

Q&A With Gibbons' Karen Giannelli

Law360, New York (March 28, 2013, 9:55 AM ET) -- [Karen A. Giannelli](#) chairs [Gibbons PC's](#) financial restructuring and creditors' rights department in Newark, N.J. She advises public and private companies and financial institutions throughout the country in the areas of financial restructuring, creditors' rights and financial services, including handling creditors' rights issues for a multinational Fortune 500 company, counseling clients regarding their rights and obligations under federal and state insolvency proceedings, and formulating reorganization plans and other financial restructuring solutions as appropriate for debtor/fiduciary and creditor clients.

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

A: In the case of American Family Enterprises, d/b/a American Family Publishers, which was owned by Time Inc. and the Pritzgers, we had to fashion a remedy for “global peace” in the context of a Chapter 11 case after all nonbankruptcy alternatives were taken away by the Supreme Court’s rulings limiting class actions. Borrowing from what Congress had done through Section 524(g) for asbestos bankruptcy cases, we crafted a channeling injunction under Section 105 of the Bankruptcy Code (incorporating the “All Writs Act”) to achieve the desired goal.

It was both challenging and exhilarating to negotiate with the various constituencies, including Ed McMahon, who was the debtor’s sweepstakes spokesperson; the class action litigants; the unsecured creditors; and the debtor’s equity owners. With the help of a very astute district court judge who presided over both the Chapter 11 case and the class action settlement, we were successful in reaching the desired goal.

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

A: Chapter 11 has become too expensive for the majority of putative debtors. Consequently, there has been a big move in recent years toward attempting to accomplish restructuring of debt outside the Bankruptcy Court. I applaud those efforts and have been involved in a fair amount of those “alternatives to bankruptcy.” There is also a commission currently at work to look at Chapter 11 reforms, which will undoubtedly lead to some suggested improvements in the way Chapter 11 cases are handled.

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

A: In the Supreme Court’s 2011 decision of *Stern v. Marshall*, bankruptcy court jurisdiction over the vast amount of litigation matters brought in a typical Chapter 11 case has become clouded, thereby encouraging most defendants in any litigation of import to engage in costly motion practice and extending the life of the litigation to the detriment of the creditors of the bankruptcy estate. The busiest jurisdictions for Chapter 11 cases (e.g., New York and Delaware) are dealing with this, in part, through a rule clarifying the role of the bankruptcy courts and the district courts where bankruptcy jurisdiction ultimately lies. However, at the moment, the ramifications of this decision are having an adverse effect on the cost and timetable for resolving hotly contested litigation matters.

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

A: Harley Riedel [of [Stichter Riedel Blain & Prosser PA](#)] is a Florida bankruptcy attorney who was engaged by the class action plaintiffs as their bankruptcy counsel in the American Family Enterprises case I discussed in response to question #1 above. He was both a very pleasant person and an effective negotiator for his clients. Most impressive was the speed with which he grasped the complexities of what we were trying to accomplish in this novel approach to consummating a class action settlement in the context of a Chapter 11 case and his ability to impress upon his clients the value of that proposed course of action.

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

As an associate, I did not have a full appreciation for the “negotiation process” involved in Chapter 11 cases and, therefore, in one particular matter was too quick to agree to a compromise of my debtor-client’s rights. After consultation with the partner in charge of the matter, I realized my mistake and, fortunately, was able to salvage the situation in further settlement discussions with my adversary. However, I was appropriately chastised by my adversary for having presented myself as having authority that I did not yet have due to my inexperience. It was a good lesson to learn, since it made me appreciate the importance of my role as an advocate for my client as well as the need to be more circumspect in negotiating the best deal possible for the client.

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