

# ***BANKRUPTCY PROFESSIONAL:*** **SPOTLIGHT**



**Michael L. Cook**

***Partner & Chair of Business Reorganization Group***

**Schulte Roth & Zabel LLP**

Schulte Roth & Zabel LLP's New York, Washington, D.C. and London-based offices handle the full range of legal needs—from “domestic and cross-border acquisitions to high-stakes litigations, multi-layered financings, high-profile real estate deals, debt restructurings, and estate and trust administration.” In fact, the firm boasts 13 full-service practice groups and 450 lawyers worldwide.

Since its formation in 1969, the firm's focus has been on serving the financial services industry. According to Schulte Roth & Zabel, it is “widely regarded as the ‘destination firm for private investment fund formation and management’”—in addition to a range of other legal capabilities. The firm states, “Just as our pioneering efforts in the alternative investment arena have made us the hedge fund industry's ‘iconic brand,’ clients increasingly have come to us to represent them in transactions of great size and importance.”

Schulte Roth & Zabel's Business Reorganization Group handles Acquisitions and Divestitures of Troubled Entities; Creditors' Rights Litigation; Bankruptcy Litigation; Creditor Representation; Distressed Debt and Claims Trading; Financially Troubled Companies; Prime Broker and Counterparty Issues; Real Estate Restructuring; Reorganization and Debt Restructuring; Reorganization Financing and Transaction Counseling.

Michael L. Cook, a Partner in Schulte Roth & Zabel's Business Reorganization Group, focuses on corporate restructuring, workouts and creditors' rights/bankruptcy litigation. His clients include lenders, acquirers, reorganization trustees, creditors' committees, troubled companies, professional firms and other parties.

Recognized as a leading lawyer by The Best Lawyers in America, Chambers USA, The Legal 500 United States, New York Super Lawyers, The K&A Restructuring Register, PLC Cross-border Restructuring and Insolvency Handbook and Who's Who in American Law, Mr. Cook chairs the Board of Regents of the American College of Bankruptcy, is a member of the Practising Law Institute Bankruptcy Law Advisory Committee, a former chair of the American Bar Association's Creditors' Rights Litigation Committee and a former chair of the Bankruptcy Litigation Institute. We spoke with Mike about how he got interested in bankruptcy law, his advice to law students considering a specialty in bankruptcy and trends in bankruptcy.

**BP:** Your career in bankruptcy law spans several decades. Why did you choose this particular niche, and did you ever practice in other areas?

**MC:** Bankruptcy fascinated me in law school because of a particular teacher, the late Professor Lawrence P. King, who, at his death in 2001, was the country's

leading academic bankruptcy guru. But he was a lot more than that. He was my favorite teacher in law school, role model, and later friend. His teaching and, more important, his character—not the subject matter of his courses—spurred my interest in bankruptcy. If King had taught torts, that’s probably what I would be practicing today.

BP: In 2000, you moved to Schulte Roth & Zabel from Skadden Arps. Why did you make that move after two decades with Skadden Arps?

MC: Paul Roth, a founding partner of the Firm, had been a neighbor for about 16 years prior to my moving to Schulte in 2000. We lived in the same apartment building and often took the same subway to work. In late 1999, he asked if I would be interested in moving to Schulte. After six months of soul-searching and inquiries, the prospect of a mid-sized-firm, then led by Paul, was intriguing. I previously litigated against Schulte, and had a good relationship with other partners. Also, at this stage in my career, I wanted to move from a large reorganization practice to a smaller group in one place.

BP: Before Skadden Arps, you were with Weil Gotshal for ten years. What draws you to the larger firms, and what, specifically, differentiates Schulte Roth & Zabel from its competitors.

MC: Larger firms attracted me because of the cross-fertilization by different practice areas. My practice depends heavily on working closely with litigation, corporate, real estate and tax lawyers. Weil, Skadden and Schulte all provided these capabilities. When I joined Weil in 1970, the firm had about 60 lawyers. Almost 11 years later, when I joined Skadden, the firm had about 260 lawyers. When I left Skadden after 20 years, however, the firm had about 2,000 lawyers with more than 20 offices around the world. Schulte had about 250 lawyers when I joined in 2000, with a single office in New York, but now the firm has 425 lawyers in three offices. The lawyering and the quality of the people at each firm helped me decide where I belonged at a particular point in my career. I have made many life-long friends at Weil, Skadden and Schulte, and have been lucky at every stage in my career.

BP: Do you have occasion to work with and/or argue against your former colleagues at Skadden and/or Weil?

MC: Weil and Skadden have since provided me with many opportunities to work with them (i.e., they sent business) and, on occasion, to oppose them in professional engagements. Because of our strong personal friendships, we have had a good time and maintained mutual respect. In the end, our clients always benefited.

BP: Schulte Roth & Zabel has particular notoriety with financial service industry representations—particularly with those clients “whose assets under management...total in the trillions of dollars.” What financial services industry trends do you envision for the remainder of 2010 and beyond?

MC: First, there will be even more litigation in the financial services industry. With increased bankruptcy filings and non-judicial debt restructurings, parties will try to extract leverage from litigation. Just within the past few months, for example, courts have handed down controversial, often conflicting, decisions on (a) the ability of secured lenders to credit bid; (b) the disclosure requirements for investors under the Bankruptcy Rules; and (c) the effect of statutory safe harbor provisions insulating parties from the effects of bankruptcy. Distressed acquisitions will also continue to keep lawyers busy and will generate the usual amount of litigation (e.g., asserted collusive bidding; improper credit bidding; unfair and unnecessary breakup fees).

One undesirable development is professional fee disputes. Unhappy participants in bankruptcy cases have, unfortunately, challenged fees paid to financial advisors, accountants, investment bankers and lawyers. Some of this litigation is justified, but much more of it usually turns on grudge matches and a desire to punish a particular professional for having represented his client effectively.

BP: Your firm cites its heavy involvement in pro bono initiatives. In which representations of this nature are you personally involved?

MC: Pro bono work has always been an important part of my legal career, and I have been especially active in the last 15 years. I chaired the Board of Lawyers Alliance for New York, the leading provider of pro bono legal services to New York’s nonprofit community, from 1999 to 2003, having been a director from 1996 to 1999. When my term expired, I worked with the Federal Bar Council from 2004 through 2008 to establish the New York City Bank-

ruptcy Assistance Project and chaired its Steering Committee. In early 2008, The American College of Bankruptcy asked me to chair its pro bono committee. In all of these roles, my job was to devise and implement strategies to provide effective bankruptcy legal assistance for indigent consumer debtors. Happily, the American College of Bankruptcy has now funded either the establishment of new projects or funded existing projects around the country, including Lawyers Alliance and the New York City Bankruptcy Assistance Project.

BP: In addition to your prolific contributions to numerous industry publications, you're also lead editor and contributing author of *Bankruptcy Litigation Manual* (rev. ed., Aspen Law & Business, 2009–10), and a contributing author to *Collier Bankruptcy Guide* (rev. ed., Matthew Bender, 2005) and *Collier on Bankruptcy* (15th rev. ed., 2003)—among other renowned titles. Why do you devote so much of your time to writing, and how do you fit this in with your client representations?

MC: Clients benefit indirectly, if not directly, from my writing. Writing has kept me current on important issues that regularly arise in my practice. For example, we litigated over judicial approval of a settlement our client made with a bankruptcy trustee a few years ago. Our adversary cited *The Bankruptcy Litigation Manual*, which contains my chapter on settlements. We were able to convince the court that the objecting party had not only misinterpreted my analysis, but had also taken it out of context.

BP: For many years, you were an Adjunct Professor of Law on Creditors' Rights, Debtors' Protection and Bankruptcy as well as a Lecturer on Business Law. What did you enjoy about teaching, and why did you stop?

MC: Everything about teaching was great. Again, like writing, teaching kept me current and forced me to explain complex subjects in plain English. I learned a great deal from teaching. In particular, I remember discussing a recent 5-4 Supreme Court decision. I thought the lower courts and the dissent had gotten it right. By the time my class was over, one of my students had convinced me otherwise. In addition, many of my students have gone on to become effective, well-known lawyers who continue to keep up with me. The sense that you had some role in shaping a younger person's education is gratifying. Just yesterday, a well-known practitioner graciously

wrote me, saying that "whatever success I've had [I attribute] to what I learned in your class."

I reluctantly had to stop teaching a few years ago when my young sons started elementary school. Juggling my schedule had become almost impossible. Instead of teaching law students, I read nightly to my boys, now 12 and 13 years old. And I continue to manage about four continuing legal education programs a year for practicing lawyers.

BP: What is the most important message you'd like to convey to law students embarking on a career in bankruptcy law?

MC: Students embarking on a career in bankruptcy law should focus on helping clients and continuing their education. Like many other disciplines, the law is still evolving, and there is still much to learn. Indeed, life-long learning has kept me anchored to my practice. It's what gets me up in the morning and makes me run to work.

BP: You recently led a team of attorneys representing Alfa, S.A.B. de CV in a case related to Enron's 2001 bankruptcy. Tell me about this proceeding and the significance of its outcome.

MC: Our representation of Alfa in the Enron case is ongoing. Although Alfa obtained a reversal of the bankruptcy court's ruling on what we viewed to be the dispositive legal issue in the case, Enron did an effective job, in our view, of creating fact issues in the bankruptcy court and turning a pure legal dispute into a protracted factual dispute. The essential legal issue is whether a particular safe harbor provision in the Bankruptcy Code insulated from preference and fraudulent transfer attack a substantial payment made to our client by its stockbroker 45 days prior to Enron's Chapter 11 filing.

The district judge in the case quickly grasped the overarching legal issue, understood its significance and, within a 60-day period, not only granted leave to appeal, but also reversed the bankruptcy court on the law, ordering dismissal of Enron's complaint. As the district court noted when granting leave to appeal in October, 2009, five circuits within the past 20 years had agreed with Alfa's legal position. Only one circuit, in a 2-1 decision, disagreed. The Second Circuit should be hearing argument on Enron's appeal within the next six months.

BP: Your representation roster covers the full gamut—Debtor Representations, Investors/ Acquirors, Reorganization Trustees, Secured Creditors and Lessors, Creditors’ Committees and Professional Firms. Do you have a representation preference?

MC: I have no client preference. Helping solve client problems, helping clients out of difficult situations, and adding value to a particular transaction are all rewarding to me.

BP: In May, the UJA-Federation of New York’s Lawyers Division will award you with the Professor Lawrence P. King Award in recognition of your contributions to the field of bankruptcy. How were you selected for this honor, and what does the award mean to you personally and professionally?

MC: The UJA-Federation Award is doubly significant to me. First, it’s gratifying to be told that UJA-Federation, whose mission is caring for all New Yorkers, believes you made a meaningful contrib-

ution. Because it is the Lawrence P. King award, it has added significance. As I mentioned before, Larry King showed many people, including me, how to live a life that matters. He was a sharing, generous, modest decent human being. That my community thinks I learned something from him means a lot.

BP: What representation has brought you the greatest personal satisfaction?

MC: So many of my professional engagements have brought tremendous personal satisfaction. They range from heavily contested acquisitions; reorganizations for troubled companies and individuals; and professionals in reputation-damaging litigation. Representing other professionals—financial advisors, accountants and law firms—in fee disputes has been particularly satisfying whenever we were able to vindicate the professional’s reputation. Where I come from, a professional’s reputation is much more valuable than money.

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