

Q&A With Pachulski Stang's Robert Feinstein

Law360, New York (May 01, 2013, 4:41 PM ET) -- Robert J. Feinstein is the managing partner of Pachulski Stang Ziehl & Jones LLP's New York office. He is an adjunct professor in the LLM Bankruptcy Program at St. John's University School of Law, associate editor of the Norton Journal of Bankruptcy Law and Practice and contributing editor of Norton Bankruptcy Law and Practice 2d. He was recently lead counsel to the Ad Hoc Movie Studio Committee in the Blockbuster case and the Official Creditors' Committees appointed in AMF Bowling Worldwide, Coach Transportation and Circuit City; debtors' counsel to Digital Domain Media Group; and represented Mike Tyson and Penthouse Magazine publisher General Media Inc. in their Chapter 11 cases.

Q: What is the most challenging case you have worked on and what made it challenging?

A: Representing the creditors' committee in Freedom Communications Inc. The debtors, the privately held owners of the Orange County Register, community newspapers all over the country and several television stations, filed a pre-arranged bankruptcy with the support of their senior secured lenders, board members and management. The proposed plan left unsecured creditors, if they accepted the plan, with 5 cents or less on the dollar, while providing for a distribution to old equity, and broad direct and third-party releases of potentially valuable claims against the plan proponents and insiders. The committee, which included the former CEO, vendors and a class action plaintiff representing "newsboys" short-changed in their compensation, fought back vigorously, not just by challenging the DIP financing and the plan, but by seeking and obtaining court approval to run its own sale process to generate a better deal for creditors. After numerous contested evidentiary hearings in this fast track case, and victories along the way for the committee, the debtors and plan sponsors relented and the plan was modified such that unsecured creditors saw their recoveries go from maybe 5 cents to approximately 70 cents on the dollar, and the proposed recoveries to old equity were eliminated.

There were several close runners-ups for most challenging. Blockbuster, which started out as a pre-arranged case and ended in a liquidation, leaving the estate administratively insolvent by more than \$200 million, leading to a large number of unhappy people fighting in the courthouse hallways; Digital Domain, where we sought expedited approval of a 363 sale for the visual effects company under extremely difficult circumstances; and General Media Inc. a/k/a Penthouse, a hotly contested case involving a battle for control of Bob Guccione's Penthouse Magazine and related media businesses. If I ever write a book, the opening line of the chapter on the Penthouse case will be: "It was a dirty fight for a dirty magazine." In that same year, 2003, which I refer to as my "year of living dangerously," my partner Debra Grassgreen and I represented Mike Tyson in his Chapter 11 case.

Q: What aspects of your practice area are in need of reform and why?

A: The process of committee formation after Universal Building Products. Committees are deserving of quality professionals to represent their interests. The Office of the United States Trustee initiated changes in the wake of the Universal Building Products case, but these changes have not been clearly articulated to the bankruptcy community. It would be helpful if the U.S. Trustee's office would confer with practitioners in the field to ferret out abuses without disabling a committee's ability to identify qualified professionals to interview and retain to represent unsecured creditors' interests.

Q: What is an important issue or case relevant to your practice area and why?

A: Gifting in Chapter 11 cases. While gifting under plans appears to be outlawed in the Second and Third Circuits under the DBSD and Armstrong World cases, gifting to unsecured creditors continues in the context of Rule 9019 settlements and resolutions to committee challenges to DIP financing and sale motions. In many cases these days, gifting appears to be the only way for unsecured creditors to see any recovery, given the degradation in asset values relative to secured debts that has occurred since the beginning of the Great Recession in 2008.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: Ken Eckstein of Kramer Levin, who has handled many complex, high-profile bankruptcy cases, including as debtors' counsel in the General Maritime and St. Vincent's Hospital Chapter 11 cases, and the Official Creditors' Committee in the ResCap, General Motors and Chrysler Chapter 11 cases. Ken has a keen grasp of extraordinarily complex issues arising in these mega-cases, and demonstrated his ability to develop and implement creative solutions to the problems facing these debtors. He clearly has credibility with, and the respect of, the bench and other members of the bar, and that makes him a very effective practitioner and advocate. Together with his partner Tom Mayer they lead one of the very top quality bankruptcy practices in the country.

Q: What is a mistake you made early in your career and what did you learn from it?

A: My father used to say that he never made a mistake in his life, except once when he thought he had made a mistake, but it turned out he was wrong. (Little did I know that he was paraphrasing the late Peanuts cartoonist, Charles M. Schulz.). I learned early on that you don't learn everything you know to be a good lawyer in law school, and that it's important to recognize what you don't know, to admit as much (whether to a senior partner or a client), and instead of trying to make an educated guess or, worse still, bluff like you know the answer, to do the research or ask for help from others if you are out of your depth.

The opinions expressed are those of the author and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.