

## Distressed Debt & Claims Trading

The secondary market for distressed debt and claims trading has grown tremendously. Fueled by the 21<sup>st</sup> century's big bankruptcies – beginning with Enron in 2001 – and the development of Internet auctions and other forums that facilitate trading, the claims trading market is now a \$500 billion industry. That figure represents significant opportunity. But even with extensive trading experience and legal safeguards, buyers and sellers in this still evolving market risk entering into unfavorable agreements, or, more frequently, expending resources on negotiations that are never completed or honored.

Issues arise when the two parties come to the table with a different understanding of the negotiating process and then fail to disclose their expectations. In these circumstances, particularly those involving first-time sellers, relying on “standard” industry terms and conditions is risky and may later be deemed unreasonable in court.

Our attorneys will identify potential issues and help you expedite an agreement. We know this marketplace and all aspects of transactions relating to distressed debt and the purchase and sale of trade claims. From the negotiation of confidentiality agreements to the negotiation of trade confirmations and purchase and sale agreements, we can anticipate and address your needs. We regularly advise both buyers and sellers to mitigate any misunderstandings. And when disputes arise, our litigators are prepared to assist you.

We have built a nationally recognized reputation successfully representing parties in the distressed debt industry. Notably, we litigated the seminal case involving a dispute between an international corporation with no experience in trading claims and a major distressed claims trader. We also represented numerous buyers and sellers of claims in several of the past decade's high-profile Chapter 11 cases.



### Quick Facts

- A multidisciplinary team with deep bankruptcy and litigation experience
- Nationally recognized restructuring capabilities
- Senior attorneys who are leading authorities on claims trading law and have been called upon to provide expert testimony
- Unique litigation experience handling disputes between inexperienced sellers and members of the claims trading industry
- Thought leadership provided in publications including the *Dow Jones Daily Bankruptcy Review* and *Law 360*

## Case in Point

In one of only two reported decisions of its kind, a district court granted summary judgment to our client, a global manufacturer, dismissing claims brought by an investment bank for breach of contract and breach of the duty of good faith and fair dealing in connection with a failed attempt to sell trade claims in bankruptcy.

In 2006, the investment bank sought to purchase trade claims that the global manufacturer held in a high-profile bankruptcy. The parties agreed over the phone on the price and type of claims to be sold, and exchanged draft agreements to complete the deal. But almost immediately, they found they could not agree on certain material terms, though they spent the next two months trying.

Frustrated by the lack of movement, the manufacturer terminated negotiations and sold the claims to another bank. The first bank then sued the manufacturer, claiming that the parties had a binding agreement based upon the draft documents exchanged or, alternatively, that there was a binding oral agreement based upon the customs and practices in the claims trading industry.

The case was intensely litigated, including witnesses from across the United States and abroad as well as expert testimony on the industry and its customs. The judge's decision in favor of our client was significant, as it now serves as a guide for the operation of the booming trade claim market and the interaction of parties in the industry.

## Clients We Serve

- Commercial banks
- Hedge funds
- Investment banks
- Funds focused on distressed debt
- Private equity funds
- Trade creditors

We have represented numerous US and international buyers and sellers of claims in many high-profile bankruptcy cases including the following:

- Chrysler LLC
- Enron Corporation
- Delphi Corporation
- General Motors Corporation
- Lehman Brothers Holdings, Inc.
- Mirant Corporation

## Connect

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