

HATZALAH

How Marshall Huebner helped rescue the economy

BY RAY PHILLIPS
PHOTOGRAPHY BY MICHAEL PARAS

"WHEN YOU'RE THE FACE OF CALM, comforting someone ... it's immediate and very satisfying."

Marshall Huebner, co-head of the insolvency and restructuring group at Davis Polk & Wardwell, isn't talking about his day job here; he's talking about something he does on the side.

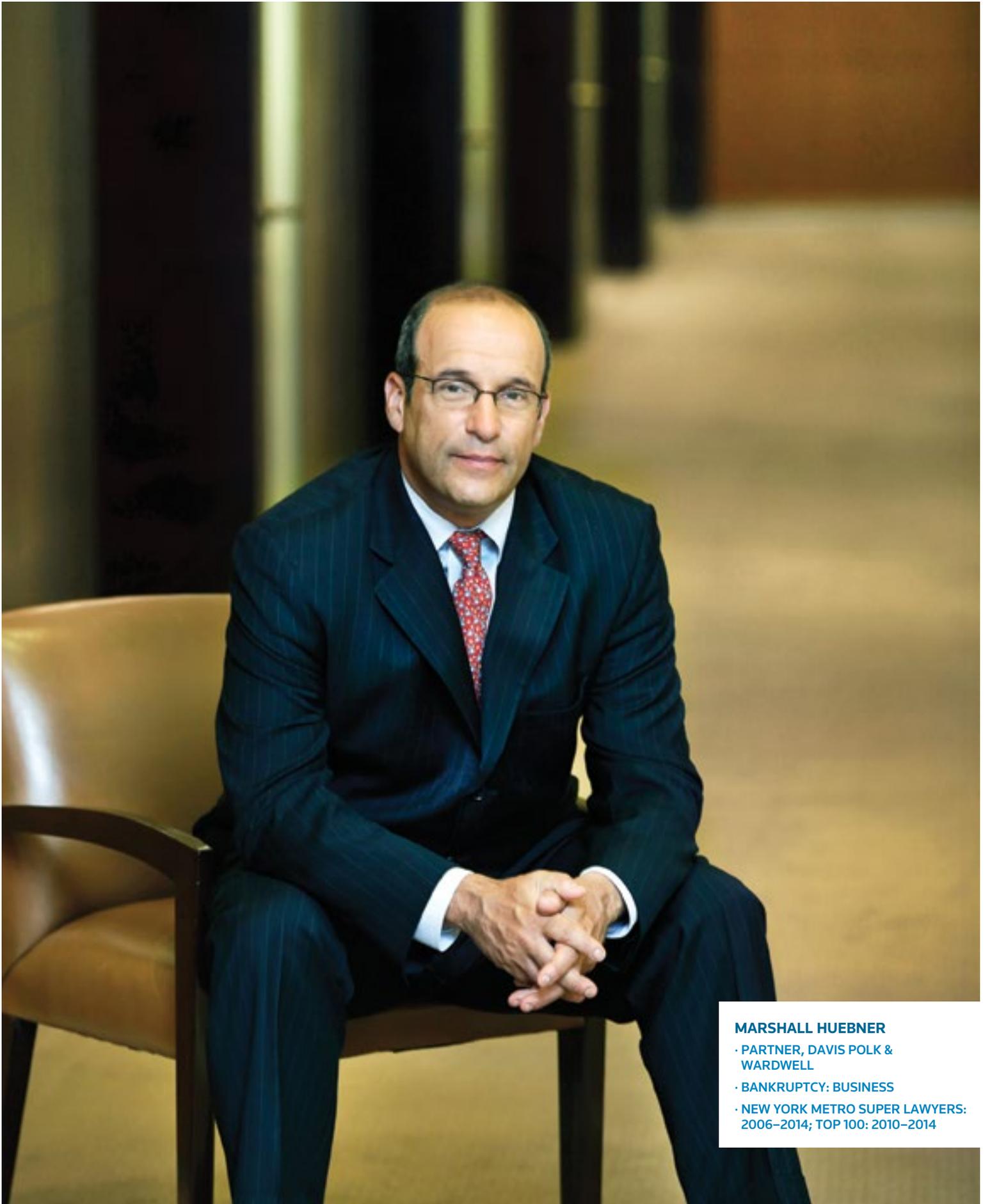
As an undergraduate at Princeton, Huebner became the director of the Outdoor Action program, which encourages students to backpack and canoe. "You needed a high level of first-aid certification to have the job," he says. "And because once I start doing something I tend to go all the way to the end, I became an EMT with the town of Princeton during my freshman year and rode on the town's rescue squad for the next three years." He's been a volunteer EMT now for almost three decades, chiefly serving with Hatzalah, a New York all-volunteer, nonprofit ambulance rescue service whose name means "rescue" or "relief" in Hebrew. That's what the above quote is about: comforting someone who's had a heart attack or stroke.

But he could be talking about his day job, too.

"In a way, we're the oncologists of capitalism," he says. "When we come in, we are seeing problems that no one else has been able to fix, such as systemic failures across the corporate structure and across business lines, as well as human resources problems. It's incredibly complicated."

"No lawyer gets closer to his clients than a restructuring lawyer," he adds. "You're there when it's life or death for a company. No other kind of law engenders those kinds of relationships."

Huebner has served as counsel to Ford Motor Co. in its \$10 billion balance sheet restructuring and to the Star Tribune Co. in its Chapter 11 proceedings. Beginning in 2005, at age 37, he led Delta Air Lines Inc. through one of the largest restructurings in U.S. history while helping to defend the firm against a \$10 billion hostile takeover effort by US Airways. "Trying to stop Marshall," Delta's former CEO Gerald Grinstein told *The American Lawyer*, "is like trying to stop a tide with your own hand." Most significantly, he was lead counsel to the



MARSHALL HUEBNER

· PARTNER, DAVIS POLK &
WARDWELL

· BANKRUPTCY: BUSINESS

· NEW YORK METRO SUPER LAWYERS:
2006–2014; TOP 100: 2010–2014

Federal Reserve Bank of New York and the U.S. Treasury Department in arranging emergency financing to prop up insurance giant American International Group (AIG) during the global financial meltdown in 2008.

Joseph W. Bean is the general counsel at Patriot Coal Corp., which Huebner helped restructure last year. "He commanded tremendous respect even from our adversaries, who clearly trusted and listened to him as much as they did to their own advisers," Bean says of Huebner. "His level of care and concern for Patriot—manifested in emails, calls and voicemails that often started at 6 a.m. and ended well past midnight—motivated us all. He was one of the main reasons Patriot was able to emerge from bankruptcy, save 4,000 jobs and preserve health care benefits for many thousands of retirees."

Huebner is not unaware of the social function to restructuring work. "Many of the companies that Davis Polk has helped restructure employ tens of thousands of people, often in very distressed areas, often in very distressed industries," he says. "The employees and retirees rely on the company for medical care, health benefits and pensions. Those are really the people for whom you stay up until 4 in the morning. Because while the senior executives will usually land on their feet, there are a lot of people who may have no other options if their employer fails. ... Retirees will write to the courts to say, 'I'm 85 years old. I worked in a coal mine for 36 years, and I'm on the following 12 medications. I have a broken back; and I'm on assisted breathing. If you cut my benefits I may well die.' There's nothing more direct and brutal than that. Nothing."

Until the late 1970s, bankruptcy was practiced mostly by small businesses. The passage of the Bankruptcy Reform Act of 1978 changed the field, but one of restructuring's first real debuts came in late 1990 with the second Continental Airlines collapse.

"That was a big test of a major U.S. company going into bankruptcy but surviving," Huebner recalls. "Before 1990, no one knew of a company that had gone through bankruptcy and survived. Bankruptcy historically meant the end—liquidation, shutting down—not reorganizing and coming out successful."

Airlines are particularly prone to bankruptcy. In addition to the unreliability of fuel prices, the cost of entry for newcomers is relatively low, and new, smaller airlines often enjoy lower labor costs and start with fewer and often newer planes, thus minimizing maintenance. "If one airline ticket is \$99 and the other is \$94, people will buy the ticket at \$94," Huebner says. "The major airline can't say to the customer, 'Well, I have to add \$5 for pension costs. ... The consumer doesn't care.'"

Since the 1970s more than 185 airlines have gone into bankruptcy, and very few have bounced back via restructuring. Huebner's success in reviving Delta and Frontier Airlines are notable exceptions. At Delta, Huebner led a Davis Polk team and ensured that the majority of creditor concerns and disputes were consensually resolved out of court, and convinced other interested parties, including Delta's retired pilots, that restructuring the airline was in everyone's best interests. "We would say, 'We have to get younger faster than they're getting older,'" Huebner recalls. "You needed to get back to the economics of a younger carrier that did not have all the weight of built-in costs." Delta emerged from Chapter 11 with one of the largest equity capitalizations on record.

So would a company ever enter bankruptcy simply to shed creditors?

"Bankruptcy is a pretty terrible place," Huebner says. "No company looks forward to it. If anything, they often file much later than they should, because—it's human nature—we all try to avoid things that we know are going to be painful, and hope that deliverance is around the corner. What *has* changed in recent decades is that the American corporate culture has accepted restructuring and bankruptcy as tools in the tool kit, just like raising capital or taking out bank loans. But I don't think anybody plans for it."

Bankruptcy may be complicated but Huebner can sum it up in straightforward, human terms. "What a bankrupt company is saying to everybody is this: 'You gave something to me, I made you a promise to pay, but it is no longer possible for me to honor that promise to pay.' Whether it is a billion dollars of bond debt, the unpaid bill of the cleaning company, retiree benefits or the cafeteria supplies, it's all the same thing: 'I know I promised; I just don't have any money left. And if we can work something out that I can pay, I'll survive and I will pay it. If we can't, I will liquidate and pay nothing. So yes, we've broken a promise, and that's tragic and morally wrong, but here we are. So what do you want to do?'"

HUEBNER GREW UP IN QUEENS, TO PARENTS

who ran a travel agency, and attended Stuyvesant High School. He spent two years in Israel, attending graduate school and studying at a rabbinical seminary, before enrolling at Yale Law School, and fell into bankruptcy practice by chance.

"I never took a bankruptcy course at law school," he says, "but as a summer associate I was put on a bankruptcy project and found it interesting. It's kind of an 'everything' practice,

in that you get to help save companies from within, or, if you're working from the lender side, to seek ways to aid distressed businesses. Every day is different, every deal is different, and the tool kit that you bring has to have a pretty broad range of stuff in it."

His firm, Davis Polk, is a 165-year-old legal powerhouse with a venerable history—Grover Cleveland served as its of counsel between nonsequential stints as president. Yet Huebner says, "We don't have stars and minions here. Our emphasis is on morale, teaching and inclusion. This can mean giving junior associates the podium in court or acknowledging the demands an associate's work schedule is placing on his or her family. In the end, the level of work product you turn out is going to be much higher when everyone feels valued and special."

Thomas J. Reid, managing partner at Davis Polk, sees Huebner's dedication to the firm's associates. "There is no more talented a lawyer than Marshall," he says, "and no one more aware of the need to nurture young lawyers."

Huebner stresses Davis Polk's preference for negotiation in bankruptcy proceedings. "If you were to read the transcript of the James River Coal case, which we just filed, right there in the transcript I made an announcement: 'Your Honor, I want to be very clear from the first day: We hate litigating. If anyone ever has an issue large or small, just call. Don't file papers. We will always try to work it out.' That's basically Davis Polk's view. There are very few problems that can't be solved by people sitting down and thinking very hard about a way through the labyrinth. Not everyone approaches it that way. Some say, 'Well, let's just punch them in the face for a while, we'll soften them up.' That's not us. Our philosophy is, 'Let's first stop, look and listen, because most of the time you can work it out.'"

Which brings us to one of his more difficult workouts.

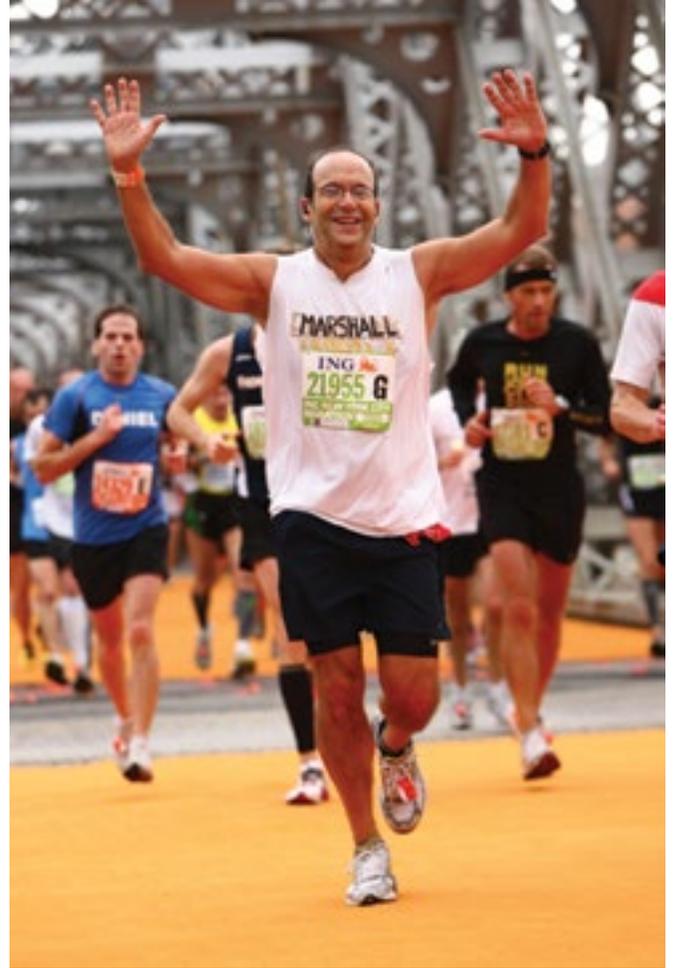
On Monday, Sept. 15, 2008, the financial services firm Lehman Brothers filed for bankruptcy—an event that sent shockwaves through the world's economy. The situation of AIG was equally precarious, and it was asking the Federal Reserve Bank of New York for help. AIG had invested substantially in mortgage-backed securities, many of which had plummeted in value and were unsellable in 2008. Experts concluded that the effect of its collapse would be nothing short of seismic, but the Treasury and the Fed initially rebuffed AIG's plea for help. Instead, they asked banking giants JPMorgan Chase and Goldman Sachs to consider financing the floundering insurer.

On Sept. 16, Huebner, representing JPMorgan,



ABOVE: Huebner, with his wife Dina and their four daughters. "My family," he says, "that's where my sanity comes from."

RIGHT: After nine months straight on the AIG bailout, and a subsequent scary doctor visit, Huebner began to run for the first time in his life. "Once I start doing something," he says about another matter, "I tend to go all the way to the end."



joined its vice chairman, James Lee Jr. and representatives from Goldman Sachs in making a presentation to the New York Fed about AIG. They explained that AIG needed tens of billions of dollars to survive, more than the private sector would be able to lend. Something had to be done. "There was a fear that had the conflagration not been put out, it would have engulfed certainly Main Street and likely Wall Street as well," Huebner says. "As [then-New York Fed president] Timothy Geithner put it, the Fed was 'the only fire station in town still left open.'"

But any agreement would have to be done before the opening of business the next day, and the Fed informed Lee that it would need Huebner to counsel the government regarding AIG. Lee agreed. Huebner was like a baseball player traded in the middle of a double-header. He immediately went over to the Fed.

Many hours later, with help from Davis Polk colleagues and in collaboration with AIG's legal team, an exceedingly complex deal was worked out. The New York Fed agreed to loan AIG \$85 billion—the overall financing from the Fed and Treasury later grew to \$182 billion—in exchange for, among other things, a 79.9 percent equity stake for the public. Two elements were unprecedented: that the Fed would loan tens of billions of dollars to a private company, and that U.S. taxpayers would own a majority stake in it.

Huebner worked until 2 a.m. Wednesday, Sept. 17 to finish the deal. "I had never before represented the government," he later told *The American Lawyer*. "Now I was representing the American people, whose money I was helping to protect. It was a moving experience."

Huebner dismisses various criticisms of the deal and believes the government's role was essential in preventing disaster. "The financing that was extended to AIG played a material role in saving the U.S. economy from collapse, and the fact that it was structured in a way that ultimately saw the taxpayers fully repaid with a \$22.7 billion profit is a testament to how well it was done."

ALL OF THIS EFFORT TOOK A TOLL ON HUEBNER

and his Davis Polk colleagues. "Starting in fall 2008, I more or less didn't go home for about nine months," he recalls. "Our whole team was working around the clock. When I finally went to the doctor, he said, 'This is terrible: your cholesterol, your weight, your lipids,' so I decided then and there I'd better get this in check. I started to do something I'd never done in my life: run. And run and run and run."

Because once Huebner starts doing something, he tends to go all the way to the end.

Huebner has now run several marathons—in New York, Jerusalem and elsewhere—often on behalf of the charity The Blue Card, which provides

programs, such as health benefits and financial assistance, for elderly Holocaust survivors in the United States. "I like the synergistic quality of it," he says, "the ability to raise a lot of money while doing something that's good for me physically."

AIG aside, Huebner is serious about work-life balance. His office is filled with photos of his wife, Dina (a Yale Law grad with a Ph.D. in education who works for an organization that supports nondenominational Jewish day schools), and the couple's four daughters: Rachel, 19; Leora, 17; Abigail, 14; and Shira, 11. Their apartment on the Upper East Side and the girls' school are close enough to his office that Huebner can commute within 20 minutes; birthdays, recitals and school events are rarely missed.

"I get up with the kids and we have breakfast together. By 7 a.m. I'm at the gym. Once at the office I tend to have intense work days and rarely take time out for a business lunch; then I'm home pretty much every night by 7:30 or 8 for dinner. Sometimes there's a second work window late at night, emails and phone calls, but I try to be with my family at least for two large parts of the day—early morning and in the evening."

"My family," he says, "that's where my sanity comes from." [SI](#)