

Q&A With Choate's Doug Gooding

Law360, New York (April 18, 2013, 5:30 PM ET) -- Douglas R. Gooding chairs Choate Hall & Stewart LLP's finance and restructuring group in Boston. He has more than 20 years of experience in corporate finance, restructuring, bankruptcy and related litigation including debtor-in-possession lending; representation of senior, second lien and mezzanine debt in complex restructurings; insolvency matters; and out of court workouts. He also advises boards of directors on "zone of insolvency" issues. Gooding is listed in Chambers USA, The Legal 500, Guide to the World's Leading Insolvency and Restructuring Lawyers, Best Lawyers in America, Massachusetts Super Lawyers and PLC – Which Lawyer.

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

A: I have been fortunate to have many challenging cases throughout my career. Our practice is incredibly varied, which means that oftentimes we are doing something completely new. If I had to choose one case that was most challenging — it really was not a bankruptcy case except at the very end of the process, when an involuntary bankruptcy petition was filed. I led a team of about eight lawyers in connection with the workout of Zoots, which at the time was one of the largest dry cleaning chains in the United States. We were tasked with maintaining going concern value and employees' jobs, while dealing with the competing demands of the senior lender, subordinated creditors, landlords and the trade over a six to nine month period. During that period, we completed 13 separate going concern sales outside of bankruptcy using a hybrid Article 9 secured party sale structure.

Following the completion of the last sale, we implemented an assignment for the benefit of the creditors (ABC) for the company. Only after we completed the last sale did the subordinated creditors file an involuntary petition. The bankruptcy court looked at the situation and dismissed the involuntary petition largely on the basis that we had employed a strategy that was designed to maximize the potential recovery to all stakeholders and preserve jobs. That was a satisfying case.

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

A: Venue in bankruptcy should be reformed. Under the current venue rules, the vast majority of Chapter 11 business cases are filed in New York and Delaware even in situations where there is little or no connection between the forum states and the debtors. No question that there are highly skilled practitioners in each of those jurisdictions, but that is not the issue. Under the current venue rules, locally based constituencies integral to the debtor's business are effectively disenfranchised if they are unwilling or unable to bear the expense of hiring counsel (maybe a second set of counsel) in a distant jurisdiction to protect their interests. By filing a Chapter 11 case in a distant venue, the debtor may be depriving local constituents (particularly employees and trade creditors) of due process.

Moreover, having appeared in bankruptcy courts throughout the country, I just don't buy the notion that judges in New York or Delaware are higher quality or somehow better equipped to handle business cases than other judges. Also, if a handful of judges in one or two jurisdictions are developing Chapter 11 jurisprudence, it may deprive the bankruptcy system of a diversity of views that the extended federal system promotes.

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

A: The Supreme Court's decision in *Stern v. Marshall*, 131 S.Ct. 2594 (2011) is a very important decision because it has, once again, introduced ambiguity into the jurisdiction of the bankruptcy courts. *Stern* casts doubt over bankruptcy court authority, holding that a bankruptcy court did not have constitutional authority to enter a final judgment on a bankruptcy estate's state law counterclaim against a creditor of estate, even though the claim was statutorily "core" under 28 U.S.C. §157(b)(2). In the two years since it was decided, *Stern* has spawned a great number of decisions and I think it is only a matter of time before the issue of bankruptcy court jurisdiction is back before the U.S. Supreme Court.

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

A: While there are a number of attorneys whom I admire, William Cupelo, AVP and senior corporate counsel at Liberty Mutual Insurance Company, is someone who has impressed me over an extended period of time. The breadth of his knowledge and expertise is truly remarkable. Not only does Bill have a command of bankruptcy law, but he is also an expert in a variety of other areas of law that touch on Liberty's business. Bill really has helped to teach me to focus on practical business issues, which has served me well in my career.

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

A: Over-promising. In the first six months of my career, I was put on the two largest cases in the office — a large Chapter 11 case and a major piece of litigation. Since I was a first-year associate, I was in over my head, working around the clock and not making anyone happy. Thankfully, one of the partners saw what was happening and removed me from the litigation team. Of course, at the time, I thought my career was over. That experience taught me early on about the importance of clear communication with colleagues and clients, as well as the need to manage expectations and to deliver on what I've promised to do.

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