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NEWS

Heads-Up: Brad Eric Scheler at Fried Frank in New York

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"I'm a big believer in Sir Isaac Newton's law that what goes up, must come down." The long-time chair of Fried Frank's restructuring and insolvency practice, **Brad Eric Scheler**, tells GRR about the "magic" of distressed investing, how his firm uses restructuring as a client gateway to other practice areas, and why he believes restructuring lawyers are the last of the Renaissance lawyers.

Can you tell us about your career to date? How did you end up as the global chair of Fried Frank's restructuring practice?

Having studied history and government as an undergraduate at Lehigh University, at the start of my law school education I was certain I should make business my primary focus. What was important to me was to have a keen understanding of how businesses work, so I focused especially on securities law, commercial law, corporate finance and accounting courses. The course on corporate finance used as its textbook *Security Analysis*, the seminal work by Graham, Dodd and Cottle. I was intrigued and captivated.

As a young person and law school student, I wasn't sure whether I wanted to be a deal lawyer or a litigator. I very much believed that lawyers should go to court and talk to judges, but I also wanted to work on transactions. During the summer between my second and third years at the Hofstra University School of Law, I had the good fortune to be offered a summer associate position at Weil Gotshal & Manges.

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That summer the firm was focused on the large and complex liquidation of a major retail business and the firm was awash with bankruptcy-related work and assignments. In moving from theory to practice, I learned very quickly that the bankruptcy and restructuring field was the ultimate hybrid between being a deal lawyer and being a litigator. It was very appealing, as it had the foundation of business at its core.

At the start of my career, I spent four years with Weil, an era when very few of the large firms had dedicated restructuring practices. During that time, many of the other major firms in New York and globally decided to start restructuring and insolvency practices, including Fried Frank.

While I loved and greatly benefited from my time at Weil, I had the great fortune to be recruited by Fried Frank in 1981 to help build a restructuring practice. The thought at the time was that the practice was going to be an experiment and there was no assurance that it was going to work out, but I was given this opportunity to join a firm that was grounded in excellence. Whereas most bankruptcy and restructuring lawyers in that era had their underpinnings and their perspective based on litigation, in my formative years I arrived at a firm where cutting-edge transactional work was front and centre. Fried Frank was and has always been an incredible platform. The full panoply of the firm's global experience has allowed our restructuring practice to offer a holistic approach to advance the interests of our clients in the most complex and sophisticated transactions. For that and so much more I owe an enormous debt of gratitude to my Fried Frank partners past and present.

Little by little we persuaded clients to have trust and confidence in the practice and embarked on doing interesting and compelling work. We were one of the first major firms to represent and organise bondholders in restructurings. Although we had the capacity and continue to have the capacity to do company-side work, over time our practice has been more broad based. Regardless of client constituency, we have long believed, both as a practical matter and of necessity, that a best path is out-of-court restructurings. Reflecting on the current era, the cost of these formal processes – whether chapter 11 or UK proceedings – are prohibitively expensive. A much more efficient way of attending to reorganisation and rehabilitation is by consensual out-of-court basis. That has been our paradigm since inception, but it has become so much more compelling with the passage of time.

And does your practice still focus on the bondholder's side advice?

We represent all sides, but we are probably most well known for our work with distressed investors who are looking to deploy capital and rehabilitate businesses. We act for parties who buy debt and use the accumulation of claims as a springboard to participate in a restructuring, to deploy incremental capital to a company and then to secure control as long-term owners.

Our practice is a gateway. We look to benefit clients through the introduction to and use of the full range of Fried Frank resources, including, tax, senior executive compensation, finance, M&A, capital markets, securities, real estate, litigation and asset management.

You've now been the chair of Fried Frank's restructuring practice for over 30 years. What has changed in the sector since you started out?

The approach to distressed investing has evolved over time. In the early stages of my career, two factors presented themselves. One was that creditors tended to hold on to their claims for a long time: there was not much in the way of secondary and tertiary markets, there was not a lot of trading, and capital structures were more simplified – comprised of little more than senior bank debt, vendor claims and the potential for some bond debt. The Michael Milkin-led opening of the high-yield debt market was a major innovation, and transformed distressed investing and the claims trading marketplace. Money centre banks began to syndicate their loans in a much greater way, and secondary markets in bank paper opened. Coincident with more active trading on senior secured debt were the pioneer buyers of unsecured bond debt and trade claims. What were markets with few early and bold investors in time became popular, robust and much more efficient.

The other factor is that initially there were only a handful of investors availing themselves of the distressed investing opportunity, but today there is an enormous amount of capital that is focused on distressed investing with a multi-national and global focus. This has created a broad spectrum of investments and great liquidity for both investors, and practitioners to help investor clients realise on such opportunities in incredibly creative and innovative ways. That said, there has been far less in the way of distressed debt product, investment opportunity and arbitrage since the global financial crisis, with the result that debt now

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trades at a premium. We have much more capital, and incredibly sophisticated investors deploying their capital in a highly competitive and razor-thin margin environment.

What skill sets would you say are required to practise in and lead to a successful restructuring and insolvency practice?

I believe that restructuring lawyers are the last of the Renaissance lawyers. We are a rare breed. We are specialists, but we have to have a generalist outlook and perspective. We have to be comfortable with all aspects of capital structure; with all aspects of finance; we have to be sensitive to taxation issues; we have to be focused on executive compensation and so much more. We must have expertise that is grounded in understanding the underpinnings of balance sheet, cash flow, numbers, and how fractions work. Perhaps most important of all, we have to be the individual who, above all others and all else, remains cool, calm and collected in the face of the storm. And we have to be able to deploy well to clients, unvarnished advice and guidance, along with providing the resources clients need to take a sober look at the business, be it as CEO or investor, and then re-position to achieve a much brighter future. We are at our best when we tell clients what they need to hear, not what they want to hear. Difficult – but mandatory and essential.

If you weren't a restructuring lawyer do you think you would have practised in another area?

If I had the skill set, I would have loved to play centerfield for the New York Yankees. I love practising law and I've loved it since the day that I started. I have unequivocal respect and admiration for public sector lawyers, for those lawyers who represent the indigent, who represent other individuals at peril, for public defenders and for prosecutors and for those who ensure the integrity of the US Constitution's Bill of Rights, today more than ever.

At all times I have a sense of calm and comfort in the storm, that so long as I am able – along with clients – to keep wits and to focus on the problem, any problem and challenge can be overtaken, as opposed to worrying about it. I'm the first person to think about how to get from our current circumstances to where we want to end up, how do we memorialise that in a term sheet, and how do we direct the flow to that goal and objective. Being able to do that, and to stay calm while doing so, is one of the greatest gifts I think you can offer in terms of client confidence and appreciation. To have had the honour and privilege to do that at Fried Frank and to have a constant sense of independence, autonomy and integrity, I can't imagine anything else being as gratifying.

How do you see the top end of the international restructuring market changing in the next few years?

We're continuing in this remarkable bull market that has been sustained for a decade. By all statistics, it's one of the longest and most robust bull markets ever. When you look at the equity markets, prices continue to escalate. At the same time, I think on both a macro, global basis, and a micro, mainstream basis, there is a disconnect between the wealth and value that is represented by the equity markets and what happens on Main Street.

Whether you're looking in Western Europe, Eastern Europe, the United States and elsewhere over the globe, there seems to be a shrinking and challenged middle class with fewer opportunities, and there is widespread continuing poverty. There's a tension that exists there, which we're seeing in the political arena, and it does suggest that economies that are driven in part by consumerism should hit a point where there will be a correction.

I'm a big believer in Sir Isaac Newton's law, that what goes up must come down. It strikes me that there is going to be a correction – but no one can tell you when. If you look at corrections through history, they seem to be preceded by periods where many investors and market observers and pundits have a sense of comfort and consistency, and then when the correction comes, they are surprised to be caught off guard.

Even in the unlikely event a correction doesn't come soon, as a result of technology, there is economic Darwinism taking place in a variety of segments. We can look to bricks-and-mortar retail, for example. There's been a generational shift, and an individual shift, where people are doing online purchasing, as opposed to going into bricks-and-mortar retail stores, so you're seeing a lot of retailers fail. We're also seeing problems in the auto manufacturing market. There's always been a saturation point in terms of auto manufacturing, and while it has been robust, we are seeing some cracks in the foundation.

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I also believe that over time, the bricks-and-mortar retail issues will back up to some segments of real estate. With the volatility in oil and gas, that's still a sector where there's a potential for the need for restructuring. And healthcare is another area ripe for potential stress, with changes in reimbursement rates and insurance coverage and the increasing needs of an aging population.

In the near term, I think we will see a persistent increase in restructuring work, albeit on an episodic and at times sporadic basis. I think it will take place nationally and internationally, because companies have become much more complicated in terms of where they have their assets and manufacturing facilities and their locations.

Are there any other sectors you think are going to be profitable for restructuring and insolvency professionals in the future?

What I see ahead is a circumstance where there is going to be a need and opportunity for talented people to work on the most complex and sophisticated transactions.

More and more, the restructuring business looks like a photographic negative of the M&A business. At core, a restructuring is a change of ownership. It's reworking the entire capital structure, but ultimately a restructuring is about new ownership and deleveraging. Whether it is done overtly by putting up a company for sale and using the proceeds to distribute value to stakeholders, or by implementing a transaction within the capital structure so creditor constituencies end up owning a majority portion of the equity capital, either way the process is tantamount to a sale transaction.

When working on the complex and challenging transactions, many believe the work is done when parties reach the term sheet stage. For all of us at Fried Frank, that is just the beginning, because we're setting the foundation for the future of the company and future work for the firm.

With respect to the work we do, it is not enough to get to the point where there's an agreement on what the terms of the restructuring should be – it is our duty and responsibility to attend to all of the financial engineering. The reason why this is of paramount import is to best position our client-investors and the enterprise, because winding up as controlling owners of a rehabilitated and restructured company is only phase one. Phase two is realising on the upside of that de-leveraged, recapitalised, well-positioned company. There is always the continuum of M&A that punctuates restructurings. A client once advised that I should hold in check congratulations on the closing on purchase and save for the closing of the future sale.

Is Fried Frank's London group experiencing the same sort of issues as the US group at the moment?

In our London office we have constructed a mirror image of all that we do in the US. I remain a believer that the London marketplace and the UK as a whole are, and will continue to be, an extraordinary market. Vibrant, compelling and essential is all of London and the UK, even in the face of Brexit. And one constant will never change – there's something remarkably advantageous about sitting on the prime meridian.

Our US and UK restructuring team does regular work in the international arena, and that continues to grow and expand. What is both an axiom and a wonderful consequence is that the more that you do, the more comfortable clients become with you. Our consistently successful results, most satisfied and loyal clients and word of mouth lead to further engagements. We have a remarkable team at the firm. **Ashley Katz** in London is just an extraordinary talent. **Gary Kaplan**, **Jen Rodburg**, **Peter Siroka**, **Kalman Ochs** and **Julia Smolyanskiy** are equally so; and all my colleagues outshine me, which is one of the best things that you can do. When you can state unequivocally that you have colleagues who are better and more impressive and compelling, you bring honour and distinction to the firm.

Outside of New York and London, which jurisdictions do you think will be important in the next decade or so?

I think there is going to be a lot of work in Western Europe and Eastern Europe. I think in large measure the countries in those regions have enormous appeal to distressed investors because, over time, the regimes and schemes are better understood in terms of process. It's far more easy for investors to springboard into UK and European investments than it is to go into other major markets that may be more challenging – where practices and processes aren't quite as consistent or built-up.

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But I also believe one should not ignore the prospect of opportunity in the Far East and the Middle East, and certainly in Canada, South America and Central America. As never before, the arena for distressed investing and related legal work is a global one.

If you were a distressed investor right now, what moves would you be making?

If I was a distressed investor right now with a large pool of capital, the hardest thing I would face is being disciplined and patient. There's an enormous amount of pressure that comes when you have large pools of assets under management and the charge to deploy capital. At the same time, the art of investing is about doing your research, understanding and assessing the risks and opportunities, and also being able to account for both early capital and late capital opportunities. It's okay to go early and to lead an investment, provided you have enough resources and capital to ensure you have staying power and a long runway.

If you are a smaller investor and you could be the subject of capital calls and you go early, the runway becomes very short and the opportunity to realise on your investment – which may take time and complexity – may be lost to you. Part of the investor's skill set is understanding that to embark on a complicated restructuring investment, one needs adequacy of capital, both for the point of entry and for the point of exit, and the carry power to last the duration of the process.

I think that there's a lot to be said about patient capital. One of the things that we saw about four or five years ago in the context of the oil and gas debacle is that when oil prices went down, many people went into the marketplace and it turned out to be only a first round of deterioration in price. So many were faced either with re-investing or the prospect of taking a loss in relation to the incremental and later capital deployment by others. That's a good example and a lesson of how one must think about deployment of capital and patience with respect to capital.

In the circumstances we have right now, with this remarkably overheated equity market that some people think is overpricing assets and businesses, the question is: are you going to get the kind of margin and return that you are seeking if you go in now versus six months from now, or 12 months from now, or 18 months from now? The magic of investing is why investors are brilliant, why they have my admiration and respect, and why there are some investors who have demonstrated consistent genius, while for others genius has been fleeting.

What about the challenges facing international restructuring and insolvency practices?

One is to deal with the anticipation of the greater volume of work to come – and it will come. We must continue to cultivate interest and expand and retain talent, and to be sure that during times like the current period, we invest an enormous amount of time in training and developing our youngest colleagues, so when the robustness and volume of work return, they experience ease and comfort with the process, as opposed to trying to do things on the fly.

At Fried Frank, we invest a lot of time and effort in the training and development of our lawyers, not only as specialists, but they're all grounded in having core and generalist skill sets as well. By reason of the broad-based training, the skill sets of all of the lawyers at the firm can be equally deployed in aspects of the work that we do, we will never have a cohort of idle people.

As we anticipate increased activity, we are also in the market to expand our restructuring and insolvency partner and associate ranks in the US and UK.

Do you think young lawyers coming up the ranks are equipped for the challenges they are likely to face?

When you've gone through a period of such a robust economy, people talk about the potential of there being a lost generation of lawyers with restructuring expertise. While there has been a narrowing of people who have entered the restructuring space, the talent pool is robust.

We encourage our young lawyers to learn from and work closely with those who have previously experienced a high volume of work. We also custom blend – because we've been giving our young lawyers the opportunity to spend some time working in other disciplines, in a reverse of how we access talent from other firm practices when our practice is very busy.

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Mental health is a topic very much on our minds at the moment. How do you encourage lawyers in your global practice to protect their mental health?

As a firm, we have always focused on ensuring firm-wide wellness and have implemented a firm-wide wellness programme. We live in this age of technology, where the world is switched on 24 hours a day, seven days a week, 365 days a year, and we have to be very sensitive to the fact that working in a highly charged environment is challenging and may produce adverse consequences.

It is incumbent on us to do all that we can to be best resources to our colleagues, to be sensitive to their needs and to lead by best example.

We have to instil in all professionals a sense of comfort and confidence that our families and our loved ones come first, and that we do not feel in any way that somehow that might be looked upon as a negative, because nothing could be further from the truth.

We have to lead by very best example. Dedication to and time with family, the continued pursuit of interests and hobbies, volunteering and giving back to community and being of service to others most in need, these are the hallmarks of consummate professionalism. It is incumbent on us to ensure that all are embraced and championed by subsequent generations with utmost comfort and confidence. That is our duty and responsibility as seniors and leaders.

How do you go about maintaining a healthy work/life balance?

There is nothing, and there has never been anything, more important to me than my wife Amy and my three grown daughters and all in our growing family. I also have the great fortune of loving what I do. To have love of family and love of law is a best gift and blessing.

Throughout my career, when my daughters were younger, whenever there were parent-teacher conferences or sporting events or theatrical or art-related events and all else of import to my daughters, I made sure that I was there. I never in any way, shape, or form hesitated to let clients know if I would be unavailable because of family commitments, and I think I've received an enormous amount of respect and appreciation for it over the years.

And finally, do you have any hobbies or interests that occupy your time outside of the office?

I have long been a runner. I run or work out every day.

I've also done a lot of volunteering in my career. For a 15-year period, I had the honour and privilege to serve on the Board of Trustees of Lehigh University, and for a five-year period I served as Chair of the Lehigh Board. I also served as Chair of the Board of Advisors for my law school.

I also sit on the executive committee of the board of Tina's Wish. And I spent a several-year period as chair of the board of Her Justice.

My mom and dad taught me that as related to the academic and career success and hopes and aspirations of others, I was duty bound to do for others, any and all that at each stage of life I had hoped and would have preferred that others had done for me.

I also learned from my parents that my duty and responsibility for any success I might have, is to do all I can as a result of that success to try to heal and make better our world. I will keep at that always.

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