

Bankruptcy, Insolvency & Restructuring

Cozen O'Connor represents key parties on all sides of bankruptcy and restructuring matters, including large corporate debtors, secured and unsecured creditors, creditors' committees, and trustees. On the debtor side, we quickly assess the client's options and devise a workable solution, whether the client is looking to refinance or restructure debt, or to sell substantially all of its assets through an out-of-court process or a Chapter 11 proceeding. On the creditor side, we implement strategies for creditors and creditors' committees to maximize their recoveries against debtors in an expeditious manner. We also represent trustees in administering complex Chapter 7 cases, pursuing litigation against third parties, and selling business assets under a court-sanctioned auction process. Overall, our goal in every engagement is to restructure or liquidate in a way that preserves and maximizes value.

Unlike much corporate work, bankruptcy often involves dozens or even hundreds of directly interested parties. To reach a mutually acceptable solution, counsel must accurately assess and coordinate a host of divergent interests. The lawyers at Cozen O'Connor have experience representing parties on all sides of bankruptcy matters, which means they are quick to anticipate the needs and priorities of divergent constituencies and devise a winning strategy for the client. They also serve as mediators in high-level disputes, so they are adept at focusing negotiations and navigating smoothly around potential roadblocks.

Bankruptcy is unique from other practice areas, because it combines transactional and litigation practice. Attorneys must design complicated contracts as readily as they make oral arguments. Cozen O'Connor's bankruptcy attorneys' breadth of experience in putting deals together and trying cases makes them ideally suited to operate at this legal crossroads. Our bankruptcy attorneys have extensive trial experience and move easily between the courtroom and the conference room.

Whether overseeing a Chapter 11 case on behalf of a creditors' committee, declaring insolvency, executing an out-of-court restructuring, or lodging a cross-border complaint, bankruptcy-related matters move fast. Our practice is structured to facilitate prompt team formation, which allows us to get up and running without delay. The firm has local offices in 31 different cities in the United States, Canada, and the United Kingdom, and the important bankruptcy hubs of New York City, Wilmington, Houston, Richmond, Toronto, and Chicago. Accordingly, when a matter demands quick action, our attorneys are already on location. No matter how fast the pace, neither quality of work nor client communication is ever compromised.

SERVICES

- Represent large private and publicly held businesses in Chapter 11 proceedings
- Represent trustees in Chapter 7 liquidation and Chapter 11 reorganization cases
- Represent foreign representatives in Chapter 15 proceedings
- Represent creditors' committees in Chapter 11 proceedings
- Represent purchasers and sellers in Section 363 sales
- Represent lenders, developers, and investors in real estate insolvencies and restructurings
- Counsel creditors on reorganizations, foreclosures, and liquidation proceedings
- Counsel clients on out-of-court restructurings and workouts
- Advise clients who sell, buy, or invest in distressed and insolvent businesses
- Advise boards of public and private companies in the midst of financial crises
- Represent clients in all forms of litigation arising from bankruptcy and insolvency

CLIENTS

- Corporate debtors



John T. Carroll, III

Co-Chair, Bankruptcy, Insolvency & Restructuring

jcarroll@cozen.com
Phone (302) 295-2028
Fax (302) 295-2013



Mark E. Felger

Co-Chair, Bankruptcy, Insolvency & Restructuring

mfelger@cozen.com
Phone (302) 295-2087
Fax (302) 295-2013

Related Practice Areas

- Business
- Distressed Real Estate
- Insurance Corporate & Regulatory
- Tax

- Secured and unsecured creditors
- Creditors' committees
- Trustees
- Foreign representatives
- Purchasers of assets
- Investors
- Insurers
- Developers
- Landlords and equipment lessors

TEAM

Cozen O'Connor's bankruptcy team is comprised of extraordinarily well-qualified attorneys. The group includes lawyers recognized by the American Board of Certification, Chambers & Partners, and Best Lawyers in America. Senior members of the team chair bar association bankruptcy sections, serve on boards of industry organizations and serve as adjunct law school faculty.

Our goal is to transcend the role of outside counsel and become a true business partner. That requires an ability to listen and understand client goals. It also requires a different approach to staffing than most large law firms. We believe that major matters are best handled by small teams of veteran attorneys. When a firm assigns twelve different lawyers to manage twelve different tasks, no one sees the whole picture and, worse yet, no one is accountable. At Cozen O'Connor, we staff in ways that both support the development of comprehensive solutions and ensure accountability and efficiency.

Experience

Represented over sixty insurers holding subrogation claims totaling approximately \$2 billion in the PG&E Chapter 11 cases, worked with the ad hoc committee of subrogation claimants, and negotiated a settlement resulting in a confirmed plan which will pay subrogation claims a dividend of over 60 cents on the dollar. This is one of the largest Chapter 11 cases of all time.

Represented the court-appointed trustee for the bankruptcy estate of pharmaceutical company Akorn Holding Company LLC in connection with establishing and conducting an expedited auction sale process for substantially all of its assets. At the conclusion of the auction, the aggregate purchase price agreed to be paid by the successful purchasers was approximately \$309 million. We then negotiated 13 individual Asset Purchase Agreements and obtained the entry from the bankruptcy court of 21 individual sale orders approving the sales of the purchased assets, all of which we successfully closed within a 45-day period.

Successfully stopped a state court-ordered sheriff's sale of a debtor's real property in a Chapter 11 bankruptcy case. We obtained court approval of the client's post-petition financing, enabling the company to exit its bankruptcy case and pay all prepetition creditors in full, and then obtained an order dismissing the bankruptcy case.

Represented the court-appointed Receiver for two companies comprising a manufacturing business in hotly contested divorce proceedings. The representation included assisting with emergency efforts to maintain business operations, negotiating forbearance agreements with the companies' secured lenders, resolving numerous employee issues, handling vendor disputes and mechanics' lien matters, resolving customer issues, selling assets, and resolving other critical operational issues including the owner's interference with the Receiver's control over the companies. At the conclusion of the receivership, we negotiated an order providing additional funding to ensure that the receivership's administrative expenses were paid in full and obtained a discharge order to protect the Receiver.

Represented Cosi, Inc. and its six affiliates in their chapter 11 cases commenced in Delaware. One month into the chapter 11 cases, the global pandemic occurred and the resulting lockdowns caused an immediate reduction of 85 percent of this sandwich shop chain's revenues. The company struggled for its survival, which was hampered by the longevity of the pandemic, the inability to obtain a PPP loan, and funds being exhausted under the Restaurant Revitalization Fund before its application could be acted upon. Ultimately, after dismissing its cases to attempt to obtain RRF monies, the company secured a third-party plan sponsor. We then successfully moved to reinstate the chapter 11 cases over one year after dismissal. We were able to confirm a pre-packaged plan of reorganization within sixteen days after the cases were reinstated with the unanimous support of the creditor body.

Represented US Tobacco Cooperative and its five affiliates in their Chapter 11 proceedings in Raleigh, NC. USTC and its affiliates were forced into Chapter 11 due to an adverse judgment in a class action that had been ongoing for 17 years, and that resulted in a \$1 billion claim being filed by the class in the case. After early skirmishes with the class, we were able to negotiate a global settlement after three days of mediation with the class and the bank group. The global settlement served as the lynchpin to a plan of reorganization that was fully consensual with all classes of creditors and equity holders and was confirmed by the court and has gone effective. The matter was named the 2022 Consumer Staples Deal of the Year and the Chapter 11 Reorganization of the Year by the M&A Advisor.

Represented the Trustee of IntegraMed America (ITMD) and nine of its affiliates in Chapter 7 proceedings. ITMD -- with more than 1,000 employees who performed all of the non-clinical functions for 19 medical practices operating almost 150 fertility clinics across the country (several of which included labs housing cryo-preserved embryos and other human tissue) -- ceased operations overnight. We quickly negotiated agreements with all 19 medical practices and ITMD's secured creditor, enabling employees to keep their jobs and the clinics to maintain their operations, which were ultimately approved by the Bankruptcy Court. We also crafted and ran a sale process, which resulted in the negotiation, approval, and consummation of seven separate sale transactions (without any issues arising with respect to the cryo-preserved human tissue) that transitioned all 19 medical practices to new owners, who assumed almost \$20 million of claims held by thousands of patients. This matter drew on the experience of the firm's Bankruptcy, Insolvency, & Restructuring; Corporate; Health Law; and Commercial Litigation attorneys.

Represented affiliated logistics and technology companies TradeGlobal, LLC, Jagged Peak, Inc., and TradeGlobal North America Holding, Inc. in their Chapter 11 cases in the U.S. Bankruptcy Court for the District of Nevada. (*In re Jagged Peak, Inc., et al.*)

Represented the Official Committee of Unsecured Creditors in the Chapter 11 cases of Warrior Custom Golf, Inc., Warrior Acquisitions, LLC, and affiliated entities in the U.S. Bankruptcy Court for the Southern District of Texas. The debtors operated a custom golf business and held a nationwide portfolio of public golf courses. (*In re Westwind Manor Resort Association, Inc., et al.*)

Counsel to debtor-in-possession, Friedman's Express Inc. in the United States Bankruptcy Court for the Eastern District of Pennsylvania in Chapter 11 for trucking carrier which was longest continuously operating long term care carrier in the United States.

Special counsel to bankruptcy trustee in case of defense contractor, LTC Holdings Inc., Lakeshore Engineering Services, Inc., et al (a/k/a TolTest, Inc.) in successfully prosecuting trustee's objection to Contrak International, Inc.'s motion for order granting leave, standing and authority to prosecute claims on behalf of Lakeshore Engineering Services, Inc. and defeating Contrak's objection to the trustee's global settlement with the United States of America.

Special litigation counsel to Hechinger's Liquidation Trust in the pursuit of approximately 2,700 avoidance actions under Chapter 5 of the bankruptcy code.

Counsel to Day & Zimmerman in Chapter 11 bankruptcy case of FirstEnergy Nuclear Operating Company in United States Bankruptcy Court for the Northern District of Ohio in obtaining critical vendor status.

Counsel to Kimmel Center, Inc. in the bankruptcy of Garces Restaurant Group, Inc. in connection with the objection to a 363 sale in which the firm negotiated the resolution of client's objection by obtaining modifications to food subcontract agreements and concession agreements to facilitate the sale and provide continuity of uninterrupted catering services at the client's multiple facilities in Philadelphia.

Counsel to Sunoco Partners Marketing & Terminals L.P., and Sunoco Pipeline L.P., a prime contractor on Mariner East 2 Pipeline Project, in the bankruptcy of Welded Construction, L.P. et al. Successfully defended Motion for temporary restraining order and preliminary injunction and complaint for declaratory judgment and negotiated a settlement agreement, providing for termination of contract with the debtor which enabled the timely completion of the project.

Counsel to the bankruptcy trustee of HRP (Hard Rock Park) Myrtle Beach Operations, LLC in a Section 363 sale of substantially all assets to FPI MB Entertainment LLC.

Counsel to the bankruptcy trustee of Our Alchemy LLC f/k/a Millennium Entertainment, LLC and Anderson Digital, Inc. in a Section 363 sale of license rights in a large film library. The sale concluded notwithstanding rejections of executory license agreements.

Managed the successful purchase of assets of New York-based specialty coffee shop chain and high-end chocolatier, FIKA, out of Chapter 11 bankruptcy proceedings. The assets were purchased by an acquisition vehicle comprised of a non-insider family group of investors, the existing management of FIKA, and the largest secured lender to FIKA. In addition to forming the acquisition vehicle and managing the acquisition out of bankruptcy, the representation involved handling a financing transaction through which FIKA's pre- and post-petition operations were funded, and ensuring the continuity of management through new employment agreements for selected management personnel.

Counsel to Ryder System Inc. in numerous matters including the bankruptcy case of Veg Liquidation Inc. f/k/a Allens, Inc. and All Veg, LLC in successfully defending against an action by the Chapter 7 Trustee against multiple parties involved in sale of bankruptcy estate's assets during Chapter 11 pursuant to Section 363 and obtaining dismissal of the action which has been affirmed by the United States Court of Appeals for the Eighth Circuit No. 18-1786.

Represented Unilife Corporation and its affiliates as lead bankruptcy counsel in Chapter 11 proceedings in the District of Delaware. The case involved the sale of the debtors' assets through a Court-sanctioned section 363 auction sale process to four separate buyers; the wind-down of the debtors' Australian affiliates; the negotiation and settlement of derivative claims, which created a fund for distribution to creditors; and the negotiation and confirmation of a consensual plan of liquidation with the creditors' committee.

Counsel to the bankruptcy trustee of MCC (f/k/a Monaco Coach Corporation) and twelve affiliated debtors, former leading producers in the United States of diesel-powered motorhomes and towable recreational vehicles which operated eight plants/facilities throughout the country. Defended the trustee in a class action under the Workers Adjustment and Retraining Notification Act ("WARN"), commenced by former employees on behalf of themselves and all others similarly situated seeking in

excess of \$18 million in damages, and successfully negotiated settlement on behalf of the estate in the reduced amount of \$10 million.

Counsel to the bankruptcy trustee of Fenwick Automotive Products Limited and seven (7) affiliated debtors who were leading manufacturers, remanufacturers, and distributors of aftermarket automobile parts in asserting claims for breaches of fiduciary duties, civil conspiracy, aiding and abetting, negligence, alter ego, misappropriation and conversion against both their publically traded parent corporation, its officers, directors and employees as well as against the former officers, directors and employees of the debtors. Successfully negotiated settlement of the claims and counterclaims resulting in the recovery \$18.5 million and a release of all claims against the estate by the putative defendants.

Counsel to the bankruptcy trustee of Innovative Building Systems LLC, one of the country's largest manufacturers of single-family custom (high-end) modular homes, multifamily units (apartment complexes), and commercial structures, and its eleven affiliated debtors in connection with a Section 363 sale.

Special transaction counsel to the bankruptcy trustee of Hospital Partners of America Inc. and SJ Medical Center Management LLC in a Section 363 sale of interests in St. Joseph Medical Center (Houston, Texas) for \$150 million to IASIS Healthcare LLC. Also negotiated the resolution of declaratory judgment action over medical malpractice reserves of \$10.5 million established in connection with the sale. The negotiated resolution provided for \$9.5 million of the reserves being retained by the trustee for the benefit of creditors of the estates.

Counsel to debtor-in-possession in the United States Bankruptcy Court for the Eastern District of Pennsylvania in Chapter 11 of a not-for-profit Continuing Care Retirement Community (CCRC) which had been operating for 147 years providing skilled nursing care, independent living, and personal care services to the elderly. Successfully negotiated and obtained confirmation of consensual Chapter 11 plan of reorganization which resulted in 100 percent payment to bond holders and 100 percent to all general unsecured creditors. As a result of the reorganization, the reorganized debtor continues its mission as a not-for-profit corporation providing for benevolent care to the indigent elderly.

Counsel to the bankruptcy trustee in case of failed sub-prime lender, American Business Financial Services, Inc. and five affiliated debtors having approximately 26,000 creditors asserting claims in excess of \$800 million. As a result of successful administration and litigation, recoveries of approximately \$275 million have been made for the benefit of the creditors of the estates.

Acted as special counsel to the Chapter 7 trustee in connection with litigation against the debtor's landlord. Achieved a favorable settlement which significantly reduced administrative and pre-petition claims by the landlord. (*In re Windsor Financial Group LLC*)

Achieved a favorable settlement on behalf of a creditor modeling agency in connection with the bankruptcy of a former advertising agency. (*In re Revolute Holdings LLC*)

Represented a mortgage originator in bankruptcy litigation brought by the post-confirmation trust. Secured a favorable decision from the bankruptcy court, and the parties' disputes were thereafter settled in concurrent non-bankruptcy litigation. (*In re Residential Capital, LLC*)

Represented a publicly traded medical device manufacturer and certain of its affiliates as debtors-in-possession in Chapter 11 proceedings in the U.S. Bankruptcy Court for the District of Delaware. (*In re Unilife Corporation, et al.*)

Acted as debtors' counsel to several affiliated companies, which together represented the world's

largest pre-paid calling card company, in Chapter 11 proceedings in the U.S. Bankruptcy Court for the Southern District of New York. The debtors' going-concern business enterprise was sold pursuant to section 363 of the Bankruptcy Code, resulting in substantial cash proceeds for the benefit of creditors, the assumption by the purchaser of tens of millions of dollars in claims, and the preservation of jobs for the debtors' employees. A joint Chapter 11 plan was thereafter successfully confirmed. (*In re Vivaro Corporation, et al.*)

Represented Chapter 7 trustees, committees, and debtors in the investigation and pursuit of litigation against the debtor's former directors and officers for breach of fiduciary duty and related claims in the following cases: Samuels Jewelers, Affirmative Holdings, Hashfast, Scoreboard, Starter Corporation, Glass Group, TVC/OPUS, Archway Cookies, Capitol Infrastructure, Advanced Interactive Systems, Code Rebel, and 38 Studios.

Represented Wolverine Tube, Inc. and various affiliates as lead bankruptcy counsel in their Chapter 11 cases in the District of Delaware. Wolverine is a leading producer of enhanced copper tubing and related products for commercial applications with worldwide operations. The case resulted in a confirmed plan of reorganization within eight months of the petition date. The plan provided for full payment to unsecured creditors, a debt for equity exchange with the debtors' bondholders, and a negotiated resolution with the PBGC of its \$100+ million pension underfunding claim. Shortly after the plan went effective, the firm handled the refinancing of the debtors' tolling arrangements with a new working capital facility.

Represented Aluminum Shapes, LLC and various affiliates as lead bankruptcy counsel in their Chapter 11 proceedings in the District of New Jersey. The cases were filed with a pre-negotiated plan with the debtors' plan sponsor and secured creditors. The cases were hard fought with the creditors' committee and resulted in a confirmed plan within six months of the petition date – with the committee's consent. The plan sponsor was replaced mid-way through the case by a party that offered financing on better terms and a larger recovery for unsecured creditors.

Represented Foamex International, Inc. and certain affiliates as lead bankruptcy counsel in their Chapter 11 cases that were filed in the District of Delaware. These cases involved a sale of substantially all of the assets of the debtors through a two-phased auction process. The auction process yielded significant additional value for creditors, and the cases were concluded through a structured dismissal that saw all administrative and priority creditors paid in full and a significant amount of the unsecured trade debt paid through debt and contract assumption and critical vendor payments.

Represented the debtor, the owner and manager of a 220-bed nursing home, in its Chapter 11 case in the United States Bankruptcy Court for the District of New Jersey, where we confirmed a Chapter 11 plan restructuring the client's secured debt, real-property leases, and union obligations, and enabled the Debtor's equity interests to maintain ownership of the entity, all while maintaining a consistently high level of care for residents.

Represented the debtor, the owner and operator of an exclusive private country club, in a Chapter 11 proceeding in the United States Bankruptcy Court for the District of New Jersey resulting in a sale of substantially all of the debtor's assets to a buyer that preserved the club's operations.

Represented the debtor, a real estate investment and construction company, in its Chapter 11 case in the United States Bankruptcy Court for the District of New Jersey, confirming a Chapter 11 liquidating plan providing for the completion of pending jobs and orderly liquidation of the remainder of the debtor's assets which substantially increased the value of the debtor's estate for creditors.

Represented the trustee in liquidating estate consisting of claims by approximately 26,000 creditors in the aggregate amount of approximately \$720 million. The representation included obtaining authority to operate, securing trustee financing, and subsequent litigation against multiple parties on a variety of causes of action. Included in the representation was negotiation and approval of a settlement which provided for payment of \$100 million to the trustee from certain financial institution defendants \$17 million from directors and officers.

Represented the trustee in completing the closing of a complex sale under 11 U.S.C. Section 363 for \$165 million of the majority 78.2% membership interest in St. Joseph's Medical Center LLC, a 792-bed full-service hospital facility located in downtown Houston.

Represented the trustee in a multi-debtor case involving seven pulp and paper mills located in both the United States and Canada. The representation included obtaining authority to operate the debtor pending completion of the Section 363 sale of a paper pulp mill plant. This matter was complicated by cross-border issues arising from the existence of parallel receivership proceedings for certain of the U.S. debtors in Canada under the Canadian Companies' Creditors Arrangement Act as well as the pendency of a Chapter 15 case in the United States Bankruptcy Court for the District of Delaware.

Represented the trustee in a multi-debtor case of leading producers of diesel-powered motor homes in the United States and major manufacturer of motorized recreational vehicles. Negotiated settlement of Bank of America's secured claim and have conducted sales under U.S.C. Section 363 of three separate manufacturing facilities located throughout the United States for which the debtor was unable to obtain lender support for sale during Chapter 11.

Represented Chapter 7 trustee as special counsel to develop and implement auction process to sell substantially all of the assets of the estates under Section 363 of the Bankruptcy Code in the following cases: IntegraMed America, Advanced Interactive System, Synova Healthcare, Peregrine I, Pixel Optics, Polymedix, Pursuit Capital, Impact Services, A Voce, Lyton Partnership, and Thompson River Power.

Represented the Chapter 7 trustee in winding up the affairs of the estates of Archway Cookies, a leading manufacturer of cookies and related products. Cozen O'Connor handled a myriad of matters, including investigating and settling fiduciary duty litigation against the debtors' private equity sponsor and directors and officers, and significant WARN Act claims.

Represented the Official Committee of Unsecured Creditors in the 1031 Tax Group cases that were commenced in the Southern District of New York, which involved widespread fraud perpetrated by the debtors' principals. The committee worked with the Chapter 11 trustee to confirm a consensual plan of reorganization that in the end will result in a recovery to unsecured creditors in excess of 70 cents on the dollar.

Represented the Official Committee of Unsecured Creditors of a manufacturing company that filed a Chapter 11 petition in the District of Delaware. The case involved three separate sales of the debtors' business divisions and real estate and the investigation and settlement of claims against the debtors' directors and officers. The case resulted in a consensual confirmed plan and a 45 cent recovery for unsecured creditors.

Represented the Commonwealth of Pennsylvania in contesting the Chapter 9 bankruptcy petition filed for the City of Harrisburg by members of its city council. The Commonwealth was joined in its opposition to the bankruptcy filing by several other stakeholders, including the City of Harrisburg's mayor, and the unions representing city employees. Petition was dismissed and dismissal was upheld on appeal.

Represented the Kimmel Center – Philadelphia’s performing arts center – as a major constituent in the Chapter 11 bankruptcy cases of The Philadelphia Orchestra, The Academy of Music, and Encore Series, Inc., as well as in its capacity as chairperson of the Official Committee of Unsecured Creditors of the Philadelphia Orchestra and The Academy of Music.

Defended Multi District Litigation (MDL) commenced by former investment advisory clients for losses incurred arising from the bankruptcy of ClassicStar, LLC (United States Bankruptcy Court for the Eastern District of Kentucky). Claims in this case exceed one billion dollars.

Represented Wild Waves, LLC, the debtor’s largest creditor in a Chapter 11 case in the United States Bankruptcy Court for the District of New Jersey and the purchaser of substantially all of the debtor’s assets, in confirming a creditor’s Chapter 11 plan over the objections of the debtor and its equity interest holders.

Represented the Liquidating Trustee of Limited Partnership of a failed Philadelphia commercial real estate development slated to be Waldorf Astoria hotel and condominium complex. Appointment was by Philadelphia Court of Common Pleas.

Represented a large commercial landlord in large bankruptcy cases including Borders, Claim Jumper Restaurants, Real Mex Restaurants, and Gottschalks. Litigated and resolved issues concerning administrative claims, rejection damages, and general unsecured claims. Providing counseling regarding commercial landlord’s rights in tenants’ bankruptcy cases.

Represented one of Canada’s leading integrated energy companies in connection with SemGroup’s bankruptcy cases. Successfully defended multimillion dollar preference demand and obtained a \$0 liability outcome. Provided counseling regarding creditor’s rights in connection with customer bankruptcies, including avoidance of preference liability and special rights afforded to parties to “forward contracts” under Bankruptcy Code.

Defended class action plaintiffs, Kleen Products LLC, R.P.R. Enterprises, Inc., El Jay Poultry Corporation, and Mighty Pac, Inc. against Chapter 11 debtors seeking to enjoin their pursuit of an anti-trust conspiracy action under the Sherman Act for price fixing in the container board industry as being in violation of the Chapter 11 discharge and related discharge injunction.

Represented The Honickman Group, dominant distributor of Pepsi Cola and Canada Dry products, in the Chapter 11 bankruptcy case of the Great Atlantic & Pacific Tea Company.

Represented one of the largest shipping companies in the world in connection with bankruptcy cases, including AbitibiBowater and Eastman Kodak. Defended multimillion dollar preference avoidance action; provided counseling on topics including preventative measures to reduce potential preference liability, negotiating “critical vendor” agreements, and shipper’s rights in connection with customers’ bankruptcies.
