

Q&A With Sheppard Mullin's Carren Shulman

Law360, New York (March 19, 2013, 1:31 PM ET) -- Carren B. Shulman is a partner in Sheppard Mullin Richter & Hampton LLP's finance and bankruptcy group in New York and a member of the firm's executive committee. For more than two decades, she has counseled clients in restructuring, bankruptcy, receiverships and distressed asset purchases, aggressively protecting her clients' rights, resolving disputes, recovering value and helping clients to solidify business relationships.

Shulman has experience in the areas of hospitality, aerospace, asset-backed securities, technology, life sciences and fashion/retail, and with issues involving the intersection of intellectual property and bankruptcy. For the sixth consecutive year, she represents IWIRC before UNCITRAL, Working Group V, which makes recommendations regarding the interpretation of the Model Law on Cross-Border Insolvency, to foster certainty and predictability in cross-border insolvencies.

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

A: All bankruptcy cases present some challenge, but the most challenging recent case was *In re M Waikiki LLC*, a bankruptcy filed by the owner of a hotel in Hawaii to avoid a TRO entered by a N.Y. state court in favor of our client. We dealt with so many moving parts over a contracted period of time. Immediately after the filing, we successfully moved to recover our client's proprietary property, including data, contracts, intellectual property and customer information. We fought the debtor's attempt to increase the DIP loan and extend the case for up to a year. We won our bid to terminate exclusivity within the first four months of the case, negotiated with the senior secured creditor and filed a competing plan, and we litigated multiple legal battles with substantial discovery in an incredibly tight time frame, all of which culminated in a competing plan trial over a 10-day period with multiple expert and fact witnesses. It was a fun and exciting case, but it was an unbelievably challenging nine months, albeit in a great location.

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

A: I have concerns about a few areas of the practice, like the increased use of claim estimation to adjudicate and effectively cap claims in the wake of *Stern v Marshall*, but none require reform. Bankruptcy courts are courts of equity and bankruptcy judges have tremendous power to interpret the Bankruptcy Code in a manner that is fair to all involved, and work hard to achieve the right result. Great bankruptcy practitioners are master strategists and will find ways to achieve their goals regardless of any changes or clarifications I might add to the Code or the Rules. It would be nice to have consistency and therefore predictability from state to state in interpreting the Code, or a guide for courts not often presented with some issues, somewhat similar to the Legislative Guide on Insolvency published by UNCITRAL. However, a formal requirement for consistency would curtail the bankruptcy court's power to do equity.

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

A: At least weekly there is an important decision relevant to my practice. The most recent are in cases like *Vitro* and the Argentinean debt restructuring where foreign governments took action or rendered a decision that affected U.S. creditors and were found by U.S. courts to be contrary to U.S. bankruptcy law. Contrary decisions across borders make it difficult to provide definitive advice with regard to outcomes, and will require lawyers to provide better up front business advice to limit risk. As the world continues to get smaller, companies with international operations must consider where disputes may arise, where they may be tried, and potential outcomes, although it will be difficult for a foreign business with assets and/or creditors in the U.S. to avoid filing a proceeding here, whether a Chapter 11 or Chapter 15.

There is also a string of interesting cases beginning with *Qimonda AG* and continuing through this past summer regarding the protection of patent and trademark licensees facing rejection of their licenses. A portion of my practice is advising our tech and life sciences attorneys on the protections afforded generally to contract parties and specifically to licensees of intellectual property, which under the Code does not include trademarks. I have written and spoken on these issues throughout my career and find the recent bankruptcy court and circuit court attention noteworthy.

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

A: Debra Grassgreen from Pachulski. She's an incredibly hard-working attorney, smart, practical and organized. She flies everywhere for work while raising a small child, devotes substantial time to improving her community, and she's a gourmet cook. It's the cooking part that really impresses me.

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

A: Believing that people who had been practicing longer, spoke more authoritatively, or yelled louder must know more. It took a few years for me to realize that we all become the person practicing longer and are not necessarily smarter, we should all speak authoritatively when we've researched the facts and the law and know what we're saying, and the louder someone yells is usually directly linked to their utter lack of knowledge.

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