

George A. Zimmerman

Skadden

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Complex Litigation and Trials



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Education

J.D., New York University
School of Law, 1979

B.A., Brooklyn College of the City
University of New York, 1975

Bar Admissions

New York

Associations

Former Special Trial Counsel,
Departmental Disciplinary Committee,
Appellate Division, First Judicial
Department

George A. Zimmerman's practice emphasizes federal court litigation, including securities, corporate and commercial as well as leveraged finance and bankruptcy litigation.

Mr. Zimmerman served as lead litigation and trial counsel for NextEra Energy, Inc. in its bankruptcy court trial victory against the Adelphia Communications Recovery Trust, which had sued to recover approximately \$300 million for an allegedly fraudulent transfer from Adelphia to two NextEra subsidiaries. The Skadden trial team led by Mr. Zimmerman prevailed in proving that the plaintiff had failed to carry its burden of establishing that Adelphia was insolvent or would have been unable to raise adequate financing to continue operations at the time of the alleged fraudulent transfer. This, notwithstanding the undisputed facts that Adelphia had committed \$400 million of financial fraud, exceeded the permissible leverage ratios in its loan documents, and had no unencumbered assets. The successful result was sustained by the district court after an extensive *de novo* review of the trial record, and subsequently affirmed by the 2nd U.S. Circuit Court of Appeals. The victory was achieved, in part, through a novel argument that combined two concepts courts traditionally analyze independently—namely the question of Adelphia's access to the capital markets had to be evaluated in light of its \$2.5 billion equity cushion (which Mr. Zimmerman's team proved), tying together the question of Adelphia's solvency with its prospective access to capital markets, a unique approach endorsed by both the bankruptcy and district courts.

Mr. Zimmerman served as lead litigation and trial counsel for Citigroup Global Markets Inc., Goldman Sachs Credit Partners L.P., Deutsche Bank Trust Company Americas and Deutsche Bank Securities Inc. in their successful trial arising out of a \$2 billion financing facility for Solutia, Inc. The lenders had invoked a "Market MAC" provision in refusing to fund the facility on the grounds that there had been an adverse change in the markets, which in their reasonable judgment materially impacted the syndication of the exit facility. Solutia sued to force the lenders to fund the facility. Following trial, Solutia agreed to new loan terms that were substantially more favorable to the lenders, and enabled the lenders to successfully syndicate the financing within 24 hours. The highly visible trial, which was closely followed by the markets, ultimately confirmed the utility of Market MAC provisions as a means to incentivize borrowers to recognize the need to renegotiate loan terms in the face of declining market conditions in order to obtain necessary funding.

Mr. Zimmerman also served as lead litigation and trial counsel for Spectrum Brands, Inc., a Chapter 11 debtor, in its resoundingly successful trial against a consortium of senior lenders. Spectrum was seeking either to reinstate its \$1.4 billion senior secured loan or cram-down a plan of reorganization that would adjust certain restrictive covenants in the loan agreement and set a specified interest rate. The senior lenders opposed the amendments and sought a cram-down interest rate of more than double the interest rate proposed by Spectrum. As a direct result of the trial effort spearheaded by Mr. Zimmerman, the lenders agreed to virtually all of the proposed amendments to the loan agreement and to substantially lower their interest rate. As a result, Spectrum will save \$500 million in cash interest payments over the next three years.

Mr. Zimmerman secured a major victory for Flightlease Holdings Limited in its breach of contract action against Airbus Industries for wrongful termination of an aircraft purchase

agreement. Following four years of intense litigation, Mr. Zimmerman won a summary judgment motion in the Commercial Division of the New York State Supreme Court resulting in an order awarding Flightlease approximately \$400 million in damages. Shortly after arguing the appeal in the Appellate Division, First Department, Flightlease was able to obtain a highly successful settlement of its dispute.

In the federal securities area, Mr. Zimmerman successfully argued in the 1st U.S. Circuit Court of Appeals to affirm a dismissal of a roughly \$1 billion fraud claim against Cowen & Co. He also successfully argued in the 2nd U.S. Circuit Court of Appeals to affirm dismissals with prejudice that he had obtained of fraudulent transfer claims against Citibank, N.A., federal securities law claims against Jet U.S. Airlines and unfair trade practice claims against AT&T Universal Card. Mr. Zimmerman also obtained dismissals of multimillion-dollar securities class actions against Citizens Communications Co. and against Grow Group, Inc. He also is representing or has represented publicly traded corporations and their officers and/or directors in securities class actions or complex commercial litigations involving the Kroll O'Gara Company; Cowen & Co., LLC; FleetBoston Financial Corporation; and Société Générale.

Mr. Zimmerman has served as lead litigation counsel in numerous significant bankruptcy matters. He represented Sterling Chemicals Holdings, Inc. in its successful litigation efforts to obtain a contested priming lien that led to the successful reorganization of the debtor and represented Union Pacific Resources Company as the largest producer creditor in the Columbia Gas Transmission Company bankruptcy proceedings, which resulted in Union Pacific receiving an award of approximately \$200 million on its claim. Mr. Zimmerman also represented Grove Worldwide LLC; Ames Department Stores, Inc.; Wang Laboratories, Inc.; and United Merchants and Manufacturers, Inc. in various significant litigation matters arising from their Chapter 11 reorganizations.

Mr. Zimmerman served as lead counsel in defending the Long Island Power Authority (LIPA), and successfully argued in the New York Court of Appeals against a highly publicized and politicized challenge to an agreement among LIPA, the Long Island Lighting Company (LILCO) and the state of New York. Under the agreement, LIPA acquired the Shoreham Nuclear Power Plant from LILCO for the purpose of decommissioning and closing the power plant.

In the takeover area, Mr. Zimmerman has been involved in many of the most hotly contested cases, including Tyson Foods, Inc.'s successful tender offer for the Holly Farms Corporation; Robert Maxwell's successful tender offer for MacMillan, Inc.; Grow Group,

Inc.'s successful takeover defense against the Sherwin Williams Company; Caesars World, Inc.'s successful defense against Martin T. Sosnoff's unsolicited tender offer; and Essex Chemical Corporation's successful defense against Gurit-Heberlein A.G.'s hostile tender offer.

In 2012, Mr. Zimmerman received the Burton Award for Legal Achievement, which recognizes excellence in legal scholarship.

Publications

"Supreme Court Clarifies Scope of Bankruptcy Court Authority, Allows Court Adjudication of 'Stern Claims' if Parties Consent," *Skadden, Arps, Slate Meagher & Flom LLP*, May 27, 2015

"Eliminating Asymmetrical Discovery to Resolve Disputes on the Merits," *New York Law Journal*, October 6, 2014

"'Stern Claims' Remain Hazy Despite High Court Ruling," *Law360*, June 16, 2014

"Supreme Court Holds That Bankruptcy Courts May Report and Recommend on Stern Claims," *Skadden, Arps, Slate Meagher & Flom LLP*, June 11, 2014

"Eleventh Circuit Reverses Fraudulent Transfer Ruling in TOUSA Bankruptcy Case," *Skadden, Arps, Slate, Meagher & Flom LLP*, May 24, 2012

"Chapter 11 Litigation After 'Stern v. Marshall,'" *New York Law Journal*, November 14, 2011

"Chapter 11 Litigation Strategies After The Supreme Court's Decision in Stern v. Marshall," *Skadden, Arps, Slate, Meagher &*

Flom LLP, October 11, 2011

"Case Study: In Re TOUSA," *Law360*, March 23, 2011

"District Court 'Quashes' Bankruptcy Court's Fraudulent Transfer Ruling in the TOUSA Bankruptcy Case," *Skadden, Arps, Slate, Meagher & Flom LLP*, March 1, 2011

"A Bankruptcy Regime For States: Pros And Cons," *Law360*, February 14, 2011

"Bankruptcy Court Issues Significant Fraudulent Transfer Ruling in the TOUSA Bankruptcy Case," *Skadden, Arps, Slate, Meagher & Flom LLP*, October 27, 2009

"Class Action Chronicle," *Skadden, Arps, Slate, Meagher & Flom LLP*, December 2008

"Commitment Letters in Turbulent Times: Market MAC Clauses and the Solutia Litigation," *Commercial Law Newsletter*, July 2008

"Market MAC Provisions Regain Prominence in Current Market Turmoil," *Skadden, Arps, Slate, Meagher & Flom LLP*, March 11, 2008