



Energy Commodities Trading, Hedging & Marketing Practice

Trans-Atlantic - Counterparty Insolvency Practice

Complimentary Guidance on Lehman Brothers Bankruptcy and Other Significant Financial Events

As a result of Lehman Brothers bankruptcy and other similar significant events in the financial sector, we have been contacted by a number of existing and new clients and colleagues (including utilities, energy trading companies, and financial institutions) requesting assistance with dealing with the potential and actual insolvency of their energy trading counterparties. Many of them have indicated a need for some general guidance on dealing with this type of situation.

In response we have been providing our clients with a comprehensive presentation prepared by John Varholy (the head of the firm's Energy Commodities Trading, Hedging and Marketing Practice Group) specifically addressing the handling of situations like the Lehman Brothers bankruptcy through practical advice based on years of experience in guiding clients through these murky waters. John Varholy presented a similar tutorial at the International Energy Credit Association's 2007 Annual Meeting.

Feedback from recipients has been very positive and we have been told that it is a useful guide in current circumstances as well as a good means of helping them perform an analysis of the options available to them as the non-insolvent party, contains useful recommendations for in-house legal counsel, and provides a good summary of the type of numbers to run and other factors necessary to calculate and evaluate exposures in determining whether or not to terminate contracts.

If you believe that such a presentation would be useful to you and your business, please do contact us at the address given below and we will be happy to send you a complimentary copy.

Overview of Troutman Sanders' Bankruptcy Practice Group - Counterparty Insolvency

Troutman Sanders' Bankruptcy Practice Group in the USA consists of 22 full-time bankruptcy practitioners and litigators (including a retired federal bankruptcy court judge) and numerous other specialists from related practice areas (such as lending and structured finance, commodity and derivative trading and regulation, UCC transactions, debt financing, project development and finance, securities litigation, and real estate) who all have legal expertise and experience in bankruptcy matters.

A large number of these practitioners and litigators are located in the firm's New York office, located in the Chrysler Building, and all have years of hands-on experience with all aspects of the NY Bankruptcy Courts, their rules, procedures and other characteristics.

Our NY based bankruptcy practitioners include Hollace Cohen, a leading expert in bankruptcy law as it applies to energy trading contracts and counterparty insolvency risk. Extremely unique for a U.S. based and licensed bankruptcy law expert, Hollace has a thorough understanding of European energy trading contracts gained through her work in producing memoranda under the U.S. Bankruptcy Code and under U.S. and New York State banking laws for the European Federation of Energy Traders (EFET) in respect of the enforceability of the early termination and close-out netting provisions of the EFET Master Electricity and Natural Gas Trading Agreements as well as of the EFET Cross Product Master Netting Agreement. Hollace also authors on behalf of other European based energy trading companies and banks, similar netting memoranda on numerous trading



contracts employed in the North American energy trading markets, such as the EEI Master Power Purchase and Sale Agreement, its NAESB-based Natural Gas Annex and related trading documentation.

Lawrence Swift, who co-authors the EFET memoranda with Mrs. Cohen, represents banks and other financial institutions with interest rate swaps, caps, collars, equity and energy swaps, using International Swaps and Derivative Association (ISDA) and EFET forms as well as custom documentation. He also specializes in workouts and asset recovery, both negotiated and judicial and strengthening secured positions. He has authored several commercial finance treatise chapters regarding UCC security interest legal opinions.

Troutman Sanders long-standing, broad-ranging, US bankruptcy law experience includes representing secured creditors, unsecured creditors, debtors-in-possession and creditors' committees. Troutman Sanders attorneys have sat on numerous creditors' committees and have extensive experience in negotiating, formulating and drafting plans of reorganization in complex bankruptcy cases. The firm also represents clients in litigating adversary proceedings under the Bankruptcy Code.

While a list of significant bankruptcy matters handled by the firm on a global basis is far too long to list here, some examples of recent representations:

- Representation of the Ad Hoc Committee of Yosemite/CLN Noteholders in the Enron Corp. et al. chapter 11 cases. The Yosemite/CLN Notes were secured by credit default swaps. The credit default swaps resulted in net termination claims against Enron North America Corp. ("ENA") and guaranty claims against Enron Corp. Hollace Cohen was instrumental on our clients' behalf, in the formation of the ENA Subgroup and participated as a member of the ENA Subgroup in negotiating Enron's plan of reorganization. Ultimately, our clients' claims against Enron and ENA recovered more than 90 cents on the dollar
- Representation of numerous utility, energy trader, IPP and industrial clients in resolution of various claims in the Enron Corp. et al. chapter 11 and other bankruptcy cases
- Representing Alliance Energy Renewables, LLC in the Mirant Corporation, et al. chapter 11 cases, in Alliance's acquisition of the 100% membership interest in Mirant NY-Gen LLC, the owner of five power plants in upstate New York
- Representing several utilities in the Calpine Corporation, et al. chapter 11 cases in respect of numerous relationships with Calpine debtors, including tolling agreements, power purchase agreements and trading contracts. In the Calpine case, we successfully negotiated revisions to the order regarding the honoring of trading contracts to address our client's rights under its power purchase agreement; we advised another client in the exercise of its rights with respect to letters of credit securing a tolling agreement; and we caused Calpine to include amendments to its plan of reorganization to carve-out our clients from plan provisions which would have impinged on their rights of set off after confirmation of the plan
- Representation in the Calpine chapter 11 cases of an affiliate of The Southern Company in the auction of a partially completed power plant. As a result of our efforts, our client received a bidding incentive fee of several million dollars even though it did not acquire the power plant
- Representation of The Southern Company in the \$60 million purchase of natural gas customers in the New Power Corp. Chapter 11 case



- Representation of Iroquois Gas Transmission in its pipeline claims in both the Enron Corp. and U.S. Gen chapter 11 cases
- Representation and advice to several U.S. and European utilities, trading companies and insurance companies, in connection with their trading contracts with various Lehman debtor and non debtor affiliates that were guaranteed by Lehman Brothers Holdings, Inc.
- Representation of numerous banks in loan workouts and restructurings
- Representation of numerous borrowers in loan workouts, restructurings, forbearances and DIP financings

For further information or assistance, please contact either:

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