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Nature of Bankruptcy Work Changing Amid Filing Declines



Bankruptcy counseling—referred to by one attorney as “an industry in consolidation”—has always been a cyclical business, but the steady, years-long decline in new cases has required lawyers to rethink their practices to some extent.

“The drop-off that we’ve seen is in the midsize-to-smaller-size Chapter 11s,” said Stephen Packman, who chairs the bankruptcy, restructuring and insolvency litigation group at Haddonfield-based Archer & Greiner, and practices in the firm’s Philadelphia office.

“There’s more out-of-court workouts; there’s more prepackaged deals,” he added. “There’s been more bankruptcies that are either largely sales or liquidations.”

“Certainly the work we would traditionally do in the region has downsized,” he said.

But it’s not an issue limited to the region. For the yearlong period ending March 31, filings in federal bankruptcy courts nationwide tumbled by 12.3 percent after falling 11.3 percent the prior year, according to a Administrative Office of the U.S. Courts database.

More recently, an April 30 report about law firm business by Thomson Reuters claimed a 7 percent dip in demand for bankruptcy services in the first quarter of 2015.

“It looks like stepping stones down into the ocean,” said David Stratton, who called bankruptcy practice one that is consolidating. “You have to have more inventory to keep you busy.”

“There’s very few people who are busy constantly, and a lot of people are slow,” said Stratton, who co-chairs Philadelphia-based Pepper Hamilton’s corporate restructuring and bankruptcy practice group from the firm’s Wilmington, Delaware, office. “And you’re going to see more of that, I think.”

The reasons are many and have been discussed at length.

The economy, while far from booming, has recovered from the recession—which made bankruptcy a busy and coveted practice in 2009 and 2010. Credit remains cheap, and even weak companies can borrow money at little cost to stay afloat. Changes in the Bankruptcy Code also have played a part.

Also, according to practitioners, creditors are reluctant to fund a company, especially a small to midsize one, as it works to reform. The lengthier—and more lucrative—reorganizations have given way to faster, cheaper liquidation, they said.

Whatever the reasons, firms have had to adapt in a variety of ways, including by picking up the bankruptcy-related tasks that might not yield the same amount of billable hours, such as workouts, and doing other types of work for banking sector clients.

Some formidable bankruptcy-heavy firms are carried by reputation (the lawyers consistently mentioned Kirkland & Ellis). Still, even those with a strong reputation weren't immune to the market changes: For instance, Weil, Gotshal & Manges' revenue dropped in 2013 in part because its Lehman Brothers bankruptcy work dried up, leading to layoffs and pay cuts. And though the firm posted a 16.5 percent revenue upswing in 2014, its bankruptcy practice remained slow, according to sibling publication *The American Lawyer*.

Consultants in recent months have said bankruptcy is no longer a targeted practice when it comes to firm mergers and acquisitions.

According to Stratton, "there have been other times when people have been desperate to get bankruptcy practices."

"I have seen lawyers who've been practicing for 25, 30 years, who now are doing the front-side transactional work," Stratton said. "People are diversifying in the face of this slowdown ... but not everyone can do that."

Joseph Lubertazzi Jr., a senior partner in McCarter & English's bankruptcy and restructuring practice group and a member of the Newark firm's executive committee, said, "This is not New Jersey; this is widespread. If you're what I call a bankruptcy purist, a lot of people are not busy. ... A lot of people across the board [are] wondering where it's going."

McCarter & English's group has between 25 and 30 people, according to Lubertazzi, who estimated that 90 percent of work is on the creditor side.

In his own practice, Lubertazzi said he's currently at work on four or five large creditor-side matters, but several months ago, there were only one or two active files.

Lawyers in the group have picked up the slack by handling workouts, litigation and other areas of client need, he said.

"If you're doing bankruptcy work, you have to look at who the client base is," he said. "If you're doing debtor work ... you're really marketing your reputation," because most companies don't go into bankruptcy more than once.

On the other side of the coin, institutional clients—namely banks and other lenders—tend to be loyal and routinely funnel other tasks or types of work to the firm, according to Lubertazzi.

Picking up that slack has kept business steady: Revenue strictly from bankruptcy work is down, but practice group revenue is not, Lubertazzi said.

"On a billable hour basis, we are fully engaged," he added. "So it's not like I have people sitting around, but they may be doing some non-bankruptcy work. ... Considering what is happening to some other firms, we're happy."

Flaster Greenberg in Cherry Hill, a roughly 60-lawyer firm that counts bankruptcy among its practices, sees opportunity in the changing market, according to managing shareholder Peter Spigel.

"We see bankruptcy as a strategic area for us," he said, adding that the firm is "still out there" recruiting from other firms willing to jettison their bankruptcy practices. "We're talking to a few laterals now in the bankruptcy area."

"That's, frankly, our strategy—to try to take advantage of areas in the market that are maybe not being pursued," he added.

There have been bumps in the road, according to Spigel: The firm's nine-lawyer bankruptcy group has seen a drop-off in individual filings—by executives at privately held companies, for example—and a long-running dormancy in Pennsylvania bankruptcy courts, though Delaware remains busy. Bankruptcy practitioners at the firm handle workouts, debt renegotiations and other related tasks, he noted.

"We're not highly leveraged," Spigel said. "We don't have a lot of associates who have to be fed." Archer & Greiner's six-lawyer bankruptcy group is leaner than it was in years past, though Packman said the downsizing "wasn't really a function of" lack of bankruptcy work. He declined to explain further. All lawyers in the group—who handle creditor-side, debtor-side, committee and trustee work—are busy, Packman said, noting that the firm served as special counsel to the debtor in the Trump Taj Mahal matter in Delaware, and has branched out into international Chapter 15 work.

Pepper Hamilton, meanwhile, has been “patient” through market changes, and work has continued to flow in, Stratton said, noting that the firm has worked on the municipal bankruptcy in Detroit, and is co-counsel to the debtor in RadioShack’s pending bankruptcy in Delaware.

“Some of it was just dumb luck; let’s be honest,” Stratton said. “We may be beating the average ... but we can’t defy gravity.”

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