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Paul M. Nussbaum succeeds at helping failing businesses

A NEW YORK YANKEES FAN IN BALTIMORE'S BANKRUPTCY COURT

by ELIZABETH WASSERMAN photography by LUIGI CIUFFETELLI

In 1984, when Paul Nussbaum graduated from California Western School of Law, his peers were specializing in securities litigation, international law and white-collar crime. Exciting areas. Nussbaum, meanwhile, was unsure of his direction until, in his final year, he took a bankruptcy elective and scored the top grade in the class.

"I found it incredibly fascinating," Nussbaum says. "It was the first area of the law I found that I was able to comprehensively appreciate and understand how it worked, and why the process and legal proceedings were there, and the benefits and creativity it allowed for a practitioner. I thought, 'This is something that would really be fun.'"

Nussbaum recalls the response to his epiphany. "Everyone else said to me, 'You've got to be kidding.'" Back then, bankruptcy was considered a trifle dull.

These days, of course, bankruptcy law is big business. Maybe it's the last big business.

"We're crazy busy right now," echoes Nussbaum, stopping for coffee in a 19th-floor conference center at Whiteford Taylor Preston. "I have not seen in my 25 years of practice anything like this."

In the past, Nussbaum says, a rise in bankruptcy work was typically limited to a few sectors. Not now. "There is not an industry—service, manufacturing, retail, real estate, transportation, financial services, etc.—that is not affected by what we're going through in this recession."

In general, Whiteford Taylor Preston represents debtors—textile maker Dan River Inc., which filed for protection in Delaware in April 2008; real estate developer Caruso Homes Inc., which filed in June 2008; and Captain's Cove, a country club and resort developer on the Eastern shore of Maryland, which filed in 2009—but recently it's been representing several creditors' committees in new or long-standing bankruptcies.

The firm is well-positioned for the current crisis in part because of an earlier crisis. After companies such as Enron and WorldCom were rocked by allegations that corporate officers and directors knowingly defrauded investors, massive legislative overhaul occurred at the federal level. The Sarbanes-Oxley Act of 2002 sought greater accountability by allowing creditors or their representatives, such as bankruptcy trustees, to go after the executives, directors, auditors, accountants and turnaround specialists who engaged in the alleged wrongdoing.

Sensing opportunity, Nussbaum went to his partners with a proposal to develop a niche for the firm's bankruptcy practice. Instead of having one team of bankruptcy professionals plus another team of commercial litigators without any bankruptcy background who could be called in if a case went to trial—as was the norm—Nussbaum proposed and created a team of bankruptcy expert litigators (initially three, now eight) to act as "special counsel" to other law firms, or clients enmeshed in bankruptcy proceedings.

That special counsel team now has a national reputation. In 2007, Nussbaum and partner Bill Ryan represented the trustee appointed to creditors of defunct shoe retailer Just for Feet Inc., a chain that, at its peak, had 70 stores nationwide. It collapsed amid an accounting scam, with former executives pleading guilty to, among other things, overstating earnings. In

the end, accounting firm Deloitte & Touche wound up paying the trustee \$24 million, the estate of the company's founder forked over \$15 million, and five former outside directors gave up \$41.5 million. *The Wall Street Journal* wrote that this last payment was believed to be "the largest out-of-pocket payments by outside directors following corporate-fraud allegations."

More recently, in February 2009, Nussbaum's special counsel team scored another victory as former directors and officers of The Rowe Companies, parent of furniture retailer Storehouse Inc., agreed to a \$6.6 million settlement to its bankruptcy trustee.

"[Nussbaum] has really helped establish a national reputation," says Marty Fletcher, managing partner at Whiteford Taylor Preston. "He came down from New York and over the past 20 years has built a highly sophisticated bankruptcy and restructuring practice."

"He makes a great chess partner," says Arnold M. Weiner, who runs his own firm, and has tapped the special counsel team in bankruptcy cases several times. "He can think two or three moves down the game, which is very important for a lawyer. You cannot just be reacting. You have to always be planning for the next move of your opponent."

NUSSBAUM GREW UP in a small house in East Flatbush, Brooklyn, sharing a room with his younger brother Robert. "We spent a lot of time together, boxing, throwing a football back and forth in our room," says Dr. Robert Nussbaum, now a gastroenterologist in Alexandria, Va. "Because he was my big brother I always knew no one was going to bother me." Paul had a reputation for toughness, and even followed his younger brother during his first week of high school to make sure no one hassled him.

Such family loyalty extended only so far. Nussbaum broke with his brothers, Robert and Jack, and his father, Arnold, a pediatrician, in two ways. The first was professional. Both of his brothers followed their father's footsteps into medicine. "I was actually happy when [Paul] became a lawyer," says Robert. "Doctors are only useful when someone gets sick. For everything else, you need a good lawyer."

The second break was sartorial—having to do with pinstripes. While Arnold, Robert and Jack all cheered on the New York Mets, Paul, under the influence of his maternal grandfather, became a fan of the rival, and hated, crosstown Yankees. "When I was in junior high school, [my grandfather] started to—how should I put this—let me leave school to go to Yankee Stadium," Nussbaum recalls with a twinkle in his eyes.

"My father could never understand, nor could my brothers," he adds. "[But] I was overwhelmed by the excitement and aura of the Yankees as a team. They were not only a better team but they had a storied history." To make matters worse, his father had been a New York Giants fan before they left for San Francisco. "If you were a New York Giants fan, you *hated* the Yankees," Nussbaum recalls. "But he was always deferential to anything his children wanted to have an interest in, and he supported me in rooting for the team I chose."

Nussbaum didn't just watch baseball; he pitched for teams in high



Left: Nussbaum with a Nathan's Famous at New Yankee Stadium. **Opposite:** Nussbaum surrounded by familial doctors and Mets fans at La Palina in Brooklyn (from left): Dr. Arnold Nussbaum, Dr. Jack Nussbaum, Paul Nussbaum, Esq., and Dr. Robert Nussbaum.



school and college. And it was because of a softball injury—a dislocated finger—that he met his future wife, Johnnie, at the Scripps Clinic. “She was a nurse there,” Nussbaum recalls. “I used to tell my kids that I went there with a broken heart and she helped mend it.” They’ve been together 27 years.

In law school, Nussbaum was known for his diligent study habits. “He was in the library probably more than anyone else I knew,” says former classmate Bruce Blakeman, now an attorney with Abrams Fensterman in New York. “He wanted to get the A. Others were satisfied getting a B and, since we were in San Diego, they’d go to the beach during the day.”

Blakeman adds: “He was known as ‘Pale Paul.’”

Before graduation, Nussbaum was offered a job with a medical malpractice insurance firm—defending doctors—but, enamored of bankruptcy, he turned it down to clerk for a bankruptcy judge, the Hon. Prudence B. Abram of the Southern District of New York. It was baptism by fire. On his first day Abram told him she needed a brief the next day, then kept him busy in court; he had to pull an all-nighter.

But it was good training for working at the now-defunct Levin & Weintraub & Cranes, a Chapter 11 debtor firm. His first case—initially with a senior partner, then by himself—involved the bankruptcy of the corporate parent of Levitz Furniture stores. “They had a reorganization plan,” Nussbaum recalls. “We sold divisions off and I learned basically everything about the bankruptcy process and the comprehensive interplay of the various statutes and rules.”

Three years later he and his wife decided to relocate. Her family lived in Maryland so they looked into D.C. firms. Then his headhunter told him, “We have this firm in Baltimore that wants to talk to you,” Nussbaum recalls. “It’s a great opportunity. The firm has 120 lawyers.’ I said, ‘Who’s the head of the bankruptcy group?’” The answer? There wasn’t one. They didn’t have a bankruptcy group.

“I had no confidence that this was something I could do,” Nussbaum says today. “I was a stranger in a strange place. I didn’t grow up in Maryland. I didn’t go to school in Maryland. How do you meet people when you don’t know anyone in Maryland?”

So he called his father. Arnold Nussbaum died two years ago but his son still chokes up recalling his advice. “He said to me, ‘Paul, opportunities in life don’t come that often. And if you miss the right opportunities you’ll regret it for the rest of your life. I think this is one of those. Take the job.’”

Building Whiteford’s bankruptcy practice, Nussbaum admits, wasn’t easy. He started by taking small cases. Mark Friedman, a bankruptcy attorney with DLA Piper, referred Nussbaum one of his first big cases in Maryland: representing the old Ramada Inn of Annapolis. After a year Nussbaum was able to achieve a creative reorganization plan that involved the only “cash flow” mortgage ever approved in a Maryland bankruptcy case. *The Baltimore Sun* summed it up thus: “Bankruptcy Plan Says Debtor Can Pay When It Can.”

Nussbaum and Friedman have since repeatedly worked either in concert or on opposite sides. “He’s very loyal to his clients, very energetic and very creative,” Friedman says.

“We both take turns beating up on each other,” jokes bankruptcy specialist Joel Sher, of Shapiro Sher Guinot & Sandler, who faced Nussbaum in cases such as the bankruptcy of National Energy Group, a subsidiary of California’s PG&E. “He’s going to keep coming at you, and that’s my kind of fight.”

Whiteford Taylor Preston, which had no bankruptcy practice when Nussbaum arrived, now has the largest bankruptcy practice in the Mid-Atlantic—24 lawyers in four cities: Baltimore; Washington, D.C.; Falls Church, Va.; and Wilmington, Del.

THESE DAYS, NUSSBAUM is less involved in litigation than he used to be, and more involved in case management, strategic direction and case oversight. “[Bankruptcy] is not a process toward the end,” he says. “It’s a process toward a new beginning—maybe a leaner, meaner operation but one that can have a balance sheet that is sound and a business model that is feasible going forward.”

He almost sounds like a doctor here. Something is sick and he’s helping make it better. Maybe he didn’t leave the family profession as far behind as he thought.

Nussbaum’s other break with family tradition—that damn Yankees one—contains its own twist.

He’s still a fan, of course. Nussbaum’s corner office, residing in the heart of Baltimore Orioles country, is filled with Yankees paraphernalia, including autographed pictures, bats and gloves. He also has a replica of the placard, replete with Joe DiMaggio quote, that Yankee players used to tap for luck on their way out of the locker room at Yankee Stadium: “I want to thank the Good Lord for making me a Yankee.” Nussbaum’s is signed by Derek Jeter, the Yankee who wound up with the original.

But the bulk of Nussbaum’s collection—220 autographed baseballs; batting helmets signed by the World Series champions of 1996, 1998, 1999 and 2000—is displayed in the friendly confines of his home. Well, friendlier. Nussbaum has three children—Kerri, 23, Josh 21, and Michelle 17—and one night when the family was sitting down to dinner, Kerri, then a freshman in high school, said she had an important question to ask. Everyone waited quietly.

“Daddy,” she said. “I was wondering if you would mind if I became an Orioles fan?”

Cosmic justice? A case of the apple not falling far from the tree? However you interpret it, Nussbaum, as befits his profession, was quick to respond. “I said, ‘Of course you can be an Orioles fan. You just can’t root for them in this house.’”

He was kidding. Sort of. ◀

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