American College of Bankruptcy
Distinguished Service Award
Recipient Remarks
By
Hon. Burton R. Lifland

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Thank you Ralph for those most generous and *fulsome* remarks (a bit more about that term later).

Ralph, you and I share a most unique connection to the field of insolvency and bankruptcy: I, as counsel to Finley Kumble Heine & Underberg, which after my departure grew 10 fold, and you at LeBoeuf, Lamb Greene & MacRae, which, long after you left, grew enormously by merger into Dewey LeBoeuf. Of course, both major law firms following our respective departures ultimately entered into formal bankruptcy liquidation proceedings.

I'm not sure as to what this portends for our current affiliations, but, as for me, I am most concerned with the solvency of my sovereign employer, which, notoriously, even with sequestration, is having trouble meeting its financial obligations. Notwithstanding this, I look forward to its long-term survival. If not, there is abundant talent in this room to deal with the sovereign's debt.

Some have told me that I've enjoyed a fulsome career – I was flattered until I found it to be a pejorative comment. Although the term is meant to be uplifting, the use of the adjective surprises me, because as far as I, and the Random House Dictionary, are concerned, this is an unflattering description. To quote from that dictionary: "Fulsome," the primary definition is, "offensive to good taste." The secondary definition is, "disgusting, sickening, repulsive." This hardly describes the careers of the award recipients that preceded me.

In joining the ranks of these prior recipients, I am most humbled. I bask in the reflection of the extraordinary talent, dedication, scholarship and achievements of these folks who are often described as legends, many of whom are present tonight, and almost all of whom have had lasting influence on me.

Ralph Mabey, Bill Norton, Jim Yacos, along with other newbie judges in the era of the just- enacted Bankruptcy Reform Act of 1978, were called upon to deliver cutting edge opinions on a *tabula rasa*.

On the other side of the bench, and on the lecture circuit, there were the likes of Harvey Miller, Leonard Rosen, Ray Shapiro, (not related to his namesake Barney Shapiro), Jerry Smith, Larry King, George Treister and others. Their jurisprudential benchmarks remain in place today.

These benchmarks, and other impactful products emanating from the College, are the fruits of those Fellows who have been long recognized for their selfless zeal, and scholarship, in advancing the integrity and unraveling the complexities of the insolvency arena. This is no small task given a global economy, which fosters what we, who have labored in this vineyard, recognize as an accelerating detrimental change. Namely, change imposed by the disproportionate impact of special interests that seek to elevate parochial needs over the traditional concepts of equality of distribution and predictability. Change is inevitable and necessary, but it is hoped that those, such as the College Fellows, can channel change to help rather than hinder our insolvency regimes.

For me, the complex changing trends started when I was a newbie judge. As with my colleagues in the SDNY, I've learned early on to deal with the mega cases, which start with portends of a swift simple passage through the system, but which invariably turn out to be incredibly complex, with little cookie-cutter precedence.

Johns Manville, the first mass torts case seeking a bankruptcy solution, was like the proverbial camel that gets its nose in the tent. The first look at that nose never lets you size up the rest of it as it squeezes its way inside. The early assurances by the *Brahmin* lawyers (Michael Crames, Gordon Harriss, and Steve Case) turned out to be terribly wrong.

On the first day of the case, in 1982, they emphasized that this is a simple matter of some $50 million measured by a tobacco-use causation, to be dealt with a one-size-fits-all claims adjudication process. (In other words, it's a tobacco case, DUMMY, not an asbestos one!)

Well, scores of years later, we bear witness (i) to the effects of an evergreen, ongoing trust that has distributed more than $4 billion and thus far with more to come, (ii) to adoption by Congress of a statute, 11 U.S.C. § 524(g), which is modeled on the Manville confirmation order, and (iii) to a perpetual litigation ping pong through the courts, including several trips to the Supreme Court, and which is continuing to the present day without an end in sight.

I find that this genre of cases is sufficiently interesting and challenging to foster my desire to remain on the bench long enough to see them through closure.

In this vein, the Madoff case regularly generates complex issues pushing the frontiers of certain bodies of law. And, like Manville, the impact of these issues is felt by an expansive class of Madoff victims, who, like Manville, could fairly be considered part of a mass tort case, generating full employment to the legal profession. This mass tort case will also survive me… perhaps as a "fulsome" one.

I am quite fortunate to have been blessed not only with a wonderful, supportive family, but with a second career in the hot button areas of cross-border insolvency. As a longstanding member of our country's delegation to the United Nations Commercial Trade Law commission, (the acronym is UNCITRAL), I have been privileged to be among those who labored to develop

a model, cross border insolvency law as well as related products such as a legislative guide, a procedural guide, and a compendium of cross border protocols, all of which have been validated by widespread international adoption.

For me, there is great pleasure in dealing with and interpreting Chapter 15 of the Bankruptcy Code, which is the analogue to the Model Law. The floor debaters, prior to the United Nations' adoption, attempted with skill and fertile imagination to anticipate most every issue that could arise from implementing the Model Law. But to this day, as courts struggle with administering versions of that Law, the amount of unintended consequences steadily increases and amazes me. This growth of cross border jurisprudence is like law on steroids, I am gratified to be a part of it.

I am also, infinitely, gratified to be a part of this esteemed organization of Fellows and look back very fondly at the collegial time spent together. I am truly honored by this award.

Thank you.