

MVP: Davis Polk's Brian Resnick

By **Dave Simpson**

Law360 (October 21, 2020, 3:20 PM EDT) -- Brian M. Resnick led a Davis Polk & Wardwell LLP team that advised Dean Foods Co., one of the largest milk producers in the U.S., through its Chapter 11 process, during which it sold its assets to several buyers including the Dairy Farmers of America despite the disruptions of the COVID-19 pandemic, earning him a spot among Law360's 2020 Bankruptcy MVPs.

WHY HE CHOSE BANKRUPTCY LAW:

Resnick gave a slew of reasons for why he chose the practice area, such as its challenging nature, the possibility to make a tangible difference in the lives of many people, and the diversity of the work.

"It's a mix between corporate and litigation," he said. "And I can advise the board of directors on doing an M&A transaction in bankruptcy or financing on one day, and the next day be in court litigating against adversaries in the bankruptcy proceeding."

But Resnick has a unique fondness for the practice area: His father, Alan Resnick, was a law scholar, a professor and a legend in the field of bankruptcy.

"The people who get into it just really, really love it," Resnick said. "And I don't know if many lawyers out there have children who necessarily desire to follow in their parents' footsteps based on the love that their parents have for their job. But dad loved every minute of it, so I grew up witnessing that."

AN IMPORTANT CASE THIS YEAR:

Dean Foods supplies milk to about 30% of the country and 23% of schools, and when it filed for Chapter 11 in November, about 15,000 jobs were on the line.

Resnick was scheduled to present an argument at the bid procedure motion hearing in Houston on March 12. He arrived a few days early and wrote his argument on the plane.



"Overnight, before the hearing was when basically all the schools across America were shutting down," he said. "All the sports leagues were shutting down. All the restaurants. I ended up having to scrap the original speech. And literally the morning of, I basically said to the judge, 'You know, this is not what I planned to ask for even 24 or 48 hours ago. But now, with the state of the world, the pandemic, we need to move things much more quickly. And we need to get the assets in the hands of the Dairy Farmers of America to be able to continue the milk supply across the country.'"

They ended up fast-tracking the sale, preserving the vast majority of the 15,000 jobs and keeping America supplied with milk, Resnick said.

In late March, Dean Foods announced that it had agreed to sell nearly all of its assets to national dairy farm cooperative Dairy Farmers of America for \$433 million as part of a more than \$508 million divestment.

A PARTICULARLY COMPLEX CASE THIS YEAR:

With Dean Foods, Resnick was representing the company, but for Blackhawk Mining LLC's emergence from Chapter 11 in November, he showed an example of another part of his practice, where he represents lenders.

"We filed a prepackaged bankruptcy case, which we were hoping for a quick exit," he said. "The coal company's fortunes diminished rapidly during what was supposed to be a quick case. And after we got our plan confirmed, it became clear that the company couldn't sustain the proposed exit debt on the balance sheet."

They went back to the drawing board and repackaged their case. According to Resnick, once a prepackaged, or prepack, case is confirmed, it's rare for the company to have to go back for a new plan before it emerges.

"It's so extremely rare that a prepack falls apart after getting confirmed that we came up with a term for it," he said. "We called it the repack."

A CASE THAT REPRESENTS THE THIRD ELEMENT OF HIS PRACTICE:

In addition to company-side and investor-side bankruptcy work, Resnick does financing work for distressed assets, which was on display when, over the course of 10 days last fall, he tried to put together \$35 billion exit financing commitments for PG&E for an emergence that was supposed to be about nine months away.

Ultimately, the company did not emerge with \$35 billion in debt, but raising that amount in exit financing commitments was still notable.

"This was, we believe, the largest exit financing commitment ever done in history. Nine months is a long time to leave any financing commitments outstanding, let alone \$35 billion, which is an astronomical amount. And all that given the uncertainties of the wildfire claims against PG&E."

HIS LARGEST NON-LEGAL ACCOMPLISHMENT OF THE LAST YEAR:

Resnick has a passion for music, he studied percussion performance at Juilliard School before getting his law degree at Columbia Law School, played on Saturday Night Live, and most recently won a Tony Award as a co-producer of "Hadestown" on Broadway.

"Although the substance of playing drums and making an argument before the court are quite different in a sense, there is a connection there and similarity in terms of either performing for or speaking to an audience," he said. "The pressure of performance is similar, and the drive to always be better."

— *As told to Dave Simpson*

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