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2015

2015 was another stellar year for Morrison & Foerster’s Business Restructuring + Insolvency Group. We dominated in the energy sector, representing the official committees of unsecured creditors in the chapter 11 cases of Energy Future Holdings, Patriot Coal, and Walter Energy, and representing debtor HOVENSA, owner of what was once one of the largest oil refineries in the Caribbean, in its chapter 11 case. We continued our work on some major cross-border and offshore matters, including our representation of the Winding-Up Board of LBI (f/k/a Landsbanki) in Iceland and the liquidators of offshore investment funds in the Madoff clawback proceedings, among others. In December, we were pleased to welcome two restructuring partners, Peter Declercq and Sonya Van de Graaff, to our team in London. You can read more about our accomplishments and our team in the following pages.

As always, we want to thank our clients and friends for your continued support. We look forward to working with you in 2016.
Energy Future Holdings

We are counsel to the official committee of unsecured creditors for Texas Competitive Energy Holdings Corp. (TCEH) and certain debtor affiliates in connection with the chapter 11 case of TCEH’s parent corporation, Energy Future Holdings Corp. (EFH), one of the largest power producers in Texas. This was one of the most challenging bankruptcy cases of 2014 and 2015 because it involved various groups of creditors with opposing interests and objectives, even within the creditors’ committee itself. MoFo played a critical role in uniting committee members to form a collective voice of reason before the court. Although various regulatory approvals must still be obtained before the plan can go effective, the plan has the potential to provide TCEH’s unsecured creditors with recoveries of more than 30% — a substantial improvement from the 0% recoveries for those creditors projected by the debtors at the outset of the case.
Patriot Coal Corporation

We were counsel to the official committee of unsecured creditors for Patriot Coal Corporation. On October 9, 2015, the Bankruptcy Court confirmed a chapter 11 plan that contemplated the sale of substantially all of the debtors’ assets through two separate value-maximizing sale transactions. The confirmed chapter 11 plan addressed approximately $790 million in funded debt as well as significant and complex legacy and environmental liabilities. Patriot was one of several coal producers to seek bankruptcy protection in 2015.
Welcome
Peter Declercq
Peter focuses his practice on cross-border insolvencies, restructurings, and distressed investments, including distressed mergers and acquisitions. He provides comprehensive counsel to distressed investors – including hedge funds, private equity funds, and investment banks – on all aspects of the life cycle of their investments, as well as “zone of insolvency” counseling to sponsors and members of the boards of distressed companies. He also represents formal and ad hoc creditor groups in multinational out-of-court restructuring transactions and in formal insolvency proceedings.

Peter has been recognized as a leading restructuring and insolvency lawyer by *Chambers Global* and *Legal 500 UK*, and has been named an INSOL International Fellow. As a recognized leader in the field, Peter regularly speaks and writes on the subject of global insolvency law.

Peter earned his Propaedeutic in Law cum laude and his Juris Doctor from Erasmus University in Rotterdam. As a Fulbright Scholar, he attended New York University School of Law where he earned his Master of Laws degree. He is licensed to practice in England, Wales, The Netherlands, and New York.
Walter Energy

We are counsel to the official committee of unsecured creditors for Walter Energy, Inc. The debtors, major producers of coal and natural gas, were forced to seek bankruptcy protection in light of the recent unprecedented decline in metallurgical coal prices. The MoFo team is working to facilitate agreements among the debtors and the debtors’ key creditor constituencies in an effort to enable them to effectuate a job-preserving going-concern sale of their Alabama operations and provide a recovery to general unsecured creditors.
HOVENSA

We represent HOVENSA LLC in its chapter 11 case, the largest chapter 11 case ever filed in the District Court for the U.S. Virgin Islands. HOVENSA, with facilities that span approximately 2,000 acres of land located on the south shore of St. Croix, once constituted one of the ten largest oil refineries in the world, employing nearly 25% of St. Croix’s workforce. As of the bankruptcy filing, HOVENSA had over $2 billion of prepetition indebtedness exclusive of significant legacy liabilities, primarily in the form of environmental obligations, pension obligations, and retiree benefits. We are working to confirm a chapter 11 plan that will address the company’s environmental obligations and provide unsecured and other creditors with significant recoveries.
Sonya’s practice focuses on European restructuring, distressed investing, and financing (including direct lending). She advises funds and other investors (whether individually or in ad hoc groups) involved in these markets. In particular, she has experience in identifying and analyzing distressed investment opportunities and restructuring strategies, including in relation to NPL auctions. Sonya also advises private creditors and shareholders in connection with financial institution restructurings, where government intervention could result in disparate treatment of private investors.

In addition, she regularly advises on issues arising out of settlement of LMA as well as hybrid debt and claims trades.

Sonya graduated from the Queensland University of Technology with first-class honors and earned a Master of Laws from King’s College at the University of London on a full Commonwealth Scholarship. She is licensed to practice in England, Wales, and Australia.
LBI (f/k/a Landsbanki)

We represent the Winding-Up Board of LBI with respect to LBI’s composition (similar to a plan of reorganization). Landsbanki was one of the first Icelandic financial institutions to seek and receive recognition of its reorganization proceedings under chapter 15 of the Bankruptcy Code. MoFo has been involved in these matters since the start of the Icelandic banking crisis in 2008. On October 13, 2015, the Winding-Up Board became the first of the three large Icelandic banks to launch its proposal for composition, representing the concluding chapter in LBI’s winding-up proceedings. The Winding-Up Board convened a Composition Meeting on November 23, 2015 at which the composition proposal was approved by creditors representing 96.67% of all claims against LBI. The District Court of Reykjavik held a hearing on December 15, 2015, and issued an order approving the LBI composition plan on December 18, 2015.
LBI hf v Kevin Stanford

We also represent the Winding-Up Board of LBI in proceedings against Kevin Stanford, a former customer of the bank, in the English High Court. The bank sued Mr. Stanford for unpaid debts amounting to approximately £22 million, which Mr. Stanford used to fund the purchase of properties in London and Courchevel, France. Following a four-week trial, Mrs. Justice Asplin rejected each of Mr. Stanford’s defenses and found emphatically in LBI’s favor, awarding attorneys fees in the region of £3 million. LBI has since taken possession of both the London and Courchevel properties and is negotiating their sale.

“They really know the guts of the Bankruptcy Code and the practical ‘how-to’ of implementing a plan.”
— Chambers USA
Restructuring Talks Around the World
Former Judge Peck was invited to speak on developments in international insolvency law at a variety of foreign venues including Frankfurt, Toronto, Mexico City, Naples, Brisbane, and Singapore. Topics ranged from the use of mediation and arbitration as tools to resolve cross-border insolvency disputes to the vexing and still-unresolved allocation issues in the Nortel case.

In his Brisbane speech, Judge Peck was paired with Justice Steven Rares of the Federal Court in Sydney to discuss the special challenges faced by a court in applying local law to disputes arising within an international web of cases. In Singapore, Judge Peck spoke on a panel that included officials from Singapore’s Ministry of Justice. The panel addressed the adoption of possible reforms to the country’s insolvency laws that would enable Singapore to become even more of a “go to” jurisdiction and a regional hub for corporate restructurings.

Not all of his speaking engagements called for long-haul travel, however. In October, Judge Peck was honored to deliver the keynote address at the annual meeting of the California State Bar. The lecture, entitled “Judging Lehman,” described the global financial crisis from the perspective of his courtroom. Those listening included a truly special guest on the dais: Supreme Court Justice Anthony Kennedy. Justice Kennedy’s presence elevated the experience and made this Judge Peck’s most memorable speech of the year.
Puerto Rican Fiscal Crisis

We represented an ad hoc group of holders of tax-based bonds – issued by the Commonwealth of Puerto Rico and certain of its instrumentalities – with respect to the Commonwealth’s enactment of bankruptcy laws similar to protections under chapter 11 of the Bankruptcy Code.
Saad Investments Company

Our London team continues to work with the liquidators of the Cayman Islands company Saad Investments Company Limited in connection with its $9.2 billion liquidation. We have commenced proceedings in London seeking to recover over $300 million from a third party (a Saudi Arabian entity). In connection to this claim, we have recently succeeded in the Court of Appeal in defending a forum challenge. A discrete issue as to whether it is possible to have common law trusts over non-common law situs assets is being appealed by Samba to the Supreme Court, with a two-day hearing listed for April 2016. The hearing is of monumental importance to the global trusts industry.
Madoff Clawback Proceedings

We represent the liquidators of multiple Cayman Islands and British Virgin Islands investment funds, as well as individuals and other foreign investment funds, in U.S. Bankruptcy Court proceedings for the Southern District of New York. We are defending against claims seeking to clawback and recover significant sums claimed to be “Customer Property,” allegedly received from Bernard L. Madoff Investment Securities LLC, prior to discovery of the Madoff Ponzi scheme. Our clients have been sued for in excess of $2 billion and have asserted claims against the Madoff estate that exceed $1 billion.
The Standard Register Company

We represent the independent directors of the Standard Register Company, a public print and marketing company that filed for bankruptcy in March 2015. We are defending the independent directors against a breach of fiduciary duty lawsuit.

“The team provides good, intellectual, strategic analysis in developing solutions to difficult and complex problems.”

– Chambers USA
Pro Bono

Pro bono work is at the heart of who we are as a firm and as lawyers. Throughout 2015, members of our team worked on a variety of pro bono matters that benefited from our lawyers’ skills, passions, and interests.

**Favela Project**

Brett Miller’s soccer-playing son was the unexpected source of his pro bono work — incorporating the Favela Project as a nonprofit and applying for tax-exempt status. The project is led by a former Brazilian professional soccer player who happens to coach Brett’s son. The main activity is collecting used soccer equipment in the U.S. and distributing it to children who live in the favelas, or slums, of Brazilian cities and other impoverished areas around the world. Last month, the Favela Project received 501(c)(3) approval and held its first event.

**Legal Counsel for the Elderly**

Christopher Campbell represented a client in the preparation of a will, financial power of attorney, and health care power of attorney. The representation was referred through the Legal Counsel for the Elderly.

**James Beard Foundation**

Jordan Wishnew, Anthony Princi, and John Weber have been representing the James Beard Foundation in connection with issues arising from its involvement in the recently completed Expo 2015, which was held in Milan. Specifically, the not-for-profit corporation that it helped create to run the U.S. pavilion at Expo 2015 is insolvent and may have to file for insolvency protection either in the U.S. or in Italy. In addition to having a significant claim against this corporation, the James Beard Foundation may face derivative claims from other creditors of this corporation if it commences an insolvency proceeding.

**Anti-Semitism in Europe Project**

Peter Declercq continues to provide legal assistance to Human Rights First in relation to its Anti-Semitism in Europe Project, focused on Greece, France, and Hungary. In particular, Peter is providing counsel with respect to the Golden Dawn Trial in Greece.

**New York City Family Court**

Kathleen Schaaf, Jordan Wishnew, and Lacey Laken provide legal advice to multiple unrepresented litigants in the New York City Family Court on a regular basis.

**Amazon Conservation Association**

Charles Cole assisted the Amazon Conservation Association with the negotiation of contracts related to hosting college classes at its preserve in Peru. He also assisted with general corporate matters.
Nonprofit Medical Facility Debt Restructuring
Todd Goren provided restructuring advice to a nonprofit medical facility.

Nonprofit Debt Restructuring
Kathleen Schaaf worked on a pro bono matter in which she counseled a nonprofit filmmaker in restructuring its debt.

Cyrus R. Vance Center for International Justice
Erica Richards prepared a research memo for the Cyrus R. Vance Center for International Justice about when and how police and prosecutors use the possession of condoms as evidence of illegal activity, especially sex work. The research is focused on legal and other arguments that caused New York City and California to change their policies so that condom possession is no longer used as criminal evidence – a change seen by many as helpful in the battle against HIV and AIDS.

The McCarton School (n/k/a The Keswell School)
For the past several years, MoFo has represented the McCarton School, which provides an educational program for children with autistic spectrum disorder. In 2015, Peter Dopsch and Samantha Martin revised the school’s governing documents, negotiated an extension of the school’s loan documents, and assisted the school with changing its name from the McCarton School to the Keswell School.

Friends of Fort Tryon Park
Lorenzo Marinuzzi and Samantha Martin advised the Friends of Fort Tryon Park with respect to its dissolution under state law.
40 inspiring individuals.
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Charles Cole and Jennifer Mink are partners in our full-service debt trading group and represent clients engaged in the secondary market trading of commercial loans, claims, and other debt assets. Their clients include investment banks, commission brokers, commercial banks, fund and asset managers, hedge funds, and other investors. They focus on three types of trading activities – trading distressed debt, trading par debt, and transfers of portfolios of debt assets – that involve loans owned by U.S.-based corporations, as well as loans and claims owned by European, Latin American, Asian, and other foreign obligors.

In particular, our debt trading team’s work includes:

- Providing regulatory advice regarding bank, securities, and investment adviser issues to banks, brokers, and other regulated institutions that engage in loan trading;
- Structuring investment funds and debt trades to comply with “prohibited transaction” rules under ERISA;
- Advising clients regarding credit documentation and related transfer documentation, collateral securing debt, bankruptcy court filings, and workouts and restructurings;
- Advising clients regarding fraudulent conveyance, preferential transfer, lender liability, and disgorgement risks; and
- Resolving disputes arising from failed trades.
Previous Annual Reviews

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2014 Annual Review

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