

A PRODUCTIVE YEAR ACROSS BANKRUPTCY LITIGATION AND RESTRUCTURING PRACTICES

WilmerHale's Bankruptcy and Financial Restructuring Group is pleased to report another successful year. Led by nine partners out of the firm's New York, Boston, and Washington DC offices, the group presents a unique combination of litigation and transactional practices spanning the bankruptcy and financial restructuring landscape. In New York, the group is composed of **Phil Anker**, **Andy Goldman**, **Jim Millar**, **Bill Perlstein**, and **George Shuster**. In Boston, the group's partners are **Mitch Appelbaum**, **Dennis Jenkins**, and **John Sigel**. **Craig Goldblatt** works primarily from the firm's Washington DC office. Together, the group's partners work across the spectrum of bankruptcy-related litigation, financial restructuring, bankruptcy policy, and debt-related transactional matters. In this recap, we share with you a summary of some of our practice highlights from 2012 in each of the areas in which we focus. These matters demonstrate the group's involvement in some of the most prominent bankruptcy cases this year. They also demonstrate how WilmerHale's firmwide skills in areas such as financial industry regulation, intellectual property, and complex civil litigation and appeals integrate with the group's bankruptcy expertise to create an unparalleled ability to service the bankruptcy-related needs of the firm's clients. We hope and expect that our successful year will be matched in 2013, and we look forward to working with you in the coming year.



FINANCIAL RESTRUCTURING RECAP: IN-COURT AND OUT-OF-COURT SOLUTIONS TO LEVERAGE

WilmerHale's Bankruptcy and Financial Restructuring Group achieved substantial success in complex financial restructurings, both in and out of court. **Andy Goldman** led a team of WilmerHale lawyers in the representation of the Official Committee of Unsecured Creditors in **Getty Petroleum Marketing's** Chapter 11 bankruptcy in New York. With WilmerHale's guidance, the Committee took control of the Chapter 11 case by proposing and obtaining confirmation of the Committee's Chapter 11 plan of reorganization. **Andy Goldman** also led WilmerHale's efforts in obtaining a consensual restructuring of **Bicent Power** on behalf of the agent for the second-lien lenders, through a pre-arranged Chapter 11 plan confirmed

by the bankruptcy court in Delaware. Also in Delaware bankruptcy court, **George Shuster** led the representation of the first-lien agent and DIP agent in the Chapter 11 bankruptcy of **Digital Domain Media Group**, a digital special effects production company with credits on films including *Transformers*, *X-Men*, and *Pirates of the Caribbean*. That case involved an accelerated Section 363 auction process resulting in substantial value to the creditors and a preservation of the production business as a going concern. In an out-of-court restructuring, **Dennis Jenkins** represented an informal group of **Inergy** noteholders in connection with the exchange and consent solicitation proposed by Suburban Propane Partners, which was part of the proposed purchase by Suburban Propane of the residential propane assets of Inergy. The group's efforts substantially improved the value of the transaction to the noteholders.

Bankruptcy and Financial Restructuring Group: 2012 Recap

BANKRUPTCY LITIGATION RECAP: BANKRUPTCY-RELATED LITIGATION CONTINUES TO BE ACTIVE



Our Bankruptcy and Financial Restructuring Group was also at the forefront of major bankruptcy litigation matters in 2012, including a number of multi-billion dollar actions resulting from spinoffs and leveraged buyouts that were followed

by later bankruptcy filings. In one such case, a WilmerHale team led by **Phil Anker** defended a Fortune 20 company against a suit brought by a litigation trust on behalf of creditors of a former subsidiary in US District Court, related to the spinoff of the former subsidiary prior to its bankruptcy. Our client successfully moved to strike the creditor trust's jury demand, obtained a dismissal of a substantial portion of the claims, and proceeded to a two-week bench trial on the remainder of the claims, on which it is awaiting verdict. The same Fortune 20 company has also retained a WilmerHale team, led by **Phil Anker** and **Craig Goldblatt**, to defend another multi-billion dollar fraudulent transfer action relating to a separate transaction brought by a different bankruptcy litigation trust. **Phil Anker** is also representing financial institutions in their defense of claims arising from the **Lyondell** and **Tribune Company** bankruptcies, related to the leveraged buyouts that preceded those bankruptcy filings, as well as other financial institutions in their defense of claims relating to the bankruptcies of **Refco** and the **SPhinX Funds**. **Andy Goldman** is pursuing claims of the **Getty Petroleum Marketing** estate against multi-national defendant **Lukoil**, related to Lukoil's spinoff of Getty, following the assignment of those claims to a liquidating trust through Getty's confirmed Chapter 11 plan. **Craig Goldblatt** is also representing an array of derivatives counterparties in ongoing disputes arising out of the **Lehman Brothers** bankruptcy.

The group has other litigation assignments on behalf of noteholders and other similar creditors. **Phil Anker** and **George Shuster** are representing a hedge fund creditor in connection with a series of issues arising out of the **American Airlines** Chapter 11 case, including issues related to municipal conduit financing claims and potential fraudulent transfer claims. **Jim Millar** is representing a minority secured bondholder in litigation in the New York

Supreme Court to enforce its claims against the issuer, **Cleveland Unlimited**, following an out-of-court debt-for-equity exchange to which the bondholder did not consent. **George Shuster** is representing noteholders in defense of equitable subordination claims commenced against them by the trustee for **Pelikan Technologies** in its Northern District of California Chapter 7 bankruptcy.

Other litigation assignments involve a variety of clients and suits. **Craig Goldblatt**, **Dennis Jenkins**, and **Jim Millar** are continuing to represent a leading national mortgage servicer in connection with a number of disputes in bankruptcy courts across the country relating to the treatment of home mortgages in Chapter 13. **Andy Goldman** and **George Shuster** successfully represented corporate vendor defendants in a number of multi-million dollar preference suits brought by the liquidating trustee for **Circuit City**.

In the cross-border arena, **George Shuster** is representing parties in interest in the Delaware Chapter 15 case of **Elpida Semiconductor**, which is also subject to bankruptcy proceedings in Japan, and the New York Chapter 15 case of **Upper Deck International**, which is also subject to bankruptcy proceedings in The Netherlands. **George Shuster** also continues to represent a number of foreign banks in connection with the claims pursued by the **Fairfield Funds** in their Chapter 15 cases in New York and liquidation proceedings in the British Virgin Islands.

DISTRESSED M&A RECAP: SECTION 363 SALES CONTINUE TO ATTRACT SIGNIFICANT INTEREST



The distressed M&A market has remained active in 2012, and the WilmerHale Bankruptcy and Financial Restructuring Group has been engaged by a number of sellers and buyers in Section 363 sale transactions. **Andy Goldman**

represented buyers **Transportation Management Services** and **MV Transportation** in two separate purchases of the assets from Coach America through Section 363 sales in the Delaware bankruptcy court. **George Shuster** assisted **Eastman Kodak Company** in the proposed Section 363 sale of its patent portfolio, and has been engaged by a pharmaceutical industry client in its bid to purchase assets in a Section 363 sale, both in the New York bankruptcy

court. In these representations, which involved fast-paced and complex sale structures and documentation, the Bankruptcy and Financial Restructuring Group relied heavily on the transactional expertise of WilmerHale's corporate partners, including **Mark Borden**, **Jay Bothwick**, and **Justin Ochs**. In another aspect of distressed M&A representation, **Jim Millar** assisted the independent board members of a pharmaceutical company in evaluating the sale of its assets to a strategic buyer in a distressed context.

BANKRUPTCY POLICY RECAP: THE EVOLVING STATUTORY AND REGULATORY BACKGROUND



Craig Goldblatt and **Jim Millar**, along with appellate partner **Danielle Spinelli**, are working with the **Loan Syndication and Trading Association (LSTA)** in connection with the **American Bankruptcy Institute (ABI) Commission to**

Study the Reform of Chapter 11, and have provided testimony to the commission on several occasions regarding the protection of secured creditor rights in the bankruptcy process. **Craig Goldblatt** and **Danielle Spinelli** also represented the LSTA as *amicus curiae* in the recent US Supreme Court case regarding the right of a secured creditor to credit bid its claim in bankruptcy, **RadLAX Gateway Hotel, LLC v. Amalgamated Bank**. **Phil Anker**, **Craig Goldblatt**, and **Danielle Spinelli** were also recently retained by the **Securities Industry and Financial Markets Association (SIFMA)** to represent it, as *amicus curiae*, in a Second Circuit appeal arising out of the **Madoff** bankruptcy that raises significant questions about the scope of the Bankruptcy Code's safe-harbor provisions relating to securities contracts. **Craig Goldblatt**, **Mitchel Appelbaum**, **Dennis Jenkins**, and **Jim Millar** are continuing to represent a leading mortgage servicer in connection with its residential mortgage business, helping the bank to navigate the evolving policy and regulatory regimes in that area. These efforts, which draw on WilmerHale's substantive bankruptcy knowledge as well as its depth of experience in the trial and appellate litigation and regulatory practice areas, display the broad perspective with which WilmerHale's Bankruptcy and Financial Restructuring Group approaches its work.

WHAT WE DO

WilmerHale's Bankruptcy and Financial Restructuring Group specializes in financial restructuring, bankruptcy-related litigation, and distressed investment advice for corporate and financial institution clients. We represent creditors, investors, and buyers of distressed counterparties; defendants in litigation in bankruptcy court or implicating bankruptcy and insolvency law; and debtors in their financial restructurings.

WHO WE ARE

WilmerHale's Bankruptcy and Financial Restructuring Group is led by nine partners across the firm's New York, Boston, and Washington DC offices. For more information, please contact us.

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