

OCEAN TOMO

# BANKRUPTCY & RESTRUCTURING VALUATION SERVICES



A considerable and increasing number of corporate restructurings involve intellectual property (“IP”) matters, including patented technology, copyrighted works, trademarked brands, and customer agreements, to name a few. Often, a company’s IP is among its most valuable assets, establishing its market identity and setting it apart from the competition. Disputes related to IP rights and their value are becoming increasingly commonplace and can play a significant role in the restructuring process. Dealing with such issues requires an in-depth understanding of the intellectual property landscape.

Ocean Tomo’s Valuation Group brings expert capabilities and a business-oriented perspective to serve its clients on restructuring matters. Our unique approach combines industry-leading intellectual property market expertise with sound valuation theory, allowing us to properly recognize and accurately value all types of intellectual assets. The increasing importance of IP issues in corporate restructurings has been demonstrated in recent Ocean Tomo engagements, where we successfully advised clients on matters involving intellectual property rights throughout various industries. Examples of these recent projects include:

## Nortel Networks

Nortel Networks (“Nortel”) was a multinational telecommunications and data networking equipment manufacturer with global headquarters in Ontario, Canada. Nortel was regarded as a highly technologically innovative organization and at one point, was Canada’s largest publically traded company.

Despite its past success, Nortel struggled to remain competitive in the early 2000s and by the 2008 recession it was clear the firm would no longer be able to continue servicing its debt. In early 2009 the company filed for creditor protection and subsequently auctioned off its assets. These assets included the company’s business lines and nearly 2,500 associated patents, and ultimately, the remaining Nortel IP portfolio consisting of over 7,000 patents which was sold to Rockstar, a consortium of technology companies including Apple and Microsoft. These sales generated over \$7 billion in proceeds while the claims submitted by creditor consortia from Canada, from the U.S., and from Europe, the Middle East, and Africa (“EMEA”) exceeded \$35 billion.

After several years of failed attempts to negotiate the allocation of sales proceeds, the parties proceeded with litigation. Ocean Tomo was hired in 2013 by the EMEA debtors to assist with all valuation and allocation issues related to Nortel’s 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.

# Cengage Learning, Inc.

Cengage Learning, Inc. ("Cengage"), a private equity-backed education company, filed for bankruptcy protection on July 2, 2013 as part of an effort to shrink its \$5.8 billion debt load. Ocean Tomo was hired by management of Cengage to serve as its lead intellectual property financial advisor and determine the value of certain intangible assets. On March 31, 2014, Cengage completed its financial restructuring and successfully emerged from its Chapter 11 reorganization.

Our role as intellectual property advisors included participation in all aspects of the valuation of certain unperfected copyrights, as the value of these assets was an early variable between the creditors on how to allocate value under the plan of reorganization. In the case of Cengage, new copyrighted works were being generated so often that Cengage and its creditors chose to file security liens with the U.S. Copyright Office periodically (e.g., quarterly) rather than each time a new work was created. As a result, security interests in certain copyrights owned by Cengage had not been properly perfected under the U.C.C. at the time of the bankruptcy filing. Consequently, the challenge arose as to which creditor held the rights to these unperfected copyrights and how to allocate the value of those assets.

Ocean Tomo undertook a highly quantitative and nuanced approach to valuing these IP assets. In the course of this engagement, we:

- Performed an independent valuation of the 15,000+ subject copyrights by utilizing a hybrid analysis consisting of the Excess Earning and Relief from Royalty methodologies;
- Determined the appropriate economic life of the subject copyrights;
- Utilized complex content allocation factors to develop revenue projections that reflected the unique content that was created specifically for the subject copyrights;
- Developed revenue projections for future revisions of the subject copyrights to account for unique content that is carried from one textbook edition to the next;
- Analyzed and interpreted royalty rate data related to the subject copyrights, as well as data from dozens of third-party publishing license agreements.

# Fisker Automotive, Inc.

Fisker Automotive, Inc. ("Fisker") is an American automaker and creator of one of the world's first production plug-in hybrid electric vehicles, the Fisker Karma. The company ceased production in November 2012 due to financial difficulties and eventually declared bankruptcy in November 2013. Ocean Tomo was retained by the purchaser of a defaulted Department of Energy ("DOE") loan who succeeded the DOE as the senior secured lender. In February 2014, the assets of Fisker were successfully sold for a bid of almost six times what Fisker was seeking when it filed for bankruptcy. The various creditor groups were in dispute about the allocation of the proceeds from the sale of the company's assets. In particular, the value contribution of the IP assets was a significant consideration as certain parties believed the international non-perfected IP rights to be of material value. Ocean Tomo provided initial valuation and advisory services related to Fisker's IP portfolio of utility and design patents, outstanding patent applications, and trademarks.



## CONTACT

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Gregory Campanella is responsible for leading Ocean Tomo's Management Services Group and is a Managing Director in the Valuation practice. Mr. Campanella's work has focused on valuations of intangible, intellectual property and tangible assets for acquisitions and divestitures, bankruptcy and restructuring, establishment of monetization strategies including licensing, mergers and joint venture/partnership formations, litigation support, and financial reporting and tax matters.

Mr. Campanella also has experience performing business enterprise, equity and debt valuations. Industries in which he has experience include telecom, computer hardware and software, entertainment, semiconductors, life sciences/pharmaceuticals, wireless and wired communication, e-commerce, among others.



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## About Ocean Tomo

Ocean Tomo LLC provides Expert Opinion, Management Consulting, and Advisory services focused on matters involving intellectual property (IP) and other intangible assets. Practice offerings address economic damage calculations and testimony; business licensing strategy and contract interpretation; trade secret reasonable measures; asset and business valuation; strategy and risk management consulting; merger and acquisition advisory; debt and equity private placement; and IP brokerage.

Ocean Tomo experts are routinely qualified in U.S. District Courts, U.S. Bankruptcy Courts, U.S. Tax Court, U.S. Court of Federal Claims, state courts, the U.S. Patent and Trademark Office Patent Trial and Appeal Board, international courts, and arbitration tribunals on questions relating to intellectual property economics. The firm's professionals have provided expert opinions on IP valuation, reasonable royalty, lost profits, price erosion, commercial success, corrective advertising, creditor allocations, Hatch-Waxman Act market exclusivity, business licensing terms including RAND obligations, venture financing, and equities of a potential injunction. The firm's experience extends to general business valuation and commercial disputes, domestic and foreign, as well as policy issues affecting international technology transfer and economic matters before the International Trade Commission.

Intangible assets comprise 90 percent of business value but are also subject to significant impairment due to enterprise and regulatory compliance risk. Our services are built upon more than three decades of experience assessing intellectual property in the most rigorous of venues. Our financial, market, scientific, and technical experts have deep experience with tangible and intangible assets protected by intellectual property. We bring a unique understanding of the contributory value of proprietary innovation to every engagement. This is the cornerstone of our business.

Subsidiaries of the firm include Ocean Tomo Investments Group, LLC, a registered broker-dealer. As a part of J.S. Held, Ocean Tomo works alongside more than 1500 professionals globally and 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 global consultancy providing technical, scientific, and financial expertise across all assets and value at risk. Our professionals serve as trusted advisors to organizations facing high-stakes events demanding urgent attention, staunch integrity, clear-cut analysis, and an understanding of both tangible and intangible assets. The firm provides a comprehensive suite of products, data, and services that enable clients across industries to navigate complex, contentious, and often catastrophic situations.

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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