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Q&A With Dechert's Michael Sage

Law360, New York (March 18, 2013, 4:45 PM ET) -- Michael J. Sage is a partner in Dechert LLP's New York office. As co-chairman of the firm's business restructuring and reorganization practice, Sage advises ad hoc committees of bondholders, noteholders, term lenders and other creditors, official creditors' committees, individual creditors, acquirers and debtors in bankruptcy proceedings and out-of-court restructurings.

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

A: The case that stands out for me is Interco. I was a mid-level associate at the time (early '90s), and it was the first case in which I was given substantial responsibility for a significant matter. Even though our client had a major role in the case, our staffing was lean, and the partner in charge of the matter gave me the opportunity to develop my skills and interact with the clients and the other side in a way that I had not done before then.

In addition, we were embroiled in a hard-fought battle with the senior creditors over issues relating to fraudulent conveyances and other matters. The case had a little bit of everything. We tried to do an out-of-court restructuring/pre-pack, which did not work due to the level of acrimony. In bankruptcy, an examiner was appointed, and we briefed the issues that had been separating the parties for months.

Our ad hoc group was extensive, and I had to coordinate and interact with par buyers, non-par buyers and a changing cast over time. The senior group substantially changed hands during the case, which turned out to be a tremendous help. All in all, it was a great experience, but given where I was in my career at the time, it was an extremely challenging one as well.

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

A: All biases against secondary market purchasers, in whatever form, should be removed in my view. Whether you like that there is a secondary market for securities, the fact is that one exists and is not going anywhere. Years ago, I had to litigate a U.S. trustee's refusal to put my client on a creditors' committee. I'm not suggesting that U.S. trustees routinely do not appoint such buyers to committees at present, but it should not be an issue.

Secondary buyers may have different incentives than par buyers, or they may not. The fact is that they hold a claim or an interest and are entitled to all rights that go along with what they hold, and that applies in all contexts in connection with the bankruptcy process.

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

A: Can debtors in a multidebtor structure use an impaired class in one of the debtors as the one consenting impaired class with respect to all debtors in the stack? Section 1129(a)(10) of the bankruptcy code has been read by counsel on both sides of that issue differently, not surprisingly.

It's an important issue because creditors at debtors, where there is no consenting impaired class, don't expect to have a plan imposed on them without their consent or the consent of another impaired class at their debtor. At the same time, debtors in a multiple-debtor structure sometimes cannot make confirmation work without resorting to that.

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

A: Judge Robert Drain practiced as a bankruptcy lawyer before he went on the bench. We had a case together in that period — Loewen — in which our clients were part of an informal group of similarly situated bondholders, and his client had a substantially larger claim than the rest of our clients. As a consequence, he became the de facto leader of a group of strong personalities (lawyers and clients included).

His ability to manage the complex legal issues and the various parties in our group and on all other sides was impressive. I also appreciated his willingness to bring me up to speed and the time he spent doing that, given that my client was the last member of the group to the party.

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

A: When I was a mid-level associate working on a debtor case, we prepared a customary letter to all creditors, along with the disclosure statement urging them to vote for the plan. It was to be signed by the Chief Executive Officer. In the crush of work leading up to the mailing, I missed that the secretary reading my scribble had typed "Chief Execution Officer" instead, and that's exactly how the letter went out. I thought I was going to be fired.

I learned at least two things from this. One, spell check is hardly infallible, and there is no substitute for extensive proofreading and care in general. Two, my supervising partner handled my mistake like a pro and smoothed things over with the client, who had the right to be more than annoyed but only joked with me about it. I've tried to carry that kind of understanding through to my dealings with associates and others. People make mistakes, even ridiculous ones.

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