Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Bankruptcy Group Of The Year: Davis Polk

By **Rick Archer**

Law360 (March 1, 2024, 3:47 PM EST) -- Davis Polk & Wardwell LLP helped Revlon, Party City and LATAM Airlines get their bankruptcy cases over the finish line while moving Purdue Pharma through the appeals of its Chapter 11 plan, landing the firm a spot among Law360's Bankruptcy Practice Groups of the Year.

With the elevation of a new partner for the fifth year in a row the practice now employs 81 attorneys in offices in New York City, Hong Kong and São Paulo, Brazil.

The firm's biggest headline-grabbers of the year were its victory before the Second Circuit in upholding Purdue's reorganization plan and its release of claims against Purdue's former owners in the Sackler family. Practice co-head Marshall Huebner described the U.S. Department of Justice's appeal of that ruling to the Supreme Court, which was argued in December, as a "tragedy" that has delayed the implementation of a plan agreed to by all but a handful of Purdue's 618,000 creditors and prevented the release of billions of dollars of Sackler settlement funds and Purdue assets to compensate victims and treat and prevent opioid addiction.

"That we ended up in the Supreme Court years after the petition date, with 100% of the victims still waiting, is terrible. Some may never see their recoveries," Huebner said.

He said both the Boy Scouts of America and the Roman Catholic Church filed amicus briefs at the Supreme Court arguing that a lack of Purdue-type releases would endanger their bankruptcy plans and prospects for their continued existence.

"The almost universal consensus we collectively built — for the best available outcome for the victims — is actually an extraordinary example of the right use of Chapter 11," Huebner said.

On a more positive note, the firm was able to score wins for secured creditor groups in the Revlon and Party City Chapter 11 cases. Revlon was forced into Chapter 11 without time for any pre-negotiation due to a sudden liquidity and supply chain crisis, but the ad hoc term lender group represented by the firm was able to quickly put together $375 million in debtor-in-possession financing to fund the case before negotiating a plan that eliminated $2.5 billion in debt and globally resolved complex and novel litigation over a controversial 2020 transaction that Eli Vonnegut, who headed the team representing the lenders, said threatened to overwhelm the case.

"Drawn-out litigation over the 2020 financing could have easily left the company stuck in bankruptcy for years, but a creative approach to the litigation and the plan enabled emergence in less than 12 months start to finish," he said.

For Party City, the firm represented an ad hoc first-lien noteholder group that had entered into a plan support agreement with the retail chain before filing. During the case, business performance began to decline, negotiations with creditors to a non-debtor subsidiary became protracted, and the company faced a series of setbacks that jeopardized the restructuring. The ad hoc group confronted these challenges by renegotiating the support agreement mid-bankruptcy.

"Retail cases can be unpredictable, and Party City was a real test of our ability to pivot from a prearranged restructuring and problem-solve successfully," said Adam Shpeen, who helped lead the Party City team.

Davis Polk also represented Delta Air Lines, a major creditor of Chilean air carrier LATAM, in that company's Chapter 11 case, which was resolved with an $18 billion restructuring plan in November 2022. The firm also reached a resolution in the bankruptcy of Brazilian mining company Samarco Mineracao, where Davis Polk was lead counsel for an ad hoc group of the holders of more than $3 billion of the Brazilian mining company's debts.

A dam holding a pool containing tailings from Samarco's operations collapsed in 2015, killing 19 people and resulting in litigation seeking over $30 billion in damages. A similar disaster at a mine operated by Samarco's parent company killed 270 people in 2019, and the company filed for bankruptcy in Brazil in 2021.

Brazil had only four months earlier revised its bankruptcy law to allow creditors to submit plans, but retained provisions giving the creditors' equity owners substantial control of the case, Samarco team member Tim Graulich said. Between this and the fact that the Samarco bankruptcy was a test case for many provisions of the new law, the restructuring bogged down in litigation and appeals, he said.

The deadlock was broken in May when the ad hoc group was able to reach an agreement with Samarco and its shareholders on an essentially consensual plan to issue $3.82 billion in notes to financial creditors, while protecting environmental claimants' ability to recover from Samarco up to a capped amount.

"The plan provided an appropriate recovery for financial creditors while simultaneously balancing the rights of environmental claimants," Graulich said.

--Editing by Karin Roberts.
