

Dennis J. Connolly

Partner

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Dennis Connolly's primary practice is the representation of debtors and creditors' committees in large Chapter 11 bankruptcy cases. He has been involved in national cases in a number of different industries, including manufacturing, transportation, finance, defense contracting, and space and technology. He has appeared in Alabama, California, Delaware, Florida, Georgia, Louisiana, New York, North Carolina, Ohio, South Carolina, Texas, and West Virginia courts.

Dennis has represented parties in interest in major Chapter 11 cases, including Delta Air Lines, Refco Inc., Enron Corp., Zale Corporation, Einstein Noah Restaurant Group Inc., AmeriServe, and Winn-Dixie. He is a Fellow and a director of the American College of Bankruptcy and a director of the Southeastern Bankruptcy Law Institute. He has been selected as a leading practitioner by *Chambers USA* and listed in *Super Lawyers* magazine, where he was named to the "Top 100: 2014–2016 Georgia Super Lawyers Top List." He was also named Lawyer of the Year in Litigation – Bankruptcy (Atlanta) for 2018 and in Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law (Atlanta) for 2014 by *The Best Lawyers in America*®.

He has been actively involved in the bank crisis, representing bank holding companies and their directors and officers in litigation with bankruptcy trustees. He has represented purchasers of assets in cases nationwide.

Representative Experience

- Representing Navicent Health in the acquisition of certain assets of the Oconee Regional Medical Center in Oconee's bankruptcy case pending in the Middle District of Georgia.
- Representing MEAG in the bankruptcy case of Westinghouse Electric pending in the Southern District of New York.
- Represented Granges AB, a multinational aluminum company, in acquiring three rolling mills out of the Noranda bankruptcy case in the Eastern District of Missouri.
- Appointed trustee for American Spectrum Realty in its case pending in the Central District of California.
- Represented Alabama Aircraft Industries, a defense contractor, in its Chapter 11 proceedings in Wilmington, Delaware.
- Represented the directors and officers of Beach First National Bancshares, a bank holding company, in obtaining dismissal on standing grounds and obtaining affirmance of the district court ruling in the Fourth Circuit.
- Represented the directors and officers of Integrity Bancshares, a failed bank holding company, in obtaining dismissal of all claims on standing grounds and obtaining affirmance of the district court ruling in the Eleventh Circuit.

- Represented Sea Launch LLC, a major satellite launch company, as a Chapter 11 debtor in a case in Wilmington, Delaware.
- Acted as counsel to the official committee of unsecured creditors of Cornerstone Ministries Investments, a large nonbank financial institution, in its bankruptcy case in the Northern District of Georgia.
- Acted as trustee (and plan administrator) in the SonicBlue matter, a large Chapter 11 case in San Jose, California.
- Represented HomeBanc, a large mortgage company, as a Chapter 11 debtor in a case in Wilmington, Delaware.
- Represented Cadence Innovation in pursuing a significant patent claim against Delphi in its bankruptcy case in the Southern District of New York.
- Represented hedge funds and other entities that deposited assets with affiliates of Refco Capital Markets in that company's bankruptcy case in the Southern District of New York.
- Involved in the representation of Delta Air Lines as special counsel for pension plan and employee benefit issues in the airline's bankruptcy case in the Southern District of New York.
- Served as co-counsel for Galey & Lord, a global textile supplier, and its affiliates in their bankruptcy cases in the U.S. Bankruptcy Court for the Northern District of Georgia.
- Served as co-counsel to the ad hoc committee of the holders of senior secured notes in the Chapter 11 bankruptcy case of O'Sullivan Industries, a major manufacturer of ready-to-assemble furniture, in the Northern District of Georgia.
- Served as co-counsel for the official committee of unsecured creditors in the cases of Dan River Mills, a leading manufacturer of textile products, and its affiliates in the U.S. Bankruptcy Court for the Northern District of Georgia.
- Served as co-counsel to the debtor in the bankruptcy case of Paragon Trade Brands, a leading manufacturer of private-label disposable diapers, in the U.S. Bankruptcy Court for the Northern District of Georgia.
- Served as counsel for the official committee of unsecured creditors in the bankruptcy cases of Einstein Noah Restaurant Group, a leading chain of retail bagel stores, and its affiliated debtors in the U.S. Bankruptcy Court for the District of Arizona.
- Served as counsel to LaRoche Industries, a national chemical manufacturer, in its Chapter 11 case in Wilmington, Delaware.
- Served as counsel to the official committee of unsecured creditors in the bankruptcy case of Builders Transportation Co., a major regional transportation company, and its affiliated debtors in the U.S. Bankruptcy Court for the Northern District of Georgia.
- Represented the Enron Corp. Examiner in all aspects of the examination, including litigation involving discovery, disputes relating to the scope of the examination, fee applications, and other matters involving the investigation.
- Represented creditors, purchasers, and other parties in interest in a number of cases throughout the U.S., including companies in the grocery, food services, air transportation, electronics, and automotive supply industries.

- Involved in representing parties with claims against the FDIC and/or the RTC as the receiver for insolvent financial institutions throughout the Southeast.

Publications & Presentations

Publications

- “Process Issues Involved in the Interrelation Between Bankruptcy Examiner Investigations and Governmental Investigations,” in *Norton Annual Survey of Bankruptcy Law*, Thomas Reuters, 2017.
- “The Issue is Moot. Or is it? Rethinking the Application of Equitable Mootness to Bankruptcy Appeals,” in *Norton Annual Survey of Bankruptcy Law*, Thomson Reuters, 2016.
- “Arriving at *Arkison* and *Wellness*: Making Sense of the Procedural Quagmire After the Supreme Court’s Rulings on Bankruptcy Court Jurisdiction and Authority,” in *Norton Annual Survey of Bankruptcy Law*, Thomson Reuters, 2015.
- “Wellness: Is Consent the Cure?,” *ABI Journal*, Vol. 34, No. 8, August 2015.
- “Arriving at *Arkison* and *Wellness*: Making Sense of the Procedural Quagmire after the Supreme Court’s Rulings on Bankruptcy Court Jurisdiction and Authority,” *Norton Annual Survey of Bankruptcy Law*, 2015.
- “Plan Drafting Issues in Connection with Post-Confirmation Litigation of Claims by Estate Fiduciaries,” *Norton Annual Survey of Bankruptcy Law*, 2014.
- “The Contractual Right of Triangular Setoff in Bankruptcy Proceedings: Issues and Alternatives,” *Norton Annual Survey of Bankruptcy Law*, 2013.
- “Best Practices Report on Electronic Discovery (ESI) Issues in Bankruptcy Cases,” *The Business Lawyer*, Vol. 68, Issue 4, August 2013.
- “Recent Developments with Respect to the ‘Safe Harbors’ for Swaps and Repo Agreements,” *Norton Annual Survey of Bankruptcy Law*, 2011.
- “Sea Launch – A Unique Business and a Unique Reorganization,” *The Bankruptcy Strategist*, Vol. 28, No. 4, February 2011.
- “Twombly/Iqbal Pleading Requirements in Preference and Fraudulent-Transfer Cases,” *ABI Journal*, July/August 2010.
- “The Intersection of FIRREA and Bankruptcy Law,” *Pratt’s Journal of Bankruptcy Law*, Vol. 6, No. 5, July/August 2010.

Professional & Community Engagement

- American College of Bankruptcy, fellow and director
- Southeastern Bankruptcy Law Institute, past chair; current director
- ABI/Tulane (Emory) University School of Law Bankruptcy Litigation Skills Program, former advisory board
- Atlanta Bar Association, Bankruptcy Section, past chair of board of directors

Accolades

- Listed in *The Best Lawyers in America* in Bankruptcy and Creditor-Debtor Rights Law, 2005–2019 editions; Lawyer of the Year in Litigation – Bankruptcy (Atlanta) for 2018 and in Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law (Atlanta) for 2014 and 2018
- Selected as a leading insolvency practitioner by *Chambers USA*, 2003–2018
- Noted as a “Georgia Super Lawyer” in *Atlanta* magazine, 2004-2018 editions (Top 100 Lawyers in Georgia, 2013–2016)
- Listed in the Guide to the World’s Leading Insolvency and Restructuring Lawyers, 2006–2018
- Listed in *Who’s Who Legal: USA*, 2018
- Listed in *Georgia Trend’s* Legal Elite, 2006–2018

Education

- University of South Carolina (J.D., 1986)
- University of Michigan (B.A., 1982)

Admitted to Practice

- New York
- Georgia

Related Services

Financial Restructuring & Reorganization | Commercial | Litigation | Financial Services & Products | Derivatives & Structured Products | Alternative Investments | Private Equity | REITs & Funds | Corporate & Business Transactions | Bankruptcy Litigation | Bankruptcy Transactions

Financial Restructuring & Reorganization Overview

Our Financial Restructuring & Reorganization Group represents clients in all aspects of restructurings, workouts, and insolvencies by employing a holistic approach to each client representation that draws on our diverse attorney teams' extensive transaction and litigation experience.

We begin every representation by seeking a thorough understanding of the relevant background and our client's tactical and strategic goals, and then we combine our legal and interpersonal skills to achieve those goals in the most efficient manner.

Clients often rely on our skills to help avoid the most precarious of situations, and just as often to get out of them.

The team is nationally recognized and respected by industry peers and organizations. Prominent rankings and positions held include:

- *Best Law Firms*: Recognized in the area of Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law, 2011–2019.
- American College of Bankruptcy: Partners include an officer and member of the board of directors.
- Association of Insolvency & Restructuring Advisors: Former president and chair, and current board member.
- *Chambers USA*: 2006–2018 Band 1 – Bankruptcy/Restructuring (Georgia). Clients have praised several members of our team: “his litigation skills are superb – he has lots of credibility with judges, he is efficient and doesn't waste time”; “extremely intelligent and creative”; “a hard-nosed litigator who is tough and smart”; and “a smart, bright lawyer, who is efficient, focused, and a pleasure to work with.”
- Southeastern Bankruptcy Law Institute: Two active directors, both of whom are former presidents and chairs.

Areas of Service

Distressed and DIP Lending

We have extensive experience representing clients in all aspects of distressed debt and debtor-in-possession (DIP) finance. Whether or not the distressed debt is within the context of a bankruptcy, we work creatively to restructure debt in diverse scenarios. Recent examples include representing an administrative agent and lead lender in connection with a \$1.9 billion warehouse/servicer DIP loan that, upon confirmation, converted into exit financing; representing the lead lender in a Chapter 11 case where the DIP loan will fund an extensive fraud investigation by the estate's fiduciary where those claims and causes of action have been included in our client's collateral package approved by the bankruptcy court; and representing a participant lender in a \$725 million asset-backed debtor-in-possession loan to facilitate a Chapter 11 liquidation of one of the nation's largest department store chains.

Secured Creditors

We have significant experience with creditors' rights. Our attorneys represent secured creditors of almost every type and involving a wide-range of collateral, including banks and other financial institutions, asset-based lenders, real estate financiers, private equity groups, secured suppliers, master servicers, special servicers, agents, and indenture and administrative trustees.

The group assists our clients with workouts, restructurings, bankruptcy filings, receivership appointments, foreclosures, and navigating the process of liquidating collateral inside and outside of bankruptcy. We also assist secured creditors in negotiating and closing transactions contemplated by plans of reorganization, including true leases and secured transactions, Section 363 sales that include the creditors' collateral, relief from stay to repossess collateral, and intercreditor agreements among competing secured creditors. Often times our representation includes defending our client's secured claims from attack by debtors, committees, trustees, and other creditors.

Structured Finance & Securitization

We represent market participants with structured finance and securitization. When insolvency or credit concerns arise, our attorneys regularly represent indenture trustees; structured investment vehicles such as collateralized debt obligations (CDOs) and collateralized loan obligations (CLOs); collateral managers in trust-preferred issuances; various parties in RMBS, CMBS, and ABS structures, including trustees, master servicers, and special servicers, repo buyers and sellers, swap counterparties, and market participants in subordinated debt structures, including first- and second-lien lenders and mezzanine capital. With a comprehensive understanding of these structures, we can quickly and efficiently immerse ourselves into domestic and international restructurings and provide strategic thinking at the most critical time.

Not only do our clients who find themselves in a restructuring rely on our attorneys' ability to understand these structures, they also value our team's venerable courtroom experience when litigation is necessary. It is rare to find both in one group. Whether CMBS, RMBS, CDOs, or CLOs, Alston & Bird's bench in structured finance workouts and restructuring is unmatched.

Fiduciary/International/Chapter 15

Our attorneys have extensive experience serving as, or representing trustees, examiners, and plan administrators in, complex Chapter 11 cases. We have also filed numerous Chapter 15 cases and regularly represent liquidators appointed in cases in foreign jurisdictions involving all different types of property located in the United States.

Distressed Asset Acquisition and Disposition

We have substantial experience with all aspects of the acquisition and sale of companies or assets in distressed situations or in bankruptcy proceedings (i.e., Section 363). We have represented buyers acting alone or in consortiums with other strategic buyers, represented sellers, and dealt with the litigation issues that can arise in transactions ranging from claims of collusion to successfully challenging or obtaining bid protections for "stalking horse" buyers, claims among lenders in a syndicate exercising a credit-bid, and participation and other intercreditor disputes. We bring an experience-based, practical business orientation to our legal work in all areas of distressed mergers, acquisition, and disposition.

Debtor Representation

Our team has significant experience representing businesses and owners in restructuring situations, both in and out of court. Whether through an out-of-court restructuring, a prearranged or prepackaged Chapter 11 plan, a fast Section 363 sale process, or an emergency bankruptcy filing, our experienced team steers companies through the process, working with in-house counsel and boards of directors to evaluate options and manage negotiations with lenders, creditors and other stakeholders. We are well-equipped to advise on

debtor-in-possession financing, debt restructuring, valuation, asset sales, corporate governance and fiduciary duties, designing and implementing employee retention programs, conducting sales of core or nonessential business lines, and other complex issues that may affect a workout or restructuring through plan confirmation or other exit from formal or informal proceedings.

Official and Ad Hoc Committee Representation

Our attorneys represent official and unofficial (ad hoc) committees of unsecured creditors in Chapter 11 cases filed throughout the country in various industries, often achieving greater-than-expected returns on claims for unsecured creditors.

Professional Engagements

Our attorneys are routinely engaged to advise professional service firms and financial institutions on risk mitigation, bankruptcy retention, and fee-related issues. We regularly represent these clients in cases across the nation on these issues and in defense of avoidance actions relating to payments made to them by debtors before filing for bankruptcy.

Restructuring Representation

Our team has significant experience representing businesses and owners in restructuring situations, both in court and out of court. Some are driven by litigation against the debtor, some by overleveraged balance sheets, and others by operational difficulties. Many restructurings start out as high-yield refinancings or M&A transactions. Sometimes, however, these transactions can only be accomplished through a broader restructuring, either inside or outside of court.

Whether through an out-of-court restructuring, a pre-arranged Chapter 11 plan, a fast Section 363 sale process or an emergency bankruptcy filing, our experienced team steers companies through the process, working collaboratively with in-house counsel and the boards to evaluate options and manage negotiations with lenders and other creditors. Our team is well-equipped to advise on all aspects of debtor-in-possession financing, debt restructuring, valuation, asset sales, corporate governance, and fiduciary duties, designing and implementing employee retention programs, conducting sales of core or nonessential business lines, and other complex issues that may affect a workout or restructuring.

In bankruptcy sale scenarios, speed of execution is often critical. We have represented debtors and other stakeholders in a number of sales transactions that went from filing to closing in under one month, including Alabama Aircraft (17 days from the filing of the sale motion to the closing of the transaction), Knology, Inc. (represented equity in pre-pack plan confirmed in 31 days), Swoozie's, Inc. (closing a sale transaction within 29 days of a bankruptcy filing), and Dicon Technologies, LLC (closing a sale transaction within 24 days of filing the sale motion).

Representative Experience

- *Confidential*: Represented one of the premier residential home builders in the southeastern U.S. in its recent out-of-court restructuring. Our client had more than \$250 million of funded debt, which greatly exceeded the value of its assets. The debt was held by a number of different parties. To avoid a bankruptcy filing, the lenders had to unanimously consent to a restructuring. The restructuring was accomplished through an innovative and consensual out-of-court approach that incorporated an M&A transaction that was supported unanimously by the lenders, permitted existing equity to participate in the successor entity and avoided the goodwill impairment that would have likely occurred in a bankruptcy with the buyer being protected from subsequent exposure.
- *Sea Launch*: Represented Sea Launch in its out-of-court and, ultimately, in-court restructuring of \$2.3 billion in debt. Sea Launch is an international commercial satellite launch operator that uses a one-of-a-kind mobile platform to launch satellites to geosynchronous orbit 23,000 miles above the Earth. The company was organized as a joint venture by U.S., Norwegian, Russian, and Ukrainian companies. We helped Sea Launch restructure its business in a bankruptcy proceeding through a plan that allowed one of the joint venture partners to provide exit financing in exchange for a majority of the equity interest in the reorganized company, eventually "migrating" its country of organization from the Cayman Islands to Luxembourg. The company obtained buy-in from all of its major customers and creditor constituencies.
- *Alabama Aircraft Industries Inc.*: Represented the Chapter 11 debtor and concluded the sale of this aviation repair and retrofit company in bankruptcy and addressed and resolved substantial union opposition. Litigation claims were vested in a trust, and a majority of the beneficial interests in the trust were assigned to the buyer.

- *Louisiana Medical Center and Heart Hospital, LLC (LMCHH)*: Represented LMCHH in a complex bankruptcy case. This was a hospital shutdown and liquidation where total debt exceeded \$200 million. We worked on pre-bankruptcy planning, execution of a shutdown and sale, and all of the complex regulatory and bankruptcy issues associated with a full service operating hospital with an emergency room. We confirmed a liquidating plan filed jointly with the creditors committee, and resolved WARN Act claims in the context of the confirmed plan.
- *Mayo Clinic Health System*: Advised the Community Directors on governance and health care M&A and provided strategic counsel on transitioning of Waycross Inc. from a non-profit to a for-profit and withdrawal of sole member hospital. The result was a sale of the hospital to HCA for \$51.5 million, plus a commitment by HCA for \$21.6 million in additional investment, a commitment for continuation of the hospital's charity care, and a recovery of \$65.3 million for the community.
- *Middlebrooks Pharmaceuticals Inc.*: Represented this client in the sale of substantially all of its assets through a Section 363 process in bankruptcy that paid all creditors in full on more than \$14 million of asserted claims and provided a meaningful distribution to shareholders.
- *Chemtura Corporation*: Served as special counsel to Chemtura Corporation, one of the largest publicly traded specialty chemical companies in the U.S. with a market valuation of over \$2 billion, in its Chapter 11 proceedings, leading to the confirmation of a Chapter 11 plan of reorganization that resulted in creditors receiving 100% on account of their claims.
- *Confidential*: Represented a leading provider of services and engineered detention products, furnished and installed, in the U.S. in connection with its out-of-court workout and restructuring of a \$25 million credit facility with a business development company (BDC) lender.
- *Sleepy's LLC*: Served as exclusive counsel for Sleepy's in its strategy to roll up distressed mattress retailers, including Rockaway Bedding, 1-800-Mattress, Mattress Discounters, and others.
- *HomeBanc Mortgage Corporation Inc.*: Served as debtor's counsel for this large residential mortgage originator. In addition to its origination platform, HomeBanc also serviced approximately \$8 billion in mortgages. We shepherded a sale of HomeBanc's servicing platform through a Section 363 sale.
- *LaRoche Industries Inc.*: Served as debtor's counsel for this international chemical company. In order to reorganize, the company needed to divest itself of assets, resulting in the sale of three chemical plants during the bankruptcy case.
- *Southwest Recreational Industries Inc.*: Served as debtor's counsel for this internationally recognized participant in the sports surfacing industry. Together with its subsidiaries, SRI designed, manufactured, sold, and installed high-quality indoor and outdoor synthetic and natural grass athletic surfaces, including field, track, and indoor and outdoor tennis surfaces. SRI's widely recognized brand names include the HPG™, AstroPlay®, NeXturf®, and AstroTurf® brands. We concluded the sale of a substantial portion of SRI's assets.
- *American Athletic Inc.*: Served as debtor's counsel for this manufacturer of athletic equipment that served institutional end-markets, including high schools, universities, government agencies, and athletic clubs globally. AAI was the world's leading supplier of gymnastic equipment and maintained approximately 80 percent of the domestic market share. We concluded the sale of a substantial portion of AAI's assets to a strategic buyer.
- *Sport Court Inc.*: Served as debtor's counsel for SCI, which manufactured and distributed modular sports floors for indoor and outdoor applications, residential backyard game courts, golf putting

greens, and portable protective surfaces. We concluded the sale of a substantial portion of SCI's assets to a strategic buyer.

- *Piedmont Hardwood Flooring LLC*: Served as debtor's counsel in this Chapter 11 case in which the debtor was sold as a going concern, with a complete return to secured creditors and a substantial projected return to unsecured creditors.
- *South Fulton Medical Center Inc.*: Served as debtor's counsel in this Chapter 11 reorganization case. South Fulton Medical had more than \$90 million of total debt; through a Chapter 11 sale process, the debtor received funds sufficient to make a substantial return to unsecured creditors.
- *SportsTown Inc.*: Served as debtor's counsel for this publicly traded sports apparel and equipment retailer in its Chapter 11 case. The case led to a consensual sale of the company's assets, including more than 30 big-box stores in six states that generated a return to unsecured creditors of more than 50 cents on the dollar. We also handled all claims objections in the case, including challenging several million dollars in personal property taxes and lease rejection claims to enhance creditor recovery.
- *Beyond Oblivion Inc.*: Served as counsel to the Chapter 11 debtor that owned and operated a streaming digital music business in the sale of substantially all of its assets under Section 363, including the assumption and assignment of critical contracts and the transfer of vital intellectual property rights over the objection of numerous third parties.

Fiduciary Representation

Our attorneys have extensive experience serving as trustee, examiner and plan administrator in complex Chapter 11 cases. We regularly represent fiduciaries, including trustees, receivers and liquidators, appointed in cases in the United States and in foreign jurisdictions involving property in the United States.

Representative Experience

- Appointed as the Examiner for Enron to investigate and report on Enron’s use of special purpose entities and off balance sheet partnerships and the roles of Enron’s officers, directors, professionals and financial institutions in connection with those entities. Alston & Bird served as counsel and identified over \$10 billion in claims against third parties by investigating Enron’s extremely convoluted transactions. Some of those claims were based on state law while others were based on the Bankruptcy Code, including claims for over \$3.3 billion in avoidable transfers, claims for equitable subordination and related causes of action and claims objections. To date, the Enron Bankruptcy Court has authorized settlements resulting in payments or claim reductions exceeding \$3 billion. The Wall Street Journal noted that the reports were “deliciously specific, naming names via internal memos, phone conversations, faxes, sworn testimony and, of course, the white collar equivalent of the smoking gun—emails.” The Enron report stands the test of time as the gold standard for an investigation such as this.
- Appointed as Examiner for Southmark Corporation to investigate the pre-petition conduct and affairs of Southmark, a conglomerate that included insurance companies, real estate enterprises and a large savings association, San Jacinto Savings Association. The Southmark examination was the largest bankruptcy examination prior to the Enron investigation. The one-year examination resulted in a series of reports that documented significant claims against insiders, counterparties and others. Southmark provided a template for the examination of large public companies. As part of the Southmark examination, Alston & Bird’s Neal Batson successfully obtained court authority to retain professionals in what was a precedent-setting decision.
- Appointed as the Chapter 11 trustee for SONICblue to investigate and to bring actions, if appropriate, in response to the conduct of the parties in the bankruptcy cases, including debtors’ counsel, creditors’ committee counsel, the senior bondholders and others. After an investigation, Alston & Bird’s Dennis Connolly, represented by partners in our Bankruptcy and Litigation Groups, brought claims against counsel for the debtors, counsel for the creditors’ committee and the senior bondholders and recovered value in excess of \$25 million from those parties. In addition, Mr. Connolly proposed and litigated with various parties a plan of liquidation for the four debtors’ estates that resulted in significant increased distribution to creditors (from the debtors’ prior estimate of 28 percent recovery to approximately 48 percent recovery to unsecured creditors). In addition, Mr. Connolly’s plan of liquidation resolved the complex inter-estate claims and avoided substantive consolidation litigation.