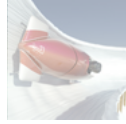


# CASE STUDIES

# PreTiFlaherty 2009/10 ANNUAL REPORT

Click on a  
thumbnail  
to view the  
case study



## A Push for the U.S. Bobsled Team

It was one of the big feel-good stories of the Vancouver Olympics. The U.S. four-man bobsled team won a gold medal for the first time in six decades. But it might never have happened if a last-minute lawsuit hadn't successfully been fended off by our Sports Law group.

In the bobsled competition, where mere hundredths of a second can separate winners from losers, the three "push athletes" who sit behind the driver can mean the difference between a gold medal and no medal at all. The team needs nine of these push athletes to compete in the various events, and the U.S. Bobsled Federation uses a rigorous 12-part selection process to choose them.

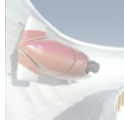
So when four other push athletes who had been left off the team brought a claim challenging the Federation's selection criteria, it threatened to interrupt—at the eleventh hour—the precise timing and training regimen necessary for the team's success. As counsel for the nine "Affected Athletes" already on the team, we wanted to make sure this didn't happen.

The four plaintiffs proposed, as an alternative remedy, a race-off against our clients. We argued successfully that such a race-off on the eve of the Games would be not just unfair to the athletes on the team, but highly disruptive of the entire team's chances of victory. We were able to convince the arbitrator that the selection procedure was completely rational and should therefore be respected. As a result, our nine clients kept their places on the team. The rest is history.

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# PreTiFlaherty 2009/10 ANNUAL REPORT

Click on a thumbnail to view the case study



## Giant Bankruptcies Felt at the Local Level

Our Franchise and Bankruptcy attorneys helped dealers navigate their franchise agreement during historic manufacturer bankruptcies.


## Turning Oil Tanks into Art

Sprague Energy's tank farm is a lynchpin of the local economy, but it will never be anyone's favorite view of Portland Harbor. So when our pro bono client, the Maine Center for Creativity, approached Sprague about making art from those tanks, there was something in it for everyone. The arts' community would get 261,000 square feet of "canvas" to work with. Sprague would get to put a more appealing face on some of its oil tanks. And the people of Portland would get a considerable upgrade on their view of the harbor.


And so, the "Art All Around" project was born, and our Intellectual Property group was right in the thick of it. We helped create and administer the design competition that attracted 560 submissions from artists in 73 countries. We protected the organization from potential trademark issues, and gave them the means to use all artistic submissions for other purposes. We registered the Art All Around trademark and we even helped purchase the URL "artallaround.com," which had been owned by another organization.

The \$20,000 prize was won by Jaime Gili, a Venezuelan artist now living in London, who is currently in the process of transforming the second of five tanks, making this the largest public art canvas ever created on an industrial site.

The project represents a unique collaboration between the public and private sectors, using corporate funding to join the energy infrastructure to the arts community. It all serves to position Portland as a



*“An A+ in all areas’, the team has a trial-ready reputation – with one client praising its ‘creativity and attention to every detail of the court proceeding.’”*



– *Legal 500 US*



#### ● What a red handkerchief showed the jury

- His trial lasted two-and-a-half months. He was facing up to 70 years in prison. His four co-defendants were convicted of conspiracy, fraud, and tax evasion. To make matters worse, the prosecution’s star witness, testifying under a plea bargain, was the very person who had originally gotten him into this business — selling tax shelters he’d thought were legitimate.

Yet R. Craig Brubaker emerged from court acquitted of all charges. Our attorneys used an unusual tactic — the now-famous “red handkerchief” — to convince the jury that Mr. Brubaker had truly believed in the tax shelters he had marketed from 1995 to 2005. We were able to show that he had been as much a victim of the scheme as the taxpayers who bought the shelters.

Mr. Brubaker is a former broker for Deutsche Bank in Dallas. He and his co-defendants were accused of designing and marketing fraudulent tax shelters, generating over ten years more than \$7 billion in false tax losses. From the start, our attorneys set out to articulate for the jury a theory of our client’s innocence.

A key component of our successful defense was our four-day cross-examination of the government’s star witness, with whom our lead attorney used a red handkerchief to elicit a recreation of the sales pitch used by the witness — an experienced tax attorney — to persuade many, including Mr. Brubaker, that these transactions were legal. The handkerchief served to delineate two separate personas our attorney was adopting in order to make a serious point to the jury.

When the handkerchief was in his lapel pocket, he played the role of a potential client hearing and responding to the sales pitch. When the handkerchief was removed, he resumed the role of lawyer, deftly showing the jury that the pitch had been convincing, not just to Mr. Brubaker, but to many lawyers, accountants, and financial planners as well — none of whom would have signed off on a tax strategy they thought illegal.

From that point on, it was clear that our client had been led to believe in the efficacy of the tax shelters, and that he had acted in good faith in transactions with his buyers. The jury understood this, and acted accordingly.

*The firm was named in the top tier of litigation firms in New York, and nationally, as a leading litigation firm in the areas of commercial litigation, intellectual property and white collar criminal defense.*

*– Benchmark Litigation, 2008-2013*



#### ● **Sirius XM sued by its own star**

- By the time radio icon Howard Stern's five-year contract had run its course, our client Sirius XM Radio had already paid him over half a billion dollars in cash and company stock. When he sued Sirius for another \$300 million, Sirius turned to the same litigation team that had successfully defended it in the past.

The suit concerned the performance-based compensation provision in Stern's contract, which entitled Stern to receive awards of \$75 million in stock if certain subscriber growth targets were achieved. This provision was honored to the letter. But with Sirius' 2008 merger with XM Satellite Radio, Stern contended that XM's 10 million subscribers should be counted as "Sirius subscribers" for purposes of performance-based compensation — entitling him to an additional \$300 million.

Sirius contended that the unambiguous language of the contract proved that, when the parties entered into the contract, they did not intend for XM subscribers to be counted as "Sirius subscribers"; only those receiving Sirius' satellite radio service were to be counted as "Sirius subscribers." On behalf of Sirius, we filed a motion for summary judgment to dismiss the complaint. In April 2012, the Commercial Division of the N.Y. Supreme Court, New York County, granted Sirius' motion and dismissed the complaint with prejudice. Stern has appealed this decision to the Appellate Division, First Department.



### ● Complexity and collaboration in the St. Vincent's bankruptcy

- It was a healthcare bankruptcy of unprecedented complexity. The financial woes of St. Vincent Catholic Medical Centers were already far advanced when the recession sharply curtailed both government funding and charitable donations. Unable to secure a new sponsor to continue its main hospital operations, and having exhausted its access to emergency funding, they were forced to close their historic hospital in Greenwich Village and file for bankruptcy protection.

When we stepped in as debtors' counsel, we needed to balance the often conflicting interests of the hospital's creditors with those of the patients, staff, and the community at large. Any solution required recognition of St. Vincent's charitable mission — a mission that dates back to 1849. It was imperative that the Village hospital be closed in an orderly fashion that protected patients, while continuing the operation of a number of other services that remained viable — including a major behavioral health hospital and three nursing homes — until new sponsors could be found.

The entire process was, for us, a cross-disciplinary collaboration, involving attorneys from our Bankruptcy, Real Estate, Corporate/M&A, Employee Benefits, Environmental, and Tax practices.

Working closely with all stakeholders, we succeeded in confirming a Chapter 11 plan that assured administrative solvency, which had been at risk at various points during the case. The plan allowed for repayment in full of all secured lenders and administrative and priority claims, while providing a substantial recovery for employees, pensioners, and medical malpractice trusts. This process was accomplished through the sale of several of the health system's numerous going concerns services — which not only preserved jobs and patient care continuity, but realized substantial proceeds as well. Finally, we negotiated the unprecedented \$260 million sale of St. Vincent's West Village campus to the Rudin Family and North Shore Long Island Jewish Medical Center, for the creation of a mixed-use residential project that includes the first stand-alone, 24-hour emergency and ambulatory surgery facility in the New York metro area.



### ● A world-class arena for Brooklyn

- The enthusiasm for the recently opened Barclays Center has been overwhelming. From its opening night concert featuring Jay-Z, the arena has quickly become one of the most prestigious entertainment venues in the region, if not the world. Home to the NBA's renamed Brooklyn Nets, the arena stands as a visible symbol of Brooklyn's rebirth.

The arena stands next to Atlantic Terminal, a vital transportation hub where the Long Island Rail Road and eleven subway lines converge. The area is bisected, however, by the open pit that holds the rail yard, and numerous deteriorated buildings immediately south of this yard were a blight on the area.

Barclays Center is the first of 17 buildings which will redevelop and revitalize a 22-acre site — part of the ambitious Atlantic Yards project. Phase I of the project comprises new infrastructure (including a new subway entrance and new rail yard), the Barclays Center itself, and five other buildings. Phase II of the project calls for a platform to cover the rail yard, eleven more residential buildings, and eight acres of open park space.

The project is being built by our client, Forest City Ratner Companies LLC, under the auspices of Empire State Development Corporation, a public benefit corporation of New York State whose mandate includes the rehabilitation of derelict areas.

From its inception, the Atlantic Yards project has been controversial. Subject to one of the most extensive public review processes in the City's history, multiple litigations were brought by project opponents even before that process was completed. The deluge of litigation — which continued after the project's final approvals — challenged the demolition of buildings found to be in danger of imminent collapse, the use of eminent domain, the adequacy of ESDC's Environmental Impact Statement for the project, and numerous other aspects of the project. We served as lead litigation counsel to Forest City Ratner in the successful defense of all of these suits.

Even then, things didn't run smoothly. The recession, combined with the delays resulting from litigation, led to certain minor modifications of the project. Approval of these modifications led to another wave of litigation by project opponents. While these suits failed in their effort to halt work on the project, they did lead to a court decision requiring ESDC to prepare a Supplemental Environmental Impact Statement for Phase II of the project.

Phase I is unaffected by this ruling and continues to move forward. With the opening of the Barclays Center and the arrival of the Nets, the City can now see the tangible benefits of this project. Despite the long struggle, we are proud of our role in making it happen.



### ● What other assets can be securitized?

- In the unending search for new and novel investments, our clients regularly turn to our Securitization group for help with the design and marketing of those arcane securities known as “esoteric” asset-backed securities (ABS).

The importance of these types of securities has grown in recent years. They performed well during the financial crisis, and investors were rewarded — in terms of yield and performance — for being active participants in their development. Moreover, as the collapse of the credit markets caused many traditional credit sources to dry up, we have seen a boom in the acquisition and formation of specialty lenders by private equity investors, many of whom are clients of ours. This confluence of pent-up demand and financial sophistication has resulted in significant innovations — esoteric securitization being a shining example.

Esoteric ABS can be defined, at least somewhat, by what they are not. They are not stocks and bonds. They are not the traditional “big four” securitized assets — auto loans, credit cards, student loans, and residential mortgages — the last of which imploded so spectacularly. Nor are they “structured finance” vehicles, such as collateralized loan obligations (CLOs) and collateralized debt obligations (CDOs), though our esoteric specialists frequently get involved with those as well.

Virtually any other financial asset with a dependable and predictably timed cash flow may be considered a reasonable candidate for an esoteric securitization. These may include assets as diverse as lottery winnings, Chapter 13 consumer receivables, vacation timeshare loans, structured litigation settlements, even the licensing of patents, trademarks, and copyrights.

Our securitization attorneys have long been in the forefront of turning these assets into marketable securities, and have done a significant number of first-of-a-kind transactions. We usually play a major role, acting as capital markets counsel to the investment banks, large investors, and issuers who put these highly complex deals together. These include deals in the clean energy space — solar, in particular. They include government receivables related to the installation of energy efficiency projects on military bases. We have even done deals that monetize intellectual property such as music and film royalties.

We’ve also been involved in what we consider to be the next big thing in the field: using securitization in the context of financing M&A transactions. In the first such deal of its kind, we successfully securitized the licensing revenue of a major fashion designer, allowing the proceeds to be used in a management buyout of the company.

We have been doing these esoteric transactions longer than anyone, so wherever the field goes next, our clients can count on us to be with them on the frontier. They know our history, they know our reputation, and they know we have the creativity necessary to structure the deals, document them, and get them into the market.



# A Chinese Stake in Hollywood



[Lindsay Conner \(/People/Lindsay-Conner\)](#)  
Partner | Co-Chair, Entertainment and Media



[Sophia K. Yen \(/People/Sophia-K-Yen\)](#)  
Partner | Entertainment and Media

As film production has grown both more complex and more expensive, Hollywood has looked to a number of non-traditional financing sources—hedge funds, private equity and venture capital—to take up much of the slack.

Add to this the emergence, only recently, of Chinese film companies wanting to invest in Hollywood productions. One such company, Perfect World, looked to Manatt to help reach a deal with Universal Studios for a significant stake in a slate of 50 films. The deal—reportedly worth \$500 million—is the largest direct investment ever by a Chinese company in the films of one of the six major studios.

For Perfect World, the deal was strategic as well as financial. The partnership with Universal raised their profile worldwide and provides insight into the workings of the global film industry. Manatt, having already negotiated several such China-Hollywood co-financing deals, was ideally positioned to bridge the business cultures of China and Hollywood. Our thorough knowledge of the entertainment landscape, coupled with our ability to work with a diverse array of parties to create a win-win result, proved to be invaluable resources for Perfect World as the deal moved forward.

#### **Client**

Perfect World Pictures Co., Ltd

#### **Service Type**

Cross Border (/search/work?searchtext=&servicesfilter=20), Entertainment Finance (/search/work?searchtext=&servicesfilter=24)

#### **Industry**

Entertainment & Media (/search/work?searchtext=&industryfilter=32), Motion Picture / TV / Radio (/search/work?searchtext=&industryfilter=60)

#### **Office**

Los Angeles (/Corporate/Offices-Landing/Los-Angeles)



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# Two Joint Ventures, Eight Regional Shopping Centers, \$5.4B on the Table



**Tom Muller** (/People/Tom-Muller)  
Partner | Co-Chair, Real Estate



**Anita Sabine** (/People/Anita-Sabine)  
Partner | Real Estate

In a series of exceptionally complex deals, Manatt orchestrated the formation of two joint ventures involving major stakes in eight regional shopping center properties. Our client, The Macerich Company, sold a 40 percent interest in five regional centers to GIC, the sovereign wealth fund of Singapore. At the same time, they sold a 49 percent interest in three centers to Heitman LLC, a real estate investment firm. The eight properties together have a reported value of \$5.4 billion.

The unusual complexity was evident from the start. As an offshore investor, GIC was subject to an array of arcane tax rules limiting its ability to own and control any joint venture. This necessitated a complex REIT structure that would allow GIC to invest in the business without tripping unnecessary tax liability. But first, several of the portfolio properties needed to be repositioned — either into or out of existing joint venture structures. These repositionings were delicate transactions in themselves, structured to minimize transfer taxes and gain recognition.

The deal was also an exercise in coordination. With three major parties and eight properties in play, it was up to us to coordinate a large group of professionals on both sides of two different tables, assuring that the myriad tax, real estate, financing and business concerns were all addressed in appropriate and timely ways.

Macerich had no hesitation about handing the job to Manatt. Having been through many deals with us, they knew we were more than capable of seeing highly complex multibillion-dollar transactions through to conclusion. And they knew we would make sure that for all three parties, the result would be a win-win-win.

## **Client**

The Macerich Company

## **Service Type**

Real Estate Partnerships & Joint Ventures ([/search/work?searchtext=&servicesfilter=59](#))

## **Industry**

Real Estate ([/Real-Estate](#)), Commercial Property Owner / Manager ([/search/work?searchtext=&industryfilter=15](#)), Developer ([/search/work?searchtext=&industryfilter=19](#)), Equity REITS ([/search/work?searchtext=&industryfilter=34](#))

## **Office**

Los Angeles ([/Corporate/Offices-Landing/Los-Angeles](#))

# PretiFlaherty 2009/10 ANNUAL REPORT

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case study



## A Declaration of Energy Independence

To the people of Vinalhaven and North Haven, energy independence is no longer an abstract concept. The two islands off the coast of Maine are about to get all their power from something they have in abundance: wind. Instead of continuing to pay twice what the mainland pays for electricity, the residents of both islands will soon see their monthly bills go down substantially.

Our client, the Fox Islands Electric Cooperative of Vinalhaven, installed three 4.5-megawatt wind turbines, enough to supply power to both islands, with enough left over to sell back to the mainland grid via an undersea cable.

The Cooperative turned to us to help with the commercial negotiations, including those with the project's tax equity investor. We also advised on both state and federal energy regulatory matters.

With all the talk of renewable resources and sustainable energy, it is especially gratifying to see some of these ideas become an everyday reality. We believe this project can serve as a model for other communities with access to offshore wind, and it underscores our ongoing interest in putting Maine in the forefront of wind-powered energy.

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