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Commercial Litigation, Insolvency & Creditors' Rights

Even the best-laid plans sometimes go awry. When they do, Steptoe's attorneys work with our clients to develop innovative approaches that untangle and resolve complex financial relationships. Our far-ranging and respected Commercial Litigation, Insolvency, & Creditors' Rights practice represents clients in almost every form of commercial litigation, creditors' rights and insolvency, and bankruptcy.

- **Complex commercial disputes.** Our practice includes significant litigation on behalf of creditors and other clients in disputes that arise out of troubled business arrangements, particularly financial fraud. Our litigators are involved in court and arbitration proceedings throughout the world.
- **Workout transactions, reorganizations, and restructurings.** With significant experience in large and extensive business reorganizations, we represent some of the largest lenders in the international real estate and construction sectors, as well as in the surety, railroad and electric utility industries. From single-asset real estate workouts to major restructurings, our ability to develop innovative solutions on behalf of our clients is unsurpassed.
- **Insolvency and Creditors' Rights.** We regularly represent secured, unsecured and subordinated creditors, equity security holders, sureties and insurers of financially troubled enterprises in the US and abroad, with a particular depth of experience in failed or failing real estate and construction projects, mass-tort cases, and ERISA-related matters. Our lawyers possess the business acumen and litigation toughness required to successfully handle complex bankruptcy cases. We have been successful in rendering advice, structuring transactions and developing innovative solutions to protect and enforce creditors' rights, remedies, and security interests within and outside of bankruptcy proceedings.
- **Insurance and Bankruptcy.** Steptoe represents its insurance and surety clients in connection with bankruptcy and insolvency issues of particular interest to insurers.
- **ERISA/Regulatory.** We provide unsurpassed service to our pension plan fiduciary, union, and retiree group clients.

Attorneys in this practice are supported by the diversified resources of the more than 500 members of the firm, drawing freely upon the collective wisdom and business and litigation experience of their colleagues to resolve clients' complex insolvency, bankruptcy, workout, reorganization and creditor rights issues.

Commercial Litigation, Insolvency & Creditors' Rights

Commercial Litigation

We represent creditors and other clients in disputes that arise out of troubled business arrangements, particularly financial fraud. Litigators from each of Steptoe's offices are involved in court proceedings and arbitrations throughout the world.

We are known for our experience in litigation, arbitration, mediation, and other forms of dispute resolution, both in party representation and as neutrals in disputes ranging from personal injury, wrongful discharge, and insurance coverage to technology transfers, environmental claims, and RICO actions.

Workout Transactions, Reorganizations, and Restructuring

With significant experience in business reorganizations, we represent some of the largest creditors and debtors in the international real estate and construction sectors, as well as in the surety, railroad and electric utility industries. Attorneys in this practice are supported by the diversified resources of the more than 485 members of the firm, drawing freely upon the collective wisdom and business and litigation experience of their colleagues to resolve clients' complex insolvency, workout, reorganization and creditor rights issues.

Insolvency & Creditors' Rights

We represent secured, unsecured, and subordinated creditors, equity security holders, sureties and insurers of financially troubled enterprises, both in the United States and abroad, with particularly deep experience in failed or failing real estate and construction projects, mass-tort, and ERISA related matters .

We advise clients, structure transactions, and develop innovative solutions to protect and enforce creditors' rights, remedies, and security interests—within and outside of bankruptcy proceedings.

Insurance & Bankruptcy

Steptoe is an industry leader, developing creative solutions to the problems posed to insurers and other interested parties by the unique, complex issues arising in mass-tort cases. We have represented insurers in several of the largest and most influential mass-tort bankruptcies.

In addition, Steptoe's innovative strategies have resulted in stellar results for its insurer surety clients outside of the mass-tort context:

ERISA/Regulatory

Our commercial and bankruptcy attorneys also draw from the knowledge and experience of our strong ERISA and regulatory practices—combined with our bankruptcy experience—enabling us to provide unsurpassed service to our pension plan fiduciary, union, and retiree group clients.

Commercial Litigation, Insolvency & Creditors' Rights

Representative Matters

Commercial Litigation

- Representing a major telecommunications company (Motorola) in various commercial litigation matters throughout the United States and Europe in relation to a \$2 billion fraud;
- Representing a client in a multi-billion dollar RICO case (Telsim); attached millions of dollars in assets in New York, Bermuda, Germany, France, Switzerland, and the United Kingdom, as well as obtaining freezing orders, tracing assets, arresting aircraft and yachts, and enforcing foreign judgments in the European Union and elsewhere;
- Raising issues of first impression in the federal appellate courts in a case before the US Court of Appeals for the Ninth Circuit and establishing limits to the application of collateral estoppel based on a court-approved settlement of derivative and class litigation in a later legal malpractice action;
- Representing an employer in the US Supreme Court's landmark case establishing that petitioning activities are immune from attack under statutes governing unfair labor practices;
- Representing the trustee of the liquidating trust of a \$12 billion thrift holding company in challenging the settlement of derivative claims for no consideration on the eve of the company's bankruptcy and seeking over \$100 million in damages against the company's former officers, directors, and attorneys and the derivative plaintiffs and their attorneys;
- Defending a UK-based commodities deal and Turkish subsidiary in a £30 million action in the English High Court concerning facilities granted to processors of hazelnut products in Turkey;
- Advising on arbitration and litigation aspects of claims under and possible termination of a joint venture agreement between large US and local providers of advertising and media service;
- Representing a French cosmetics manufacturer in a series of disputes with its former UK distributor concerning breaches of distribution agreements, infringements of registered trade marks, and passing-off of cosmetics products;
- Representing a major transportation company in a dispute with a former subsidiary over liability for past income taxes;

Commercial Litigation, Insolvency & Creditors' Rights

- Representing a minority shareholder and director in a series of disputes over transfers of properties allegedly in violation of section 320 of the Companies Act of 1985;
- Acting on behalf of the claimant in proceedings between architect and project manager in respect of major redevelopment concerning breach of contract, negligence, applicability of performance bond, and rectification costs;
- Representing a UK shipbuilder in a £200 million suit in the English High Court over alleged misrepresentations in privatization documents concerning design development drawings, procurement, and completion costs of a dynamically positioned exploration drilling rig;
- Representing an international utility in defending multi-party claims in the Commercial Court for Compensation and indemnity under the EU Council Directive on Commercial Agency and 1993 Regulations, settled all claims following three days of CEDR mediation;
- Advising and representing several foreign state governments in a series of antidumping and countervailing duty investigations initiated by the US steel industry against imports of steel wire rod;
- Acting on behalf of the Canada Wheat Board in a WTO dispute brought by the US government concerning various allegedly discriminatory aspects of Canadian regulation of grains;
- Advising and representing various clients in EU antidumping proceedings, involving TCCA, PET, PSF, and other imports originating in numerous countries; and
- Many of these disputes involve matters that cross national borders. Our extensive international capabilities enable our attorneys to analyze, plan, execute, and manage cross-border as well as domestic commercial disputes for our clients.

Workout Transactions, Reorganizations, and Restructuring

- Advised clients on numerous workouts and restructurings, ranging from single-asset real estate cases to complex real estate and multi-billion dollar corporate workouts;

Commercial Litigation, Insolvency & Creditors' Rights

- Providing a wide range of workout, restructuring, and bankruptcy-related counsel and advice to a major commercial bank. Have successfully represented the bank in matters involving hundreds of millions of dollars in loans to companies in the healthcare, real estate development, franchise, and commercial real estate development and ownership industries;
- Representing the 35-member surety insurers' group in connection with its acquisition of Morrison Knudsen Corporation's passenger railcar manufacturing business, including all associated assets in the US; and
- \$3.5 billion global restructuring and prepackaged bankruptcy of Morrison Knudsen, a major international construction contractor.

Insolvency & Creditors' Rights

- Currently represent multiple liability insurers in mass-tort-driven bankruptcies across the United States;
- Currently represent a major international airline with its ancillary bankruptcy proceeding and ongoing liquidation;
- Negotiated a settlement of the adversarial proceeding for the largest non-bank allowed claim in the representation of a power plant turbine manufacturer in the Chapter 11 proceedings of Pacific Gas & Electric, Inc. (PGEI), California's largest electric power utility and the workout negotiations of National Energy Group, PGEI's unregulated affiliate. Initiated claims on behalf of the manufacturer seeking over \$150 million in breach-of-contract damages under a contract to supply turbines to a series of electric generation projects for NEG and PGEI;
- Made new law asserting the "essential vendor" doctrine to obtain repayment of tens of millions of dollars of the manufacturer's otherwise unsecured debt when representing a large telecommunications manufacturer in many of the then largest telecommunications bankruptcies in the United States, including Arch, Metrocall, Mobilemedia, and PageNet;
- Represented a major commercial bank in the bankruptcy of a developer's real estate interests—one of the more significant real estate developer proceedings in the United States and the largest in the Washington, DC, area. Our client entered the proceedings with the 10th largest claim and exited the bankruptcy with the largest amount recovered; and

Commercial Litigation, Insolvency & Creditors' Rights

- Aggressively advanced litigation to advance competing plans of reorganization and claims relating to the Surface Mine Control and Reclamation Act in representing a major surety company in the bankruptcy of Horizon Natural Resources, the fourth largest mining operator in the United States. The surety faced approximately \$250 million in unsecured liability as a result of surface mining reclamation bonds provided to Horizon. In late 2004, negotiated a plan of reorganization on behalf of the surety involving transferring all of Horizon's assets, including mining operations and related fuel supply agreements, in three parcels to three sets of acquirers. The surety was released from certain bond obligations to the estate and received security interests in all of the assets of the principal transferee. The surety has experienced no losses and is now adequately secured.

Insurance & Bankruptcy

- Represented two US subsidiaries of Hyundai Mobis in the Chrysler bankruptcy case filed in the SDNY before Judge Gonzalez. We obtained excellent outcomes for both US subsidiaries, both of which were unsecured trade creditors of Chrysler.
- Advised Korean financial regulators, MOFE and KDIC, on the reorganization of the Korean credit insurance sector, as well US and Korean entities on Korean restructuring issues;
- Counsel to a major surety insurer, in connection with payment of its claims and provision of interim bonding facilities to the debtor in the Chapter 11 reorganization of Washington Group, Inc. (WGI), the largest construction bankruptcy in 2001. The WGI plan, confirmed in Nevada in early 2002, provided for full payment of the sureties' claims;
- Represented the surety insurers' syndicate in connection with its bankruptcy debtor in possession financing and innovative leveraged acquisition of assets from the bankruptcy estate of Guy F. Atkinson Co., a major international construction company. Among the assets acquired by the sureties were facilities in Indonesia and Israel and in three major portions of Boston's Big Dig, the largest single construction project in US history. The firm's work was featured in the May 2000 issue of *Bankruptcy Court Decisions*;

Commercial Litigation, Insolvency & Creditors' Rights

- Represented insurers facing competing claims to limited policy proceeds in a variety of bankruptcy matters. For example, in Baltimore Emergency Services, we obtained injunctive relief that protected our insurer client from competing claims to the policy proceeds and the impending threat of bad-faith claims; and
- Advising captive of a multinational beverage supplier in relation to a pending product liability class action, including recovery of contingencies and consequential business interruption losses, likely recoverability under reinsurance program, possible breaches of warranties, and interpretation of policies in reinsurance programme.
- Represented a major commercial bank in the bankruptcy of a developer's real estate interest—one of the more significant real estate developer proceedings in the United States and the largest in the Washington, DC, area. Our client entered the proceedings with the 10th largest claim and exited the bankruptcy with the largest amount recovered.

ERISA/Regulatory

- Represented clients in many of the significant bankruptcies filed over the past decade, including representations in Chrysler, TWA, US Airways, Delta Airlines, Northwest Airlines, and Aloha Airlines; and
- Served as bankruptcy counsel to the PBGC, including in the LTV bankruptcy, which was the largest US bankruptcy ever filed at the time.

Noteworthy

- Ranked, *Chambers USA 2008-2011: America's Leading Business Lawyers*; Litigation: General Commercial (Arizona)