

Economic Analysis Related to Bankruptcy & Restructuring

Insolvency-related litigation has become more complex, often involving securitized financial instruments that can be challenging to value.

Analysis Group works alongside the country's leading authorities on solvency, debt, and restructuring issues. We have applied our depth and diversity of professional expertise in some of the largest bankruptcies in U.S. history.

Analysis Group is distinguished by the combination of thought leadership and pragmatic experience we bring to assessing the economic and financial issues involved in bankruptcy matters. We work with leading academic and industry authorities on valuation of financially distressed firms, creditor claims, and corporate reorganizations. Our expert affiliates have authored widely referenced papers and texts on bankruptcy-related topics, and have testified in bankruptcy courts.

Working with leading academics, our professional staff has extensive experience in complex and high-profile litigations involving bankruptcy issues. Our expertise includes:

- valuing complex assets
- analyzing factors contributing to bankruptcy
- measuring damages related to the causes and timing of bankruptcy or financial distress
- advising on restructuring strategies and alternatives

Factors Contributing to Bankruptcy

Analysis Group has experience evaluating and analyzing factors that contribute to a company's bankruptcy filing. Using sophisticated economic models to predict corporate failure and credit downgrades, we have evaluated the impact that accounting fraud, accounting policies, market and industry factors, credit ratings, and capital structures have had on a firm's ability to continue operating as a going concern.

For example, Analysis Group was retained on behalf of a major corporation to assess whether, at a particular point in time, it was reasonable to expect that the company would file for bankruptcy. Working with an expert, we used publicly available data and a variety of empirical techniques to show that the company was experiencing severe financial distress and that it was reasonable to expect it to file for bankruptcy.

Valuation in Bankruptcy

Analysis Group applies sophisticated modeling, statistics, and econometric techniques to value the assets of bankrupt entities. We have particularly strong expertise in valuing distressed firms and have been involved in the valuation of many other types of assets and liabilities, including:

- purchased mortgage servicing rights
- interest rate swaps
- collateralized mortgage obligations
- accounts receivables
- real estate

Additionally, we have provided expert analysis and testimony on issues relating to:

- the solvency of a company
- the reasonableness of financial projections
- market and industry analyses
- valuation of complex assets
- valuation of complex securities

We have conducted valuations in a variety of bankruptcy contexts, including matters involving fraudulent conveyance claims, private equity and venture capital transactions, and issues of successor liability.

Many highly leveraged companies have been created through privatizations, LBOs, and other takeovers. In the subsequent tightening of credit markets, transactions have been shelved, and bankruptcies have emerged, resulting in litigation affecting private equity firms, venture capital firms, hedge funds, and other entities.

Fraudulent Conveyance Claims

Allegations of fraudulent conveyance typically involve the transfer of assets for less than equivalent value, after the company is insolvent. Analysis Group has provided analyses in fraudulent conveyance matters, including analysis related to issues of comparable worth and solvency. For example, we managed the financial and economic analysis in a fraudulent conveyance litigation involving one of the largest bank failures in U.S. history. When examining the solvency of companies, we evaluate assets relative to liabilities, the ability to pay debts as they come due, and the adequacy of capital. In these matters we give careful consideration to the value of business initiatives such as corporate reorganization, and credit issues such as the ability to raise capital.

Private Equity Transactions

Analysis Group has analyzed a number of transactions where there have been allegations of negligence in connection with failed private equity and venture capital transactions. In these matters, we have provided assistance in:

- evaluating financial projections and public disclosures
- assessing the capital adequacy of highly leveraged firms
- determining the causes of bankruptcy, including general market and industry factors

- quantifying the damage exposure resulting from failed LBOs

Assessing Damages in Bankruptcy Matters

Bankruptcy trustees, receivers, and creditors' committees have claimed damages allegedly suffered at the hands of lenders, accountants, and others as a result of wrongfully incurred unpayable debt. Analysis Group has worked on a number of cases involving claims of corporate harm stemming from excessive leverage.

Damages may take the form of added financial distress costs, further diminution in the value of a corporation's assets, or additional debt used to finance failed investments. To assess damages, Analysis Group has analyzed the values of businesses "but-for" the alleged actions of defendants, and contrasted them with the actual value of the firm. We also have distinguished between damage claims made on behalf of shareholders and those made on behalf of a bankruptcy trustee.

In one of the largest bankruptcy matters in recent U.S. history, we responded to credit and estate claims that damages arose because certain structured transactions were of material harm to the company.

Economic and Accounting-Related Analysis

An important component of bankruptcy analysis involves the financial, economic, and accounting aspects surrounding filings. Analysis Group has substantial expertise with credit rating models, bankruptcy prediction models, and cash flow forecasting. Our experts have testified about whether certain transactions are common in a particular industry. Additionally, we have experience recasting financial statements to examine the viability of firms in a but-for world.

In a matter where a parent company filed for bank-

ruptcy, a group of claimholders asserted that the company's subsidiaries were also subject to debtholder claims. Analysis Group provided economic and financial analysis of the rationale for, and benefits from, the existing corporate structure.

Recasting Financials

In one of the largest and most complex reorganizations of recent years, Analysis Group was retained to help our client achieve a rare ruling of substantive consolidation – the pooling of the assets and liabilities of separate legal entities for the purpose of calculating creditor distribution. We supported our affiliate in his examination of documents filed by the client's 274 bankrupt legal entities, and in his review of more than 1.2 million line items related to the corporation's inter-company transactions.

Determinations of Fraudulent Activity

On behalf of major investment banks, Analysis Group analyzed Enron's alleged fraudulent accounting for certain off-balance-sheet financings.

Restructuring

Restructuring efforts typically require the involvement of senior executives across the organization. We have worked with boards of directors, CEOs, business unit and corporate function heads, and general counsel to develop and implement strategic solutions.

Our expertise in this area includes analyzing the ability of firms to raise capital, developing financial projections and strategies, assessing which assets to sell or keep, and identifying or developing alternatives to restructuring.

We are highly experienced in the type of quantitative analysis that is essential to developing effective approaches to restructuring, including:

- cash flow modeling, forecasting, liquidity analysis, and developing strategies for capital preservation
- valuing businesses and business units, intellectual property, and tangible assets
- developing stress test recovery strategies, and

recommending changes to near-term operating procedures, core businesses and products, and corporate strategy

Selected Case Work

Bankruptcy

Baptist Foundation of Arizona (BFA) v. Arthur Andersen

Arthur Andersen LLP agreed to pay \$217 million to settle all accounting malpractice suits resulting from its audits prior to the Chapter 11 bankruptcy of the Baptist Foundation, whose collapse in 1999 was the largest non-profit bankruptcy in U.S. history. An Analysis Group team assisted counsel for the Liquidating Trust of the Baptist Foundation in finding expert witnesses for both liability and damages issues. We also worked with our affiliate Roman L. Weil of the University of Chicago Booth School of Business on the calculation of damages for the Liquidating Trustee. Professor Weil's report showed that, because Baptist Foundation continued to operate after the time that Arthur Andersen's audits should have revealed the BFA's insolvency and acts of wrongdoing on the part of management, the Baptist Foundation lost assets in excess of \$150 million that it could have used to pay the claims of its account holders.

In re Bear Stearns Litigation

In a widely reported decision, the New York State Supreme Court granted summary judgment, dismissing consolidated class-action lawsuits filed in New York and Delaware by Bear Stearns shareholders after J.P. Morgan Chase & Company (JPMorgan) agreed on March 16, 2008 to buy Bear Stearns in a deal brokered by the U.S. Federal Reserve. The suits claimed that JPMorgan's offer to purchase Bear Stearns was "unfair and inadequate," and that Bear Stearns' directors breached their fiduciary duties by failing to get the highest possible price.

JPMorgan counsel Wachtell, Lipton, Rosen & Katz retained Analysis Group to help address the issue of whether Bear Stearns' shareholders would have done

better in a bankruptcy rather than through the sale to JPMorgan.

An Analysis Group team led by Chairman Bruce Stangle and Managing Principals Mark Howrey, Gaurav Jetley, and Richard Starfield supported a bankruptcy expert.

Ben S. Branch, Trustee of Bank of New England Corporation v. Federal Deposit Insurance Corporation

Analysis Group managed the financial and economic analysis in a fraudulent conveyance litigation involving one of the largest bank failures in U.S. history, including identification and support of numerous academic witnesses to present testimony on the economics of the banking industry; conditions in real estate markets; management, operation and regulation of nationally chartered commercial banks and bank holding companies; and factors which led to bank failures in the 1980s and 1990s. Managing Principal Richard Starfield managed all aspects of the financial and economic analysis in the case. Mr. Starfield worked closely with several testifying experts, including Professors Karl Case of Wellesley College; Dwight Crane of Harvard Business School; Francis Diebold and Anthony Santomero of the Wharton School of the University of Pennsylvania; and James Wilcox of the Haas School of Business of the University of California, Berkeley.

Calpine Corporation Bankruptcy Settlement

Analysis Group client Calpine Corporation received \$97 million and a favorable 10-year gas supply agreement in a settlement of all claims related to the 2005 sale of its oil and gas business to Rosetta Resources. The settlement, which resolved disputes arising from Calpine's bankruptcy, included conveyance of certain residual oil and gas properties to Rosetta. The suit was brought in the U.S. Bankruptcy Court for the Southern District of New York, and was part of a larger bankruptcy case involving Calpine. We supported our experts, who undertook an analysis of Calpine's solvency on the day of transaction and examined its management forecasts.

Credit Default Swaps Analysis in Enron-Related Matter

Analysis Group assessed the impact of a credit default swap on the value of certain trusts set up jointly by our client and Enron Corporation. Following the Enron bankruptcy, investors sued our client, focusing on the solvency of the trusts and claiming they were deceived as to the credit quality of the underlying instruments. Our team, led by Managing Principals Maureen Chakraborty and Marc Van Audenrode, supported our expert, Dr. Michael Koehn, who authored an expert report and was deposed regarding the impact of the credit default swap on the value of the trusts.

Global Crossing Bankruptcy Bondholder Suit

In this matter, an Analysis Group team led by Managing Principal Richard Starfield and Vice President James Rosberg worked on behalf of the defendant – a major investment bank. The plaintiffs originally invested in bonds issued by the telephone company Frontier. When Global Crossing acquired Frontier, it also assumed obligations associated with the Frontier bonds. After Global Crossing's bankruptcy, plaintiffs alleged that the transfer of the bonds was prohibited under the terms of Frontier's bond indenture and our client, the indenture trustee, was liable for damages. Analysis Group supported an expert in conducting a financial analysis demonstrating that the transfer of the bonds was consistent with the terms of Frontier's bond indenture.

Granite Funds, L.P. v. Donaldson, Lufkin & Jenrette

Granite Funds, L.P. and two other investment funds claimed in bankruptcy proceedings that they were subject to improper margin calls. A Litigation Advisory Board (LAB) created in the bankruptcy proceeding sued Donaldson, Lufkin & Jenrette Securities Corporation and several other financial services firms, alleging that the defendant broker-dealers made improper margin calls on the funds and conducted bad faith and commercially unreasonable liquidations of the funds' securities. Working with Friedman Kaplan Seiler & Adelman, and Berlack, Israels & Liberman, counsel for the LAB, Analysis Group

developed analytical models to compute the fair market values of the Funds' portfolios on the margin call and liquidation dates. The Analysis Group case team was led by President and CEO Martha Samuelson and included Managing Principals Nicholas Crew and Gaurav Jetley. Our team worked closely with affiliate Burton Malkiel of Princeton University, a renowned expert in the field of financial economics.

Investor Class Action v. Investment Bank Solvency Analysis

In a case involving a massive credit card securitization fraud, our client, a major investment bank, was granted summary judgment in an action brought against it by a financial services company. The company had charged-off credit card receivables purchased from card-issuing banks and financed its purchases using lines of credit and asset-backed securitizations. The company collapsed into bankruptcy after its massive fraud was exposed. In a related matter, Simpson Thacher retained Analysis Group to analyze the solvency of the financial services company. We also undertook an econometric analysis of the company's portfolio of securitized credit card receivables.

In re Lomas Mortgage USA, Inc. and Martin Pollner, Trustee v. Ernst & Young

In the first of two related cases, Analysis Group supported affiliate Roman L. Weil of the University of Chicago Booth School of Business in the valuation of the pre-bankruptcy assets and liabilities of Lomas Mortgage USA (LMUSA) in a fraudulent conveyance action. Shortly before its bankruptcy, the company had sold a portfolio of purchased mortgage servicing rights (PMSRs) to CDC. The trustee of the creditor committee of LMUSA sought to overturn this sale by showing that LMUSA was already bankrupt. In this action, the Analysis Group team ascertained the solvency of LMUSA at the time of the sale by valuing all of its assets and liabilities of LMUSA, including PMSRs, interest rate swaps, real estate, CMOs, and accounts receivable. Analysis Group also valued certain subsidiaries held by LMUSA, as well as its parent, LFC.

In the second case, Professor Weil demonstrated that, because LMUSA continued to operate after it was insolvent, LMUSA lost assets that it could have used to repay bondholders. Again, Analysis Group valued LMUSA's assets over time and measured the change in cash position.

MCI WorldCom Bankruptcy

Proceedings of the MCI WorldCom bankruptcy, the largest in history, included claims by dissident creditors regarding intangible assets and compliance with the "arm's length" standard within the meaning of transfer pricing rules. MCI WorldCom had charged royalties to its operating companies for the "management foresight" of MCI WorldCom top management, effectively minimizing state income taxes of the MCI WorldCom group of companies. The royalty charged amounted to more than \$20 billion over three years, exceeding the total operating earnings of these companies.

Analysis Group was engaged by the dissenting creditors to provide expert opinion on whether the management expertise and foresight were intangible assets within the meaning of the transfer pricing rules and, notwithstanding how they were considered, whether the royalty rates charged were arm's length. An Analysis Group expert provided analyses in support of the dissident creditors' claims. The bankruptcy examiner's report, which also included assessment of potential back taxes owed by MCI WorldCom, discussed the same issues and was highlighted in national media. The case settled just prior to trial.

Nanovation Technologies v. BearingPoint

BearingPoint (formerly KPMG Consulting) counsel Lord, Bissell & Brook retained Analysis Group to provide consulting and expert witness services in this complex stock valuation suit in the telecommunications sector. Affiliate Robert Sherwin served as the expert witness. Integrated optical solutions provider Nanovation sought bankruptcy relief on July 25, 2001, shortly after the precipitous downtown of the tele-

communications industry. Nanovation charged that then-KPMG's September 20, 2000 valuation of Nanovation stock had failed to properly ascertain the stock's fair market value, had been negligently prepared, and had aided and abetted insiders in breaching their fiduciary duties to Nanovation when those individuals sold their stock to repay loans to the failing company. The trustee for Nanovation sought damages in excess of \$20 million. The United States Bankruptcy Court for the Northern District of Illinois ruled for BearingPoint on all counts of the complaint.

Parmalat-related Securities Litigation

Analysis Group has provided consulting expertise in numerous cases related to the multibillion dollar Parmalat bankruptcy. We have been retained to analyze complex financial transactions and whether they were used in an attempt to prop up the company.

In addition, we have supported our affiliate Peter Tufano of the Saïd Business School in his examination of structured financial instruments at Parmalat. We also have supported an expert in the evaluation of the solvency of various Parmalat entities.

Restructuring

In re Calpine Reorganization

Retained by Kirkland & Ellis, Analysis Group helped Calpine achieve a rare ruling in favor of substantive consolidation – the pooling of the assets and liabilities of separate legal entities for the purpose of calculating creditor distribution. The ruling came after an Analysis Group affiliate showed that substantive consolidation would not disadvantage any of the company's creditors.

Analysis Group supported our affiliate in an examination of the documents filed by Calpine's 274 bankrupt legal entities. More than 1.2 million line items related to Calpine's inter-company transactions were reviewed in order to determine whether the various entities' accounts were entangled and, if so, whether they could be separated in a cost-effective and timely manner. A report was then submitted to the Court in

support of Calpine's Sixth Amended Joint Plan of Reorganization demonstrating that Calpine met the requirements for substantive consolidation as a matter of accounting.

Official Committee of Asbestos Claimants v. G-I Holdings

Analysis Group's client, BMCA, was sued as a result of the bankruptcy of building supply holding company G-I Holdings, from which BMCA was spun out. Through an acquisition, G-I Holdings had inherited an asbestos-related liability that remained with the holding company after the spin-out of BMCA, which subsequently housed the company's operating assets. G-I and BMCA were sued by a creditor group after G-I filed for bankruptcy. We were retained to evaluate issues related to successor liability.

Restructuring of American Airlines

Analysis Group was retained to assist in a matter related to the restructuring of American Airlines Corporation (AMR). We analyzed and modeled the airlines market, and assessed contractual obligations and the potential impacts of bankruptcy. Our work included financial projections and liquidity analysis, assessment of bankruptcy alternatives, and litigation support.

Structuring a Successful Turnaround

Analysis Group worked with a struggling HVAC and refrigerant services company to develop and implement a turnaround plan. Prior growth initiatives had failed to achieve targets. Cash flow was negative, the firm's capacity to tap the equity and debt markets was severely limited, and management needed to improve profitability quickly. Our strategy team worked with senior management and the board of directors to identify and help implement restructuring alternatives. We recommended a series of immediate actions including cost reductions, distribution changes, exiting of unpromising business lines, and improved cash management. The client's business stabilized over the ensuing months and eventually returned to profitability while avoiding a bankruptcy filing. ■

ABOUT ANALYSIS GROUP

Since 1981, Analysis Group has provided expertise in economics, finance, health care analytics, and strategy to top law firms, Fortune 500 companies, global health care corporations, and government agencies. Our work is grounded in a collaborative approach that allows us to integrate the best ideas of leading academic and industry experts and our more than 600 professionals. As a result, our clients receive thoughtful, pragmatic solutions to their most challenging business and litigation problems.



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