

Hot Practice
Bankruptcy law combines litigation and
transactional skills
By Lisa Stansky

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The business pages are full of news about financial turmoil—the woes of the subprime mortgage industry, the distress on all fronts caused by rising fuel prices, increasing unemployment, and more. This translates into busy times for bankruptcy lawyers, who help clients cope with the financial havoc wrought by economic downturns. New lawyers who are flexible and ready to embrace a practice that offers a wide range of opportunities may want to consider bankruptcy law.

“Right now it’s a very hot practice,” says Eric Brunstad Jr., a partner at Bingham McCutchen in Hartford, Connecticut, and immediate past chair of the Business Bankruptcy Committee of the Section of Business Law. “There is just so much there to whet your appetite The issues are incredibly broad. They are incredibly interesting.” Brunstad notes that large-scale bankruptcies generate issues that span the law, possibly raising issues in tort, intellectual property, labor and employment, and constitutional law.

New lawyers face a fairly steep learning curve. Timothy Lupinacci, cochair of the Bench/Bar Bankruptcy Council of the Judicial Division, says one of the initial challenges is learning the bankruptcy code itself: “You’ve got to learn all the nuances of bankruptcy law.”

One way new lawyers can gain that knowledge is by writing articles, which in turn may lead to speaking engagements, notes Lupinacci, a shareholder at Baker, Donelson, Bearman, Caldwell & Berkowitz in Birmingham, Alabama. Getting one’s name out there helps a lawyer develop a network of contacts to secure referrals, he adds.

If you have a taste for litigation as well as transactional work, a bankruptcy practice could be a good fit for you. Bankruptcy represents a unique combination of the two, says Michael St. Patrick Baxter, chair of the Business Bankruptcy Committee of the Section of Business Law and a partner at Covington & Burling in Washington, D.C. In addition to bankruptcy litigation, there is a transactional aspect involved in restructuring the corporation in bankruptcy, notes Baxter.

Lawyers in the field note that bankruptcy law practitioners must be flexible because the practice cycles along with the economy. Rising lawyers need to understand how these cycles influence their own work flow and be flexible enough to weather these shifts. “They’ve got to be able to do other work besides bankruptcy,” says David Greer, immediate past vice chair of the Consumer Bankruptcy Committee of the Section of Business Law and a solo practitioner in Norfolk, Virginia.

To prepare to dive in, Greer suggests that students get a good foundation in related areas like contract law and secured transactions, among others. Jeffrey M. Sklarz, immediate past chair of the Bankruptcy Law Committee of the Young Lawyers Division, notes that moving to bankruptcy practice from a litigation background helps. “I think bankruptcy is all about understanding the procedures,” says Sklarz, partner with Zeisler & Zeisler in Bridgeport, Connecticut. A background in other substantive areas, such as business law, is good as well, he notes.

Baxter ticks off some areas that intersect with bankruptcy law, such as insurance law and the Employee Retirement Income Security Act (ERISA). Insurance policies can be significant corporate assets in bankruptcy proceedings, Baxter notes. Bankruptcy lawyers who understand how insurance and bankruptcy law intersect will have a huge edge. Baxter points out that companies going into bankruptcy may have large, unfunded pension obligations, creating a link between bankruptcy law and ERISA. He adds that the Pension Benefit Guaranty Corporation (PBGC), the federal entity created to protect pension funds, may also turn out to be one of the largest creditors in the case.

Real estate law is another angle to the practice. Patrick Mears, immediate past chair of the Real Estate Financing Group of the Section of Real Property, Trust & Estate Law, says that he primarily represents creditors in bankruptcy matters and workout scenarios. Many matters concern distressed commercial real estate ventures with debtors that go into bankruptcy and have mortgage loans held by his clients.

Mears, also cochair of the Finance, Insolvency and Restructuring Department of Barnes & Thornburg, in Grand Rapids, Michigan, says that students with an eye on business bankruptcy should know first if they like the work involved: "Make sure you enjoy the area and try it out," he suggests. Sklarz adds that it's key for bankruptcy lawyers to know the businesses they are dealing with.

One of the other pleasures of the practice is its intellectual rigor. One needs creativity to come up with solutions to help companies reorganize, Lupinacci says. Lawyers appearing in bankruptcy court practice before a sophisticated judiciary. "You're really out there arguing in front of a tribunal who really understands it," he adds.

The cases can be huge and take years to work through. Large bankruptcies are big on many fronts, including the number of lawyers involved. "You become part of this enormous team of lawyers" facing a host of issues, Brunstad explains.

Bankruptcy work these days is more likely to cross borders than ever before. "As the world gets closer and closer, smaller and smaller, you will see more opportunities for a lawyer to operate outside the U.S.," says Mears.

Now that you are interested, where do you go from here? There are several routes into the practice. Lupinacci notes that he has done work for both debtors and creditors, eventually focusing on creditors. Seeing the practice from these different perspectives is useful, he says, adding that these days he represents primarily financial institutions and other entities.

One way to see a wide range of cases is to clerk for a federal bankruptcy court judge out of law school. And there are other opportunities with the government, such as working for the U.S. Trustee Program, which is, according to the program's website, a "component of the Department of Justice responsible for overseeing the administration of bankruptcy cases."

Brunstad notes that a state attorney general's office may also have a need for lawyers versed in bankruptcy law. And one could also consider work with the PBGC itself to help employees keep their pension funds.

Sklarz represents debtors in the business realm, and he says that students must work to ferret out opportunities with firms that do debtor work. "There's always fewer debtor [side] firms," he notes.

The largest firms get much of the limelight, but students should not overlook opportunities with large and mid-size firms, Greer points out. "Ask around before you commit," he advises, noting that students should be sure to find a firm with a solid reputation.

After that, go for it. As Greer says, "You just have to go in. Be willing to learn. Be willing to work hard."

ABA Resources on Bankruptcy Law

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