

Bankruptcy & Restructuring

Our clients rely on us to help them navigate distressed situations and bring about swift and sensible solutions through bankruptcy and restructuring.

ZAG-S&W offers legal services in all aspects of bankruptcy, restructuring, creditors' rights and commercial law.

We deliver sophisticated bankruptcy counsel and forceful litigation representation for businesses of all sizes.

We practice in all areas of bankruptcy, restructuring, creditors' rights and commercial law, routinely handling matters involving intricate debt structures and financial instruments. We have represented clients in matters involving billions of dollars and the most complex legal issues, in Chapter 11 cases and out-of-court workouts and restructurings, as well as in contested matters throughout the U.S.

Clients

We have a special focus on issues faced by financial institutions and investors in transactions involving distressed entities. Clients regularly rely on our bankruptcy team for advice concerning:

- Restructuring of investments in defaulted public, private, and secured and unsecured bonds
- Debtor and creditor side workouts
- Bankruptcy litigation, including fiduciary issues
- Foreclosures
- Workout of investments in CDOs and other structured investment vehicles
- Credit default swap analyses

- Enforcement of termination of swaps and other derivative instruments on account of bankruptcy or reorganization
- Issuance of non-consolidation opinions and true sale opinions on behalf of bankruptcy-remote, special purpose entities

We are especially deep in experience with private equity, debtors, and indenture trustee and other corporate trust clients.

Accolades

- *Chambers 2020 USA* recognized the firm's Bankruptcy/Restructuring Group and noted its skilled handling of contentious and out-of-court bankruptcy and restructuring matters across the United States. The group is highly recommended for advising on Chapter 11 filings, with niche expertise in aviation.
- U.S. News *Best Lawyers* "Best Law Firms" 2020
 - Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law, National and Boston Metropolitan

Delivering on Your Next: Case Studies

Quarterbacking a successful claims resolution process

Challenge

A major U.S. healthcare client and its subsidiaries needed help with the resolution of a significant number of post-effective date bankruptcy claims and issues.

Getting to Next

The bankruptcy group worked with an interdisciplinary

team tasked in January 2018 with resolving approximately 3,000 claims throughout the United States totaling over \$900 million. The case involved wide-ranging legal issues including, among others, bankruptcy, tax, insurance and antitrust. The case was before the U.S. Bankruptcy Court in New York.

Results

The claims were favorably resolved in less than one year.

Further, four high-ranking doctors subsequently sought to void their non-compete agreements, requiring the reopening of the client's bankruptcy case. The doctors later withdrew their petitions.

Protecting the interests of an Administrative Agent and its Unsecured Lender Group

Challenge

Our client needed legal counsel after being appointed as successor Administrative Agent under a \$300 million Unsecured Term Loan Credit Agreement among Nine West Holdings LLC, as Borrower, and certain affiliated guarantors.

Getting to Next

On April 6, 2018, Nine West and its affiliated guarantors filed petitions under Chapter 11 in the Bankruptcy Court for the Southern District of New York. We represented the Administrative Agent in these Chapter 11 proceedings and as a member of the Official Committee of Unsecured Creditors.

Results

The Nine West plan was confirmed on February 27th, 2019.

Representative Client Work

- **CQS (US) LLC.** Represent CQS (US) LLC in the Chapter 11 cases of Windstream Holdings, Inc. and its

subsidiaries.

- **EY Bermuda.** Represents EY Bermuda as the Joint Provisional Liquidator in the George's Bay Limited Chapter 15 case pending before the United States Bankruptcy Court for the Southern District of New York.
- **GTAT Corporation.** Successfully represented GTAT Corporation and its subsidiary debtors in connection with the recovery of over \$110 million of avoidable transfers arising from the commencement of the GTAT Chapter 11 cases. Lawyers at Sullivan commenced over 300 lawsuits seeking the return of funds and obtained approval by the United States Bankruptcy Court for the District of New Hampshire for mediation procedures to streamline the litigation process.
- **Insightra Medical, Inc.** Successfully represented our client, a private equity fund, in connection with the prepackaged Chapter 11 case of Insightra Medical, Inc. Insightra Medical had significant litigation, operational and financial issues that were resolved as part of the Chapter 11 process and our client's acquisition of the company.
- **Black Elk Energy Offshore, Inc.** Successfully represented the Ad Hoc Group of Noteholders in Black Elk Energy Offshore, Inc. in connection with all aspects of the Chapter 11 case, including various litigations, as well as the approval of debtor-in-possession financing and plan confirmation.
- **Credit Default Swaps.** We regularly advise hedge funds on the bankruptcy and litigation process as it pertains to various credit default swap positions held by such funds. As part of this process, we assist our clients with the evaluation of risks to help them make better investment decisions.
- **Municipal Financings.** We regularly represent clients in connection with the enforcement of remedies in tax-exempt bond financings and understand the rights and obligations of economic development issuers,

borrowers and bond purchasers in such matters. We have represented clients in the Chapter 11 case of a continuing care senior housing facility, in state court proceedings (including both special mastership or receivership proceedings) of health care facilities, in the enforcement of rights with respect to tax exempt bonds providing for educational facilities and multi-family housing, in litigation concerning the rights of credit parties involved in the financing of military housing facilities and in connection with non-judicial remedies exercised following municipal energy project defaults.

- **Chapter 15 Proceeding.** Successfully represented indenture trustee of public debt before the U.S. Court of Appeals for the Fifth Circuit in appeal of Chapter 15 proceeding. The Fifth Circuit ultimately ruled that a Mexican company's reorganization plan that granted discharges to its non-debtor operating subsidiaries could not be enforced in the United States. After having its bankruptcy plan approved in Mexico, the Mexican company, Vitro SAB de CV, filed a Chapter 15 proceeding in the Bankruptcy Court for the Northern District of Texas, and sought to have its plan enforced in the United States. The Bankruptcy Court refused to enforce the plan. The Fifth Circuit then agreed to take a direct appeal from the Bankruptcy Court. This case represents the first time a Mexican reorganization plan has been denied enforcement in the United States.
- **Lehman Brothers.** Represented client in its capacity as indenture trustee, securitization trustee and collateral agent under various derivative transactions, loan trusts, swaps and other securities, as a member of the unsecured creditors' committee in the Chapter 11 proceedings of Lehman Brothers Holdings, Inc., and affiliates and subsequent representation of client as a member of the post-confirmation litigation sub-committee in connection with those Chapter 11 cases.
- **Airline Bankruptcies.** Represented mortgagees, pass-through trustees, subordination agents and indenture trustees, in the Chapter 11 proceedings of American Airlines, Northwest Airlines and United Air Lines with respect to commercial aircraft equipment and engines, including enforcement of obligations under Section 1110 (a) of the Bankruptcy Code, repossession and foreclosure of aircraft collateral, restructuring of transactions and prosecution of claims. Significant involvement in claims litigation concerning the interplay among tax indemnity claims and stipulated loss value and litigation with respect to equity squeeze provisions.
- **Distressed Mergers and Acquisitions.** Represented successful bidder and ultimate purchaser of intellectual property assets in Section 363 sale in the Lily Robotics Chapter 11 case. Acted as counsel to senior secured lender insurance company in distressed disposition of media company business assets.
- **Higher Education.** Representation of a lender to a distressed educational institution in financing secured by significant real estate and asset portfolio. Representation of various colleges and universities in creditors rights matters involving research and development projects, intellectual property protection issues and collaboration agreements.
- **American Refining Group, Inc. (ARG).** Represented a refinery operator in the bankruptcy of Chemtura Corporation, from whom ARG acquired a facility with a long legacy of environmental issues.
- **Integrated Health Services, Inc., Mariner Post-Acute, Inc., Sun Healthcare Group, Inc.** Our clients, holding leasehold and mortgage interests in approximately 57 real properties located in 13 states, entered into settlements whereby the properties were recovered and the debt resolved within a short time of each company's Chapter 11 filing.
- **Publicly Held REIT.** Advised a publicly held REIT and its affiliates, which buy, own and lease senior citizen housing, in the creation and/or recycling of 17 "bankruptcy remote" subsidiaries in order to secure a master credit facility.

For further information about our Bankruptcy & Restructuring practice, please visit our website at www.zag-sw.com or contact: