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A Conversation with Jan M. Hayden: Making Dollars and Cents of a 40-Year Career in Bankruptcy and Restructuring

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(Interview by Lacey Rochester)

Dubbed the "Baroness of Bankruptcy" by Super Lawyers, Jan Hayden has spent her 40-year career developing a national reputation as a widely respected leader in the field of insolvency and restructuring. Jan's myriad of accomplishments, awards, and honors extend beyond bankruptcy court, as she is also a pro bono champion and an engaged mentor who tirelessly strives to instill in younger lawyers a sense of professionalism and an appreciation for the peculiar nature of bankruptcy law. I speak from experience; meeting Jan when I was a law student solidified my decision to embark on a career as a bankruptcy lawyer. Having had the good fortune to subsequently practice with Jan in Baker Donelson's Corporate Restructuring and Bankruptcy Group, it was both an honor and privilege to sit down with her to reminisce on some of Jan's memorable cases and clients.

Lacey Rochester: Bankruptcy is a niche area of the law. How did you first discover your interest in representing debtors and creditors?

Jan Hayden: I started in the early '80s with the oilfield crash in part attributable to the Penn Square Bank failure. It is a wonderful story how I ended up doing almost exclusively bankruptcy work for all of this time. When I was a new lawyer, Mr. Edward Heller, one of the senior lawyers in my prior law firm and the gentleman referred to in Louisiana as "Mr. Bankruptcy," called me into his office and asked me to close the door. My first thought was, "What could I have screwed up? I have never worked for him!" I swallowed hard and closed the door. Mr. Heller then said, "Would you be willing to do some bankruptcy work?" I responded, "Of course, but why did I have to close the door?" When Mr. Heller replied, "So you could feel free to tell me no," I knew then that I was blessed with a wonderful mentor. Under his tutelage, I was able to grow, to excel in, and love the practice of bankruptcy law.

LR: What a great story! How fitting that the "Baroness of Bankruptcy" got her start under the mentorship of "Mr. Bankruptcy." Are there any interesting cases from your earlier years of practice under Mr. Heller that stick with you today?

JH: One of my favorite debtor cases, dating from the '90's, was when I represented a Louisiana alligator farm as a debtor in possession. The case was filled with interesting characters and involved learning about the science behind conservation of a nearly extinct species through creative law-making. But, of course, the most interesting part was the gators! As debtor's counsel, I recall having a dispute with the lender's counsel, who would not consent to the use of its cash collateral to feed those nasty looking fellows or to an emergency hearing to consider my request. I said, "Fine! But if we don't feed them over the weekend, we will deliver your collateral to your bank lobby and you can figure out what to do with hundreds of hungry alligators!" After my opposing counsel and I shared a good laugh, I explained that alligators, unlike other animals, quickly turn not only on their masters but each other if left hungry. In one weekend the hungry gators could damage each other's pelts so severely that the entire crop would be destroyed, which was obviously not a favorable outcome for the lender.

LR: Surely there was a take-away lesson there? When life hands you gators, make Gatorade?

JH: At that point, I learned then that lender's counsel, just like debtor's counsel, needs to understand the debtor's business and be prepared to develop a strategy that makes sense for that business in that environment. It's a lesson I use in every single matter: understand the business before you try to help solve your client's problem.

LR: Would you agree that bankruptcy involves more negotiation and settlement with your adversaries than in a non-bankruptcy case? Why or why not?

JH: It almost always does because we are not recovering whole dollars. One of my favorite examples of the client figuring out the process quickly involved a case where Baker Donelson represented the largest unsecured creditor to the tune of \$40+ million in a Chapter 7 liquidation case. The pot of money available for unsecured creditors was less than \$5 million and the trustee was hoping to enlarge it through litigation, including litigation against our client on various theories of recovery. We met with the trustee's lawyer in the morning and the trustee presented a demand and draft complaint. We had anticipated the claims and felt confident of success. By the time we got to lunch, the client and I had considered that, if we won, as our claim constituted over 50 percent of the pot, every dollar the trustee spent was half ours. That fact, coupled with the concept of paying Baker Donelson full dollars to litigate with the trustee, drove the client to tell me to settle by reducing our claim. We had a court order in place approving the settlement within 45 days.

The takeaway is that in bankruptcy, especially with creditor-side litigation, every litigant must place a lot of focus on the cost of success. In deciding whether to settle, a creditor must consider what winning is really worth.

LR: What did you learn early in your career that has helped your trial practice?

JH: One of the first things I learned was how important it was to keep track of who had the burden of proof. As a defendant's lawyer, I had a very aggressive plaintiff's lawyer on the other side who quite honestly made me nervous. Perhaps it was the nerves, but I decided to create a list of every element he had to prove to win his case. As he proved an element, I checked it off my list until he finally rested. To my pleasant surprise, when I looked at my list, I saw that one box remained unchecked. As I stood to move for judgment on the basis that my opponent failed to meet his burden, he scoffed at me. Judge Brahney, on the other hand, smiled and then ruled for me on the basis that my opponent did not meet his burden to establish each element of his cause of action. Since then I carry my little check list with me, whether I am representing the plaintiff or the defendant.

LR: What was your favorite moment in a trial?

JH: I was representing a debtor in a stay lift hearing and, due to time limits and lack of funds, I had to examine the bank's appraiser without the opportunity to depose him first. At issue was the fair market value of a tract of land, a substantial portion of which was wetlands. As he testified about his report and the fair market value of the tract in question, I noticed Judge Brown taking diligent notes, which indicated to me that the appraiser was making headway. However, his appraisal didn't make sense to me, so I kept asking him questions to understand how he arrived at the fair market value of the entire tract, including the wetlands. Because he kept reciting figures that only included the building site of the land but excluded the wetlands, I pressed him to provide the fair market value of just the wetlands portion of the tract. He reluctantly responded "nothing." You could hear a pin drop. I repeated his words back to him. "Nothing? No one would pay anything for that?" He nodded "Right, no bank would loan on that, so it was worth nothing." At that point, Judge Brown put down his pen and I took my seat. I and my opposing counsel were reminded then that it is important that you prepare your witnesses as well as understand the basis for their valuations. I attended Judge Brown's funeral last

week, and I will never forget how good he made me feel when he bragged about my cross examination of that appraiser to so many of our colleagues.

LR: What is your favorite part of practicing in this field?

JH: One of the things I love about a bankruptcy practice is how much I get to learn about the businesses involved and the law governing them. From casinos, to oil fields, to vessels, to retailers, to real estate, horse racing and airlines, it seemed I had to learn about a new industry in every case - and with each new industry, new laws governing it: maritime liens, Jones Act, ERISA, PACA, for example. Each filing requires that I learn so much more than just the Bankruptcy Code and I never get bored.