Law360

2015 Practice Group of the Year

Bankruptcy

Kirkland & Ellis LLP last year upheld its reputation as a restructuring heavyweight, between taking on the mammoth Chapter 11 filing of Caesars Entertainment Operating Co. to turning around Patriot Coal Corp. from a near loss to a going concern, earning it a spot on *Law360*'s Bankruptcy Groups of the Year.

For the third year in a row, the attorneys at Kirkland have maintained their position as one of the go-to firms for major restructurings and insolvencies both abroad and in the U.S., where Kirkland had a hand in six of 2015's 10 largest bankruptcy filings for public companies.

Its skills were on display in its work for Patriot Coal Corp. and its affiliates, where the firm took the struggling operator of West Virginia coal mines from the brink of liquidation to a successful reorganization in less than five months, despite a massive wall of opposition from federal and state authorities as well as environmental groups, saving thousands of jobs in the process.

Besieged by falling coal prices, Patriot Coal filed for Chapter 11 in May, the second time in three years. It was strapped for funds and at a loss for potential acquirers who'd be willing to enter into a cash deal.

"It was in very precarious shape, consistent with the massive downward economic pressure on the coal markets right now, and on coal producers," said Kirkland partner Stephen Hessler. "And it had extremely limited liquidity, which required us to prepare and file the company at a breakneck pace."

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With all-cash buyers few and far between, Kirkland arranged a sale of the majority of Patriot Coal's operating mines to Blackhawk Mining LLC, which agreed to take on unfunded Patriot Coal debt in exchange for debt securities and a chunk of the pro forma Blackhawk equity. And in something of an unorthodox bit of dealmaking, Kirkland set up a sale of Patriot Coal's remaining assets to an affiliate of nonprofit environmental group Virginia Conservation Legacy Fund Inc., which agreed to take on $400 million in liabilities.

But approval of Patriot Coal's Chapter 11 plan still faced a phalanx of resistance from the federal government, regulators in four states and environmental groups, which claimed the plan wouldn't leave sufficient funds to pay for existing environmental clean-up obligations at Patriot-owned mining operations in various states.

With the clock ticking due to Patriot Coal's limited cash flow, Hessler said the firm had to make the plan's opponents understand how dire the situation had become.

"Our approach on that was twofold, we needed to sufficiently explain to all those entities the severity of Patriot's circumstances, and we needed to be able to demonstrate credibly to them that if we did not have a deal, if we did not figure out a way to get Patriot's assets out of bankruptcy quickly, there would be a liquidation," Hessler said. "And a liquidation would be even worse for those governmental and environmental interests."

Ultimately, Kirkland was able to push the deals through quickly and "relatively" consensually, Hessler said, which allowed miners to keep working for the acquirers.

Currently, Kirkland is involved in numerous pending bankruptcies both large and small, including the complex and contentious battle over Caesars Entertainment Operating Co., the largest public company filing of 2015, along with Energy Future Holdings in all aspects of its restructuring of more than $40 billion, which was Delaware's largest operating filing ever and the largest public company filing of 2014. EFH's Chapter 11 plan won approval in December.

In another corporate save for Kirkland, the firm stepped up for the Houston Astros in bankruptcy and related proceedings filed by Comcast Corp. against the troubled regional sports network it owned with the Astros and Houston Rockets.

Houston Regional Sports Network LP, a joint venture doing business as Comcast SportsNet Houston, was pushed into Chapter 11 by Comcast, which cited owner disputes over affiliation agreements with other network carriers. The petition claimed the network was unable to pay its bills, raise capital or make key business decisions.

Comcast at first said it was prepared to purchase the network, but later backed off, leading to a search for new operators for the network, which the Astros and Rockets found in AT&T and DirecTV. While the teams found new buyers, they also found themselves in the midst of a knock-down, drag-out brawl with Comcast, which was looking to use HRSN's reorganization to recover $100 million it loaned the network.

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Kirkland partner Paul M. Basta said the fight with Comcast was about whether it was entitled to get $100 million for a secured loan to HRSN, but Comcast didn't have a lien on the teams' media content. Instead, Comcast argued its lien on their affiliation agreement, which was their agreement to sell content to the Comcast customers, had real value.

"What we argued is when you value that affiliation agreement, you can't value it without the contributions of the teams, with their separate media content," Basta said. "And so, Comcast wasn't entitled, in their collateral value, to look and capture the value that the teams were providing to the network."

A Texas bankruptcy judge agreed, finding that Comcast's interest in the network is "inconsequential" given that HRSN was worth relatively little at the time it entered bankruptcy, and as a result, Comcast would be unable to recover the full value of its loan. That ruling was upheld in October by a U.S. District Court. Comcast has appealed to the Fifth Circuit, but the network has enjoyed a successful relaunch as ROOT Sports Southwest under the control of AT&T and DirecTV.

Boasting more than 100 dedicated restructuring attorneys in New York, Chicago, Houston, San Francisco, London, Munich and Hong Kong, with backup from many others in different disciplines, Kirkland's restructuring group is a truly global and cohesive effort, according to partner James H.M. Sprayregen.

"We operate as one group, we're not based in New York, we're not based in Chicago, we're not really based in the U.S. We talk to our restructuring partners around the world by email and phone multiple times a day," Sprayregen said. "We're very connected, and that's important because most of our clients are very connected around the world too."

And business is booming. Unlike some other firms which have scaled back their restructuring groups in the wake of the financial crisis, Kirkland has invested heavily in its restructuring practice, Basta said.

"Now as you see a large number of commodity-based restructurings, we are poised with people who have been very, very busy over the last five years on very important matters, so now we are really well positioned across the organization," he said.