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## The Man Who Is Unwinding Lehman Brothers

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Marilynn K. Yee/The New York Times

Harvey R. Miller, 75, may be the best-known bankruptcy lawyer in the country — and he is especially busy these days. He is now handling the Lehman Brothers proceeding.

By JONATHAN D. GLATER  
Published: December 13, 2008

THESE days, it's awfully hard to get on Harvey R. Miller's calendar.

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Chip East/Reuters

Employees leaving Lehman Brothers in New York on Sept. 14. The company filed for bankruptcy the next

A 75-year-old lion of the bankruptcy bar, Mr. Miller has been consumed by the largest corporate liquidation in American history: [Lehman Brothers](#), the storied investment bank that set off one of the most harrowing episodes in the [financial crisis](#) when it collapsed in mid-September.

Mr. Miller's workdays begin around 8 in the morning and, if he is lucky, end near 11 at night. This combative, outspoken lawyer says that some days don't seem to end at all, but merely expand into the next, dissolving into tense meetings and complicated hearings in overheated courtrooms.

Although Mr. Miller has been involved in landmark bankruptcy cases before — including those of Eastern Airlines, R. H. Macy and [Global Crossing](#) — Lehman's is in a class by itself because of volatile markets, continuing government investigations, the involvement of federal regulators and a possible wave of other corporate implosions.

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morning.

From his perspective as Lehman's undertaker, Mr. Miller believes that the fallout from the firm's messy bankruptcy could have been avoided. Regulators could have stepped in, he says, not necessarily to save Lehman, perhaps, but to head off the meltdown that followed. "They totally missed it," he says. "Look what happened."

When companies rushed to terminate contracts with Lehman, he says, investor confidence plummeted in just about everything — securities and the markets they trade on, corporate debts and the assets backing them, the power of the government and its readiness to use it. In the days after Lehman filed for bankruptcy, he notes, demand for corporate debt utterly evaporated.

The failure of a Wall Street firm poses its own special risks, because other companies that rely on it — such as counterparties to complex financial contracts known as [derivatives](#) — are all financially exposed to its collapse.

That's why Mr. Miller says it was crucial for the government to head off the wholesale termination by counterparties of all their transactions with Lehman before the firm was forced into bankruptcy. "If the Fed or the Treasury said, 'Let's say to Lehman, there's no bailout, we're not going to save the company,' they could have supported an orderly unwinding of all the transactions over a period of months," he says. "It probably would've cost the economy a lot less money."

THE severity of the economic downturn is leading many analysts to predict a wave of bankruptcies over the next year. And for bankruptcy experts and lawyers who specialize in the trade, all the bad news may be good news for their own business. For one firm in particular, it represents a windfall.

Weil Gotshal & Manges, the firm where Mr. Miller is a partner, is widely believed to be first on a short list to represent [General Motors](#) if it seeks bankruptcy protection. Ira M. Millstein, another partner at the firm, has long been a trusted adviser to G.M.'s board.

Weil is also handling bankruptcy filings by [Washington Mutual](#), Pilgrim's Pride, Sharper Image and others, and Weil lawyers say representatives of other teetering companies are calling all the time.

In addition to advising the [American International Group](#), the insurance giant that needed a huge federal bailout to stave off collapse, Weil is handling 13 bankruptcy filings this year alone.

Still, none of the failures so far compare to Lehman's. The combined debt of the 13 bankrupt companies represented by Weil totals \$684 billion, according to the firm, but a stunning \$640 billion is owed by Lehman alone.

Lawyers involved in the case say it has been a brutal sprint, in which any delay can result in billion-dollar losses.

"Events move with the velocity that almost defies comprehension," Mr. Miller said in mid-September at a hearing at the United States Bankruptcy Court for the Southern District of New York. In one 24-hour period, he pointed out, Lehman lost \$1.6 billion when the [Chicago Mercantile Exchange](#) closed out all of Lehman's positions.

Since Lehman filed for bankruptcy protection early in the morning of Sept. 15, the Dow Jones industrial average has fallen more than 18 percent. Investors worldwide have watched helplessly as billions of dollars they sank into stock markets have evaporated. Tens of thousands of people have already lost jobs in sweeping corporate cutbacks, and

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countless additional jobs are at risk.

With the fate of whole industries — financial services, automaking, airlines, retailers, real estate, media — looking shaky, demand for bankruptcy gurus is likely to remain high for some time.

For Mr. Miller, this moment offers an opportunity, but he does not want for glory, says Sandra E. Mayerson, head of the New York restructuring practice at Holland & Knight. "His reputation was secure without Lehman, but I think he lives for the thrill of his work," Ms. Mayerson says. "He didn't need a moment."

MR. MILLER says there is no place he would rather be than where he is now. Asked why, he pauses an instant, then says he loves the excitement, the risk and the potential reward.

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## The Man Who Is Unwinding Lehman Brothers

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Under Chapter 11 of the federal bankruptcy code, companies receive protection from creditors and an opportunity to reorganize so they can become productive again, preserve jobs and, ideally, eventually pay back their debts.

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“If you’re successful, there’s nothing like reorganizing a company,” Mr.

Miller says. Although Lehman filed for

Chapter 11 protection, the firm is not expected to emerge

from proceedings. Even so, he says, there are still

advantages to Lehman if its bankruptcy is well-managed.

It can produce “a result which benefits people,” he says. In

this case, that would mean finding buyers for Lehman’s

businesses that were willing to continue employing its

workers.

Mr. Miller says the first bankruptcy case he handled by

himself involved a small lithograph company that was to

be liquidated. Instead, it was able to reorganize. “We had a

dinner party, and the look on the employees’ faces whose

jobs had been saved, you can’t compare that,” he recalls of

that case.

Mr. Miller, tall, gray-haired and well dressed, is one of those hyperarticulate lawyers able to speak in complete paragraphs, offering off-the-cuff, for example, his detailed critique of the government’s response to Lehman’s collapse.

He was born in 1933, and after graduating from Columbia Law School in 1959, joined a small law firm. In 1963, he joined Seligson & Morris, an eight-lawyer firm that also employed Martin Lipton, Leonard Rosen and George Katz, who went on to be co-founders of Wachtell, Lipton, Rosen & Katz.

In 1969, Mr. Millstein brought Mr. Miller aboard at Weil. Mr. Miller created the firm’s finance and restructuring department. Weil bankruptcy lawyers have taken on some of the biggest, messiest cases of their time, representing [Continental Airlines](#), Bethlehem Steel, the Sunbeam Corporation, the [Marvel Entertainment Group](#) and [Carmike Cinemas](#). The firm also represented creditors of [Donald Trump](#) when the developer’s holdings ran

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into problems in the early 1990s.

Along the way, Mr. Miller helped to assemble a team of younger lawyers, many of whom are now heavyweights in the bankruptcy bar. Martin J. Bienenstock, who spent 30 years at Weil, mostly alongside Mr. Miller, recalled how intimidating it was for a young lawyer to work with Mr. Miller.

“He seemed to forget long ago what it is like to only have the knowledge of a beginner,” says Mr. Bienenstock, who is building a unit at Dewey & LeBoeuf in New York that specializes in restructuring and corporate governance.

Mr. Miller pushed young lawyers to improve their skills, often having them prepare and make presentations, Mr. Bienenstock says. He says Mr. Miller, who for years has been a lecturer at Columbia Law School, is also a gifted tutor.

The first time he attended a court hearing with Mr. Miller in the late 1970s, Mr. Bienenstock says, “I basically copied down on a legal pad everything Harvey did, from the time he stood up to go to the lectern.”

He says Mr. Miller would tell a bankruptcy judge what he wanted, listen closely to the judge’s response and then try to show that the judge’s own thinking supported doing what Mr. Miller wanted. “To this day, I basically follow that template because it’s so effective,” Mr. Bienenstock says.

In 2002, after 33 years at Weil, Mr. Miller left to join [Greenhill & Company](#), a boutique investment bank started in 1996 by Robert F. Greenhill. In 2004, Greenhill went public, presumably making Mr. Miller an even wealthier man.

At Greenhill, he advised Loral Space and Communications in a Chapter 11 proceeding, and got to know [Bernard L. Schwartz](#), then Loral’s chief executive.

“I developed a very strong respect for his professionalism and the way he approached the issue of restructuring Loral,” says Mr. Schwartz, who now runs BLS Investments in New York. “He spoke with confidence, with knowledge, and he was always constructive.”

Loral emerged from Chapter 11 with its management team intact, as Mr. Schwartz desired. The two men became friends, Mr. Schwartz says, and now meet for lunch at least once a month.

Mr. Miller left Greenhill last year and returned to Weil, a move that generated headlines in trade publications. It is not clear what prompted the move; in a statement at the time, Mr. Miller said that “Weil is where I grew up, and it’s always felt like home to me.”

Lawyers at other firms say the timing of his return now seems a masterstroke, given the amount of bankruptcy work.

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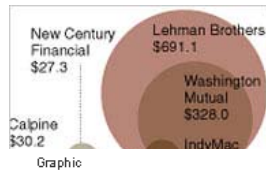
Mr. Miller can be decidedly old-school in his approach, says Luc A. Despina, chairman of the restructuring practice at Paul, Hastings, Janofsky & Walker in New York. Mr. Despina recently represented Lehman creditors, and has faced Mr. Miller in other cases.

“There’s a whole generation thing there,” says Mr. Despina, who is 48. “When he goes to court, he has a text that is typed in front of him about what he’s going to say. It is rare to see lawyers of my generation have prepared, typed text. We are more likely to have bullet points scribbled on a legal pad.”

And Mr. Miller seems indefatigable, Mr. Despina says. In the Lehman case, he observes, Mr. Miller “doesn’t flinch.”

“He did all-nighters and all that,” Mr. Despina adds. “It’s pretty incredible.”

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But even as lawyers express admiration for Mr. Miller, some also describe him as a hard man to get along with, a man whose temper has sometimes gotten the better of him. In one well-known instance, while representing Eastern Airlines in its reorganization effort nearly 20 years ago, he turned in frustration to a lawyer representing a potential buyer of the company and grabbed him by the collar — while both were in a judge’s chambers.

Mr. Miller said afterward that he regretted the lapse, but the story stuck.

Joel B. Zweibel, a well-known retired bankruptcy lawyer who says he physically restrained Mr. Miller at that meeting, chuckles at the memory. He describes Mr. Miller as a difficult but very worthy opponent.

Mr. Zweibel squared off with Mr. Miller many times over the years, including the Macy’s bankruptcy. He says that while he was able to become good friends with courtroom opponents, Mr. Miller was the exception.

“That was not my experience with Harvey,” Mr. Zweibel says. “The relationship was strictly adversarial.”

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People whom Mr. Miller perceives as adversaries outside the courtroom are treated accordingly on the inside.

During court proceedings in the Lehman bankruptcy, Mr. Miller leveled a snide comment at his former partner, Mr. Bienenstock, questioning his comprehension of a proposed deal.

Mr. Miller wanted speedy court approval of a sale of Lehman's domestic capital markets business to [Barclays](#), the British bank. Mr. Bienenstock was worried that the sale of the subsidiary could block creditors from recovering money the Lehman unit owed them.

"I'm a little bit shocked, having practiced with Mr. Bienenstock for years, that he doesn't understand an agreement," Mr. Miller said at a hearing in September.

The presiding judge, James M. Peck, headed off any possible bickering, observing, "Oh, he understands." (Mr. Bienenstock says he did not respond to Mr. Miller's comment in light of the judge's words.)

Mr. Miller, who is so busy that he limited an interview to a 15-minute phone call, describes himself as a zealous advocate, because, he says, that is exactly what his clients want and expect when they hire him. Mr. Miller's work costs nearly \$1,000 an hour, according to a court filing in another case.

"When I represent a client, I represent the client, and I do the best for the client," no matter who represents the other side, Mr. Miller says. "And I am not into back-scratching."

RIVALRY of Mr. Miller ask if so many companies turn to Weil's bankruptcy practice because of him or because of ties to other partners at the firm who schmooze and network more readily. For example, Mr. Millstein's ties to G.M., and in the past to other companies, have been of enormous help to Weil's practice.

Still, Mr. Miller is probably the best-known bankruptcy lawyer in the country. At an annual conference on distressed investing, his name is on an award given to a professional in the restructuring business.

No corporate meltdown has posed the combination of challenges that the Lehman case does, not just because the company is so large but also because it operates within an intricate financial web in which spooked investors can move money nearly instantaneously.

Lawyers say the case most like Lehman's is that of [Drexel Burnham Lambert](#), the investment bank that filed for Chapter 11 protection in 1990 after a client, Ivan F. Boesky, paid \$100 million to settle charges of insider trading and agreed to testify against the firm and its junk-bond impresario, [Michael Milken](#). Mr. Milken later went to prison for violating federal securities laws.

Regulators accused Drexel of, among other things, insider trading and manipulation of stock prices. Lehman has not been charged with any crimes, but it and some of its employees face investigations of events before the collapse. Drexel, like Lehman, was liquidated, and Drexel also turned to Mr. Miller to help sell its pieces for as much money as could be gotten to satisfy creditors.

Lehman's fall was tied to derivatives and complex mortgage securities. Blame for Drexel's collapse was assigned to a newfangled financial tool of the earlier era, the junk bond. Those high-yield, high-risk instruments helped feed mega-takeovers of the '80s.

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But figuring the worth of Drexel's assets didn't present the problem it does at Lehman, which holds billions in securities backed by home loans and other assets of uncertain worth. And Drexel's collapse wasn't seen as a potential harbinger of financial apocalypse.

In any event, every bankruptcy case is different. The federal bankruptcy code doesn't come close to covering every twist and turn that arises when companies fail. The best lawyers think creatively in these situations and bring specialized areas of expertise to bear on myriad vagaries of a corporate collapse.

The Weil team working on Lehman's bankruptcy includes lawyers who are experts in tax, real estate, litigation and mergers and acquisitions, said Lori R. Fife, a partner at the firm.

"I've worked pretty much past midnight, every night, and every Saturday and Sunday since Sept. 15," when Lehman filed for bankruptcy, Ms. Fife said, adding that she had not worked as hard in previous cases, including the huge bankruptcy of WorldCom.

"We have so many transactions going on at the same time, litigations going on," Ms. Fife says. "It's overwhelming. I don't get a lot of sleep."

Neither, these days, does Mr. Miller.

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