

BANKRUPTCY / CREDITORS' RIGHTS / REORGANIZATION

Doerner lawyers have decades of experience representing all key parties involved in bankruptcy or reorganization: debtors, secured and unsecured creditors, committees, trustees and investors. We are experienced in all aspects of Chapter 11 bankruptcy proceedings and in such highly specialized areas as Chapter 9 municipal bankruptcies, single-asset real estate cases and small business reorganizations. In all matters our key strength is facilitating restructurings and reorganizations that preserve assets and business relationships for all stakeholders.

Our firm has handled small bankruptcies and multi-billion dollar proceedings involving oil and gas businesses, manufacturers, retailers and distributors, service and financial entities and all forms of commercial real estate. Our representation of Official Committees offers a 30-plus year record of unsurpassed effectiveness. A deep bench of skills in employment, environmental, oil and gas, transactional and real estate law, among other specialties, enables us to handle the business issues of a liquidation, asset purchase or sale, workout or receivership.

We recognize that establishing confidence and trust with our clients is crucial for handling bankruptcy or restructuring successfully. The officers and directors of companies involved in these proceedings are in a new and stressful environment, and our lawyers are always accessible at any time to give guidance and reassurance. When trustees for bankrupt companies target corporate officers and directors for financial responsibility, we vigorously defend their interests against claimed fiduciary breaches and liability.

Just as importantly, we are known and highly regarded in bankruptcy courts throughout Oklahoma and in numerous jurisdictions around the country. Trustees and committees appreciate our cost accountability and detailed billings. And in workouts and restructurings, our commitment to finding business solutions that keep troubled companies out of bankruptcy is valued by debtors and creditors alike.

Recent Doerner Experience

- Crafted the successful Chapter 11 reorganization of a restaurant chain involving 13 separate entities.
- Successfully reorganized municipal corporations under Chapter 9.
- Represented the unsecured creditors' committee in a manufacturing company's Chapter 11 case, resulting in confirmed plan payout valued at 90% of claim value.
- Defended local telephone companies against a Chapter 11 plan administrator's fraudulent transfer and business tort claims totaling \$23MM.
- Defended a turnaround consulting firm against a Chapter 7 trustee's breach of fiduciary duty and fraud claims stemming from involvement with a failed convenience store chain.
- Provided successful defense against debtor and liquidating trustee objections to Ponzi scheme net loss claims by the Ponzi mastermind and Chapter 11 debtor.
- Prosecuted successful Section 523 non-dischargeability claims against a Chapter 7 debtor based upon state court litigation.
- Defended against a Chapter 7 trustee's preferential transfer claims.
- Prosecution of Section 523 dischargeability and Section 727 discharge objections against a convicted Chapter 7 debtor.

Top Areas of Focus

- Representation of Chapter 11 and Chapter 7 trustees in bringing and successfully completing hundreds of avoidance actions, while defending against such actions in other matters.

- Restructuring of comprehensive bank debt on behalf of commercial real estate developers, retail business owners, oil and gas businesses, professional services companies and high income individual borrowers and guarantors of business debt.
- Successful prosecution of numerous motions for relief from the automatic stay for creditors of debtors in Chapter 7, 11, 12 and 13 bankruptcy cases.
- Reorganization of dozens of companies in a wide range of business sectors, plus representing interests of scores of lenders, trade creditors, employees, committees, trustees, bidders, and purchasers, lessors and lessees in reorganizations.
- Experience in both judicial and non-judicial (power of sale) commercial real estate foreclosure and receivership proceedings.
- Assisting buyers and sellers of business assets in and out of numerous bankruptcy proceedings.

Case Study: Reorganizing a Local Exchange Carrier

- Opportunity: Our client was a family-owned rural telephone company subject to highly specialized regulation and very complex financing involving government and quasi-governmental agencies. The company's stock had been pledged to secure other bank debt that went into default and the lending institution sought to foreclose our client's stock and gain control of the company.
- Solution: Doerner filed a Chapter 11 bankruptcy case for the client in order to stay the action of the bank against the company's stock. During the hotly-contested Chapter 11 case, we assisted our client in negotiating a plan of reorganization which gained the bank's support, provided for a long-term payout of a portion of the bank debt while retaining ownership of the company for the family.
- Result: As a result of the successful reorganization, the family retained ownership of the company, acquired new financing, restructured its debt and retained its many longtime employees.

Case Study Using Chapter 11 to Maintain Going Concern Value

- Opportunity: A national provider of video and other gaming equipment to restaurants, bars and entertainment centers became over-extended and defaulted on a note. The lender foreclosed, sought to use Chapter 11 for liquidation of assets, and appointed a turnaround expert as president who turned to Doerner to handle the Chapter 11 proceedings.
- Solution: Our firm worked with the company as it continued to operate during the Chapter 11 case. We conducted a series of negotiations that enabled the eight national divisions of the company to be sold as going concerns in separate transitions through the bankruptcy court.
- Result: Through our creative use of the Chapter 11 process, our client retained the going concern value of its assets and continued to provide employment for its employees. The preservation of asset value in the going concern also enabled the lender to maximize the value of its collateral.

Case Study: Defending Against a \$23MM Fraudulent Transfer Claim

- Opportunity: Our clients were Kansas-based rural telecom companies that had invested in a wireless telephone enterprise that became a Chapter 11 debtor. The companies were sued by the liquidation plan administrator for allegedly facilitating \$23MM in fraudulent asset transfers before the bankruptcy filing and abetting other claimed breaches of fiduciary duty.
- Solution: Defending our clients required an intricate knowledge of the limits of bankruptcy jurisdiction to remove the case from the bankruptcy court and estoppel-related doctrines that prohibited the plan administrator's suit. In addition to the removal, we sought dismissal of the claims against our clients under unique equitable doctrines and bankruptcy-related doctrines that generally prohibit trustees from suing third parties on behalf of all bankruptcy unsecured creditors.
- Result: These strategies positioned our clients well for the litigation. The case was removed from bankruptcy and placed in district court. Although the matter was settled, the district court was poised and ready to rule on our dismissal motions.

Case Study: Staying a Step Ahead of the Trustee Made the Difference

- Opportunity: An international turnaround consulting firm asked Doerner to defend it against a Chapter 7 trustee's claim that its prepetition work for a convenience store chain's Chapter 11 rendered it liable to the Chapter 7 estate of an entity that was

related to the store chain and was its largest creditor. The issue of the turnaround consultant's control over the convenience store chain was pivotal to the trustee's claims, and as such, that aspect of the case required our immediate attention.

- **Solution:** The allegations required our immediate action, and we began interviewing more than 60 fact witnesses while setting a deposition schedule before the Trustee even began. These early interviews shored up our defense against the trustee's control liability theory, undermined the theory of harm to the bankrupt related entity and showed evidence of actual financial benefit to that entity from the turnaround firm's work.
- **Result:** This strategy positioned our client for a much more favorable settlement with the bankruptcy estate than it would have had without our efforts.

Take Action

Doerner lawyers understand that for creditors, debtors and trustees, bankruptcy or reorganization is ultimately about doing business under difficult circumstances. The Bankruptcy Code allows for a wide range of business options, and we use the Code to pursue the effective and creative strategies that best meet each client's needs. We also recognize that bankruptcy is only a tool to be used to facilitate a business solution and that a consensual, non-bankruptcy solution to a financial problem is often the best result.

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