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BANKRUPTCY

Stuart Singer and Damien Marshall Boies Schiller & Flexner

Unprecedented attempt to hold directors responsible thwarted

Miami-based Far & Wide Travel, which acquired and combined high-end global travel companies, struggled to stay in business after the 2001 terrorist attacks when fears, two wars, heightened world tensions and other dangers caused international travel to decline.

Company owners borrowed more money to keep the business afloat. But they filed for bankruptcy in September 2003.

In March 2007, bankruptcy trustee Barry E. Mukamal sued Far & Wide's former directors for \$150 million, claiming they breached their fiduciary responsibilities and deepened the company's insolvency to creditors by not filing for bankruptcy protection sooner.

It was unprecedented to hold company directors personally and financially responsible to creditors for a firm's demise.

The directors hired Fort Lauderdale bankruptcy attorneys Stuart Singer and Damien Marshall of New York-based Boies Schiller & Flexner to represent them and to devise a strategy to defeat the bankruptcy trustee's unique and untested effort.



MELANIE BELL

Stuart Singer, left, and Damien Marshall said the ruling will help shield officers and directors who are making legitimate attempts to protect their companies in tough economic times.

In November 2007, U.S. District Judge Alan Gold in Miami granted a motion to dismiss Mukamal's first complaint against the directors but gave him a chance to refile, which he did a year ago. Stuart and Marshall filed another motion to dismiss, and Gold granted it with prejudice last May. The company's directors were off the hook.

Stuart said the ruling will help shield officers and directors who are trying to protect their companies, and the interests of stockholders, in challenging economic times. Company officers "will not face undue litigation

threats" for making legitimate attempts to save their companies.

He said he viewed the case as "an unprecedented effort to apply Florida's unfair and deceptive trade practices act in a way it had never been applied." Marshall said Gold's ruling "clarifies that a corporate board is not going to be held personally liable" for trying to save the company.

"Even when a company is in danger of insolvency, there remains an obligation to act in the best interests of the shareholders," Stuart said. That is what he insisted Far & Wide's directors did.

The judge's ruling supported their view, essentially saying that company executives should not be held personally liable when trying to protect the interests of company stockholders even if those efforts conflict with what may be in the best interests of company creditors, whose interests the bankruptcy trustee was

charged with protecting.

Miami attorney Robert Josefsberg of Podhurst Orseck, one of several attorneys who represented bankruptcy trustee Mukamal in the suit, complimented Singer's work on the case, which Josefsberg said he still hopes to win on the pending appeal. "Stuart did a superb job" representing Far & Wide, Josefsberg said of Singer, who argued both successful motions to dismiss. "He always does."ⁿ

— Bud Newman