

Bankruptcy and Restructuring Group 2008 YEAR-END REVIEW



THE AMERICAN LAWYER A-LIST
2004-2008

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law firms for five consecutive years.

2008: A Year in Review

Without question, the U.S. and global economic markets have undergone a sea change this year. Virtually every industry has been affected. Along with tightening credit markets and the deepening international financial crisis, we have witnessed a surge in Chapter 11 bankruptcy filings in the financial, homebuilding, airline, and retail sectors (to name a few). Assuming these trends persist, our Bankruptcy and Restructuring Group and firm-at-large will continue to confront a unique set of cross-disciplinary challenges and opportunities.

As a group, we more than doubled our ranks in the past two years. With the arrival of Brett Miller and Lorenzo Marinuzzi, we built upon our existing bankruptcy expertise to include greater experience in the airline, real estate, food, retail, telecommunications, and automotive sectors. With the addition of Gary Lee and Karen Ostad, the group's collective experience now includes long-standing capabilities in cross-border workouts and insolvencies, distressed asset acquisitions, and corporate and insurance company insolvencies.

Our team also remains at the forefront of current developments in bankruptcy having published a variety of articles in numerous industry publications. We have joined together to provide clients around the globe with regular updates on high-profile bankruptcy cases. Working together with other members of the firm, we have presented seminars on topics ranging from bankruptcy basics, hedge funds and credit default swaps to distressed real estate, and most recently, the Emergency Economic Stabilization Act of 2008.

We will continue building on our core strengths in debtor, ad hoc and official committee representation, bank groups, as well as creditor representation in bankruptcy and insolvency proceedings and non-judicial workouts/restructurings. Based on recent bankruptcy trends, we predict increased activity in cross-border insolvency proceedings and distressed real estate matters. We also envision advising clients on key issues that affect financial institutions day-to-day, such as the bankruptcy impact of credit default swaps and other derivatives and structured products, and how these financial instruments affect the viability of hedge funds.

The financial markets are in turmoil. The increase in Chapter 11 filings and other workout and distressed situations is certain to continue. With a strong team of lawyers and a clear vision for the future, our group has positioned itself to meet the needs of an increasingly demanding business landscape in 2009.

We welcome your feedback on our first year-end review and wish you a happy holiday season.

Sincerely,



A handwritten signature in black ink, appearing to read "Darren M. Nashelsky".



A handwritten signature in black ink, appearing to read "Gary Lee".

Larren M. Nashelsky and Gary S. Lee
Bankruptcy and Restructuring Group Co-Chairs

Bankruptcy and Restructuring Group

2008 YEAR-END REVIEW

Firm and Practice Group Overview

With more than a thousand lawyers in seventeen offices around the world, Morrison & Foerster offers clients comprehensive, global legal services in business and litigation. The firm is distinguished by its unsurpassed expertise in finance, life sciences, technology, legendary litigation skills, and an unrivaled reach across the Pacific Rim, particularly in Japan and China.

Morrison & Foerster's Bankruptcy and Restructuring Group has expertise in a wide array of complex bankruptcy, insolvency, finance, and restructuring matters. We represent a diverse group of domestic and international interests, and are committed to executing creative and effective solutions for our clients, who include money center banks, investment banks, private equity and hedge fund institutions, committees, operating companies, governmental entities, insurers, and reinsurers.

Accolades

Our attorneys have received numerous accolades from leading publications, including:

- *Chambers USA* "America's Leading Lawyers for Business"
- *Corporate Counsel's* "The Best Lawyers in America"
- *World's Leading Insolvency and Restructuring Lawyers (Euromoney Guide)*
- *United States Lawyers' Rankings* 2008 List of the Nation's Top 10 Bankruptcy Lawyers
- *PLC Global Counsel 3000* "Highly Recommended" lawyer for Restructuring/Insolvency
- *Turnaround & Workouts* "Outstanding Young Bankruptcy Lawyer"
- *Northern California* "Super Lawyer," *Law & Politics* and *SF Magazine*

Prior results do not guarantee a similar outcome.

Selected Matters in 2008

Debtor Representation

Representation of Delta Financial Corporation and its affiliates as Debtors in Possession

The firm represents Delta Financial Corporation and its three affiliates—specialty consumer finance companies that securitized and sold mortgage loans nationwide—in their Chapter 11 proceedings currently pending in the Bankruptcy Court for the District of Delaware (Chapter 11 Case No. 07-11880). This bankruptcy filing was the fifth largest commenced in 2007. The companies' plan of liquidation was confirmed in December 2008, and our firm continues to assist the debtors with the orderly wind-down and liquidation of their estates, which has included shutting down the debtors' nationwide operations, liquidating their assets, and evaluating hundreds of millions of dollars of filed claims.

Representation of Tricom, S.A. and its affiliates as Debtors in Possession

The firm represents Tricom, S.A. and its affiliates, TCN Dominicana, S.A. and Tricom USA, Inc., in their prepackaged bankruptcy filing in the Bankruptcy Court for the Southern District of New York (Chapter 11 Case No. 08-10720), which involves the restructuring more than \$650 million in bond and trade debt. Tricom, S.A. and its affiliates are one of the preeminent full service providers of telecommunications services in the Dominican Republic. Our firm continues to represent the debtors in the administration of the Chapter 11 cases and their effort to confirm their prepackaged plan. Prior to the filing of the prepackaged bankruptcy, our firm served as restructuring counsel to the debtors.

Representation of Paper International, Inc. and Fiber Management of Texas, Inc., as Debtors in Possession

The firm represents Paper International, Inc. (“PII”) and Fiber Management of Texas, Inc. (“FMT”) in their Chapter 11 cases in the Bankruptcy Court for the Southern District of New York (Chapter 11 Case No. 08-13917). The New Mexico-based PII and the Texas-based FMT are U.S. subsidiaries of one of the largest integrated paper producers in North America. The debtors are guarantors of the parent company’s \$520 million bond debt, which was on the verge of defaulting when they filed their bankruptcy petitions on October 6, 2008. A significant portion of the firm’s representation will likely involve the sale of a wholly-owned non-debtor subsidiary and resolution of the bond debt guaranty claims.

Bankruptcy Examiner Representation

Representation of The Honorable Louis J. Freeh as the Court Appointed Examiner in SemCrude, L.P., *et al.*

The firm represents The Honorable Louis J. Freeh as the court appointed Examiner in the Chapter 11 proceedings of SemCrude, L.P., *et al.*, currently pending in the Bankruptcy Court for the District of Delaware (Chapter 11 Case No. 08-11525). The Tulsa-based energy company’s failed oil futures trading strategy resulted in a loss of \$2.4 billion dollars, triggering the company’s bankruptcy filing in July 2008. Pursuant to the Bankruptcy Court order appointing the Examiner, Mr. Freeh, former Director of the Federal Bureau of Investigation, among his other accomplishments, will focus his investigation on the company’s trading strategy, alleged misuse of loan funds, and insider transactions.

Creditor Committee Representation

Representation of the Official Committee of Unsecured Creditors of Dunmore Homes

The firm represented the official committee of unsecured creditors of Dunmore Homes in the Chapter 11 case of Dunmore Homes in the Bankruptcy Court for the Eastern District of California (Sacramento) (Chapter 11 Case No. 08-20569). The Chapter 11 case was filed in November 2008 and a Chapter 11 liquidating plan was confirmed in August 2008. Over the course of nine months, Morrison & Foerster attorneys worked closely with the debtor's counsel to finalize a consensual disclosure statement and plan. Our attorneys also spearheaded an extraordinarily beneficial settlement with the Chapter 7 Trustee of a related debtor entity, resulting in a streamlined post-confirmation litigation strategy and potentially greater recovery to unsecured creditors. Moreover, our attorneys formulated a settlement of various claims against the debtor's former owner that is expected to result in the recovery of the largest asset available for distribution to creditor. During the case, we achieved several notable victories. Chief among them was our successful argument in favor of transferring the venue of the bankruptcy case from the Southern District of New York to Sacramento, where the debtor was headquartered and where most of the unsecured creditors are located.

Representation of the Official Committee of Unsecured Creditors of Skybus Airlines

The firm represents the official committee of unsecured creditors of Skybus Airlines, the case currently pending in the Bankruptcy Court for the District of Delaware. Our firm has worked closely with the debtor's counsel and various other parties-in-interest to wind up the debtor's affairs and maximize value for creditors. During the case, Morrison & Foerster was instrumental in achieving several favorable settlements with the debtor's aircraft lessors and other creditors that should allow for substantial dividends to unsecured creditors.

MinorityLaw
Journal

Ranked # 6
in diversity among
U.S. law firms
nationwide in 2007.

Representation of the Official Committee of Unsecured Creditors of Fortunoff Fine Jewelry & Silverware LLC, *et al.*

The firm represented the official committee of unsecured creditors of Fortunoff Fine Jewelry & Silverware LLC, in Fortunoff's Chapter 11 case filed in the U.S. Bankruptcy Court for the Southern District of New York (Chapter 11 Case No. 08-10353). During the Chapter 11 case, Fortunoff's assets were sold for \$60 million, plus the assumption of certain liabilities.

Creditor Engagements and Acquisitions out of Bankruptcy

Representation of The ACE Group of Insurance Companies in the Liquidation of the Home Insurance Co.

The firm represents the ACE Group of Insurance Companies as a substantial creditor and as the reinsurer of individual and pooled liabilities of The Home Insurance Co., which is liquidating in a proceeding before the New Hampshire Superior Court (Case No. 03-E-106). The debtors' assets are valued at over \$1 billion. In July 2008, the firm secured a victory on behalf of an ACE subsidiary, Century Indemnity, before the New Hampshire Supreme Court. The New Hampshire Supreme Court reversed rulings by a Referee and the Superior Court denying a multi-million dollar setoff Century asserted against Home. The decision is an important victory for Century because Home is seeking several hundred million dollars in reinsurance from Century. The decision also marks the first time the New Hampshire Supreme Court interpreted the setoff provision of New Hampshire's Liquidation Statute and the first time any court addressed the issue of whether state liquidation setoff provisions are mandatory or discretionary.

Representation of Atlantic Tele-Network Inc. in the Acquisition of Substantially all of the Assets of Empire State Independent Network Inc.

The firm recently represented Atlantic Tele-Network Inc., a public telecommunications company and its subsidiary, Sovernet, Inc., in their acquisition of substantially all of the assets of Empire State Independent Network Inc., a New York-based provider of transport for voice, video, and broadband services. Empire State commenced a Chapter 11 bankruptcy proceeding in the United States Bankruptcy Court for the Western District of New York. The acquisition was completed in August 2008, following a bankruptcy court auction.

Representation of Fortress Credit Corp. as Debtor in Possession Agent in Summit Global Logistics, Inc.

The firm represented Fortress Credit Corp., as administrative agent, in connection with an approximate \$60 million debtor-in-possession loan to Summit Global Logistics, Inc. in its Chapter 11 bankruptcy case in the Bankruptcy Court for the District of New Jersey (Chapter 11 Case No. 08-11566). The debtor-in-possession lenders included Cerberus Capital Management and Plainfield Asset Management.

Representation of Intel Corporation in the Acquisition of Substantially all of the Assets of NetEffect, Inc.

The firm recently represented Intel Corporation, the world's largest manufacturer of computer processors, in its acquisition of substantially all of the assets of NetEffect, Inc., a developer of ethernet connectivity solutions. NetEffect commenced a Chapter 11 bankruptcy proceeding in the United States Bankruptcy Court for the District of Delaware. The acquisition was completed in October 2008, following a bankruptcy court-approved sale process.

Liquidating Trustee Representation

Representation of the Distribution Trustee of the FLYi and Independence Air Distribution Trust

The firm represents the Distribution Trustee of the FLYi and Independence Air Distribution Trust — a post-confirmation liquidating trust established for the former low-cost airline. The firm assists the Distribution Trustee with the administration of the post-confirmation estates, including resolving disputed claims, pursuing avoidance actions on behalf of the debtors' creditors, and making interim distributions to holders of allowed claims. In addition, the firm advises the Distribution Trustee regarding the negotiation, resolution, and, in some cases, litigation of multi-million dollar claims, including, but not limited to, aircraft lease claims, tax indemnity claims, and wage and severance claims.

Recent Engagements for 2009

Representation of the Bank Group of GGP

The firm represents Eurohypo AG, New York Branch, as administrative agent and one of multiple lenders in the restructuring of loans to General Growth Properties, Inc. and its affiliates (collectively, GGP) with combined principal amounts of approximately \$5 billion. GGP, the nation's second-largest owner and operator of retail shopping centers and one of the largest publicly traded REITs in the U.S., owns a portfolio of over 200 regional and trophy shopping centers in 44 states. GGP has more than \$27 billion in total debt, approximately \$8 billion of which is scheduled to mature by the end of 2010. Morrison & Foerster attorneys in the Real Estate, Bankruptcy and Restructuring, Corporate and Tax Practice Groups are assisting Eurohypo and the related lender groups in this highly complex restructuring.

Chapter 15 Debtor Representations

The firm represents Glitnir Bank hf. and Landsbanki Islands hf., two of the three largest banks in Iceland, in their Chapter 15 proceedings in the Bankruptcy Court for the Southern District of New York (Chapter 15 Case Nos. 08-14757 and 08-14921). In October 2008, the Financial Supervisory Authority of Iceland took control over the banks and is now overseeing the banks' reorganization processes in Iceland. Glitnir and Landsbanki are seeking recognition of their Icelandic reorganization proceedings in the United States as foreign main proceedings.

Representation of JP Morgan Chase

The firm represents JP Morgan Chase, as administrative agent for a syndicate of lenders which provided secured financing for a "new urbanism" residential real estate development project in Henderson, Nevada called "Inspirada," projected to cost in excess of \$1.5 billion to complete. The borrower, South Edge LLC, is controlled by several of the largest residential real estate developers in the country. To date, Morrison & Foerster attorneys in the Real Estate, Bankruptcy and Restructuring and Litigation Practice Groups have been engaged in negotiations with South Edge to maximize recovery to the lender group through an out-of-court restructuring.

Featured Articles – Click on the button to read the full article.

ABI Journal (cover story), July/August, 2008

“Piccadilly Cafeterias: Congress Should Revisit Supreme Court’s Bright-Line Test,”
by Lorenzo Marinuzzi and Jordan Wishnew

The Deal Newsweekly, October 27, 2008

“On a Wing and a Prayer: Why Creditors are Finding it Difficult to Realize Value in
the Recent Wave of Airline Bankruptcies,” by Brett Miller and Todd Goren

*Financier Worldwide, Americas Restructuring & Insolvency Special Report,
April 2008*

“Distressed M&A — Knowing How and When to Buy Assets,” by Karen Ostad and
Alexandra Steinberg Barrage

Morrison & Foerster Legal Update, July 16, 2008

“Delaware Bankruptcy Court Applies ‘Safe Harbor’ Protections to Repurchase
Agreement; Article 9 Deemed Inapplicable,” by Norman S. Rosenbaum and
Alexandra Steinberg Barrage

Financier Worldwide, November 2007

“Will Credit Default Derivatives Create New Stresses and Strategies in the Coming
Cycle of Restructurings?” by G. Larry Engel and Karen Ostad

Contacts

G. Larry Engel

lengel@mofocom
415-268-6927

Lorenzo Marinuzzi

lmarinuzzi@mofocom
212-468-8045

Karen Ostad

kostad@mofocom
212-468-8041

Gary Lee, Co-Chair

glee@mofocom
212-468-8042

Brett H. Miller

bmillerm@mofocom
212-468-8051

Norman S. Rosenbaum

nrosenbaum@mofocom
212-506-7341

Adam A. Lewis

alewis@mofocom
415-268-7232

Larren M. Nashelsky, Co-Chair

lnashelsky@mofocom
212-506-7365

For more information visit us at www.mofocom or contact us at info@mofocom.