

I Bankruptcy & Restructuring Litigation

In a typical bankruptcy and restructuring practice, litigators are brought in from a wide array of practice areas on an ad hoc basis. That approach fails to appreciate the technical and specialized nature of bankruptcy law; it also views litigation as reactive and/or value destructive. Our approach to bankruptcy and fiduciary litigation is different.

Rather than simply staffing litigators on bankruptcy matters when disputed issues arise, we have a dedicated team of litigators who work hand in hand with our Bankruptcy & Restructuring Department on a regular basis. Through this collaboration, our bankruptcy litigators have developed a deep understanding of bankruptcy proceedings and issues. In addition to enabling us to respond to litigation that arises during a bankruptcy case, this approach allows us to use litigation strategically, and it provides our clients with seamless representation through all aspects of a bankruptcy case. Moreover, our approach is more effective and efficient, as our bankruptcy litigators are tried-and-tested advocates inside and outside the bankruptcy arena, with years of experience litigating in state and federal courts.

Bankruptcy- and fiduciary-related litigation can take many forms, from investigating the actions of directors and officers using Rule 2004 to prosecuting or defending adversary proceedings on numerous issues such as fraudulent conveyances, breach of fiduciary duty, equitable subordination, corporate waste, and recharacterization of secured debt. We are also highly skilled at litigating issues that arise out of Section 363 sales as well as all aspects of plan disclosure and confirmation.

Businesses that fail are often subjected to intense scrutiny, and this can include claims of mismanagement against senior executives and board members. As a result, directors and officers are common targets for breach of fiduciary duty or similar claims, particularly in bankruptcy proceedings. Our team is experienced with D&O litigation, both inside and outside of bankruptcy court. We have investigated and brought claims of breach of fiduciary duty and have also leveraged our white collar experience in defending directors and officers against such claims. This experience means that we can understand both sides of the issues, yielding positive results for all of our clients.

With strength across practice areas, our work and experience span the breadth of litigation issues our clients may face in bankruptcy proceedings. Our clients turn to us when the stakes are highest, knowing that we will work tirelessly on their behalf to achieve favorable results in line with their business goals.

EXPERIENCE

- Representing the Official Committee of Unsecured Creditors of Century 21 Department Stores in its bankruptcy proceedings in the Southern District of New York. The Committee investigated potential estate causes of action relating to prepetition transactions involving the company's family owners and their network of entities. Based on its investigative findings, the Committee was able to negotiate a global settlement that involved the sale of insurance claims and mutual releases for the family and entities in exchange for \$59 million for the estate, plus potential proceedings sharing on the insurance claims.
- Represented the Official Committee of Unsecured Creditors of Mission Coal Company, LLC, a Tennessee coal mining company. As counsel to the Committee, we led a three-month Rule 2004 investigation and filed a motion seeking standing to prosecute a 52-count complaint, which included claims for avoidance of fraudulent transfers, recharacterization of debt as equity, equitable subordination, and corporate waste. The matter culminated in a contested confirmation trial, which resulted in the parties resolving all outstanding issues for total consideration of approximately \$29 million for the estate.
- Represented Debtor Aceto Corporation and its affiliated companies, including Rising Pharmaceuticals, Inc. in its Chapter 11 filing and plan of liquidation. Aceto successfully sold its global chemicals business assets and Rising's pharmaceutical assets in two Section 363 sales for an aggregate value of about \$548 million. We continued to represent Aceto in its wind-down, including the Chapter 11 plan of liquidation process, recovery of additional assets (including certain litigation claims), and the review and reconciliation of over \$1 billion in filed claims. This representation required a multifaceted effort involving coordination among various practice groups, as well as seamless integration with foreign counsel, as the client operated in more than 15 non-U.S. jurisdictions.
- Represented the Official Committee of Unsecured Creditors of Exide Holdings, Inc. in its bankruptcy proceedings in the District of Delaware. The Committee investigated potential causes of action for fraudulent conveyances and preference avoidance held by the Debtors' estates. In connection with its investigation, the Committee conducted over a dozen witness interviews and reviewed over 10,000 documents. Based on its findings, the Committee was able to negotiate a global settlement that included \$2.4 million for unsecured creditors.
- Represented the Official Committee of Unsecured Creditors of SportCo Holdings, Inc. and its subsidiaries. The litigation team conducted an extensive investigation into potential claims held by the Debtors' estates and ensured the establishment of a litigation trust for the benefit of creditors to allow the Committee to pursue claims against the Debtor's sole shareholder, a private equity firm. The Committee continues to represent the trustee for the litigation trust in prosecuting claims for breach of fiduciary duty, fraudulent transfer, and corporate waste.
- Represented the Official Committee of Unsecured Creditors of GNC Holdings, Inc. We conducted an investigation into potential estate causes of action and issued discovery requests in anticipation of a contested sale hearing. The Committee was able to negotiate a consensual Plan of Reorganization, including the sale of the GNC business as a going concern, with the Debtors, secured lenders, unsecured noteholders, and purchaser, resulting in significantly increased recovery for unsecured creditors.
- Represented the Official Committee of Unsecured Creditors of Cenveo Inc. The Committee's investigation culminated in a publically filed report that included significant findings regarding potential claims against Cenveo's insiders, including for fraudulent conveyance and breach of fiduciary duty claims relating to Key Employee Incentive Plan (KEIP) and Key Employee Retention Plan (KERP) payments and additional forms of compensation made to insiders. As a result, the parties entered into a global settlement that tripled the cash pool for unsecured creditors from \$1.5 million to \$7 million.

- > Representing the Public Employees Retirement Association of New Mexico in the chapter 11 case of Pacific Gas and Electronic Company (PG&E) before the Bankruptcy Court for the Northern District of California. As counsel to the Association, which is the court-appointed lead plaintiff in a securities class action against PG&E's officers and directors, we prevented the litigation from being enjoined and defeated a standing motion seeking to usurp the claims filed by the committee representing the victims of the 2017 and 2018 Northern California wildfires. We also participated in the heavily contested confirmation hearing that spanned approximately two weeks.
- > Represented the Official Committee of Unsecured Creditors of Fred's Inc. The Committee investigated potential causes of action against certain of the Debtors' current and former directors and officers. Using our findings, we litigated the right to include language in the Liquidating Plan that disclosed against the inequitable and improper nature of the third-party releases sought.
- > Represented the Official Committee of Unsecured Creditors of Bumble Bee Parent, Inc. We successfully litigated the Committee's objections to the Debtors' proposed KEIP and KERP payments. We also successfully prosecuted an objection to the Debtor's proposed Section 363 sale. As a result, the Committee and the Debtors arrived at a mutual resolution, which provided for the establishment of a litigation trust to allow the Committee to prosecute and collect on claims held by the Debtors' estates for the benefit of creditors.
- > Represented the Official Committee of Unsecured Creditors of Hygea Holdings, Corp., a Florida-based company that delivered primary-based health care. The Committee investigated potential causes of action against certain of the Debtors' current and former directors and officers, which included dozens of interviews, the issuance of subpoenas, and a motion to compel discovery from Hygea, as well as the review of thousands of emails and the analysis of financial data to detect fraudulent transfers. The Plan of Reorganization was confirmed in 2020, and included the creation of a creditors' trust to pursue causes of action against certain managing members.
- > Representing the Official Committee of Tort Claimant Creditors of the Diocese of Camden, New Jersey. The Committee is advocating for a bar date for sexual abuse claimants in the case that reflects the extended statute of limitations enacted by the New Jersey Legislature in 2019 and takes into account the unique injuries suffered by abuse survivors. The Committee is also conducting an investigation into the assets, structure, and relationships of the Diocese, parishes within the Diocese, and other related Catholic entities to ensure the maximum recovery for abuse survivors.
- > Represented the Official Committee of Unsecured Creditors of Yueting (YT) Jia, a Chinese tech mogul and entrepreneur carrying debts in excess of \$3.6 billion. Our international investigation focused on potential fraudulent transfers by unwinding a vast network of shell companies and intricate financial transactions. We obtained significant concessions from the Debtor in his proposed plan of reorganization, which the Committee ultimately voted to support. In addition, the litigation team participated in several adversary proceedings instituted by stand-alone creditors seeking to derail the reorganization.

HONORS & AWARDS

- > **Global M&A Network's 2021 Turnaround Awards (2021)**
Recognized for the restructuring and acquisition of GNC Holdings, Inc. by Harbin Pharmaceutical Group, affiliate of CITIC Capital, in the category of Cross Border Special Situation Deal and for the representation of Duro Dyne National Corporation in the category of Chapter 11 Restructuring
- > **Chambers USA: America's Leading Lawyers for Business (2009-2021)**
Recognized for work in Bankruptcy/Restructuring
- > **Chambers USA: America's Leading Lawyers for Business: Ranked in Band 1 in New Jersey for Commercial Litigation**