

BANKRUPTCY PROFESSIONAL:

SPOTLIGHT



Joshua J. Angel
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Founded in 1928 by Abraham Herrick and Abraham Feinstein, Herrick, Feinstein LLP's original home was in Brooklyn—in the shadow of the New York Supreme Court. The firm subsequently relocated to Manhattan and expanded to additional locations in Newark and Princeton.

Just over 80 years after its inception, today's Herrick, Feinstein bills itself as “one of the nation's most prominent mid-sized law firms.” The firm maintains that its size is one of its many strengths, offering “the breadth and flexibility to assemble client service teams across practice areas and locations, without the layering and other inefficiencies common to bigger firms.”

Joshua J. Angel serves the firm's Restructuring and Bankruptcy Group as senior counsel. Although with Herrick, Feinstein for just under three years, Joshua is hardly new to the corporate bankruptcy arena. This insolvency legend has nearly 50 years of experience in bankruptcy and corporate restructuring matters under his belt.

Well-known for his contagious smile and refreshing candor, Joshua recently penned “Ultra Stores, Inc.: A Successful Retail Jewelry Chapter 11 Reorganization”—a soon-to-be-published revealing analysis of his strategy on the Ultra Stores proceeding. His wit and wisdom come through in the opening paragraph: “An old lawyer once said, ‘Any fool lawyer with a form book and a fountain pen can file a Chapter 11 petition for a client. Getting out of Chapter 11 with the client's skin intact is another story.’”

We spoke with Joshua about the early—and final—days at Angel & Frankel, his work on the Ultra Stores' reorganization, career regrets and how he spends his free time.

BP: Tell me about your path to becoming a restructuring lawyer.

JA: I came to restructuring law by accident: there was no design to it. In the late Sixties or early Seventies, I joined with a classmate of mine, Leon Marcus, and now on senior status Chief Bankruptcy Judge Burton Lifland to form Lifland Marcus & Angel. The main thrust of the firm was the collection of commercial receivables.

In the course of that practice debtors would often end up in an assignment for the benefit of creditors or bankruptcy proceeding. So we got involved in the bankruptcies. Over time, it became apparent that there was a better future in bankruptcy than in debt collection. In the early Seventies, the firm changed its thrust from commercial receivable collection to commercial insolvency proceedings.

BP: How big was your team? Did you have an industry niche?

JA: We ran the practice with one or two associates. In those days the practice revolved around the relationships we had developed with various credit agencies or persons who controlled large amounts of indebtedness in a particular industry. For instance, one of the firm's representations was the Furniture Manufacturers' Credit Association, a credit clearing and

collection agency formed by the southern furniture manufacturers. As a result, we found ourselves doing furniture bankruptcies on behalf of FMCA members throughout the country.

There were similar agencies dealing with truckers, food, health and beauty aids, etc. As a result of our representations of those types of clients, we found ourselves doing all of their bankruptcy cases.

Leon and I were only doing creditor work. At that time, the practice was centralized in a series of isolated small firms (two to three lawyer firms) that did bankruptcy and the rubric under which you operated in those days was *economy of administration*. Essentially, it meant that you had to apply to the Court for payment of the fees. If the fees were large—like \$10,000, the Judge would say “are you crazy? The creditors are only getting a pittance and you should only get \$2,000”—and that’s how it went.

The Court was very sensitive to the expected distribution to creditors as the *most* significant criteria to be employed in formulating what you should be paid. Ultimately, with the new Bankruptcy Code, what that morphed into was that lawyers should be paid the prevailing rate for their time.

BP: You were a founding partner with Angel & Frankel, P.C. Describe the origins of that firm.

JA: Angel & Frankel began about 1981, and it continued as a recognized boutique bankruptcy law firm. In its first year, we represented the Lionel Corp. toy retailer.

Back in the early 1980’s, large law firms— always looking for sources of revenue—said “look at those fellows doing this case and that case.” We had to publish fees in the newspaper in those days, and the fees were six and sometimes seven-figures.

The writing was on the wall. The economy of administration went out with introduction of the bankruptcy code. The large firms began to gobble up the mom and pop shops here in New York, and by the early Eighties, we had a decision to make regarding our business model.

That’s when Marcus and I broke up, and the firm became Angel & Frankel. My solution was for Angel & Frankel to position itself as exclusively representing Debtor companies. Leon, with whom I remained dear friends, merged his half of the firm with a full service law firm.

BP: What changes have you seen in the practice of law?

JA: Compensation standard is one of the most significant changes I’ve seen in the past 50 years. The other significant changes deal with the uniform commercial code—claims trading, things like that. In the early days, virtually everyone, including the banks, was unsecured. Today, it is rare that the institutional lender is unsecured and, accordingly, as secured creditors they rule the roost.

As late as the Seventies and early Eighties, the creditor body had a definite interest in the reorganization of the company so that they could continue to have a trading partner. With the onset of claims trading, which began in earnest in the mid-Eighties with professional claims buyers controlling committees, the interest changed from one of “let’s see if we can help ‘so-and-so’ to ‘let’s see how fast I can get my money out of so-and-so.’”

The bankruptcy practice was then controlled by a handful of two, three, four-person law firms. Now, the practice is controlled by very, very large law firms who gave away the other half of the business—the reorganization business—to the crisis management shops like Alvarez & Marsal, etc.

In the late Seventies, there was a young accountant working for Touche whom I hired for the Food Fair Creditors’ Committee. His name was Frank Zolfo. Frank Zolfo in time mutated into Zolfo Cooper, which became the crisis manager to the world.

BP: Columbia is your Law School Alma Mater. Did you have any noteworthy classmates at Columbia?

JA: What is interesting about Columbia’s Class of ‘59 is that several of my classmates became bankruptcy specialists who are recognized as such. Harvey Miller, Leon Marcus, Lou Kruger, Burt Strumpf. Of course—the most notable classmate was Supreme Court Justice Ruth Bader Ginsburg, who had some success in another area of the law.

I recently attended the 50th anniversary of my graduating class. In my class, we had few women. We did have Hazel Gerber Schizer and her son is now the Dean of the School. Ruth Ginsberg’s daughter is a professor at Columbia Law and another classmate Richard Goldberg’s daughter is also a professor at the school, and she was honored at graduation as the favorite professor at the school.

BP: How did Angel & Frankel end up merging with Cole, Schotz, Meisel, Forman & Leonard, P.A. play out?

JA: That's a sad story. The business model was exactly what I told you and the firm was always very successful financially. It always enjoyed the highest respect of all the law firms as a boutique niche player. Bruce Frankel was about 10, 13 years younger than me. Although I'd like to die at my desk, I'm not totally stupid. The design was that Frankel would take over the firm and, eventually, I would ease off.

In June 2003, Bruce went to Philadelphia to help a friend be appointed counsel in some case. The next thing I knew, I got a call that he had a headache and was taken to a hospital with a brain aneurysm. The next day he died at just 54 years of age.

It took three years for the Cole, Schotz merger. I had conditions: They had to (1) take all my people; (2) assume the lease and (3) be fair to me. I told them I'd stay for one year; and, if they were nice people, I'd stay forever. It proved not to my liking, so I stayed for one year as I'd promised and then left.

BP: Why did you choose to join Herrick, Feinstein?

JA: The firm is led by a marvelous fellow: Harvey Feuerstein. We lived in the same building 40 years ago in Manhattan. We were neighbors and stayed dear friends. Over the years, he was building the Herrick firm. From time to time, they'd have a difficult case, and I'd work as counsel to the firm.

The day after I resigned from Cole in January 2007, I went to lunch with Harvey. I told him I'd be happy to work for Herrick on a slightly altered schedule and build the firm's Debtor-side practice. I joined Herrick Feinstein the next day—basically on a handshake.

BP: How has the adjustment from founding partner at Angel & Frankel to counsel at Herrick, Feinstein been?

JA: I'm wondering why I didn't do it ten years earlier. The wonderful thing is that I basically opened a law office six months out of law school. I was the first person to do that, with my now-deceased classmate Dick Jankell. However, I always had problems to deal with...*"How can I pay the rent? How can I pay the bank?"* I took it home with me and lived it 24/7.

Today, I only have one thing to do: my cases. I love my cases. I'm now paid for doing the thing I enjoy most—along with tennis and skiing!

The bottom line is that I did it all and had all the accolades. I don't miss it. I don't have post-partum depression. I came to grips with my age when Bruce died. Time is not forever...you have to move on. I transferred from Angel & Frankel with no regrets, and I'd do it again in a nanosecond.

BP: Angel & Frankel served as debtor counsel in the 2002 Ultra Stores bankruptcy case. Were you involved with that first Chapter 11 proceeding?

JA: Absolutely. I was the counsel in charge. Ultra Stores most recently came upon hard times because it had picked the wrong time to do a leverage recap and take some profit marbles off the counter. It did so just as the jewelry business was collapsing in 2008.

BP: You served as Debtor counsel in Ultra Stores' April 2009 bankruptcy. Why did the company follow you to Herrick, Feinstein for this case?

JA: It was always my client at Angel & Frankel; they were all my clients. There's an art to what we do. It doesn't work like a form book: when you are dealing with the smaller cases you have to think. The clients recognize that.

BP: The Court confirmed Ultra Stores' Reorganization Plan in July 2009—just over three months after the petition was filed. How were you able to achieve this speedy reorganization at a time when most other retailers were liquidating or languishing in bankruptcy?

JA: Ultra Stores, in a microcosm, is exactly what has happened in the bankruptcy practice in the 21st century. We've become too expensive for what we do. Whereas in the early days we could serve as the chief cook and bottle washer, over time the system has become a tool for the merger and acquisition of large companies and a burial ground for small companies.

Bankruptcy is no longer effective as a reorganization tool for small companies simply put in bankruptcy: the adjustment of debt for small companies is too expensive. We need to change the Bankruptcy Code for small companies. It has become too expensive for what we do.

Ultra Stores is basically the cut-off point for what can effectively be reorganized under the current cost

structure. Why did Ultra Stores survive when others collapsed? The whole game plan was thought out pre-filing. We had an agreement-in-principle from all the key parties in place pre-petition, and we did not file until we had all the pieces in place for a prepack—and exit and D.I.P. financing.

You have a certain amount of lead time. With Ultra Stores, I had almost four months time before I had to go into bankruptcy. The trick was to use the four months to do most of what you would do in bankruptcy out of bankruptcy. Still the expense was enormous.

You cannot effectively use bankruptcy for rehabilitation and debt restructure for a moderate-sized company. Its main use is now for larger companies, mergers and acquisitions and the criminal companies (Refco, Madoff or what have you).

The rest of them are burials. It's so expensive and so treacherous that it doesn't work anymore. We need some sort of a rehabilitation mechanism that is not as procedurally violent as the current code. You start putting all of the various professional roles together on a case, and the train can't carry them. In order to carry the load, you need a certain size freight train. Less than \$50 million in assets...you can't carry it in Chapter 11, so figure out another way. People are going back to a tool used when I first got into the practice: out of court restructurings.

BP: Ultra Stores emerged from bankruptcy just before the Lehman Brothers bomb dropped. Do you think they would have successfully reorganized if the case had languished a few more months?

JA: I don't know. Timing is everything.

BP: How come others are not using this expedited approach?

JA: They generally do the mechanics, and run a lot of hours, as opposed to stopping to think. Half the cases that I do never reach the bankruptcy court. The clients are better off if you speak to the lenders and navigate consensual solutions.

BP: What regrets, if any, do you have about your career?

JA: I should have spent more time with my children, skiing and playing tennis. Other than that, no regrets.

BP: If you had not chosen to be a lawyer, what other professional path would you have chosen?

JA: I was born to be a lawyer. I think it is an honor to be a lawyer. If I wasn't a lawyer though, I'd probably work somewhere in the financial world. I enjoy that.

There is one thing. If I could have afforded it, I would have liked to have been a bankruptcy judge.

BP: How do you fill your non-work hours?

JA: I still play singles tennis and ski like a madman. I enjoy gardening. I love my wife, my children, my grandchildren. I love to read. I don't get enough time to read everything that I want to. Lately, I've been re-reading books. The second time around, I get more fun out of them. I recently re-read *Bleak House*, *A Tale of Two Cities* and *Catch 22*. I don't play golf—it's an old man's game.

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