



## 2013 RECAP

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**WilmerHale's BFR Group, spanning the firm's New York, Boston, and Washington DC offices, left a footprint in 2013 that extended far beyond those locations.**

The past year has been marked with sustained success for the WilmerHale Bankruptcy and Financial Restructuring Group and its clients. From favorable litigation outcomes to ongoing debt restructuring efforts, the litigation, regulatory, and transactional work of the BFR Group continues to reflect the highest level of legal representation for leading participants in the bankruptcy dispute and distressed investing arenas. The 24 lawyers in the BFR Group, spanning the firm's New York, Boston, and Washington DC offices, left a footprint in 2013 that extended far beyond those locations. They worked on matters involving jurisdictions from China and Japan, to Russia and Germany, to the U.S. and the Cayman Islands. Their work involved the intersection of bankruptcy law with securities and finance regulation, intellectual property law, environmental regulation, communications law, and energy policy. They assisted hundreds of clients in anticipating and mitigating bankruptcy and insolvency risk, exercising claims and defenses in bankruptcy cases, and pursuing and defending bankruptcy-related actions in courts across the country. While the BFR Group's work was broad-reaching in 2013 in many respects, there was a single common theme: delivering top-notch resources to untangle the toughest legal knots in the bankruptcy and insolvency world.

### **BANKRUPTCY LITIGATION HIGHLIGHT: GETTY PETROLEUM MARKETING**

In July, after six weeks of trial, a WilmerHale team led by **Andy Goldman** secured court approval of a \$93 million settlement in favor of its client, the liquidating trustee for **Getty Petroleum Marketing Inc. (GPMI)**. GPMI had alleged that its former officers, directors, and corporate affiliates had fraudulently conveyed hundreds of GPMI's gasoline stations and terminals to shield those assets from GPMI's creditors, and then abandoned GPMI to file for bankruptcy protection under chapter 11. WilmerHale's work for the liquidating trustee followed the firm's representation of the official committee of unsecured creditors in GPMI's chapter 11 case, where the chapter 11 plan proposed by the committee created the liquidating trust and authorized the liquidating trustee

to pursue this and other causes of action. The ultimate result of the confirmed chapter 11 plan and the subsequent liquidation and litigation will be a substantial distribution to the creditors of GPMI. WilmerHale's work on the GPMI matters showcases the firm's ability to represent clients across the spectrum of transactional and litigation aspects of a restructuring.

In other bankruptcy litigation matters, **Phil Anker** continues to represent defendants in major fraudulent transfer actions across the country, including those related to the **Boston Generating, FairPoint, Idearc, Lyondell, and Tribune** cases. **George Shuster** is representing **Dominion Voting** as a defendant in fraudulent transfer actions commenced in New York and Colorado, and is representing defendants in the continuing fraudulent transfer litigation against redeeming shareholders in the **Fairfield Funds** and **Madoff** cases.

Major fraudulent transfer actions across the country and beyond

restructuring of Cleveland Unlimited. George Shuster obtained a dismissal with prejudice of equitable subordination claims commenced against noteholders by the chapter 7 trustee of Pelikan Technologies. Dennis Jenkins and George Shuster are representing preference defendants in other cases, including NewPage and Dewey & LeBoeuf.

Jim Millar is representing a Lehman Brothers counterparty in a dispute regarding a still unresolved financial contract, and Craig Goldblatt and George Shuster remain involved in other aspects of Lehman-related litigation. Jim Millar continues to represent investors in litigation arising from the

DISTRESSED M&A HIGHLIGHT: TLO

This fall, a team led by Phil Anker and Dennis Jenkins represented TransUnion as the stalking horse purchaser of the assets of TLO, a leading online investigative systems company, in its section 363 sale in Florida bankruptcy court. This fintech transaction, involving complex issues at the intersection of bankruptcy, intellectual property and data privacy law, demonstrates the interdisciplinary strengths underlying the transactional side of WilmerHale’s Bankruptcy and Financial Restructuring Practice. Our client TransUnion was the successful bidder following an active auction process, and the sale closed in early December.

FINANCIAL RESTRUCTURING HIGHLIGHT: HOUSTON REGIONAL SPORTS NETWORK, L.P.

At the end of September, a team including Craig Goldblatt and George Shuster advised a number of Comcast entities in their filing of an involuntary chapter 11 petition against Houston Regional Sports Network, L.P., a joint venture of Comcast, the Houston Astros, and the Houston Rockets. The trial on the petition commenced in late October and remains pending decision.

In other financial restructuring matters, Bill Perlstein is leading a team of lawyers who are serving as special regulatory counsel to the official committee of unsecured creditors of ResCap, demonstrating the firm’s unique capabilities at the intersection of bankruptcy and financial regulation. Craig Goldblatt is representing insurers of the Montreal, Maine and Atlantic Railway, which filed its bankruptcy in response to liability from the Quebec rail disaster earlier this year. The matter is a continuation of the firm’s extensive experience representing insurers in chapter 11 cases involving mass torts over the course of decades. Dennis Jenkins is representing a group of investors in a top 50 trucking company. George Shuster is providing advice to counterparties in connection with the chapter 9 bankruptcy of the City of Detroit. Jim Millar and Dennis Jenkins are representing a group of bondholders in

Unique capabilities where restructurings occur in regulated settings

Energy Future Intermediate Holdings, and Phil Anker and George Shuster are representing an investor in Texas Competitive Electric Holdings. Jim Millar and George Shuster represented a group of bondholders in Suntech Power. Jim Millar represented several financial advisors in bankruptcies that led to section 363 sales.

BANKRUPTCY REGULATION & POLICY HIGHLIGHT: THE LOAN SYNDICATIONS AND TRADING ASSOCIATION (LSTA)

WilmerHale continues to represent The Loan Syndications and Trading Association (LSTA) in connection with potential changes to the US Bankruptcy Code being considered by a commission of the American Bankruptcy Institute (ABI). The LSTA and its members are concerned that the focus of the commission’s work has been to provide debtors with greater “flexibility” in the chapter 11 process, which may come at the expense of the rights of secured creditors. The LSTA has thus been working with the commission to ensure that its members appreciate



the potential market impact of any proposed change to the operation of chapter 11. **Danielle Spinelli**, assisted by **Craig Goldblatt** and **Jim Millar**, has led a team of lawyers in researching, writing about, and speaking on these issues, including through submission of testimony to the ABI commission.

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## Strategic advice for making and defending policy decisions.

**Appelbaum**, **Danielle Spinelli** and **Jim Millar**, offers a strong skillset to the institution, from strategic regulatory and policy advice to handling litigation and appeals when the affected issues reach the courts.

## BANKRUPTCY IN THE SUPREME COURT

The U.S. Supreme Court is scheduled to hear three important bankruptcy cases in its current term, and WilmerHale's leading bankruptcy appellate practice is playing a significant role in each of the cases. In *Law v. Siegel*, which raises the question of whether bankruptcy courts' "inherent authority" authorizes a court to sanction a debtor by "surcharging" property that is otherwise exempt, WilmerHale is representing a trade association in urging that bankruptcy courts may not impose sanctions that are unauthorized by the Bankruptcy Code. In *Executive Benefits v. Arkison*, a case addressing the bankruptcy courts' authority in the wake of the Supreme Court's landmark decision in *Stern v. Marshall*, WilmerHale is representing a group of bankruptcy and federal courts scholars as *amici curiae*, arguing that bankruptcy courts may enter final judgment on "non-core" matters with the consent of the parties, so long as the consent is expressly given. And WilmerHale is representing the respondent, a chapter 7 trustee, in *Clark v. Rameker*, a case raising the question of whether an inherited IRA account is exempt in bankruptcy. **Danielle Spinelli** will be arguing the *Clark* case before the Supreme Court in March 2014, and has (along with **Craig Goldblatt**) led the firm's representation in each of these cases.

WilmerHale also continues to represent a major financial institution in connection with its consumer credit policies and procedures, including those affecting residential mortgage foreclosure and treatment in bankruptcy. A team of WilmerHale lawyers, including **Craig Goldblatt**, **Mitch**

## WHAT WE DO

WilmerHale's Bankruptcy and Financial Restructuring Group focuses on 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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