

# Insolvency-Related Directors and Officers (D&O) Litigation

## Overview

Corporate success depends on the ability of senior management to achieve short-term milestones, all while implementing long-term strategic goals, balancing investors' competing interests, adapting to a rapidly evolving digital world, overcoming shifting industry dynamics, and managing global economic cycles. Despite the best efforts of competent and well-meaning directors and officers, businesses and other organizations still fail from time to time.

When companies falter, disgruntled owners, investors, creditors, and customers will often raise claims of mismanagement by senior executives and board members, particularly when insurance may be available to fund recoveries. As a result, directors and officers are common targets for breach of fiduciary duty or similar claims, particularly in bankruptcies, reorganizations, and other insolvency proceedings in which the trustee and other stakeholders are looking to hold senior management accountable.

In the midst of legal turmoil and corporate failure, directors and officers need experienced counsel to help them navigate through complex legal claims and defenses while minimizing their exposure and protecting their reputation and relationships.

Our clients benefit from Carlton Fields' multidisciplinary approach, by combining the experience of our D&O litigators with expertise from lawyers in our corporate governance, white collar, and securities and derivative litigation practices. Additionally, our property and casualty lawyers routinely handle complex coverage issues on behalf of insurers under D&O, errors and omissions (E&O), employment practices liability (EPL), and other professional liability policies.

Carlton Fields' D&O litigation team has represented individuals, corporations, majority shareholders, management teams, boards of directors, and special committees of public and privately held corporations, not-for-profit organizations, and family-owned businesses in all aspects of dispute resolution, including:

- Board advisory during financial crisis
- Pre-suit mediation
- Strategic advice and counsel
- Insolvency
- Corporate governance

- Derivative suits
- Internal investigations

Our firm lawyers are active with the ABA's Business Law Section and the Society for Corporate Governance. Our team also includes the chair of the ABA Corporate Governance Subcommittee for Business Bankruptcy, former federal prosecutors, and former SEC staff.

## Experience

- *In re Health Support Network & Brides Against Breast Cancer LLC*, No. 8:15-bk-10969 (M.D. Fla. 2021). Defended board of well-known not-for-profit against claims of breaches of fiduciary duties and obtained bar order.
- *In re Treatment Center of The Palm Beaches, LLC* (S.D. Fla.). Obtained approval of settlement and bar order in favor of former executive of rehabilitation center.
- *Allied Aerofoam Prod., LLC* (2021). Obtained one of Florida's first bar orders in chapter 727 assignment for the benefit of creditors statute.
- *In re Avantair Inc.*, No. 8:13-bk-09719 (M.D. Fla. 2020). Defended six former officers of a bankrupt public aviation company against claims exceeding several hundred million dollars.
- Counsel to principal owner and director of Turnberry and Fontainebleau entities in officer/director and related litigation involving the Fontainebleau Las Vegas Hotel and Casino.
- Representation of partner in a dispute involving a signature Northeast Florida waterfront retail center.
- *Temple v. Gorman*, 201 F. Supp. 2d 1238 (S.D. Fla. 2002). Obtained dismissal with prejudice of claims against individual client in a multiparty suit asserting federal and state securities law violation claims arising from investments in a startup dot-com entity.
- *Warner v. Wireless Broad. Sys. of Am., Inc.*, No. 8:96-cv-02214 (M.D. Fla. 2000), *aff'd*, F.3d (11th Cir. 2001). Obtained summary judgment for client in a breach of contract/Florida Securities and Investor Protection Act case, which was upheld by the Eleventh Circuit Court of Appeals, resulting in an award of attorneys' fees to defendant client.
- *Molenda v. Hoechst Celanese Corp.*, 60 F. Supp. 2d 1294 (S.D. Fla. 1999), *aff'd*, 212 F.3d 600 (11th Cir. 2000). Obtained summary judgment and directed verdict for a client in a breach of contract/defamation/Florida Whistleblower Act/ADEA case, which was upheld by the Eleventh Circuit Court of Appeals, resulting in an award of attorneys' fees to defendant client.

- *In re Latitude 360, Inc.*, No. 3:17-bk-00086 (Bankr. M.D. Fla. May 29, 2019). Obtained approval of a settlement that includes a bar order precluding claims against our client's insureds, allowing our client to preserve almost 40% of a D&O policy it issued.
- Negotiated full settlement, release, and bankruptcy court bar order against future claims for directors and officers of one of the largest former bridal retailers in the United States.

## Insights

02.20.2024

Best Practices for Officers, Directors, and Advisers Navigating Fiduciary Challenges Amid Economic Uncertainty

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## Our Team

## Key Contacts



Alexandra D. Blye

SHAREHOLDER

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☎ 561.650.8016



Steven J. Brodie

SHAREHOLDER

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☎ 305.539.7302



David L. Gay

SHAREHOLDER

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☎ 305.539.7265



Donald R. Kirk

SHAREHOLDER





Aaron S. Weiss

SHAREHOLDER

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