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SPECIAL REPORT: **NORTH AMERICA INNOVATIVE LAWYERS**

Legal services

Corporate money troubles are big business for US lawyers

The two largest law firms are in a new arms race moving beyond Chapter 11 advice, to liability management

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There are multiple ways that big companies can run out of money. The variety has inspired lawyers to design ingenious ways to rescue them and solving these puzzles has set off an arms race among top law firms. They are not only concentrating on classical Chapter 11 bankruptcies, but also on how to offer holistic support — jockeying to prove that they can assemble the practices and deliver advice that cuts across restructurings, refinancings, and even M&A.

It should be no surprise then that the two biggest law firms in the world by revenue, Kirkland & Ellis and Latham & Watkins, are now fighting for supremacy in this area. Kirkland, the longtime dominant figure in bankruptcy cases as well as private equity more generally, has capitalised on these advantages to build a market-leading practice in so-called liability management — helping companies restructure debt and raise capital in order to stave off formal insolvency proceedings.

Nipping at Kirkland's heels, however, are several challengers, though no firm has received as much attention as Latham. A series of splashy hires by Latham in the past year, even in a highly active transfer market for corporate workout specialists, alongside its landing of several high profile mandates, has attracted the attention of the legal industry.

Since the start of 2024, Kirkland & Ellis has been hired as debtor's counsel in 22 large bankruptcies, more than any other firm, according to data collated by New Generation Research for the FT.

However, Latham has 10 such assignments, making it the closest contender. This year alone, Latham snagged such blockbuster Chapter 11 cases as semiconductor maker Wolfspeed, landlord Office Properties Income Trust and solar power producer Pine Gate Renewables. Latham has also been involved in representing Goldman Sachs and alternative asset manager TPG with a loan facility for telecoms group Altice USA as well as representing juice maker Tropicana in its debt restructuring.

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> **Stelios Saffos, Latham & Watkins.**

Along the way, law firms are reimagining the kind of advice that their clients require and how best to deliver it. "Clients think in a spectrum of capital," says one top lawyer, adding that to say: "'I'm a bankruptcy guy, I don't think about liability management'. That is a mistake." Equally, the lawyer adds, to say: "'I'm a liability management guy and I don't think bankruptcy'. That is mistake."

A decade ago, a teetering company would conventionally decide to fix its overleveraged balance sheet or cash crunch in bankruptcy. The game was to arrive in bankruptcy court and tell the judge at the customary first-day hearing that the parties had a deal in place, a so-called "pre-packaged" filing complete with a "restructuring support agreement" that detailed the settlement terms between the company and creditor groups.

Kirkland & Ellis mastered this choreography particularly well, expertly assembling consensus among diverse stakeholders and then presenting a clean resolution in a format that became familiar to bankruptcy judges around the country.

However, at least two major changes since then have made formal bankruptcy less relevant. First, covenant-lite debt — loan agreements with fewer structural protections for the creditor that have been prevalent since the financial crisis — mean that fewer companies formally default on loans and bonds.

And second, a deep public and private capital market allows companies to use flexibility in their debt agreements to raise fresh capital in the form of senior debt, which ranks in priority above other creditors, without having to first formally file for Chapter 11.

As it has unfolded, Kirkland & Ellis has been a key player in these kinds of liability management matters, benefiting from existing strengths in private equity, traditional restructuring, and financing documents. Kirkland has this year alone represented such clients as Altice USA, Warner Bros Discovery and luxury retailer Saks on multibillion-dollar liability management situations.

Still, the demand for distressed debt legal advice has created an opening for new players. Firms such as Davis Polk, Gibson Dunn and Akin Gump increasingly represent hedge fund and other asset manager groups that are seeking to cut deals with debtor companies and their advisers.

Law practices a decade ago tended to be far more siloed, with law partners keeping their own client lists and books of business, lawyers explain. Identifying companies that might have financial difficulties as early as possible was seen as crucial, they say.

"We are [now] approaching our client relationships as strategic advisers, whether we're representing companies or investors across their portfolio of long-term investments. Each client has multiple points of contact across our integrated practices, and we're able to deliver scaled advice and market intelligence," says Stelios Saffos, partner and global chair of Latham's capital markets and hybrid capital practices.

Latham's recent high profile hires include Ray Schrock, who previously led the heavyweight restructuring group at Weil, Gotshal and Manges, John Sobolewski, a financing expert from Wachtell, Lipton, Rosen & Katz and Ryan Dahl, who led restructuring at Ropes & Gray.

Many putative rivals are former Kirkland lawyers themselves, including the recent Latham hires Schrock and Dahl. Kirkland partners now also lead restructuring practices at the likes of Sidley Austin and Willkie Farr & Gallagher.

"We remain vigilant and are always striving to improve our team and product. Losing some partners along the way is not only inevitable but we take pride in the fact that almost all of our competitors are chaired by former colleagues," says Edward Sassower, co-leader of the Kirkland restructuring practice.