



**BANKRUPTCY +
RESTRUCTURING**
YEAR-END REVIEW

2010

MORRISON | FOERSTER

Industry Awards



The Bankruptcy and Restructuring Group was recognized by *The Legal 500* in its 2010 directory. Clients described the Bankruptcy and Restructuring Group as “responsive and creative in their advice,” and described Co-Chair Gary Lee as “practical and responsive—he takes the time to ensure that he understands what we are seeking to achieve.”



MoFo Named to AmLaw A-List for Seventh Year Running

Considered to be AmLaw’s most prestigious list, the A-List is AmLaw’s effort to “look beyond pure dollars to quantify the qualities that define the 20 most successful law firms in America” by scoring firms on four factors: revenue per lawyer, pro bono commitment, diversity among lawyers, and associate satisfaction. MoFo scored particularly well in diversity, continuing the firm’s historic strength in this key area.



In the inaugural publication of the analysis conducted by U.S. News Media Group and Best Lawyers, which included 30,322 rankings of 8,782 law firms in 81 practice areas, Morrison & Foerster’s Bankruptcy and Restructuring Group ranked in the First and Third Tiers for Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law (San Francisco and National categories, respectively).

2010 A Year in Review

The events and challenges of 2010 have reinforced our Bankruptcy and Restructuring Group's status as a leading player on both a national and international scale.

Nationally, we distinguished ourselves through our representation of key constituencies in some of the largest and most novel bankruptcy filings throughout the U.S. Internationally, we utilized our global expertise in capital markets, IP, banking, and insurance insolvency law to advise a diverse client base, including several Icelandic financial institutions nationalized by Iceland's financial regulator—arguably the most challenging and politically charged cross-border restructurings of the latest downturn.

This year, our attorneys also gained recognition as some of the finest legal writers in the nation, garnering a 2010 Burton Distinguished Writing Award in Law. Continually focused on educating clients about key legal developments, our team authored a number of publications on high-profile issues involving real estate finance, derivatives, banking, and lending law. For your reference, links to a comprehensive sampling of these articles—including a summary of Title II of the Dodd-Frank Act, and proposed bankruptcy legislation—are provided herein.

We believe our combined experience representing clients in the largest and most complex restructuring cases, together with our command of cutting-edge legal developments, provides the ideal foundation for a successful future. Our efforts in maintaining a leading restructuring practice depend on concrete results and your continued feedback.

We look forward to the challenges that lie ahead in 2011 and encourage you to learn more about our major representations and publications in this, our third Year-End Review.

Thank you and Happy Holidays.



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





Major 2010 Representations by Industry

Airlines

Official Committee of Unsecured Creditors of Mesa Air Group, Inc., et al.

- One of the largest national cases, measured by debt size, filed in 2010
- Selected out of 27 firms for engagement
- Chapter 11 bankruptcy case pending in the Southern District of New York
- Continually facing unique challenges posed by rapidly expiring code-share agreements and related aircraft leases that extend well beyond the agreements' expiration period
- Working closely with counsel and representatives of debtors' code-share partners in an effort to improve the debtors' profitability and long-term viability

Bank Holding Companies

AmericanWest Bancorporation

- Representing debtor/bank holding company in Chapter 11 bankruptcy case in Spokane, Washington
- First use of bankruptcy sale process designed to save an undercapitalized bank from liquidation by the FDIC

Cross-Border Insolvency

Amazing Global Technology Ltd.

- Representing Ad Hoc Secured Note Holders Committee in cross-border insolvency and foreclosure proceedings of global information services company

Global Garden Products Group

- Representing Ad Hoc PIK Loan Holders Committee in financial restructuring of leading Pan-European manufacturer and distributor of lawn and garden products

Landsbanki Islands hf

- Representing the winding-up board of Landsbanki Islands hf, one of the three largest banks in Iceland whose domestic assets were nationalized and whose nondomestic assets are managed by resolution committees for each of the banks

- Advising Landsbanki on the liquidation of its remaining assets and the global resolution of cross-border claims and litigation
- Steering the bank through the regulatory and judicial regimes of the various jurisdictions where the banks and their subsidiaries conducted business

Tricom, S.A.

- Implemented plan and continued post-effective date work in connection with the first successful reorganization of a public Dominican Republic corporation under the Bankruptcy Code

Distressed Real Estate

Extended Stay Inc.

- Representing Wachovia Bank, N.A. in the Extended Stay Inc. bankruptcy cases pending in the Southern District of New York
- Largest hotel/hospitality bankruptcy filing in the history of the industry, with approximately 684 properties and more than \$7 billion in debt
- Wachovia Bank, N.A., is the largest creditor in the case with an exposure in excess of \$1 billion

General Growth Properties, Inc.

- Representing 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 \$2.6 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 more than 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
- Eurohypo, as agent, is the largest creditor in the case, with a bank group that has more than \$2.6 billion of exposure

General Growth Properties (cont'd)

- Ultimate recovery in excess of 100% of principal amount of debt

JPMorgan Chase/Southedge

- Representing lender in involuntary Chapter 11 case in U.S. Bankruptcy Court in Nevada involving a highly complex, multibillion-dollar distressed real estate project in Las Vegas known as Inspirada, owned by South Edge LLC
- Working to recover approximately \$500 million owed to JPMorgan and other lenders
- Cases involve numerous pending lawsuits and arbitrations involving complex facts and issues of law
- Related to this case are two separate bankruptcy cases, one of Kimball Hill and its affiliates, and one of Woodside Homes and its affiliates, pending in different bankruptcy courts, both of which involved our input in developing plans of reorganization as one of the largest creditors in the case

Official Committee of Unsecured Creditors of Fairfield Residential LLC, et al.

- Chapter 11 bankruptcy cases currently pending in the District of Delaware
- Debtor is a fully integrated multifamily housing company that directly or indirectly acts as general partner, managing member, and owner of a number of project-level operating companies
- The company is one of the largest multifamily developers and managers in the country
- Working closely with the debtors' counsel and various other parties-in-interest to propose a consensual plan of reorganization that maximizes value for all creditors
- Instrumental in negotiating a significant payment from the debtors' plan sponsor that will increase the distributions paid to the unsecured creditors

Official Committee of Unsecured Creditors of Innkeepers USA Trust

- Representing committee in another of the largest national cases, measured by debt size, filed in 2010
- Chapter 11 bankruptcy cases currently pending in the Southern District of New York
- Debtors operate a portfolio of 72 upscale and mid-priced extended stay and select service hotels, consisting of approximately 10,000 rooms, located in 20 states across the United States
- Working with debtors' counsel to restructure \$1.29 billion of prepetition secured debt

- Given the debtors' numerous prepetition defaults, this case presents the challenge of balancing the interests of competing secured debt facilities, while utilizing the postpetition financing to improve the debtors' properties and foster their growth

RadLAX Gateway Hotel LLC and River Road Hotel Partners LLC

- Representing Amalgamated Bank as trustee for itself and U.S. Bank National Association (as successor-in-interest to San Diego National Bank) as secured lenders in two separate but related Chapter 11 bankruptcy proceedings currently pending in the Northern District of Illinois
- Debtors operate the Radisson Hotel at the Los Angeles International Airport and the secured InterContinental Hotel Chicago O'Hare
- Successfully challenged the debtors' attempt to deny the secured lenders the right to credit bid
- In upholding secured lenders' request to right to credit bid, bankruptcy court disavowed Third Circuit's majority opinion in *In re Philadelphia Newspapers*

Jack Tramiel

- Successfully defended Jack Tramiel, founder of Commodore Computers and former CEO of Atari Corp., against \$20 million in fraudulent transfer and other claims relating to the sale of distressed real estate by a Chapter 7 trustee in the bankruptcy of a successor company to Atari
- Obtained ruling by Ninth Circuit Court of Appeals affirming bankruptcy court decision of no liability, reversing judgment of more than \$6.7 million by District Court for the Northern District of California

JPMorgan/Orleans Homebuilders

- Representing JPMorgan on a \$155 million exit financing facility in the Orleans Homebuilders bankruptcy case pending in the District of Delaware

Intellectual Property

Toshiba

- Representing Toshiba in a series of issues relating to license agreements and counterparty insolvency issues

Qimonda

- Representing Qimonda AG, headquartered in Munich, Germany
- Qimonda was a leader in dynamic random access memory (DRAM), with manufacturing and research and development facilities on three continents

Qimonda (cont'd)

- Lead counsel for the Chapter 15 filing of parent company pending in U.S. Bankruptcy Court in Alexandria, Virginia
- Together with MoFo litigation team, brokered a settlement between Qimonda AG and its U.S. subsidiaries regarding the ownership of certain patents and more than \$1 billion in intercompany claims

Monoline/Bond Issuers/Insurance

Ambac Financial Group Inc. (“AFGI”)

- Proposed counsel for the official committee of unsecured creditors, in one of the largest Chapter 11 cases filed in 2010 currently pending in the Southern District of New York
- AFGI is a holding company whose principal operating subsidiary Ambac Assurance Corporation (“AAC”) is a Wisconsin-domiciled financial guarantee insurance company
- Formerly represented ad hoc senior bondholders’ committee
- Exploring unique opportunities to return value to unsecured creditors
- AAC is currently subject to a partial rehabilitation proceeding in Wisconsin, pursuant to which certain of AAC’s obligations were transferred into a segregated account
- Unique structure of the segregated account involves the first “partial” insurance rehabilitation in the United States

Official Committee of Unsecured Creditors of FGIC Corporation

- Representing official committee of unsecured creditors of FGIC Corporation in Chapter 11 bankruptcy proceedings currently pending in the Southern District of New York
- Debtor is a holding company whose primary asset is its 100% equity interest in Financial Guaranty Insurance Company (“FGIC”), a New York monoline insurance company
- FGIC previously issued financial guarantees covering payments on public finance, structured finance, and other securities and obligations, including collateralized debt obligations and residential mortgage-backed securities
- Attorneys from Morrison & Foerster’s Bankruptcy & Restructuring and Tax Practice Groups working closely with debtor’s counsel to restructure FGIC Corporation’s unsecured debt, and explore unique opportunities to return additional value to unsecured creditors

State of Rhode Island’s Department of Business Regulation

- Representing the insurance division of the State of Rhode Island’s Department of Business Regulation in the first-ever proposed discharge and liquidation of the obligations of a solvent insurer in the U.S.

Municipalities

Los Osos Community Services District

- Representing two of the largest general unsecured creditors on a variety of plan confirmation issues involving California laws and federal bankruptcy law

Oil & Gas

Caribbean Petroleum Corp., et al.

- Representing official committee of unsecured creditors of Caribbean Petroleum Corp., et al. in Chapter 11 case filed in Delaware, one of the primary importers and distributors of petroleum products in Puerto Rico
- Addressing issues relating to environmental liabilities in bankruptcy, following catastrophic explosions at the debtors’ petroleum facilities
- Conducting asset and lien analysis with respect to key properties located in Puerto Rico, including oil pipelines, refinery, tank farm, and service stations
- Facilitating a sale process in an effort to maximize value for unsecured creditors

Pacific Energy Resources Ltd.

- Representing State of Alaska and various state agencies in bankruptcy case pending in Delaware
- State of Alaska party to numerous oil and gas leases regarding debtor’s wells and drilling platforms
- Protecting State of Alaska’s rights in connection with wind-down of debtor’s business and sale or abandonment of assets
- Dealing with substantial environmental risks posed by 2009 earthquake and effect on debtor’s ability to sell its property



Publications + Client Alerts

Click on title for more information.

ABI
Journal

[“Should Congress Rebalance Employee and Retiree Rights in Bankruptcy?”](#)

– Gary S. Lee, Alexandra Barrage, and Renee Freimuth,
ABI Journal, October 2010

Pratt’s
Journal of
Bankruptcy
Law

[“Lehman, Setoff, and the Inapplicability of the ‘Safe Harbor’ Provisions: Mutuality Remains Intact”](#)

– Norman Rosenbaum, Brett Miller, Alexandra Barrage, and Kristin Hiensch,
Pratt’s Journal of Bankruptcy Law, Vol. 6, No. 4, June 2010, reprinted with permission

MoFo
Client
Alert

[“Construction Lender Reminder: Lock In Your Rights to Use Your Borrower’s Architectural Plans to Complete the Project!”](#)

– Karen Ostad and Jordan Wishnew, May 10, 2010

MoFo
Client
Alert

[“Strict Foreclosure on Personal Property—When Can a Secured Party Keep the Collateral?”](#)

– William S. Veatch, May 6, 2010

Westlaw
Journal
Bank &
Lender
Liability

[“Third Circuit Approves Prohibition of Credit Bidding by Secured Creditors: Real Estate Lenders Beware”](#)

– Brett Miller, Jordan Wishnew, and Yuichi Haraguchi, April 26, 2010
Westlaw Journal Bank & Lender Liability

MoFo
Client
Alert

[“Dodd-Frank, Title II: Where the FDIC and the ‘Orderly Liquidation Authority’ Meet the Bankruptcy Code”](#)

– Joseph Gabai, Darren Nashelsky, Alexandra Barrage, and Renee Freimuth,
August 31, 2010

Publications + Client Alerts (cont'd)

Bloomberg Law Reports

“The ‘Police Power’ Clash Continues: The United States District Court for the Eastern District of Virginia Reverses the Bankruptcy Court and Holds that § 362(b)(4) Applies in *ITC v. Jaffé*”

– Brett Miller, Alexandra Barrage, and Samantha Martin,
Bloomberg Law Reports, Vol. 4, No. 35, August 30, 2010, originally published by
Bloomberg Finance L.P., reprinted with permission

MoFo Client Alert

“CMBS MARKET DODGES A BULLET Extended Stay Hotels Plan Confirmation Leaves CMBS Structure Intact”

– Mark S. Edelstein, Brett H. Miller, and James E. Hough, August 16, 2010

MoFo Client Alert

Bankruptcy & Restructuring Current Developments Newsletter

– Alexandra Barrage, Norman S. Rosenbaum, and David Capucilli, July 14, 2010

New York Law Journal

Bankruptcy & Restructuring Current Developments Newsletter, July 14, 2010

“Time for a NOLs Refresher”

– Norman S. Rosenbaum, Melissa Hager, Kristin Hiensch, and Michelle Jewett, *New York Law Journal*, June 28, 2010

ABI Journal

“Police Power Exception and Section 959(a) Deemed Inapplicable in *In Re Spansion*”

– Alexandra Barrage and Yuichi Haraguchi, *ABI Journal*, December/January 2010



Authors Jordan Wishnew, Alexandra Steinberg Barrage, and Norman S. Rosenbaum at the 2010 Burton Awards dinner receiving their Burton Distinguished Writing Award in Law.

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