

Checking In

In this series, Practical Law Advisory Board members discuss their current work and key legal developments in their practice area.



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What do you think is currently the biggest challenge facing bankruptcy attorneys? The cost of Chapter 11 cases has skyrocketed in the past ten years due to factors such as more complex financing structures, balance sheets that are often massively overleveraged, an increase in intercreditor issues, and more litigious constituencies.

As a result, we are seeing many section 363 sales and prepackaged Chapter 11 cases, which lower exit costs by expediting the sale of assets and approval of reorganization plans. For “out-of-the-money” creditors or equity holders, the process often seems like trying to stop a train that has left the station. I believe the modern practice of expedited Chapter 11 cases is here to stay, and therefore attorneys must be far more proactive in the pre-filing period or rethink their approach to a case once it is filed.

Have any recent legal or market developments had a significant impact on your practice? Many bankruptcy attorneys, including me, were trained to think that obtaining confirmation of a plan is the gold standard for Chapter 11 cases. However, as a natural consequence of expedited sale cases, many bankruptcy estates are left with almost no assets and little hope of confirming a plan. This dynamic

has fundamentally changed the administration of modern Chapter 11 cases.

After a quick section 363 sale, confirmation of a Chapter 11 plan often is not feasible or practical. As a result, pre-plan settlements, secured creditor gifting of value, and structured dismissals have become powerful tools in recent Chapter 11 cases. The US Supreme Court’s upcoming decision in *Czyzewski v. Jevic Holding Corporation*, which will address conditions for using structured dismissals and pre-plan transactions that do not adhere to the absolute priority rule, could prove significant to both bankruptcy law jurisprudence and the future administration and resolution of Chapter 11 cases.

Are there any changes on the horizon that you think will significantly affect bankruptcy practice? From an economic perspective, historically low interest rates and the Federal Reserve’s zero interest rate policy for the past several years have incentivized borrowing. However, we are now in a rising interest rate environment. Borrowers who face maturities will need to refinance at higher interest rates. Marginal or out-of-favor borrowers may find themselves without a chair to sit in when the metaphorical music stops. This will force borrowers, even those with solid businesses and assets, to restructure and possibly undertake Chapter 11 filings.

However, borrowers are not the only parties at risk. It is reasonable to think that rising delinquency and default rates also will affect lending institutions, particularly smaller or regional lenders and non-bank lenders. Possible defaults might have a deep impact on the major financial lenders as well. We might see lenders get aggressive upon maturity

or enter another “extend-and-pretend” period similar to what we saw in the last downturn.

If not an attorney, what would you wish to be? A point guard — no, make that a strong forward — for the Boston Celtics.

What was your first job? My father was in the retail business and when I was young, I would travel with him as he visited stores. He put me to work sorting hangers, helping with returned merchandise, and even cleaning the bathrooms. I saw not only how hard my father worked but also how the entire store relied on all of its workers, even the kid cleaning the bathroom, to pitch in and contribute. The core values of hard work, teamwork, and respect for the customer were ingrained early.

What is the best career advice you have ever received? My father told me before my first day as an attorney that while there would be many things I could not control, there were important things I could control, including having a positive attitude, working hard, being responsive to clients, and always pitching in to help your colleagues.

What one piece of advice would you give to a junior attorney considering specializing in bankruptcy? As a bankruptcy attorney, you have to not only be a specialist in bankruptcy and insolvency laws but also be familiar with other disciplines, such as corporate law, M&A, real estate, litigation, labor, and tax. One day you are trying to close a large transaction, and the next day your client’s business faces a labor strike, or a sheriff comes knocking on its doors to levy on a judgment. Learn as much as you can about multiple disciplines. It will make you a far better bankruptcy attorney.