



Nixon Peabody Aided Solar Co.'s \$1B Ponzi Scam, Suit Says

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Law360 (October 27, 2021, 3:58 PM EDT) — Nixon Peabody LLP helped the founder of solar generator company DC Solar operate a “massive” \$1 billion Ponzi scheme even in the face of obvious clues the firm should have seen and acted on, according to a lawsuit brought by the nowbankrupt company’s trustee.

The firm and partner Forrest David Milder played a “vital role” in the scam, creating and implementing the complex, tax-advantaged renewable energy investments at its center despite having reason to suspect DC Solar’s founder was lying to investors and paying early investors with money taken from later ones, according to the complaint filed Monday in Nevada federal bankruptcy court.

“Nixon saw clear and repeated red flags, from which Nixon knew or should have known that Carpoft was engaged in wrongdoing and harming in connection with the transactions that Nixon structured, oversaw, marketed, and closed,” the complaint said.

The fraud that Nixon Peabody helped Carpoft perpetrate cost DC Solar hundreds of millions of dollars, according to its bankruptcy trustee, Christina Lovato.

DC Solar Solutions Inc. and DC Solar Distribution Inc. were founded by Carpoft in 2009 to manufacture, sell and lease mobile solar generators, or MSGs, that provide emergency power to cell towers and lighting for sporting events.

The company and its entities sold the MSGs to investors for \$150,000 each through specially created tax-equity funds. Buyers paid DC Solar a down payment of \$45,000 and financed the balance through the company, according to the complaint.

The buyers then leased the generators back to DC Solar, which subleased them to



end users like T-Mobile to generate revenue to pay off the debt and act as a return on investment, the complaint added.

The U.S. Securities and Exchange Commission has said DC Solar raised about \$910 million from investors.

Nixon Peabody and Milder, who the suit called a nationally recognized expert in renewable energy transactions, helped DC Solar do this by structuring the investments and transactions, marketing the investment opportunity, and vouching for the company, Lovato claims.

But Carpoft was really running a Ponzi scheme, and Nixon Peabody knew it, or at least should have, according to the suit.

“Despite the red flags and actual knowledge that its clients were being harmed, Nixon continued to violate its duties to Solutions and Distribution. From April 2017 to December 2018, Nixon closed at least seven Solutions-sponsored tax equity transactions with an aggregate face value exceeding \$700 million,” the complaint said.

The firm continued to serve as the reputational “gatekeeper” for DC Solar, issuing “transaction opinions” at the close of each transaction that gave the deals the firm’s approval. Nearly all DC Solar’s investors relied on those opinions to complete the transactions, according to the complaint.

“Each transaction drove Solutions and Distribution deeper into insolvency. Had Nixon acted properly, Carpoft would not have looted more than \$90 million from Solutions and Distribution during that period,” Lovato’s suit added.

In a statement Wednesday, firm acknowledged that the fraud committed by DC Solar was “extensive” and said it did provide opinions to the company on the application of tax laws to the structure of its transactions.

But “Nixon Peabody, like many others who worked on these transactions, had no knowledge of and did not participate in the fraudulent Ponzi scheme implemented by DC Solar and its principals and employees,” the statement said.

Nixon Peabody, though, had ample warning that those transactions were part of a



fraud, the complaint insisted.

The firm knew, for instance, that the \$150,000 price tag for the MSGs was approximately 2½ times the cost to construct an MSG and that the price never changed despite inflation or market forces, according to the complaint. Nixon Peabody also worked with Carpoft to get around the tax requirement that investor funds be managed by a party unrelated to DC Solar.

And in April 2016, Milder was forwarded an IRS draft report describing an investigation into a 2011 DC Solar-sponsored transaction.

“Upon examination, the determined that the loan was a mere circular movement of money used to prop up a vastly overstated purchase price in order to impermissibly maximize the energy credit,” the IRS report said.

The suit makes claims of malpractice, breach of fiduciary duty and fraudulent transfer, among others.

“Nixon Peabody could easily have stopped Jeff Carpoft’s Ponzi scheme in its tracks. Instead, Nixon Peabody chose to join and profit from the Ponzi,” said [Michael Budwick](#), a partner and co-chair of the financial frauds group at Meland Budwick PA who represents Lovato. “Nixon Peabody took millions of dollars in fees to close hundreds of millions of dollars in transactions that Nixon knew would injure DC Solar and cheat the United States of America.”

Milder did not respond to a request for comment. Carpoft and his wife, Paulette, pled guilty last year to orchestrating the scheme and settled parallel civil claims with the SEC.

Carpoft copped to a charge of conspiracy to commit wire fraud while his wife pled guilty to conspiracy to commit an offense against the United States. The two each pled guilty to an additional money laundering charge, prosecutors said at the time.

DC Solar filed for bankruptcy in Nevada in 2019 after a raid by the IRS and FBI forced it to lay off almost all its employees.



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DC Solar Trustee Christina Lovato is represented by [Michael S. Budwick](#), [Solomon B. Genet](#) and [Gil Ben-Ezra](#) of Meland Budwick PA and Jeffrey L. Hartman of Hartman & Hartman.

Counsel information for Nixon Peabody was not immediately available Wednesday.

The case is Lovato v. Nixon Peabody LLP, case number 21-05072, in the U.S. Bankruptcy Court for the District of Nevada.

The bankruptcy is In re: Double Jump Inc., case number 19-50102, in the same court.

—Additional reporting by Ryan Boysen. Editing by Orlando Lorenzo.

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