

BILL FACTOR

Aims at Responsiveness and Efficiency in His Bankruptcy Practice

by Maureen Wilkey



NORTHBROOK—William J. Factor, the founder of FactorLaw, has long been drawn to creative problem solving, arguing within a rule-based format, and business.

So, it is no surprise that Factor elected to practice in bankruptcy law after graduating with high honors in the evening program at DePaul College of Law in 1990. He did that while working and raising a daughter as a single parent.

Based upon his law school accomplishments, Factor was hired as a summer associate and then as a full-time associate at Sidley Austin in Chicago. There, he learned from some of the best bankruptcy practitioners, including Jim Conlan and Larry Nyhan. At Sidley, Factor developed a solid foundation working mainly on large cases throughout the country.

In 1995, Factor decamped to Seyfarth Shaw's more litigation-focused bankruptcy practice, where he made partner in 1998 and remained through 2009.

He found he had a knack for litigation and that, in bankruptcy cases, litigation often moved more quickly than big ticket corporate litigation. He also realized he enjoyed working with families and small business clients. They frequently had issues he could resolve quickly, often by using creative solutions.

HANGING HIS OWN SHINGLE

After almost 20 years practicing at large Loop law firms, Factor decided to take the plunge in 2009 and open his own bankruptcy boutique firm in Northbrook, his hometown. He chose to focus on two passions: bankruptcy and commercial litigation.

Factor founded FactorLaw during a time when the recession was in full swing and business failures and personal bankruptcies were trending upward. Unlike his past practice, he began to concentrate in consumer bankruptcies under chapters 7, 11 and 13. He realized that a true bankruptcy practice had to cover the consumer side because most of the filings were in that area.

Today, FactorLaw has six full-time attorneys and four of counsel working out of its offices in downtown Chicago and Northbrook. The option of working from the Loop or closer to home on the North Shore is attractive to many of the firm's attorneys. They enjoy the work-life balance of a small firm while being able to provide a high level of service for a fair price to all kinds of businesses and individuals.

FactorLaw has expanded in other ways as well. The firm services a wide range of clients in bankruptcy matters, including consumers in financial distress, bankruptcy trustees trying

to administer an estate and pursue litigation, secured creditors trying to enhance their recovery, and unsecured creditors. FactorLaw also handles a wide variety of commercial litigation matters in state and federal courts, including breach of contract claims, fraud claims, business dissolution claims, mortgage foreclosures and fraudulent conveyance recovery.

"We are very much a family business, like many of the clients we are representing," Factor says. "Providing top-notch service to our clients is the glue that holds us together. They're getting the same service they would get at a major firm, but at a more affordable price, including flexible fee structures and more personalized attention."

The firm is willing to take on contingency fee litigation, particularly when a client has a good claim but cannot afford to retain an attorney.

Factor resolves his clients' issues through a combination of settlement, litigation and negotiation. The attorneys at FactorLaw are not afraid to go to trial on contested issues if needed, and they have a good track record in such matters. And although some clients end up filing for Chapter 7, 11 or 13, Factor and his colleagues use bankruptcy only as a last resort.

"Our firm ethic is to avoid bankruptcy if at all possible due to the cost, uncertainty and

disruption it entails,” says Factor.

He notes that some bankruptcy lawyers will immediately recommend the bankruptcy option because “when a lawyer only has a hammer in their toolbox, everything looks like a nail.” FactorLaw’s toolbox includes multiple other options, he says.

RATIONAL APPROACH SERVES CLIENTS

Many of Factor’s clients are individuals or families who own small businesses that have fallen upon a rough financial patch. Factor always tries to contact and openly communicate with creditor constituencies to see if a work-out is possible. He believes strongly in the “rational person” theory and that creditors will make decisions based upon their rational belief to maximize recovery. Thus, the goal always is to try to preserve going-concern value or, if the business is not viable, to liquidate in an efficient manner.

“For many of these businesses, there are creative ways to restructure and move on. We have worked with companies that have been in families for decades. After working with them through their rough times, they are able to stay in the family for 30 more years,” Factor says.

“For others, liquidation is the only realistic option and generally can be accomplished outside of bankruptcy court through an assignment for the benefit of creditors or similar option.”

The kinds of clients Factor has worked with over the years have changed. From 2009 to 2011, he often dealt with individuals and families who owned real estate-related businesses, such as construction companies or development corporations.

Now, he’s seeing bricks and mortar retail clients start to suffer from the effects of e-commerce and Amazon. As some manufacturing jobs are replaced by artificial intelligence, he sometimes sees executives with large firms suffering because of mass layoffs and needing personal financial help.

He also sees some increase in senior citizens needing to declare bankruptcy or restructure their finances. People across the country are living to older ages, and they don’t always budget for the extra years of their lives.

No matter what business he deals with, the emotional toll is the same. “It’s hard not to feel the pain of the individuals going through these situations. Even in a large corporation, the company is made up of people, and the business or the job is their life.”

Although the types of businesses and individuals Factor represents change over time, the Bankruptcy Code has mostly remained the same. Judicial decisions often change how it is construed, however, which is why Factor and

his colleagues stay on top of the case law.

Factor says the BAPCPA amendments to the Code in 2005 have made it more difficult to file for Chapter 7 bankruptcy. This pushed some individuals into filing Chapter 11 or Chapter 13 bankruptcies instead. According to Factor, using Chapter 11 to help an individual debtor sometimes is like trying to put a square peg into a round hole.

“Part of the reason people were able to take risks and grow new businesses is they knew they had some protection from risk through the Bankruptcy Code,” Factor says. “Part of what fueled economic growth was the knowledge that if you failed, you could start over. With the changes to the Bankruptcy Code and some recent court decisions, a fresh start is becoming more difficult.”

FAIR FEES PROMOTE THE GOOD

Because Factor believes people should be able to take risks, start their own businesses, and have the leeway to move on with their lives if they fail, he charges a fair rate for his clients. He even takes cases on pure or blended

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contingency on occasion. Factor believes his clients are entitled to the same sophisticated representation they could get from any big-name law firm at a reasonable price.

“Bill has always cared about all of his cases, and he has been able to keep his prices down for his clients so they can afford quality attorneys for their case,” says David Holtkamp, assistant corporation counsel supervisor at the City of Chicago Department of Law. Holtkamp previously worked for FactorLaw upon completing his clerkship with Bankruptcy Judge Bruce W. Black in 2011.

“FactorLaw and all of its attorneys really are the best at what they do. Bill does a great job of only selecting the right attorneys for the job.”

Even opposing counsel find that Factor is very smart and practical when it comes to dealing with his clients. LakeLaw’s David Liebowitz has worked on the opposite side of the table from Factor since his days at Sidley Austin. Liebowitz says Factor is an intelligent, diligent, aggressive

and fair advocate for his clients.

“He is a worthy competitor, and he doesn’t spend time on issues just to be spending time on issues,” Liebowitz says. “No one is going to outsmart Bill, and no one is going to outwork Bill. I’m never unhappy to see him on the other side of the table.”

Two attorneys at FactorLaw have been named Emerging Lawyers by Law Bulletin Media in the field of bankruptcy law: Ariane Holtschlag and Jeffrey Paulsen. Holtschlag was one of the few primarily consumer bankruptcy attorneys to receive the inaugural “40 under 40” award from the American Bankruptcy Institute, and she frequently speaks on consumer bankruptcy topics throughout the country. And, according to Factor, Jeff Paulsen is one of the smartest, most compassionate and efficient attorneys he has met.

“We spend a lot of time talking through cases. Sometimes, someone will have an idea I wouldn’t have thought of based on their own experience,” Factor says. “All of these different experiences help give us the sophistication of a much larger firm.”

Some of Factor’s colleagues joined from other large law firms, including Sara Lorber, who worked with Factor at Seyfarth and was the first hire when she joined FactorLaw shortly after it opened.

“I could not have grown the firm without Sara’s assistance, dedication and knowledge,” Factor says. “She is a tremendous asset.”

Other attorneys, like Holtkamp, started their career at the firm and were mentored by Factor and Lorber. “Bill was my first real boss,” says Holtkamp. “He took the time and effort to groom me and make sure I knew how to

complete discovery and work with all the procedures and all the local rules that I would need to know.

“He taught me to work diligently for a client and to know and present them with all of the options, even if they went with an option that wasn’t the one he would have chosen.”

TOOLBOX FOR TODAY’S LAWYERS

After mentoring several attorneys, Factor says he would advise today’s lawyers to gain a background in technology, thought leadership, content marketing and social media.

Since its inception in 2009, FactorLaw has invested heavily in technology and has tried to stay on top of tech developments to deliver efficient services. In the courtroom, judges and juries can often more easily follow a presentation that involves visual elements from an iPad or another device. And maintaining a website and social media presence can connect clients and potential clients to Factor and his team.

By using thought leadership, Factor and his colleagues can organize their thoughts on the latest legal trends and prove their knowledge about matters in the news. He and his colleagues are often invited to speak at various events for bar associations, government groups and trade organizations. This gives them face-to-face exposure with potential clients. Factor also writes a regular blog about issues important to the bankruptcy law industry. Recent topics have included mortgage applications, bankruptcy increases among seniors, student loans and income inequality.

For bankruptcy attorneys, word-of-mouth is often one of the largest sources of new business. Clients who have worked with Factor to settle debts or file bankruptcy often refer other business owners or consumers who need an attorney to him.

Factor also frequently gets referrals from lawyers at larger firms whose practice does not include the representation of consumers or whose rate structure makes the representation of a small business impractical. Attorneys at other firms also often refer family members, if only for a free consultation to explore options or a reality check.

“They know we treat our clients with kid gloves and that we are responsive and knowledgeable,” Factor says.

This respect and empathy are what leads Factor to take some cases on contingency, particularly when the client has a meritorious case but lacks the funds to get their “day in court.” In one instance, Factor helped a non-profit that was victimized by predatory lending. After a three-week trial, they successfully established that the client had been defrauded.

“I didn’t like the injustice I saw in this case, and to me, that was more important than being able to bill the client,” he says. “There are times I have been willing to take on a case not knowing if we will get paid so that some of these people or organizations don’t end up being bullied.”

When he’s not working, Factor, a lifelong North Shore resident, also enjoys golf, reading, traveling and spending time with his family—including his two teenage children and his wife, who also is a lawyer.

As his career moves forward, Factor plans to continue to stay the course and enjoy practicing law. The firm will grow organically as demand rises and as steps are needed to keep on top of technology, both in the courtroom and in legal marketing.

“I just want to keep working hard, providing good service, and keeping costs affordable for our clients.” ■