

Q&A With Dechert's Eric Brunstad

Law360, New York (March 26, 2013, 1:23 PM ET) -- G. Eric Brunstad Jr. is a partner in Dechert LLP's Hartford, Conn., office. He has argued 10 cases before the U.S. Supreme Court, including matters involving the First Amendment, bankruptcy, taxation, the Commerce Clause, statutory interpretation, jurisdiction and arbitration. In addition, Brunstad has worked on more than 35 other cases before the Supreme Court, including matters involving federal licensing, civil rights, procedure, insurance, sovereign immunity, pensions, energy contracts and defamation. He has also argued and briefed numerous cases before most of the federal courts of appeals, including matters involving insurance, setoff, prepayment premiums, subrogation and a variety of other commercial law topics.

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

A: My most challenging case was undoubtedly the Anna Nicole Smith case. I represented Pierce Marshall in the litigation, and then Elaine Marshall as Pierce's executrix after Pierce passed away. The case made two visits to the U.S. Supreme Court; it involved protracted litigation in both state court in Texas and three layers of federal courts in California; the issues were extremely complex; the record was gargantuan; and ultimately, in order for us to prevail, the Supreme Court had to declare a statute of the United States to be unconstitutional.

One of the things that made the case challenging was the interplay between the state and federal courts. For example, at one point the federal bankruptcy court involved in the matter issued an injunction essentially barring certain proceedings in the state court; the state court responded with an injunction of its own barring enforcement of the bankruptcy court's injunction. Ultimately the issue was resolved by another federal court overturning the bankruptcy court's order.

The Supreme Court's ultimate resolution of the matter, determining that part of the statute vesting bankruptcy courts with jurisdiction is unconstitutional, has had a lot of impact. There have been over 500 decisions by the lower federal courts interpreting the Supreme Court's decision. The case was recognized as one of the most important decisions by the Supreme Court during the 2011 term.

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

A: I handle commercial and constitutional appellate litigation in the federal courts and the U.S. Supreme Court. One of my areas of focus is bankruptcy law. The Bankruptcy Code was amended in 2005. Many aspects of the amendments have proven to be burdensome, expensive and unproductive. The Bankruptcy Code should be revised to clean up the mistakes. Bankruptcy relief is supposed to be available to assist the honest but unfortunate debtor with a fresh start in life. In many respects, the 2005 amendments have impaired that fundamental goal.

Another aspect is the exemptions individual debtors are entitled to take. The Bankruptcy Code currently provides for a complicated set of rules that vary depending on which state the debtor lives in. In some states, debtors have unlimited homestead exemptions — they might claim even a multimillion dollar residence as exempt from the reach of creditors. In other states, they have far less of an entitlement. The exemption rules should be streamlined and clarified. I argued an exemption case in the Supreme Court on behalf of a bankrupt debtor over whether she was entitled to keep her cooking equipment — essentially her pots and pans that she used to earn her living as a caterer. The rules should be clearer so that debtors in bankruptcy may claim their entitlements without protracted litigation they cannot afford.

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

A: An issue that is highly relevant to my practice area is access to the court system for indigent debtors. I handle a lot of pro bono matters involving indigent debtors who cannot afford a lawyer when their cases go up on appeal to a federal court of appeals or to the U.S. Supreme Court. When important issues affecting the fate of indigent debtors are heard on appeal (especially at the Supreme Court) it is vitally important that someone advocates effectively on their behalf. Often the opposing party is a creditor or governmental agency with far superior resources. I believe very strongly that it is important to make sure that the interests of indigent debtors are well presented and the issues and arguments fully advanced and developed on appeal.

Another recent pro bono case I worked on involved a bankrupt debtor who was struggling to keep her car. It involved an issue that has divided the courts on how much a debtor has to pay in order to keep her automobile — specifically whether the debtor has to pay a lot more than the car is worth because the debtor rolled over previous debt when the debtor purchased the car. I am currently working on a pro bono case involving a bankrupt debtor who is struggling to keep her home while she takes care of an ill relative. The case likewise concerns how to interpret and apply a particular section of the Bankruptcy Code. Bankrupt debtors cannot feasibly handle these kinds of cases on their own, particularly when they go up on appeal to the federal appellate courts, including the U.S. Supreme Court.

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

A: There are many excellent appellate attorneys. If I were to choose one appellate attorney, I have to say that I have always been immensely impressed with Roy Englert of Robbins Russell. He is superb. I have worked with him on a number of cases and admire his competence. I also greatly admire Kathleen Sullivan of Quinn Emanuel. I have seen her argue in the U.S. Supreme Court. She is an outstanding advocate.

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

A: One mistake I made early in my career was that I tended to work too hard. There is a balance to be struck between one's professional and personal life, and it is best to focus on that early. In my case, I didn't sacrifice time with my family; I sacrificed sleep. In the long run, lack of sleep will catch up with you.

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