

OCEAN TOMO

# BANKRUPTCY & INSOLVENCY LITIGATION



When a company is facing financial distress, or worse, has reached the point of bankruptcy or insolvency, there is a critical need for expertise, flexibility, and integrity from those providing service to the company and its counsel, creditors and counterparties. Those professionals must also possess the unique skill set that comes from significant experience in bankruptcy and solvency matters. These qualities are embodied in the professionals at Ocean Tomo.

Ocean Tomo professionals have assisted distressed companies, their counsel, receivers, and regulators. Our bankruptcy and insolvency litigation engagements have included, but are not limited to, the following:

- » assessing the causes of financial distress, bankruptcy and/or insolvency
- » performing analysis and evaluation of potential fraudulent conveyance and preferential transfer, clawbacks and other matters of asset recovery
- » performing valuations of businesses and/or their remaining assets, including intellectual property (IP) and other intangible assets
- » valuation to support the allocation of sales proceeds
- » advisory and valuation to support structuring and transfer of IP rights to be used as security for new debt
- » evaluating the business operations of a company out of compliance with loan requirements
- » investigating fraud and other misconduct by management or employees
- » assessing the conduct of third parties that potentially caused, or failed to prevent, the financial hardship of the distressed company

Companies facing financial distress and turmoil are operating under enormous pressure, facing complex and confidential matters, and typically face time-sensitive deadlines. Ocean Tomo professionals are uniquely able to respond swiftly with technical expertise and a professional demeanor to assist these companies and their counsel navigate the complexities surrounding litigation and bankruptcy as well as other restructuring-related matters.

Our engagements have included providing expert testimony and consulting services regarding liability matters and potentially resulting economic damages. We routinely work with regulators and receivers in bankruptcy and insolvency matters and are actively involved in organizations that serve those practitioners.

## Featured Engagements

Our track record of results spans numerous different industry segments. Because our past success provides the best indication of our capabilities, we are proud to feature a few representative engagements and encourage potential clients to seek references from past clients.

### Fraudulent Transfer Dispute for International Insurance Company

Engaged on behalf of an international insurance company regarding a dispute arising from claims of fraudulent transfer and involving complex business transactions including evaluation of a billion dollar reinsurance agreement, issues of asset valuation, and goodwill and impairment thereof. Services included deposition and trial testimony.

### Auditor Malpractice, Insolvency Calculation and Clawback Claims in Bankruptcy Engagement

Engaged to evaluate malpractice claims against the auditor of several large bankrupt publicly traded companies that had been engaged in banking, brokerage, insurance and lending services. We evaluated accounting and auditing practices, particularly related to franchise fee revenue recognition and the allowances for uncollectible loans, and determined the extent of entities' insolvency. Ocean Tomo was subsequently engaged by counsel for the bankruptcy trustee to extract and analyze millions of transactions from the company's management system to support clawback claims against insurance carriers, franchisees, securitization trusts, banks and other financial institutions.

### Statutory & Forensic Accounting Consultation to Receivers and Liquidators

Engaged by counsel for several different state insurance departments in their roles and receivers and/or liquidators of insolvent insurance companies to assist in the assessment of whether financial statements were prepared in accordance with statutory accounting practices, analysis of the conduct of directors and officers, and evaluation of compliance by auditors with generally accepted auditing standards. Ocean Tomo was engaged to investigate causes of insolvency, perform liability, causation and damages analyses related to directors, officers, accountants, actuaries and other consultants. Issues have included loss reserve adequacy, reinsurance recoverable and internal control deficiencies, among others. Work included review of workpapers, coordination and review of work of consulting actuaries and preparation of deposition outlines. Additional services included preparation of pro forma financial statements, deposition assistance and rebuttal of opposing experts. Expert testimony provided.

### Enron Solvency Investigation

Engaged to evaluate the solvency of a now-bankrupt energy conglomerate in one of the most high-profile accounting scandals in history. The engagement involved an examination of a portfolio of assets using varied techniques for fair value measurement at multiple dates. Analysis included the identification of both observable and unobservable inputs to determine fair market value while simultaneously considering complex structured financial instruments and any associated off-balance sheet liabilities.

### Deepening Insolvency Analysis

Ocean Tomo was engaged by counsel to evaluate a variety of damages considerations involving the assertion of "deepening insolvency" as a theory of damages. In that regard, we constructed and evaluated models that sought to measure the difference between actual results and but-for results of an insolvent insurance company. Deposition and trial testimony provided.

### Property Casualty Insurance Company Looting

Engaged to assess the damages suffered in connection with the liquidation of a property/casualty insurance company. Ocean Tomo analyzed and reconstructed millions of dollars of transfers of funds through multiple entities and for multiple alleged purposes in connection with allegations of post-acquisition looting by civil and criminal defendants. In addition, Ocean Tomo analyzed the investment portfolio to determine what the portfolio could have been expected to yield based on a reallocation of asset classes and earning rates given appropriate investment decisions. Deposition testimony provided.

### Nortel EMEA Debtors

Ocean Tomo was hired by the EMEA debtors to assist with all valuation and allocation issues related to Nortel's intellectual property (IP). In order to determine the appropriate allocation of sales proceeds, Ocean Tomo performed an independent valuation of the ~2,500 patents and other IP which was sold along with Nortel's various business lines; performed an independent valuation of the 7,000+ patents sold to Rockstar; determined the appropriate commercial life of Nortel's IP portfolio; determined the geographic distribution of the income expected from Nortel's patents; determined the relative inventive and financial contributions made by each debtor over a period spanning more than two decades; determined the relative value of exclusive and nonexclusive license rights to all Nortel patents in numerous jurisdictions; analyzed and interpreted dozens of Nortel's inter- and intra-company agreements including numerous IP licenses and transfer pricing agreements.



#### CONTACT

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Ms. Avery provides expert witness testimony and leads major dispute resolution engagements, providing forensic accounting and expert witness services in high profile litigations. She is responsible for leading Ocean Tomo's Financial Expert services group.



#### CONTACT

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Kevin performs forensic accounting, litigation support and expert testimony services in cases involving bankruptcy and insolvency litigation, accounting and auditing malpractice, financial damages and valuations, insurance insolvencies, and reinsurance disputes, among others.



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## About Ocean Tomo

Established in 2003, Ocean Tomo provides Financial Expert, Management Consulting, and Advisory services related to intellectual property (IP) and other intangible assets; corporate accounting investigations; regulatory and reporting obligations; solvency and restructuring; and contractual or competition disputes.

Practice offerings address economic damage calculations and testimony; accounting investigations and financial forensics; technology and intangible asset valuation; strategy and risk management consulting; mergers and acquisitions; debt and equity private placement; and IP brokerage.

Subsidiaries of Ocean Tomo include Ocean Tomo Investments Group, LLC, a registered broker dealer. Ocean Tomo is a part of J.S. Held. With more than 100 offices globally, J.S. Held assists clients – corporations, insurers, law firms, governments, and institutional investors – on complex technical, scientific, and financial matters across all assets and value at risk.

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## About J.S. Held

J.S. Held is a specialized global consulting firm whose professionals serve as trusted, expert advisors to organizations facing high-stakes events that demand urgent attention, exceptional knowledge, staunch integrity, and clear-cut analysis and advice. The firm provides a comprehensive suite of technical, scientific, financial, and technology advisory services that enable clients across the spectrum of industries to navigate complex, contentious, and often catastrophic situations with precise analysis, reliable insights, and confidence.

In 2022, Ocean Tomo joined J.S. Held, continuing the strategic growth of the firm. Leveraging the J.S. Held team of more than 1,500 professionals around the world, our clients will now have access to J.S. Held's suite of specialized services, including:

- Construction Advisory Services
- Corporate Finance
- Economic Damages and Valuation Services
- Environmental, Health, and Safety Services
- Equipment Consulting
- Forensic Accounting
- Forensic Architecture and Engineering
- Global Investigations
- Property and Infrastructure Damage Consulting
- Surety Services

Headquartered in New York, J.S. Held has offices across the United States, Canada, Latin America, Europe, Asia Pacific, and the Middle East.

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