

Q&A With Jones Day's Paul Leake And Corinne Ball

Tuesday, Oct 23, 2007 --- Tina Brozman's recent passing is a loss to everyone in the bankruptcy and restructuring industry, say Jones Day's Paul Leake and Corinne Ball in our series of chats with high-profile bankruptcy lawyers.

Q. What's the most challenging bankruptcy you've worked on, and why?

A. The Chapter 11 reorganization of Dana Corporation has probably been Jones Day's most challenging bankruptcy representation of the past 18 months. Dana, a Tier 1 automotive parts manufacturer, has been at the forefront of many of the issues facing the U.S. automotive industry today.

For instance, during the course of its Chapter 11 case, Dana has successfully addressed the enormous task of stabilizing and turning around its global operations, which has included shifting production to lower cost countries, restructurings of both Dana's European business and Dana Credit Corporation, divestiture of non-performing businesses, closing/downsizing unprofitable operations, restructuring of Dana's pension plans and modifications to the compensation and benefits for active union and non-union employees.

At the same time, Dana's three biggest customers, Chrysler, Ford and General Motors, have been facing their own economic challenges and demanding more price support from auto parts suppliers, further complicating Dana's efforts to yield a successful global restructuring of its businesses.

Dana's modification of retiree health care benefits was accomplished through a consensual agreement with Dana's three principal labor unions and the statutory committee of non-union retired persons appointed in Dana's Chapter 11 case.

Under that agreement, the labor unions and the retiree committee will establish and manage voluntary employer benefit associations (VEBA) that will be funded by Dana as part of its plan of reorganization and which will allow Dana to remove the \$1.5 billion obligation associated with retiree health care benefits from Dana's balance sheet.

Q. Which aspects of bankruptcy law do you think are in need of reform?

A. The most visible and widely reported problems in U.S. bankruptcy law today are largely consumer, rather than commercial, bankruptcy issues, many of which were either created or accentuated by the comprehensive

reforms implemented as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

These problems have been exacerbated by the subprime mortgage meltdown, volatility in the stock markets and the slumping housing market.

One candidate for reform in the laws and rules governing business bankruptcy cases, especially Chapter 11 cases, is executive compensation rules. Reforms to the bankruptcy laws that clarify the provisions governing executive compensation in Chapter 11 cases to make them more consistent with best practices outside of bankruptcy would be welcome.

Q. What's your response to complaints from labor unions, U.S. trustees and others about "excessive" legal fees in bankruptcies?

A. The debate concerning professional fees in large Chapter 11 cases has been going on for over 30 years.

Two things have always been clear on this issue:

The most talented and qualified professionals, including attorneys, accountants, financial advisers and investment bankers, must be compensated at market rates in representing Chapter 11 debtors, bankruptcy trustees and official committees or they will simply refuse to participate in the process, leaving complex restructurings to professionals who are not as qualified to provide such services.

Second, compensation that is not justified under the standards established by the Bankruptcy Code is and should not be tolerated. Qualified, experienced bankruptcy professionals know this better than anyone else, and if their judgment on what services and strategies are necessary to do the best job possible for whatever stakeholder involved proves to be flawed, the statute allows the bankruptcy court to award whatever fees it determines are appropriate under the circumstances.

Q. How has your firm responded to the onslaught of bankruptcies among mortgage lenders?

A. Jones Day has been and will continue to be involved in many aspects of the recent volatility in the subprime mortgage market. The most notable has been our recent engagement by Wilbur Ross to advise him in his plans to enter the residential mortgage sector, starting with his announced \$500 million acquisition of the mortgage servicing business of Chapter 11 debtor American Home Mortgage Investment Corp.

In addition, we are currently advising him on several other potential acquisitions in this sector, both in the U.S. and abroad. Since starting his private equity fund in the early part of this decade, Ross has turned to Jones Day for most of his work in the distressed acquisition arena, including in the steel, coal and automotive supply sectors.

Q. Beyond mortgage lenders, where do you see the next wave of bankruptcies?

A. The last decade has produced cycles of bankruptcies across a wide spectrum of industries as a consequence of over-expansion, spiraling retiree and health care costs, general economic conditions, cost inefficiencies and other factors.

The affected industries have included retailers, telecoms, airlines, auto parts suppliers, steel manufacturers, health care providers and, most recently, mortgage lenders.

Major players in some of these industries appear to have turned the corner by successfully restructuring either in or outside of Chapter 11, while others, such as auto parts suppliers and subprime lenders or investors, will likely continue to be hard hit because of market factors over which they have little or no control.

Other already or soon-to-be troubled sectors are home builders, building suppliers and retailers.

Q. Outside your own firm, can you name one bankruptcy professional who's impressed you?

A. Tina Brozman [of Bingham McCutchen]. In addition to being one of the youngest and smartest judges ever to sit on the bankruptcy bench, she was a talented and dedicated restructuring professional who brought practical and creative solutions to the table in some of the largest and most challenging Chapter 11 cases. Her passing is a loss to us all.

Q. What advice would you give to a young lawyer who's interested in getting into bankruptcy law?

A. We would tell him or her why we chose to specialize in bankruptcy and restructuring. In many respects, the field is one of the few remaining legal disciplines that demands that one be a legal generalist and a leader, or quarterback, for the multiple disciplines involved in a restructuring.

To serve a client well, a good business restructuring lawyer needs to develop expertise in many different legal disciplines, including bankruptcy, corporate and securities, tax, real estate and litigation, as well as a good business sense.

The latter point is especially important. In this field, a premium is placed on lawyers with common sense and the ability to solve problems; lawyers who are able, when appropriate, to see beyond endless disputes and litigation and find the consensual deal or practical resolution that creates value.

Finally, it is especially gratifying to be involved with saving or restructuring a

company with the resulting positive impact on employees, communities and other constituencies.

Q. I'm a big debtor-in-possession (or creditor). Why should I hire your firm?

A. Simply put, the wealth and diversity of expertise representing all constituencies in large and small in and out-of-court restructurings, unparalleled geographic presence, and, perhaps most importantly, dedication to client service that is second to none.

Paul Leake is head of Jones Day's firmwide business restructuring & reorganization practice and head of the firm's New York corporate practice. Corinne Ball is co-head of the New York office's restructuring and reorganization practice, and she also organizes the firm's global restructuring practice.