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Q&A With Morrison & Foerster's Gary Lee

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Gary Lee

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Law360, New York (May 16, 2013, 5:09 PM ET) -- Gary S. Lee is a partner in Morrison & Foerster LLP's New York office. He is co-chairman of the firm's finance department and chairman of the firmwide business restructuring and insolvency group. Lee advises clients on domestic and international restructuring and insolvency matters in the United States, United Kingdom and continental Europe. He currently acts as lead counsel to Residential Capital and its subsidiaries in their Chapter 11 cases and represents several hedge funds in restructuring and liquidation proceedings, including several matters in the Madoff SIPA proceedings.

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

A: In 2008, the firm had the privilege of being retained to assist the resolution committees and winding-up boards of two of the three Icelandic banks that were taken over by the financial regulator in Iceland. When we were first retained, our initial task was to help figure out how to preserve the banks' foreign assets in the face of enormous creditor pressure, asset seizures, and, in the case of Landsbanki, finding itself subject to U.K. anti-terrorism legislation. When we reviewed the laws dealing with restructurings in Iceland with our clients, it became apparent that we were stepping into unknown territory — Icelandic law did not provide for a bank reorganization proceeding that would be recognized internationally, which was necessary to preserve the banks' foreign assets.

Working with our clients, we proposed a draft legislative amendment that was approved by the Icelandic Parliament. It allowed the Icelandic banks to stay creditor actions, suspend payments, institute a claims process and ultimately gain international court recognition for the insolvency proceedings. The opportunity to work with talented clients to address a gap in legislation, in real time and under extreme circumstances, was one of the most intellectually challenging, but also exciting, matters I have ever worked on.

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

A: The 210-day limit on the time period for debtors to assume or reject real property leases imposed by BAPCPA in 2005 is too short. Debtors can be forced into liquidation or 363 sales because they do not have enough time to evaluate their leases in the context of a reorganization plan. The tight time frame is also problematic for 363 sales because the purchaser is rushed into determining which leases it wants to assume from the debtor.

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

A: In 2005, BAPCPA limited the period in which debtors have the exclusive right to file a plan of reorganization to a maximum of 18 months. I believe that this limitation has had an impact on the plan negotiation process in recent cases. A strict limitation on the exclusivity period affords creditors significant bargaining power, which may create hold-up value if they refuse to engage in meaningful plan negotiations with the debtors. This may be one reason there has been a trend toward 363 sales as a means of disposing of assets outside of a plan process in recent

years; debtors do not want to risk the uncertainty of whether or not they will have creditor support. Recently, we have seen competing plans filed in some complex cases following the expiration of exclusivity. How these cases are handled going forward will be interesting to see.

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

A: Harvey Miller taught a bankruptcy law class at NYU that I attended more than 20 years ago. At that stage, I was too inexperienced to understand exactly how significant Harvey was in the bankruptcy world, but he made a great impression — he was extremely well prepared and gave great practical advice. I know he continues to teach today. While I certainly appreciated Harvey's dedication at the time I was a student, when I consider it now, the fact that he, as perhaps the preeminent lawyer in the restructuring world, has always found the time to teach is even more impressive to me.

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

A: When I first came to the U.S. 25 years ago, I did not realize — as an English man — that Americans spell differently. When I was given my first research assignment as a first-year associate, I had never used Lexis. After two days of research, I informed the partner I was working for that I had been unable to find anything on point. About two weeks later, after reviewing the Lexis bill for my work, the partner asked me how I could have spent thousands of dollars on research without finding a single result. He asked me to print my search terms and show them to him. As it turned out, I had used British English, which of course produced no results, because I had, at least according to him, misspelled everything. For the next three months, I was asked to submit a draft of my proposed searches for review before signing into Lexis. I certainly gained an appreciation for culture and spelling after that.

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