



2013 Practice Group of the Year

Bankruptcy

With the creativity, care and skill that have come to typify Kirkland & Ellis LLP, the firm stewarded bankruptcy cases for prominent clients including Fisker Automotive Holdings Inc., OGX Petroleo & Gas Participacoes SA and Hawker Beechcraft Corp., meriting a spot among *Law360's* Bankruptcy Practice Groups of the Year.

But the word “bankruptcy” only tells part of the story, as Kirkland & Ellis prefer to call the practice group its restructuring team, since actually hitting court with a Chapter 11 or similar petition is only one small slice of a larger strategy the firm aims to implement.

“We place a strong emphasis on creative deal-making,” Kirkland & Ellis partner Edward O. Sassower said. “Oftentimes, we spend a great deal of time on a client’s situation before the first day of the case. Chapter 11 is sometimes just the continuation of that strategy.”

One example is the high-profile case for electric carmaker Fisker, which filed for Chapter 11 protection in November, and could see its assets sold in a private sale to Hybrid Tech Holdings LLC or in an auction proposed by the official committee of unsecured creditors with Chinese auto giant Wanxiang Group Corp. as stalking horse.

Though the in-court proceedings have grabbed the lion’s share of the headlines lately, partner and practice leader James H.M. Sprayregen and partner Anup Sathy both said the company had been through an extensive marketing process for months before the filing.

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The U.S. Department of Energy loan at the heart of the case was sold to the debtor’s proposed private buyer the morning the Chapter 11 petition was filed, with the actual bankruptcy case being the continuation of Fisker’s restructuring strategy, the attorneys said.

The Fisker case, which remains ongoing in Delaware bankruptcy court, is just one example of the wide portfolio of cases Kirkland & Ellis took on in 2013.

In the AMF Bowling Worldwide Inc. case in the Eastern District of Virginia, the team working on that restructuring exemplified the agility needed to move through multiple solutions in bankruptcy’s often fast-paced environment.

“We understand that most of the time solutions are not binary,” Sprayregen said. “It’s not all about one side winning and the other losing. Many times you can come up with a win-win that works for everyone.”

For AMF, that meant going back to the drawing board when key lenders wouldn’t support an earlier Chapter 11 plan, and hammering out a deal that saw senior secured creditors getting their full recovery with the unsecured still seeing some money.

“This is the way we try to conduct ourselves in all of our cases,” said Joshua A. Sussberg, who worked on the AMF case. “Take disparate views and try to bridge people.”

The same dexterity was on display with the \$1.6 billion Hawker Beechcraft case in the Southern District of New York.

At one point the case appeared to be headed toward a \$1.8 billion sale to a Chinese-owned firm, but had to quickly revert back to a stand-alone restructuring when that deal ended up not getting done, said Patrick J. Nash Jr., who worked on the case.

The case was resolved as a debt-for-equity swap with lenders, and Hawker Beechcraft emerging as a company named Beechcraft Corp., focused on its profitable turboprop and piston aircraft business.

The MSR Resort Golf Course LLC saw Kirkland & Ellis draw upon the world-class experience of other departments in the firm and highlighted the restructuring team's deft skill to integrate that knowledge into its strategy.

Sassower said that through the collaborative approach among the firm's restructuring and other departments — something that distinguishes Kirkland & Ellis — the team was able to produce a "strong result" from the case.

Sprayregen agreed, saying, "We always regard that as one of the major elements of our practice. We're not just a bunch of restructuring lawyers. We bring in a unified, multidisciplinary approach."

Other cases in Kirkland & Ellis's body of work for 2013 include the fast-paced Conexant Systems Inc. and Maxcom Telecomunicaciones SAB de CV bankruptcies, the high-profile case

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for Atlantic City casino Revel AC Inc. and the ongoing proceedings for coal plant operator Longview Power LLC.

The firm has also represented constituencies other than debtors in cases, such as the independent special committee in the LightSquared Inc. case, the trust-preferred securities holders in the Mercantile Bancorp Inc. case and bond insurer Syncora Guarantee Inc. in Detroit's historic Chapter 9.

Detroit wasn't the only historic case with which Kirkland & Ellis was involved in 2013.

The firm is representing Eike Batista's oil firm OGX, which filed for a judicial recovery proceeding in Brazil in what could wind up being the largest proceeding of its kind in Latin American history.

Not only is the case expected to test Brazil's relatively new insolvency regime, but it involves several complex cross-border issues that Kirkland & Ellis is distinctly qualified to handle, said partner David R. Seligman.

But Seligman added that despite the technical intricacies of the case, a large degree of the firm's work will still be rooted in the fundamental basics of negotiation and deal-making.

"In a lot of these international cross-border cases, there is still a premium on old-fashioned getting people into a room," the attorney said.

Those keen interpersonal skills are key to putting together a successful restructuring, and the attorneys say it permeates every aspect of their strategy.

Sathy pointed out that a good portion of his work is pulling together various constituencies that have developed bad feelings for one another in the sometimes inevitable conflicts that develop during the bankruptcy process.

"The natural tendency in restructuring is to want to go into a corner," he said. "People typically want to fight or are ready to fight because they feel they've been wronged. To be able to repair some of that and do it in a fair way is a lot of what we do."

Sassower says that restructuring attorneys need to have high marks in what's known as emotional IQ in order to excel in what can often be an emotional and adrenaline-charged environment.

"Our goal is not to take every matter to trial and then trounce the opposition," he said. "Whenever we can, we're looking to resolve things consensually and achieve a win-win. That's part of what it means to be a strong restructuring professional."

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