

Judicial Profile

UNA O'BOYLE

Hon. Burton R. Lifland U.S. Bankruptcy Judge, Southern District of New York

JUDGE BURTON R. LIFLAND is in his 30th year of service as a judge on the Southern District of New York Bankruptcy Court. He is a former chief bankruptcy judge of that court and has also served as chief judge of the former Bankruptcy Appellate Panel for the Second Circuit.

Judge Lifland was born and raised in the Bensonhurst area of Brooklyn. He earned his B.A. degree from Syracuse University in 1951 and his J.D. from Fordham University School of Law in 1954. He and his wife Elaine, a talented artist, have been married for more than 50 years. They have two sons and five grandchildren.

When Judge Lifland was appointed to the bench in March 1980, the Bankruptcy Reform Act of 1978, also known as the Bankruptcy Code, was just taking hold. Judge Lifland fondly recalls as “fun” those early days of construing the new Bankruptcy Code along with his pioneering colleagues, such as Judge Ralph Mabey and Judge Roy Babbitt.

Throughout his career on the bench, Judge Lifland has presided over numerous mega-cases and other significant cases. He was tested early and has been tested often. Within a month after taking the bench, Judge Lifland was randomly assigned the Chapter 11 bankruptcy cases filed by Penn-Dixie, a national major manufacturer of cement and primary steel. These cases marked the beginning of the era of the mega-cases under the new Bankruptcy Code.

As Chapter 11 filings rolled on through the 1980s, Judge Lifland keenly resolved one new issue after another under the Bankruptcy Code. His cutting-edge decisions were analytically intricate and at the same time practical, and they have withstood the tests of time and appellate review. For example, in 1981, OPM Leasing Services Inc. filed for Chapter 11 bankruptcy. OPM, which some observers and critics chimed stood for “Other People’s Money,” was a computer leasing and financing company that had served as the vehicle for a massive lease fraud that exceeded \$100 million in losses, and OPM’s principals were sentenced to lengthy prison terms. The OPM fraud was massive for its time. Today, almost 30 years later, Judge Lifland is presiding over the world’s largest fraud case, the \$64



billion Ponzi scheme perpetrated by Bernard Madoff.

Between OPM and Madoff, Judge Lifland has presided over many other mega-cases. In 1982, Johns-Manville Corporation, the world’s leading manufacturer of asbestos products at the time, filed for Chapter 11 bankruptcy. The *Johns-Manville* case, which is remembered as the first mega-case involving massive tort liabilities resulting from exposure to asbestos, raised issues that had not been contemplated at the time the Bankruptcy Code was enacted. The issues in the case were unique and so highly controversial that, shortly after the case was commenced, a writ of prohibition was sought directly from the U.S. Supreme Court. The writ sought to preclude administration of the case by a bankruptcy court and was denied in favor of bankruptcy court administration.

One of the most difficult challenges in the *Johns-Manville* case was how to formulate a plan of reorganization that would provide for payment of both known claims related to exposure to asbestos and those that might not become known for 30 to 40 years. When the case was initially filed, the asbestos bar believed that claimants could not be treated fairly in a bankruptcy court and commented that the bank-

ruptcy judge “doesn’t know the difference between a tort and a tart.” Judge Lifland made an innovative and ingenious decision to appoint a future representative to represent the interests of future claimants. This decision was the keystone to resolving the case. The resulting settlements and plan of reorganization established a trust to which all asbestos claims were to be channeled, which has distributed more than \$3.5 billion to claimants. The future representative concept developed by Judge Lifland has become commonplace and was embraced by Congress as an approved model for the reorganization of companies involved in claims related to asbestos under § 524(g) of the Bankruptcy Code.

The *Johns-Manville* case was also unprecedented because, after his confirmation, Judge Lifland presided over the case jointly with renowned U.S. District Judge Jack B. Weinstein of the Eastern District of New York. These two judges from different districts and different courts jointly decided matters and wrote opinions together with direct appeals to the Second Circuit Court of Appeals. It is interesting to note that the U.S. Supreme Court’s June 2009 decision in *Travelers Indemnity Co. v. Bailey* reversed the Second Circuit Court of Appeals, following the appellate court’s rare reversal of Judge Lifland. In a footnote, the Supreme Court noted with approval that the same judge was revisiting and construing his own orders in the *Johns-Manville* case after 20 years.

In November 1985, Texaco Inc. was staggering from a historic \$11 billion verdict handed down by a Texas jury in a lawsuit brought by Penzoil Inc. Texaco was unable to bond that award, and was concerned that if the verdict was converted into a judgment, Penzoil would immediately file the judgment and obtain liens against all of Texaco’s properties. Accordingly, Texaco prepared to file for Chapter 11 bankruptcy before any judgment could be recorded and requested 24-hour access to a bankruptcy judge to effectuate the filing if and when that action became necessary.

Judge Lifland recognized the dilemma facing Texaco and agreed to be available to accept a Chapter 11 filing by Texaco at any time of the day or night. In a real-life scene more suited for television or the movies, a team of Texaco personnel and their attorneys tailed Judge Lifland to a dinner appointment in Lower Manhattan but lost track of his cab. After the Texaco contingent rushed to the restaurant to make sure he was there, Judge Lifland asked the team to wait outside, letting them know what Broadway show he was planning to see after dinner in case they got lost again. According to the attorneys involved, this incident was another demonstration of Judge Lifland’s dedication to the law and willingness to accommodate the needs of distressed entities—features that exemplify his 30 years on the bench. (As an aside, 16 months passed after that incident before Texaco actually sought Chapter 11 relief.)

In July 1986, LTV Corporation, a leader in the steel,

missile, and aerospace industries, along with its subsidiaries, filed for Chapter 11 bankruptcy. Refocusing its future on the steel industry, LTV decided to sell off its missile and aerospace divisions. The company initially received one offer from a joint venture of Lockheed Corporation and Martin Marietta Corporation. At the hearing to approve the sale, the Thomson Company, of which the French government was the majority owner, appeared in court and submitted a higher bid. Judge Lifland adroitly engineered the hearing to encourage a bidding contest lasting several hours and directed the bidders to “sharpen their pencils.” After several rounds of bidding, the attorney for the joint venture advised the court: “After over ten hours of bidding rounds, there is no more pencil to sharpen, it is gone!” Judge Lifland simply replied, “Find another pencil and sharpen it!” At approximately 2:00 a.m., Judge Lifland adjourned the hearing until after sunrise later that morning. Ultimately, Thomson won the auction with a greatly increased bid but was unable to consummate the sale, because it could not obtain the necessary approval of the U.S. Senate for a foreign government to own a missile and aerospace company. Fearing the possibility of such a result, Judge Lifland had approved the Thomson bid as the winning bid only after Thomson agreed to pay a \$20 million “reverse break-up fee” in the event it failed to receive the necessary security clearances. Ultimately, LTV sold its assets to a third bidder for a total purchase price of \$475 million—\$25 million more than Thomson had bid and \$120 million more than the original joint venture had bid. The case demonstrated Judge Lifland’s astute ability to obtain the best results for a debtor’s estate and its creditors.

Throughout the years, Judge Lifland not only has managed complex cases adroitly but also has continued to render decisions and publish opinions of significant precedential value on both the domestic and international fronts. In the Singer sewing machines cases, he appointed foreign representatives in an effort to deal with 55 affiliated debtors doing business in more than 150 countries. The general mandate given to the foreign representatives was to serve as the official U.S. representative of the debtors’ estates and as the court’s emissary to other courts in other countries. In this way, relevant foreign proceedings could be coordinated and harmonized. This notion of the foreign representative was subsequently incorporated into Chapter 15 of the Bankruptcy Code, yet another area in which Judge Lifland has been on the forefront.

Judge Lifland became an expert on cross-border insolvencies beginning with his first years on the bench, presiding over cases such as *Culmer* (the Vatican Bank) and *Axona*. He developed an early universal approach to cross-border bankruptcy proceedings. This expertise on international insolvency law led him to initiatives outside the court. He has served as U.S. co-chair of the International Bar Association’s development of a cross-border insolvency protocol. He was a U.S. delegate to



the United Nations Commission on International Trade Laws (UNCITRAL) working group formed to develop model laws on cross-border insolvency, which subsequently became the model for Chapter 15 of the Bankruptcy Code. He remains a member of the UNCITRAL working group for the development and improvement of laws dealing with business insolvencies, rehabilitations, and reconstructions.

Subsequent to the 2005 amendments to the Bankruptcy Code, Judge Lifland was again on the cutting edge. In the *Calpine* case, in order to resolve a valuation dispute among three different constituencies with valuations ranging from \$14 billion to \$26 billion, Judge Lifland appointed an expert witness to provide the court with an independent valuation of the debtor's assets.

During his long tenure as chief bankruptcy judge, Judge Lifland also led his bankruptcy court to introduce innovations in a number of areas. According to Judge Cecelia Morris, who served as clerk of court while he was chief judge, Judge Lifland refused to let anything get in the way of making inventive ideas happen. If a good idea did not quite fit within rules or regulations, he designated it a pilot project. After Eastern Airlines filed its case in 1989, an overwhelming barrage of claims was filed with the court. To address these claims, Judge Lifland authorized the use of outside claims agents pursuant to 28 U.S.C. § 156(c).

The institution of one of the first electronic case fil-

ing systems in the federal judiciary had probably the most dramatic effect on the day-to-day workings of his court. When Judge Lifland was told about the criticism of this initiative, he told the clerk that "when you raise your head above the crowd, expect to get shot at." Judge Lifland also initiated a unique mediation program that has proven to be extremely effective. Judge Lifland himself served as mediator in the Enron case, successfully resolving a \$25 million dispute.

Judge Lifland has long maintained an excellent reputation with the bar and is the recipient of numerous awards. He is well known to have no patience for fools or people who are trying to use the court as leverage. He does not waste time and is a self-described disciple of the KISS (Keep It Simple, Stupid) principle.

His colleagues applaud Judge Lifland for his willingness to draw upon his substantial experience when difficult problems arise in their cases. And, as one of his closest colleagues has stated, "He is one of the least critical of other individuals of any human being I know."

With all the demands on his time posed by these mega-cases, he maintains his life outside the law. Judge Lifland is an avid biker and an accomplished photographer, who shares his "photo of the week" with all who visit his chambers. His photos of the week, however, take second place to his wife's paintings, which are always proudly on display. He spends his free time at the lake, where he rides his bike and goes boating and fishing. During the summers he reserves a day at the lake for his fellow judges and another day for his chambers staff, during which they can go kayaking and water skiing; the brave ones can try swinging from a Tarzan rope from a cliff into the lake. **TFL**

Una O'Boyle is the chief deputy clerk of the U.S. Bankruptcy Court for the Southern District of New York and a former law clerk to Judge Lifland.