



Perspectives on Universal Jurisdiction, Extraterritoriality and the Future of Alien Tort Statute Litigation: Talisman and other Recent Cases

Owen Pell

Mr. Pell's areas of practice include complex commercial litigation, securities litigation, bankruptcy litigation, litigation involving foreign sovereigns and their state-owned entities, and litigation involving issues of public international law. Mr. Pell also has extensive experience representing corporations and financial institutions in connection with investigations by the SEC, the DOJ, and state banking regulators, and the litigation that may arise from such investigations. Mr. Pell has conducted numerous internal investigations for corporations and financial institutions, including with regard to FCPA, fraud, lender liability, and historical reparation issues.

Mr. Pell recently represented Deutsche Bank in class and other securities and bankruptcy actions relating to the collapse of Enron, and is representing UBS in Enron bankruptcy-related litigation. He also has represented corporations and sovereigns with regard to complex litigation arising out of the privatization of assets, including representation of TNK-BP, the third largest oil company in Russia, in a RICO action in New York federal court.

Mr. Pell recently made a presentation to SEC staff, attorneys and economists titled *The Exploding Fiduciary: Can Integrated Financial Institutions Really Manage Fiduciary Risk?* The presentation explored the expansion of financial institution exposure to liability based on the complex array of competing roles and duties inherent in their businesses, and the shift in the identity of investors in today's public markets. Specifically, active/innovative business lines increasingly may conflict with traditional fiduciary or market monitoring business lines, especially as financial institutions integrate the management of client relationships and transaction approval. The presentation raised an array of legal and policy questions, including whether we are moving toward a concept of the "universal banker" that is potentially liable to everyone "touched" by a bank's activities, and, if so, what this means for how the universal bank manages risk and conducts its business in a world defined by the "universal investor."

Mr. Pell also has handled cases in the growing area of corporate social responsibility, including by representing Citigroup in class actions relating to the bank's activities in South Africa during the former apartheid regime, and J.P. Morgan Chase in class actions relating to a predecessor bank's alleged connections to African slavery in the United States. Mr. Pell also represented The Chase Manhattan Bank and Crédit Commercial de France in class actions arising from the activities of the

banks in France during World War II, and participated in the successful negotiations between the United States and France to resolve those cases. Mr. Pell also has represented and advised foreign sovereigns and their state-owned entities in numerous proceedings and contexts. Recently, he successfully defended Poland in litigation relating to alleged property expropriations immediately after World War II.

Mr. Pell has extensive bankruptcy experience, having represented equity investors, lenders, bondholders, and a major credit rating agency in numerous complex bankruptcy proceedings, including those of Enron Corp., DIMAC Corp., El Paso Electric Company, Allied and Federated Stores, Ames, P.A. Bergner, McCrory and Healthco International. In these cases, Mr. Pell has litigated issues relating to equitable subordination, lease rejection, fraudulent conveyance, preference and substantive consolidation, and in several of these matters, also led internal corporate investigations regarding potential claims. Mr. Pell also has represented bankruptcy examiners appointed by the courts.

Recently, Mr. Pell formulated a proposal for creating a title-clearing and dispute resolution entity to address claims relating to works of art looted from individuals during the Holocaust. The proposal has received attention because it does not rely on the negotiation of a treaty for implementation, which would allow speedier formulation and establishment of the proposed entity. Hearings with regard to Mr. Pell's proposal were held in the European Parliament, and on December 17, 2003 the European Parliament adopted 487-10 a resolution supporting further study of Mr. Pell's proposal by the European Commission. Mr. Pell has published widely on the subject of Holocaust-looted art, including in the *DePaul Journal of Art and Entertainment Law* and the papers of the Permanent Court of International Arbitration. Mr. Pell also has written on potential amendments to U.S. law to facilitate the restructuring of bonds and other debt issued by foreign sovereigns.