



Q&A With Craig & Macauley's Christopher Panos

Law360, New York (April 09, 2010) -- Christopher J. Panos is the managing shareholder of [Craig and Macauley](#) PC. He concentrates his practice in insolvency matters including bankruptcy and business reorganization, as well as general business law, mergers and acquisitions, commercial litigation. Panos also represents lenders and borrowers in the negotiation and documentation of commercial finance transactions, loan workouts and restructurings.

He often is called upon as “special situations” counsel for clients such as hedge funds, private equity groups, financial institutions, and operating businesses when those clients face issues in connection with acquisitions, financial restructuring, investments and portfolio companies that require creative solutions and strategic thinking, drawing upon Panos’s diverse experience in complex transactions, litigation and insolvency matters.

In 2008, he was elected as a Fellow of the American College of Bankruptcy. Panos serves as a Trustee of the Boston Bar Foundation.

Q: What is the most challenging case you've worked on, and why?

A: A number of years ago I represented a private equity group involved in what was predicted to be a “busted deal” with a joint venture partner on a large loan to an operating energy business that was the first step in an acquisition.

The threatened bankruptcy of the joint venture partner and the magnitude of its other issues were causing the joint venture partner to act in a very self-interested manner without assigning any risk to the litigation threats from the borrower/seller. The joint venture partner certainly was not concerned with potential economic consequences to the limited partners of my client that would result from not closing the deal, and the litigation exposure to my client that would arise when the joint venture partner would not close. Evaluating the exposure, leverage and potential strategies involved consideration of litigation, bankruptcy transactional and regulatory issues.

After a series of meetings in various cities, negotiations broke down when the joint venture partner made new demands that drove the borrower/seller away from the table and towards commencement of a suit that could result in a substantial write-down of the loan and lost opportunities from the acquisition.

My client perceived that there was an opportunity to take out the joint venture partner and make a deal with the borrower/seller directly. I spoke with the representatives of the borrower/seller as they were packing up to leave. This became the groundwork for what was to become a midnight meeting in the bar of a hotel where the outline of a \$100 million-plus transaction was negotiated — not literally on the back of a napkin, but close to it.

Executing the plan involved four months of litigation posturing, bankruptcy contingency planning and, ultimately, documenting the deal. The challenge was in executing on opportunities and dealing with and ultimately controlling an irrational actor, all in the context of a complex transaction with significant timing issues.

The deal never would have been possible without very smart clients who saw opportunity in what otherwise was a morass and who were willing to be aggressive and take greater participation in the investment than they had planned in order to avoid a substantial loss. Years later, the client recognized a gain that exceeded by multiples its greatest projections.

Q: What accomplishment as an attorney are you most proud of?

A: I am proud of many professional accomplishments and results for clients. These range from results obtained in pro bono matters to successful deals, trials and settlements.

What I am most proud of is that I believe that I have earned the trust and respect of clients and other lawyers and professionals. On many occasions I have been retained by lawyers and law firms to represent them in sensitive matters such as dissolutions, internal disputes or fee issues. I also receive frequent calls from other lawyers asking me to be a sounding board on an issue in one of their cases or even with their own firm.

Clients also frequently ask my perspective on purely business issues. I hope this means that over more than 20 years in practice I have earned a reputation for good judgment, hard work and integrity.

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

A: 1. The Bankruptcy Abuse Prevention and Consumer Protection Act changes on timing of assumption of rejection of leases have made retail restructurings much more challenging. These BAPCPA changes have imposed a restraint on realizing value for the estate that is often out of line with the reality of determining whether locations should be maintained or closed.

2. I would also like to see legislative clarification to eliminate the split among the courts on whether a debtor may assume its own intellectual property licenses (preferably to clearly provide that it may), even if not otherwise assignable under applicable nonbankruptcy law.

3. It would be nice, but not likely, to see some modification of the BAPCPA amendment that was intended to significantly limit key employee retention plans (KERPs) for “insiders.” While I believe that the abuses that led to the amendment were real, the pendulum has swung too far and has limited an effective tool to retain qualified individuals who could contribute real value through a “per se” rule that really should allow some discretion for reviewing courts. Courts now have to review “incentive” plans to determine their true motivation.

4. Fortunately, I do not have to regularly deal with means testing, but I have spent a fair amount of time thinking about how Chapter 11 is not a neat fit for cases for individuals. There are a lot of interesting issues that arise that likely will have to continue to be judicially determined — which may actually be better than attempting to legislatively address these issues.

Q: Where do you see the next wave of cases in your practice area coming from?

A: Commercial real estate.

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A: I frequently tell people, who upon hearing what I do remark that it must be difficult being around so many lawyers all of the time, that I am very fortunate to deal with excellent lawyers, accountants and financial advisers regularly. I am constantly impressed by the quality of professionals involved in restructuring matters.

Recently, I represented a large creditor in the Nortel case. In addition to having issues in connection with ongoing business and sale transactions proposed by the debtor, we sat as a member of the creditors committee. I don't often get to watch other people do the hard work on cases. I was impressed by and enjoyed watching the work of the [Akin Gump Strauss Hauer & Feld LLP](#) team, representing the committee, and the Cleary team (and the Nortel chief restructuring officer), representing the U.S. debtors, as they navigated the insolvency proceedings pending in the U.S., Canada and the U.K. and simultaneously ran three to five sale processes.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: Do it. If you like crisis management and business and if you want to develop an understanding of issues in many different disciplines of the law, do it.