Q&A with Robinson & Cole's Michael Enright

Law360, New York (April 26, 2013, 2:16 PM ET) — Michael R. Enright is a partner in Robinson & Cole LLP's Hartford, Conn., office. He handles all types of complex commercial insolvencies, including bankruptcy and receivership cases, and workouts. He also regularly defends preference, fraudulent transfer and other bankruptcy litigation, and analyzes transactional structures to identify and mitigate risks based on such claims. Enright has authored numerous bankruptcy-related publications and speaks frequently on bankruptcy matters, including as a member of the Task Force on Current Developments of the American Bar Association's Business Bankruptcy Committee. He is licensed to practice in New York, Illinois and Connecticut.

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

A: If I had to pick just one, it would be a surprisingly small case where we represented a major big box retailer in a nasty dispute with a local developer. The developer pitched a new store site to our client in a strip center to be built and successfully leased the site to our client. After becoming impatient over the glacial pace of progress at the site, due to the real estate recession, the developer turned around and sold the (already leased) site to our client's major competitor on the sly. This did not play well with our client, which was faced with losing a prime site and suffering a loss at the hands of its archrival. After a skirmish in federal court yielded an unpleasant preliminary result for the developer and the competitor, a Chapter 11 filing by the developer followed shortly, and we continued the slugfest in bankruptcy court.

The case was interesting because it featured two major retail competitors against each other. In short order, these competitors were able to resolve their mutual differences, and we forged a settlement that left the developer to fight on alone against the two of them. Very challenging injunction litigation followed in the bankruptcy court over our client's right to build its store on the approved site it had leased (and bought back from its competitor under the settlement terms). Not only was the developer, who controlled the surrounding property, uncooperative in the extreme, but oftentimes also went out of its way to actively interfere with the parcel's development, including setting up static and moving roadblocks to deter site access. It's the only case I've ever handled where the opposing party actually cut the client's phone lines (and admitted it on the witness stand) or where I was required to put into evidence 8" by 10" glossies of freshly dug ditches. In the end, both retailers got their new stores open (less than a quarter mile away from each other), and after a long delay, the developer settled on relatively favorable terms, having forfeited any upside whatsoever and having become a mere distraction for the retail behemoths.

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

A: The bankruptcy case venue still needs an overhaul. Despite all the press about what great bankruptcy courts and professionals New York and Delaware have, the simple truth is that it has been a race to the bottom for administration of large Chapter 11 cases, and the biggest players have run roughshod over the smaller ones. Rates and costs have accelerated astronomically, and results remain unimproved despite all the consultants, advisers and layers of process. This needs to change, at least insofar as the burden of administering these cases needs to be spread around the courts more evenly and with improvements in process.

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

A: The Supreme Court's decision in Stern v. Marshall really didn't add anything new to the bankruptcy jurisdictional morass, but it certainly (and unpleasantly) reminded us all of what the Supreme Court ruled 30 years earlier, and we've all tried to ignore ever since: that the 1978 Bankruptcy Code incorporated a jurisdictional flaw that undermines the efficient administration of bankruptcy cases in one forum. As the lower courts wrestle with this issue with some renewed focus in the wake of Stern, we need to find some procedures and new rules that will work better than what we have in place, much of which is built on a fatally flawed foundation.

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

A: Jack Costello at Edwards Wildman. I worked for Jack in my first job and learned the most important fundamentals about practice from him: prepare thoroughly, especially better than the other side; never panic, even though everyone else is panicking all around you; and treat your opponents with respect but beat them soundly while you do it. Jack demonstrated to me in real time the value of reducing a problem to its component parts for analysis and exploiting the other side's weakness relentlessly.

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

A: I assumed that another lawyer would treat me the same way I would have treated her. Instead, she unexpectedly used a situation to her advantage, forcing me to act in a very creative (and uncomfortable) way, including putting myself on the witness stand and being forced to ask myself questions and to give myself answers in open court. As crazy as this was (and it reminded me of a scene from a Woody Allen movie at the time), it worked to protect my client's interests, but I learned a hard lesson about relying on fair play by others too much, particularly when the other side sees an advantage for its client, though short-lived and unwise.