

Q&A With McKool Smith's Hugh Ray

Law360, New York (March 29, 2013, 11:21 AM ET) -- Hugh Ray is a principal in McKool Smith PC's Houston office and heads the firm's bankruptcy litigation practice. In addition to making several appearances before the House and Senate Judiciary Committees to testify on bankruptcy amendments, he has co-authored three books on bankruptcy, including *Last Rights* (Oxford University Press) and *Creditor's Rights-Texas Practice Guide*. Ray is the former chairman of the ABA Business Bankruptcy Committee and a former member of the ABA's Standing Committee on Judicial Selection, Tenure and Compensation; a member of the American College of Bankruptcy; and a Life Member of the American Law Institute.

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

A: Representing the Chapter 7 Trustee for Bank of New England Corporation was a challenge. The case appeared to be administratively insolvent when it was filed and no funds were available for administrative expenses and fees for an extended period. It took over 20 years to completely resolve while hundreds of millions of dollars were distributed to creditors which came from litigations against many parties, including the FDIC and the debtor's former accountants.

The case involved disputes from all directions — the government, the IRS, the former directors and officers, the accountants, and virtually every bank that had dealt with what had been the holding company for the largest bank in Boston. After the first \$300 million or so came in from litigation, the creditors started fighting and disputing the order of payments, taking their case to the Supreme Court before settling. This proved once again that it doesn't pay to be too successful in a bankruptcy case; it only causes another level of disputes to surface.

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

A: Venue reform is needed because small creditors are currently disenfranchised from cases filed in distant states. A California creditor owed \$100,000 or less simply can't afford to litigate its claims in Delaware where local counsel are always required and telephone participation by creditors in creditors' committee organizational meetings is forbidden.

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

A: The requirement for a bankruptcy examiner is ignored in larger cases even though required by the statute. Many large cases have prepetition malfeasance swept under the rug to the prejudice of creditors. When I have served as an examiner, I have not found the tasks taking long to conclude. When I have worked with examiners, I have not found them slowing down the reorganization process nor have I found them to be too costly. There has been a tendency to “look the other way” to avoid slowing down what has become a practice consisting primarily of “sell and sue” 363 cases controlled by the banks.

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

A: I have always had a great deal of respect for Harvey Miller at Weil Gotshal. Harvey, who will be 80 in April of this year, has brought creativity to the Chapter 11 process like no other lawyer in this generation.

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

A: A mistake that I made early on was not getting a retainer up front from a debtor. Debtors are frequently guilty of terminal optimism.

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