
Bankruptcy & Financial Restructuring Group: 2011 Recap

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Bill Perlstein Rejoins Practice in New York

At the end of December 2011, **Bill Perlstein** will end his term as co-managing partner of WilmerHale and will rejoin the Bankruptcy & Financial Restructuring Group in the firm's New York office. Working with New York Partners **Phil Anker**, **Andy Goldman**, **Jim Millar**, and **George Shuster**, Bill will focus his efforts on the continued growth of the firm's New York bankruptcy presence. "A five-partner New York bankruptcy group provides the critical mass that allows us to take on more of the complex restructuring cases for which we are known. I am enthusiastic about rejoining a robust New York bankruptcy practice with a strong client base among corporate and financial institutions who seek our advice on bankruptcy litigation, financial restructuring, and distressed investments," says Perlstein. Together with their bankruptcy partners in Washington DC and Boston, the New York group is pleased to add Perlstein to its ranks. "Bill has decades of experience in the restructuring space, and has stayed involved in our practice throughout his time as managing partner. We're thrilled to add his skill set to our group, and we see his rejoining the practice as part of our continuing effort to service the New York restructuring market," adds Goldman. Bill can be reached in the New York office at +1 212 937 7217 and at bill.perlstein@wilmerhale.com.

Financial Restructuring Recap: Successful Restructurings in a Difficult Climate

Despite the continued challenges to a successful financial restructuring in current markets, which have led many companies in distress to liquidate their assets rather than reorganize, WilmerHale has been involved in a number of successful Chapter 11 reorganizations in 2011. Representing the debtor in the Delaware Chapter 11 case of **Constar International**, **Andy Goldman** and **Dennis Jenkins** assisted the Philadelphia company in emerging from bankruptcy, less than five months after it entered, as a private company with a stronger balance sheet and new funding. On the creditor side, **Phil Anker** and **George Shuster** represented the first-lien administrative agent in the Chapter 11 case of **Workflow Management** in Norfolk, Virginia, which concluded with a debt-for-equity swap by the second-lien lenders, a new investment by the prior equity holders, and a revision to certain first-lien debt terms. The restructuring was effected by a Section 363 sale through a Chapter 11 plan, in order to address accrued pension liabilities, but effectively resulted in a

reorganized business. While Constar and Workflow involved very different companies with different financial and operational challenges, each demonstrates WilmerHale's expertise in effecting efficient financial reorganization through the Chapter 11 process.

WilmerHale also took leading roles in the year's other major Chapter 11 cases. **Andy Goldman** led a team of lawyers representing one of the largest lenders to **Tribune Company** in its contentious and ongoing Chapter 11 plan process. **Phil Anker** took the lead for WilmerHale's representation of one of the larger creditors in the **Lehman Brothers** Chapter 11 case, helping to negotiate the terms of the revised Chapter 11 plan proposed by the debtors and an attendant Plan Support Agreement.

Distressed M&A Recap: Section 363 Sales Continue to Attract Significant Interest

This year, WilmerHale has represented bidders in the most notable Section 363 bankruptcy sales, as well as other buyers in distressed M&A transactions ranging from small to large. In June, **Bill Perlstein** and **George Shuster** represented a technology company making a bid for the patent portfolio being sold by **Nortel Networks** in its cross-border insolvency proceedings in Delaware, Canada, and Europe. The Nortel auction lasted four days and resulted in the purchase price rising from \$900 million at the outset to \$4.5 billion at the conclusion. The auction attracted much attention to the potential value of intellectual property being sold by companies in distress, and the complications that arise when multinational intellectual property is sold through a bankruptcy process. WilmerHale's team was guided by the group's deep understanding of the intersection of bankruptcy and intellectual property law, which grows out of the background of the firm's leading practice in intellectual property litigation.

In April, **Phil Anker** and **George Shuster** led the representation of a hedge fund making a joint bid for the hotel properties being sold by **Innkeepers USA Trust** in its Chapter 11 case in New York. The Innkeepers auction ultimately resulted in litigation between the successful bidder and the debtor as to whether the winning \$1.1 billion bid should stand following an alleged material adverse change in the capital markets. That dispute settled in October, and demonstrates the importance of contractual language in sale documentation, as well as speed in closing distressed sale transactions, to keeping those transactions on track. In addition to these high-profile cases, **Phil Anker**, **Andy Goldman**, **Dennis Jenkins**, **Jim Millar**, and **George Shuster** have been involved in middle-market and small-market distressed sales, foreclosures, and other investments and dispositions in 2011, representing bidders and buyers of assets in the pharmaceutical, transportation, and energy sectors.

WilmerHale—led by **Craig Goldblatt** and Appellate Partner **Danielle Spinelli**—also represented the Loan Syndication and Trading Association ("LSTA") in an *amicus* brief that urged the US Supreme Court to grant *certiorari* in the **River Road** case, which raises the question of whether a Chapter 11 plan of reorganization may deprive a secured creditor of the right to credit bid the value of its claim when its collateral is sold in a bankruptcy auction. The Seventh Circuit held in that case, following the position set out in the LSTA *amicus* brief, that the text and structure of the Bankruptcy Code protected the right of a secured creditor to credit bid in a sale under a Chapter 11 plan. On

December 12, 2011, the US Supreme Court granted the petition for *certiorari*, and will hear and decide this case before the end of its 2011-2012 Term. WilmerHale will represent LSTA as *amicus* before the US Supreme Court at the merits stage, urging the Court to affirm the Seventh Circuit's judgment.

Bankruptcy Litigation Recap: Jurisdiction and "Safe Harbor" Disputes Dominate and Change the Landscape

In June of this year, the US Supreme Court issued its decision in ***Stern v. Marshall***, placing constitutional limitations on the ability of a bankruptcy court to enter rulings on certain matters not essential to the administration of the bankruptcy estate. **Craig Goldblatt** and **Danielle Spinelli** served as co-counsel to the Marshall estate in this historic case, which has created change and uncertainty in the ways that bankruptcy courts across the country are adjudicating and will adjudicate bankruptcy-related litigation. Indeed, the effects of the *Stern v. Marshall* decision have already been felt in other bankruptcy-related litigation. For example, the decision has become relevant to an array of disputes that **Craig Goldblatt** and others are handling in the **Lehman Brothers** bankruptcy on behalf of leading financial institutions, hedge funds, public entities, and trade associations. *Stern* has also become relevant in **George Shuster's** work with the firm's Litigation Department on behalf of foreign bank defendants in the "clawback" actions being asserted by the **Fairfield feeder funds**, which made investments in the Madoff funds—hundreds of such actions have been filed in New York state court, New York bankruptcy court, and the British Virgin Islands high court. The Fairfield litigation demonstrates the group's specialized expertise in Chapter 15 and other cross-border insolvency issues.

In addition, **Phil Anker** has led bankruptcy litigation teams in defending financial institutions and corporations in several multi-billion dollar fraudulent transfer actions, including those related to the **Lyondell** and **Tribune** insolvencies. These actions involve, among many other aspects of the litigation, defining the scope and applicability of the "safe harbor" defense to constructive fraudulent transfer claims under Section 546(e) of the Bankruptcy Code, a topic of robust and precedent-setting litigation over the past months. **Phil Anker** and his team have also represented investment bank defendants in the **Refco/Suffolk** and **SPhinX** litigation. In the Refco/Suffolk cases, WilmerHale achieved a dismissal with prejudice of the fraudulent transfer actions against the banks.

Earlier this year, the *en banc* Third Circuit ruled in favor of the firm's insurer clients in the **Global Industrial Technologies** case, issuing a landmark decision supporting the standing of insurers to be heard in bankruptcy cases filed by their insureds, which seek to misuse the bankruptcy process for the purpose of obtaining tactical advantage over the insurer. **Craig Goldblatt** argued the case before the *en banc* court, and also prevailed in obtaining the dismissal, for lack of subject-matter jurisdiction, of an action brought by a number of asbestos trusts against the firm's insurer clients in the **ACandS** bankruptcy.

Finally, a number of the group's lawyers, including **Bill Perlstein**, **Craig Goldblatt**, **Mitch Appelbaum**,

Dennis Jenkins, and **Jim Millar** are representing a leading financial institution and home loan servicer in connection with disputes relating to the foreclosure crisis that arise out of the servicing of loans to borrowers in Chapter 7 and 13 bankruptcy cases.

Together, these representations demonstrate the breadth and depth of WilmerHale's premier bankruptcy litigation, public policy, and appellate practices.

What We Do

WilmerHale's Bankruptcy & Financial Restructuring Group specializes in financial restructuring, bankruptcy-related litigation, and distressed investment advice for corporate and financial institution clients. We represent banks, funds, and companies as creditors and investors of distressed counterparties, and as defendants in fraudulent transfer actions and other actions in bankruptcy court or implicating bankruptcy and insolvency law. We also represent debtors in their financial restructurings. We have specific expertise in cross-border insolvency and in the intersection of bankruptcy and intellectual property law.

Who We Are

WilmerHale's Bankruptcy & Financial Restructuring Group is led by nine partners across the firm's New York, Boston, and Washington DC offices. For more information on the above topics or on other bankruptcy and financial restructuring topics, please contact any of us.

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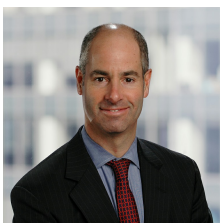
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