

## Professional Profile.....

### Creating Value Again

#### Jack Butler Joins Hilco Global

By Dave Buzzell

A few months ago, Jack Butler joined Hilco Global as an executive vice president, leaving Skadden, Arps, Slate, Meagher & Flom, where he was head of a restructuring practice he co-founded 23 years ago. While it was seemingly a major career change, Butler saw the move as a new opportunity to do what he does best — create value for his clients.

At Skadden, Butler and his team were known for creating value through their innovative work on behalf of clients in and out of court, with the law firm's pioneering work in pre-packaged bankruptcy cases being an example of that innovative mindset at work. "In the Skadden restructuring group, we viewed ourselves as deal makers," says Butler. "We sought to find the best solutions for companies from a legal perspective. We were involved in many refinancing and recapitalization situations executed out of court and large transformational restructurings executed in court."

At Hilco Global, Butler says he is pleased to be a part of the executive team of a company that is also known for its ability to create and maximize value outside of the legal system, whether that be through advisory work, redeveloping and repurposing assets, or making capital investments. The company is privately held, with 20 business units operating in 11 countries around the world and over 500 employees.



Jack Butler  
Hilco Global

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## Innovative Solutions.....

### Drug Fix

#### Unique Settlement Helps Victims of Bankrupt Pharmacy Company

By Randall Reese

The bankruptcy of New England Compounding Pharmacy, Inc. was caused by a horrible and catastrophic tragedy. The company's products were linked to a fungal meningitis outbreak which resulted in at least 64 deaths and 751 non-fatal illnesses according to the Centers for Disease Control and Prevention. However, due to the efforts of the parties involved in the bankruptcy cases, the victims of the outbreak and other creditors of New England Compounding Pharmacy will soon begin to receive compensation for their claims.

As the name implies, New England Compounding Pharmacy operated before its bankruptcy filing as a compounding pharmacy. According to the Food and Drug Administration, compounding is a practice in which a licensed pharmacist, a licensed physician, or, in the case of an outsourcing facility, a person under the supervision of a licensed pharmacist, combines, mixes, or alters ingredients of a drug to create a medication tailored to the needs of an individual patient. Compounded drugs are not FDA-approved, meaning that the FDA does not verify the safety or effectiveness of compounded drugs. Compounded drugs also lack an FDA finding of manufacturing quality before such drugs are marketed.



William Baldiga  
Brown Rudnick

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## Butler...

“Over its 28-year history, Hilco Global has transformed itself from what began primarily as a disposition business to today’s broad platform of financial services, which include acting as an advisor, an agent and often a principal, with respect to every asset category on the left-hand side of a balance sheet,” says Butler. “Hilco Global has become relevant to virtually every investment-grade company and certainly across the gamut of distressed situations that are out there today.”

### Returning to His Roots

The move to Hilco Global also fulfills Butler’s entrepreneurial inclinations, going back to his youth. His father, who never attended college, was the epitome of an entrepreneur, using a leveraged buyout to purchase the department store where he worked as a stock boy. He built the business into a chain of 20 department stores, operating as three different brand names. Butler grew up in that retail environment, working, as his father had, as a stock boy selling men’s suits and purchasing inventory for the store.

Butler left the retail world behind when he headed off to attend Princeton University, but his intention was to some day return to the family business. His occupational path changed when his father visited him when he was a junior in college and urged him to pursue a career in law instead. Butler recounts his father advising, “Look, I’ve never asked you to do anything, but I want you to go to law school because you grew up in a business family and if you can bring that experience and talent to giving advice as a lawyer, you’ll always be busy.”

“He wasn’t wrong,” Butler laughs. “It led to the career I’ve had.”

It has been a remarkable career by any measure. Butler has found himself at the center of major deals in all kinds of industries, from airlines to automotive, from retail to energy. He was with his family on Thanksgiving Day when the phone rang and he was

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asked to fly down to Houston as soon as possible to assist a besieged energy company by the name of Enron. A couple of years later, it was New Year’s Day when one of the nation’s largest retailers, Kmart, ran into a liquidity wall and Butler was brought in to find a way to scale it. He was again on hand for the restructuring of Delphi, the largest auto parts supplier to General Motors. Last year, Butler was one of the legal all-stars who made the American Airlines/US Airways merger happen.

Although these and many other engagements earned Butler the highest accolades in his profession — including being twice recognized as “Dealmaker of the Year” by the *American Lawyer* and “one of the decade’s most influential lawyers” by *The National Law Journal* — he found it impossible to turn down the entrepreneurial possibilities offered by working at Hilco. “I’ve known the CEO [Jeffrey Hecktman] for the better part of 20 years. The chance to work with him and many other people in the organization really got my juices flowing.”

### A New Opportunity

As Butler sees it, his mission at Hilco Global is very much the same as it was at Skadden: to bring value and growth to the businesses with which he is engaged. The major difference is the expanded opportunities at Hilco Global. “We are acting for our account, so it will be a very different experience than at Skadden,” Butler notes. “Hilco Global does advisory work, asset disposition and monetization work, and valuation work, which are executed in six major business units. Four are asset class companies that have shorter-term holds and do all kinds of activities and transactions relating to real es-

tate, receivables, inventory, industrial equipment, and other assets. The other two units make capital investments and develop and repurpose assets in ways that are commercially useful and bring value for others and ourselves. Thus, while we serve as agent and advisor, we are also increasingly acting as co-investor or as principal.”

That’s not to say that Butler didn’t find it difficult to leave Skadden. “I was a partner in a major national law firm and helped found and lead the restructuring business for over 23 years. It was gratifying work, but this was an opportunity to work for a large private company as a principal. I’ll be helping implement a strategic plan of considerable growth in coming years. We are well positioned to do it; we’re involved in a lot of transactions in all our business units. So, it’s an exciting time, one of significant change, and I’m happy to be a part of it.”

### Doing the Right Thing

Butler credits his success in both his professional and personal life to always trying to do the right thing. As he explains, “At Skadden and now at Hilco Global, I’m striving to find the right deal — the most innovative and efficient business solution I can in a particular transaction. I’m passionate about getting to a place of value, one that saves jobs and makes money.”

Butler is known as both a tough negotiator and a relationship builder, but he doesn’t see those two characteristics as opposing means to an end. “Life isn’t a zero sum game where, for you to win, other people must lose. It’s a much better result if everyone, to the extent you can help them win, does. Even those who don’t win at least know you made every effort to achieve the best transaction available

under the circumstances. You have to reach out in all kinds of traditional and nontraditional ways to get the deal done, and that's something I've always tried to do."

Butler also tries to be the best father he can. "I'm blessed to have a wonderful spouse. We have a great family, with four great kids."

In a career that requires a lot of travel, Butler says he makes every effort to be home on weekends. His children are very active in basketball and soccer, and Butler has coached some of their teams in the past. He is also very active in his church, and teaches Sunday school. "You do the things you can do to connect with your kids. It's important to find that

family-work balance in life."

For over two decades, Skadden was also Butler's family, and he speaks of the firm in those terms. "One of things you realize in life is that none of the things we do, we do

every day to make a difference. It was certainly true at Skadden, and now at Hilco I am part of an exceptional group of people who are working really hard to make sure we continue to move forward as a company."

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by ourselves. We are all part of organizations where what other people do allows us to accomplish the things that we do. I have been very blessed over the years to be associated with tremendous people who work hard

"Hilco Global is very strategic, dynamic, and entrepreneurial in what it is trying to accomplish. It's an exciting time for me, and I'm enjoying life every step of the way. How can I not?" □

## Drug Fix...

Reports of problems with the drugs compounded by New England Compounding Pharmacy began to surface in September 2012. Specifically, those reports indicated that several patients contracted fungal meningitis after receiving injections of preservative-free methylprednisolone acetate (MPA). The Massachusetts Department of Public Health began an investigation on September 24, 2012 and, two days later, New England Compounding Pharmacy issued a voluntary recall of three suspect lots,

deal of litigation and claims asserted against the company. As of March 5, 2014, 322 separate lawsuits had been joined in the multi-district litigation pending in the United States District Court for the District of Massachusetts (Case No. 1:13-md-02419-FDS, *In re New England Compounding Pharmacy, Inc. Products Liability Litigation*). In addition, by the January 15, 2014 bar date for filing of claims in the bankruptcy case, approximately 3,300 claims asserting injury from injections of MPA had been filed.

In January of 2013, both a Chapter 11 Trustee and an Official Com-

mission & Restructuring Department and counsel to the Creditors' Committee.

The parties were able, however, to identify and pursue a path forward. "The Committee and the Trustee have worked very closely throughout the case," notes Baldiga. "That coordination is really required given the complexity of the issues and has avoided potential delay and expense that could have occurred." The Creditors' Committee was also able to look to their counsel's previous engagements for guidance. "Brown Rudnick has a lot of experience in mass tort cases, including as Committee counsel in all but one of the Ephedra bankruptcy cases," states Baldiga. "As a result, we had a strong view of the path that this case should take."

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containing 17,646 doses of MPA that had been distributed to over 14,000 patients.

New England Compounding Pharmacy filed for Chapter 11 protection on December 21, 2012, shortly after suspending business operations, surrendering its Massachusetts pharmacy license and laying off most of its employees. Unsurprisingly, the meningitis outbreak has led to a great

mittee of Unsecured Creditors were appointed in the bankruptcy case. They were presented with immediate challenges. "The company had distributed substantially all of its cash to its owners and most books and records of the company had been seized by authorities, so it was a very difficult case from the outset," says William Baldiga, the Managing Director of Brown Rudnick's Litiga-

Specifically, the parties recognized the importance of negotiating settlements with the non-debtor parties that faced exposure for claims arising from the meningitis outbreak and the potential value to be generated from the ability to provide those parties with releases in the context of a Chapter 11 plan. "It is very difficult to bring about a good result without a plan that grants broad releases to parties in exchange for their contributions to fund plan recoveries," explains Baldiga. "In addition, global settlements result in the great portion of estate funds going to victims by avoiding large litigation and admin-

istrative costs.”

The fact that the bankruptcy case had been filed in Massachusetts presented unique challenges to this strategy. “While there are many favorable reported and other decisions in other circuits, in the First Circuit there is very little precedent for the type of broad releases proposed here in the context of a plan of reorganization,” says Baldiga. Despite this lack of precedent, the Trustee and Committee’s strategy began to demonstrate results in May of this year, when the Trustee sought court approval of a number of settlements with insiders of the company, its insurers and its landlord.

Collectively, the proposed settlements would result in the aggregate recovery by the estate of approximately \$100 million and serve as a centerpiece of a Chapter 11 plan. The settlements were reached in consultation with, and supported by, the Creditors’ Committee in the bankruptcy case and the Plaintiffs’

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Steering Committee established in the multi-district litigation. Bankruptcy Judge Henry Boroff entered orders approving the settlements on July 31, 2014.

One of the particularly unique features of the settlement reached with insiders of the company was a provision providing that those insiders would contribute 90 percent of certain federal, state, and local “net tax refunds” received by those individuals as a result of making the other payments under the settlement agreement. That provision was designed to take advantage of Internal Revenue Code Section 172(f), which allows a tax deduction for expenses related to product liability and ex-

penses related to claims on account of product liability. “There is a tax rule that, if owners of a company reverse prior years’ distributions back into the company in the form of return to capital, they can claim a refund of income taxes paid going back up to ten years,” explains Baldiga. “While this is not something that is often utilized in restructuring, it is well-established tax law and the settlements in this case are in full compliance with those tax laws.”

These settlements are likely to be followed by more settlements with other parties. “There are deals in place with a few of the clinics and negotiations are on-going with many others,” notes Baldiga. “It is expected that the \$100 million from insider settlements will be augmented with many millions more from additional settlements.” The settlements also present a clear path to confirmation of a plan that will allow distributions to creditors to begin quickly. “We expect confirmation of a plan to occur before the end of 2014 and distributions to creditors to begin in the first quarter of 2015,” Baldiga reveals. □

## Bankruptcy Report...

# Back in Business

Major companies emerging from bankruptcy in July and August include:

<i>Company</i>	<i>Petition Filed</i>	<i>Date Emerged</i>
Quiznos	March 14, 2014	July 1, 2014
1250 Oceanside Partners	March 6, 2013	July 1, 2014
Brookstone Holdings Corp.	February 1, 2014	July 7, 2014
Genco Shipping & Trading Limited	April 21, 2014	July 11, 2014
Southern Montana Electric Generation & Transmission Cooperative	Oct. 21, 2011	July 15, 2014
KidsPeace Corp.	May 21, 2013	July 16, 2014
Old FENM Inc., f/k/a		
Fresh & Easy Neighborhood Market Inc.	Sept. 30, 2013	July 23, 2014
M*Modal	March 20, 2014	July 31, 2014
Overseas Shipholding Group, Inc.	Nov. 14, 2012	Aug. 5, 2014
C&K Market Inc.	Nov. 19, 2013	Aug. 10, 2014
GSE Environmental, Inc.	May 4, 2014	Aug. 11, 2014

## Mark Your Calendar!

# Distressed Investing 2014

21ST ANNUAL CONFERENCE

December 1, 2014

Helmsley Park Lane Hotel

New York City

For more information:  
<http://bankrupt.com/DI2014>



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