

Bankruptcy Group Of The Year: Davis Polk

By **Vince Sullivan**

Law360 (January 28, 2022, 2:03 PM EST) -- Davis Polk & Wardwell LLP has deployed a multidisciplinary team of attorneys to deal with historically complex restructuring cases such as Hertz Global's and Purdue Pharma's, earning the firm a series of big wins for its clients and a spot among Law360's 2021 Bankruptcy Groups of the Year.

Marshall S. Huebner, the co-head of the restructuring practice, said the way the firm's different practice groups are able to work together on complex representations gives it an edge over its competitors.

"The fact that Davis Polk is extraordinarily strong in so many practice areas and operates so seamlessly is one reason we get hired so often," Huebner told Law360.

The firm's reputation helped it secure the lead counsel position in the Chapter 11 case of drugmaker Purdue Pharma, Huebner said. Davis Polk hadn't worked with the company before and was selected after a presentation to Purdue.

The company retained Davis Polk in March 2018, about 18 months before its Chapter 11 case began in New York court, and Huebner said Purdue's leadership was comfortable with the firm's experience.

"I think that sometimes an assignment comes along where the complexity itself is the primary attribute that clients need to be comfortable that you have the capacity to absorb," he said. "There is simply no situation too large or complicated for Davis Polk to get its arms around. That had a lot to do with us getting hired by Purdue."

In that case, the debtor was able to confirm a Chapter 11 plan in September 2021 that addressed Purdue's liability in connection with the national opioid crisis involving its sale and marketing of painkillers including OxyContin. Critical to the plan was a \$4.275 billion settlement with the members of the Sackler family that own Purdue, in which the owners contributed that amount into a claims trust for opioid claimants and gave up their ownership in exchange for a release from any potential liability.

While the Sackler deal was prominent in the plan, Huebner said the last four years of work on the case also resulted in widespread agreement with nearly a dozen ad hoc groups representing differing interests.



"What was accomplished is in fact historic — consensus among over 95% of our 120,000 voting creditors is something almost everyone in the world thought was impossible just two years prior," he said.

The firm's success extended to its representation of the administrative agent for lenders that provided nearly \$11 billion in fleet financing for car rental giant Hertz, whose case resulted in payment in full of the loan upon confirmation in June 2021.

Hitting Chapter 11 in May 2020, when the coronavirus pandemic was in its chaotic early stages, Hertz was faced with an almost complete evaporation revenue as vehicle rental business dried up on short notice. The company was left without places to park its millions of vehicles which had suddenly fallen into disuse.

The debtor sought to reject the vehicle leases funded by Davis Polk's clients, but a deal was worked out in which Hertz would make a \$650 million payment and would commit to selling 180,000 cars to make additional payments. An unexpected surge in the used vehicle market made this deal incredibly beneficial for the lenders, and it was extended for the sale of another 120,000 cars in 2021. In the end, the loans were repaid in full through the Chapter 11 plan confirmed in June.

"Even in much quieter restructuring markets we always have an extraordinary amount of work to do, which is strong proof that our business model is extremely durable," Huebner said of Davis Polk's roster of clients, even when restructuring work tapered off in 2021.

In the case of mall owner Washington Prime, Davis Polk represented SVP Global as the plan sponsor and term lender in a Chapter 11 proceeding with a complex capital structure. Restructuring practice co-head Damian S. Schaible said the firm's approach to dealing with these types of cases is to be ready to litigate on behalf of its clients but always be willing to strike a deal if it makes sense.

"In order to gain peace, you sometimes have to prepare for war," he said.

That war started early in the Washington Prime case when Davis Polk's clients began litigating with unsecured creditors and equity holders over the plan process, but Schaible said while that was going on, settlement negotiations were also underway.

"We got to do what restructuring lawyers do best, which is bring together a broad spectrum of expertise and figure out what the company should look like and what the capital structure should look like," he said.

As bankruptcies become more complicated, Schaible — a Law360 2021 Energy MVP for his work guiding creditor groups through a fresh wave of energy company bankruptcies — said having a deep roster of lawyers who are experts in real estate law, transaction law, tax law, litigation and other practice areas while also having experience in bankruptcy makes Davis Polk a valuable resource for its clients.

"Ten years ago you could have a stand-alone restructuring group that could do an awesome job on their own, but it is becoming increasingly more important that you have a broad and very strong platform to operate from," he said. "The reality is we couldn't do as good a job for our clients as we do if we didn't have our partners in other extremely strong groups."

Huebner said the strength of the firm is evident in that Davis Polk has continued to grow even as the

restructuring space has seen a downturn in work over the last year.

"We have elected new partners in our group each year in the last several years, which is a tremendous testament to the depth and strength of our practice," he said. "Needing to grow continuously at both the partner and associate level is yet further evidence of the health of the practice."

--Editing by Gemma Horowitz.

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