

DAILY BUSINESS REVIEW

BANKRUPTCY

Massive mediation effort resolves bulk of Touse claims

Howard Berlin and
Kristopher Aungst
Berger Singerman

The law firm's bankruptcy team spent 18 months filing lawsuits against contractors associated with Hollywood-based home-builder Touse and then, in a massive mediation effort ordered by the bankruptcy judge, individually settled 99 percent of the actions.

Touse filed for bankruptcy reorganization in January 2008.

By January 2010, partner Howard Berlin and associate Kristopher Aungst had winnowed the field of Touse's potential preference claims to 1,700 suits seeking to recover \$250 million from vendors and other creditors that received payments from the builder.

Under bankruptcy law, a debtor can demand the return of payments made to creditors in the 90 days preceding a bankruptcy filing if it can show the creditor pressured the company to pay its bills even though it knew of its financial trouble.

"We are talking about a company that did literally billions worth of business around the country and we had to parse through thousands of relationships and whittle it down," said Berlin.

They went after builders, concrete foundation companies, hardware suppliers, tile companies, plumbers, electricians, cleaners, advertising venues and more. "They were every possible person who supplies any kind of product that goes into a house," Berlin said.

"During the heart of this Kris and I were doing two or three mediations per day for months. It started in June 2010 and finished in the first quarter of 2011."

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Berger Singerman partner Howard Berlin and associate Kristopher Aungst guided a massive mediation effort ordered by the bankruptcy judge and settled 99 percent of the actions.

He said settlements ranged from as little as 5 percent to 100 percent of what was owed. The suits averaged between \$50,000 to \$300,000.

Some mediations took only a few hours; some of the multimillion-dollar matters entailed multiple mediation sessions and went on for months.

The firm said 99 percent of the suits were successfully mediated.

Patricia Redmond, a partner at Stearns Weaver Miller in Miami,

which represents the Touse creditors committee, told the Review the process of the mediation "was an unbelievably expeditious way for them to get through the 1,500 or 1,600 claims. On all accounts it was positive."

Berlin said the mediations were at times very difficult because the amount of hardship so many contractors had experienced with their businesses.

"If one thing permeated this case it was the magnitude of the fallout on the single-family home-building industry from this recession," said Berlin.

"When you sit across from someone who tells you they took over the business from their parents who ran it for 40 years, and then they ran it for 20 years and everything they worked for is now gone, how do you fit that into the reality of what you are to recover for the estate? We allowed them to submit financial statements to justify it, so we could say, you probably owe 100 percent, but you only have the ability to pay 10 percent."

The overall Touse bankruptcy case continues to churn on. Some of the company's properties have been sold at court-supervised auction. A reorganization plan is on hold pending appeals in the U.S. District Court.

When Touse filed Chapter 11, it listed assets of \$2.1 billion and debt totaling \$2 billion.