Company Limited (SICL) in connection with its \$9.2 billion liquidation. We are resolving issues arising from a \$2.815 billion loan to SICL under an unsecured English law governed revolving credit facility. Some banks in the loan syndicate also had bilateral facilities with SICL, and some hold assets worth several hundred million dollars for SICL. The banks' rights to security and setoff in respect of those assets, which are located across numerous jurisdictions and are held pursuant to agreements with differing governing law clauses (including Swiss, English, and New York law), have been some of the major issues we are handling. We have also been assisting the Swiss bankruptcy trustee with a variety of issues arising in an independent, local mini-bankruptcy proceeding in Switzerland; have been seeking information under compulsion from a major institution and from a former director in London; and have commenced proceedings in

London seeking to recover over \$300 million from a third party (a Saudi Arabian entity). In relation to this claim, we have recently succeeded in the Court of Appeal in defending a forum challenge.

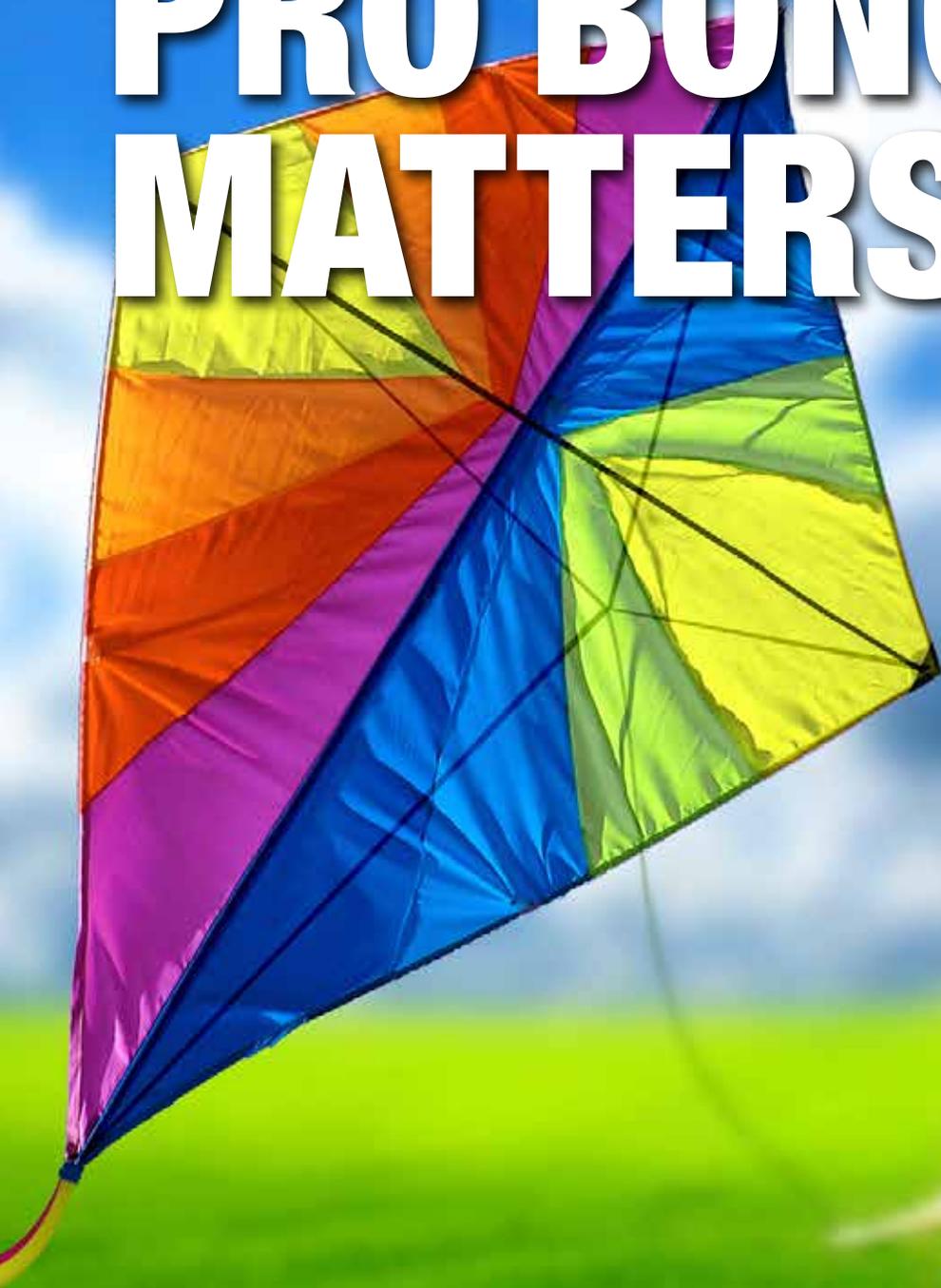
### **Insolvency of German Steel Manufacturer**

Our team in Germany represented SCHMOLZ & BICKENBACH GUSS GmbH, a manufacturer of special steel and steel-castings products, in connection with its "protective shield proceeding" and subsequent insolvency plan. A protective shield proceeding is a relatively new instrument under German insolvency law that, similarly to chapter 11 in the U.S., allows companies to protect themselves from foreclosure by creditors while they are preparing an insolvency plan. This was one of the largest protective shield proceedings in Germany in 2014.

### **Mezzanine Lender in Gienanth Sale**

Our team in Germany advised DAM Capital Management S.à.r.l., as a mezzanine lender, in connection with the sale of Gienanth GmbH, a castings producer that manufactures automobile parts and motor blocks for large vessels, through a double-sided trustee structure following a financial restructuring.

# PRO BONO MATTERS



As always, despite a busy year, our commitment to pro bono in our communities and beyond remained a priority. Here is some of the work our team participated in this year.

## A SHORT VISIT TO NEPAL

Former U.S. Bankruptcy Court Judge James Peck joined the firm in March as co-chair of our global Business Restructuring & Insolvency Group. While on the bench, Judge Peck presided over the chapter 11 SIPA proceedings of Lehman Brothers, the largest bankruptcy in U.S. history. His experience has made him one of the world's most recognized authorities on U.S. bankruptcy law.

In July, Judge Peck had the very unique opportunity to contribute to the global legal community by sharing his expertise on global issues – he was invited to Nepal to advise on reforms to that country's insolvency laws. The Nepalese Insolvency Practitioners' Association invited Judge Peck and two officers of INSOL International, a worldwide federation of associations dedicated to turnarounds and insolvency, to travel to Nepal to present a seminar to the local business community on the best global practices for dealing with distress in the financial sector. The aim was to educate and inspire local officials.

During his visit, Judge Peck learned about Nepal's substantial needs and substandard infrastructure. Its legal regime suffers from systemic inefficiencies that would not be tolerated in the U.S. Nepal has recently been plagued by the failure of several banking and financial institutions, as well as insurance companies, which were poorly managed and financially unsound.

Judge Peck's presentation in Kathmandu, entitled "Insolvency: Local Issues, Global Views," enabled him to share some of his cross-border experiences and urge Nepalese regulators and courts to work together in finding commercially and culturally appropriate means to better manage the resolution of banks, financial institutions, and insurance companies in Nepal. The country needs to attract capital and develop a more predictable and trustworthy system for resolving business failures to help to encourage foreign investment.

More than 120 delegates, including representatives from the Nepalese government and banking community, took part in the two-day meeting.

## **Bankruptcy Assistance Project**

New York partner Todd Goren is supervising lawyers on our team who are participating in the Bankruptcy Assistance Project run by Legal Services NYC. Each matter is a limited engagement to provide pre-petition assistance only to a low-income person who is filing a chapter 7 bankruptcy petition. To date, Jessica Arett, Samantha Martin, James Newton, Erica Richards, and Jordan Wishnew have taken on clients in this project.

## **Favela Project**

Brett Miller's soccer-playing son was the unexpected source of his pro bono work — incorporating the Favela Project as a nonprofit and applying for tax-exempt status. The project is led by a former Brazilian professional soccer player who happens to coach Brett's son. The main activity is collecting used soccer equipment in the U.S. and distributing it to children who live in the favelas, or slums, of Brazilian cities and other impoverished areas around the world.

## **McCarton School**

For the past several years, MoFo has represented the McCarton School, which provides an educational program for children with autism spectrum disorder by using an integrated one-to-one model of therapy. In 2014, Peter Dopsch and Samantha Martin secured an amendment to the school's charter to permit the school to offer transitional classes for students between the ages of 18 and 21.

## **Human Rights First**

Meryl Rothchild and Jessica Arett are representing a Haitian woman who was the victim of sustained and severe domestic violence as she seeks asylum in the U.S. This case was referred to the firm by Human Rights First.

## **Representation of Louisiana Abortion Clinics and Physicians**

Samantha Martin worked with a team of MoFo lawyers to secure a temporary restraining order enjoining the enforcement of a Louisiana law that imposes a number of new statutory requirements on abortion clinics and providers, including a requirement that every doctor who provides abortions at a clinic have active admitting privileges at a hospital located within thirty miles of the clinic. The Louisiana court allowed the law to take effect, but specifically ordered that the plaintiff clinics and physicians be allowed to operate lawfully while continuing their efforts to obtain privileges. An evidentiary hearing to enjoin the statute in the Louisiana case is scheduled for March 30, 2015.

## **New York City Family Court**

Kathleen Schaaf, Jordan Wishnew, and Lacey Laken provide legal advice to multiple unrepresented litigants in the New York City Family Court on a regular basis.

## ***In re Lozano***

Vince Novak and Adam Lewis are helping a low-income client with limited English skills who was defrauded by a person who claimed to be able to provide legal assistance. Judgments were entered against the perpetrator of the fraud, but were discharged in bankruptcy. Our attorneys are working to set aside the discharge, because debts for money obtained by fraud cannot be discharged in bankruptcy.

## **American Civil Liberties Union**

Vince Novak assisted a team of attorneys working with the American Civil Liberties Union to successfully obtain marriage equality in Montana.

## **Youth Employment**

Larren Nashelsky, joined by members of the New York Corporate Group, is advising a New York City youth empowerment organization that uses arts programs to build leadership skills among high school students, as it considers a strategic partnership with another nonprofit organization that may lead to a merger. Larren is sharing his insights on how best to structure the partnership, as well as on the considerations for a merger or another kind of alliance.

## **Beat the Streets**

Billy Hildbold and Larren Nashelsky continue to represent Beat the Streets, a nonprofit organization that provides leadership and direction to the wrestling community, by establishing and maintaining amateur wrestling teams and facilities throughout New York City.

## **Her Justice**

Melissa Hager recently completed a divorce case for a low income victim of domestic violence through Her Justice (formerly In Motion). Now completed, the case took several years to resolve because our client lived in a house owned by her abusive husband's relatives and had few options for relocation.

# AWARDS + RECOGNITION



## **CHAMBERS USA**

Ranked as a leading bankruptcy and restructuring firm nationwide and in New York in 2014; *Chambers* has called the group “a fixture among the major players in the industry.”

Citing “another extraordinary year,” and our “great strides in the bankruptcy and restructuring industry with a steady flow of extremely high-profile engagements,” MoFo was named the 2013 Bankruptcy Firm of the Year at the *Chambers USA* Awards.



## **CHAMBERS GLOBAL**

Ranked as a leading restructuring and insolvency firm globally in 2014.

## **LEGAL 500 US**

Ranked as a leading corporate restructuring firm in the U.S. in 2014, noting the group’s “invaluable all-round understanding of how to get deals done.”



## **LAW360**

Brett Miller named 2014 Bankruptcy Law MVP.

Gary Lee named 2013 Bankruptcy Law MVP.

Named a 2012 Bankruptcy Group of the Year.



## **THE AMERICAN LAWYER**

Gary Lee named 2014 “Dealmaker of the Year” for his work representing the debtors in the chapter 11 cases of Residential Capital and its affiliates.



## **FINANCIAL TIMES INNOVATIVE LAWYERS' REPORT**

Recognized for work on both the Residential Capital bankruptcy proceedings and the MF Global bankruptcy settlement in the 2013 edition of its *U.S. Innovative Lawyers Report*, a special publication recognizing legal counsel and firms who have “brought original thinking and practices to business issues in the U.S.”



## **AMERICAN LAWYER GLOBAL LEGAL AWARDS**

Awarded 2013 Global Finance Deal of the Year, Private Restructuring for work on MF Global’s global bankruptcy.



## **TURNAROUNDS & WORKOUTS**

Brett Miller named Outstanding Restructuring Lawyer for 2014.

Gary Lee named Outstanding Restructuring Lawyer for 2012 and 2013.

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# PUBLICATIONS



[Aurelius: Another Nail in the Coffin for Creditor Breach of Fiduciary Duty Claims](#)

*BNA's Bankruptcy Law Reporter*, Vol. 26, No. 12

Todd M. Goren and Daniel J. Harris



[Bankruptcy Mediation: Case Studies, Considerations and Conclusions](#)

Chapter in *The International Comparative Legal Guide to Corporate Recovery & Insolvency*, 2014 Edition, July 1, 2014

James M. Peck and Erica J. Richards



[Cash Collateral Orders Revisited Following ResCap](#)

*Law360*, April 8, 2014

Todd M. Goren, Jennifer L. Marines, and Samantha Martin



[Crumbs Decision Protects TM Licensees' 365\(n\) IP Rights](#)

*Law360*, November 17, 2014

G. Larry Engel, Norman S. Rosenbaum, and Kristin A. Hiensch



[Developments in Unitranche Financing: Balancing Opportunity and Risks](#)

*Practical Law The Journal – Transactions & Business*, June 2014

Todd M. Goren and Geoffrey R. Peck



[Rising rates will kill off the zombie firms – but they may hurt SMEs too](#)

*City A.M.*, August 14, 2014

Howard Morris



[Settlement Talks in Chapter 11 After “WAMU”: A Plan Mediator’s Perspective](#)

*American Bankruptcy Institute Law Review*, Vol. 22, No. 1, Winter 2014

James M. Peck

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