

## Overview

Jennifer Hayes focuses her practice on corporate bankruptcy and insolvency issues, creditors' rights, bankruptcy trustee representation, and fraud-related commercial litigation. She represents Chapter 11 debtors (Chapter 11 and SubChapter V), secured and unsecured creditors (including creditors seated on Unsecured Creditors' Committees), chapter 11 and chapter 7 trustees, buyers of bankruptcy estate assets, and buyers and sellers via the California assignment-for-the-benefit-of-creditors process. Jennifer has handled multiple bankruptcy appeals before the Bankruptcy Appellate Panel, District Court, and Ninth Circuit. She also represents plaintiffs and defendants in civil fraud, breach of contract, fraudulent transfer, unfair competition, and other business litigation cases in federal court and arbitration. She has first-chaired multiple bench trials and mediations. Prior to co-founding the boutique law firm of Finestone Hayes LLP in 2016, she was a partner in the international law firms of Dentons US LLP and McKenna Long & Aldridge LLP. Earlier in her career, she served as a Staff Attorney for the National Bankruptcy Review Commission and as the judicial law clerk for the Hon. Thomas E. Carlson (retired), U.S. Bankruptcy Judge, Northern District of California. She has spoken and written extensively on bankruptcy and insolvency issues. Since 2018, Jennifer has been named as a Super Lawyer in the field of Business Bankruptcy. Jennifer is included in The Best Lawyers in America® in the field of Bankruptcy Creditor Debtor Rights / Insolvency and Reorganization Law.

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## Representative Experience

- Represented non-profit entity in defense of alter ego litigation that followed 12 years of litigation against a related union entity, which had resulted in \$94 million jury verdict against that entity for unlawful labor practices. After judgment was vacated, and before damages were retried, the related entity filed SubChapter V. Through defense of scorched-earth litigation, client reached four-party, court-approved settlement in the bankruptcy case, which was then dismissed
- Represented Subchapter V, Chapter 11 Debtor in hotly disputed case, defeating two motions to dismiss for bad faith and confirming Chapter 11 plan after two contested plan confirmation trials
- Successfully defended confirmation order on appeal to the Bankruptcy Appellate Panel on novel legal issue of eligibility to be a debtor under Subchapter V. The BAP published its decision (the first appellate-level decision on the issue) as *NetJets Aviation, Inc. v. RS Air, LLC (In re RS Air, LLC)*, 638 B.R. 403 (9th Cir. BAP 2022)
- Retained as SubChapter V expert witness by multiple class-action defendants to explain class action members' legal rights if defendants were to file SubChapter V bankruptcy, which led to pre-trial settlement in each of the class actions
- Represented Debtor in Chapter 15 case to recognize Singaporean insolvency proceeding in the United States
- Represented prepetition lender and Debtor-in-Possession financing lender for eight related Chapter 11 restaurant debtors, which confirmed a plan of reorganization
- Represented creditor with \$38 million claim on the Official Committee of Unsecured Creditors in Pacific Gas & Electric Company's 2019 Chapter 11 bankruptcy case
- Represented creditor with \$9 million claim on the Official Committee of Unsecured Creditors in the Neiman Marcus 2020 Chapter 11 bankruptcy case
- Represented Assignor in assignment for the benefit of creditors of residential solar company

- Represented Assignee in assignment for the benefit of creditors of business that developed air energy storage technology and high-pressure gas storage and transport products
- Represented solar company in federal court post-arbitration enforcement lawsuit, successfully adding an additional defendant to a \$3.367 million dollar judgment pursuant to Cal. Code Civ. Proc. § 187, following extensive, international discovery and a contested hearing. Represented client on appeal of judgment to the Ninth Circuit Court of Appeals
- Represented solar company in obtaining prejudgment writ to obtain possession of \$1,700,000 in federal court, based on solar panels wrongfully withheld by seller at the Port of Oakland
- Retained as expert witness regarding bankruptcy law in a San Francisco Superior Court lawsuit involving disputed possessory rights to a building in North Beach purchased via a bankruptcy sale under 11 U.S.C. § 363(f). Case settled before trial
- Represented Chapter 11 Trustee in heavily contested sale free and clear of 48-acre, 9-parcel property, encumbered by numerous junior liens and subject to County enforcement proceedings due to alleged violations
- Represented Chapter 11 Liquidating Trustee serving as officer and director of two corporations owned by the Liquidating Trust
- Represented owner in obtaining repossession of condominium on Russian Hill in San Francisco, after years of wrongful possession and holdover by a vexatious litigant who filed Chapter 7. Of the owners of the six condominiums in the development, client was the first to obtain possession through use of the Chapter 7 bankruptcy process
- Represented asset purchaser in auction for sale of internet company
- Lead counsel in 27-month, cross-border federal court litigation for breach of contract involving the United Nations Convention on Contracts for the International Sale of Goods
- Represented Chapter 11 Trustee in assumption and assignment of co-location facility lease and sale of operating assets
- Represented litigation finance company in obtaining prejudgment writ of attachment in federal court breach-of-contract dispute
- Settled intractable fraudulent conveyance lawsuit and Cal. Code Civ. Proc. § 187 claims against officers and directors in complex litigation removed to Bankruptcy Court
- Represented Chapter 11 Debtor in mass-tort bankruptcy case from case filing through plan confirmation
- On behalf of Chapter 7 trustee, prevailed on novel legal issue regarding the applicability of the automatic stay to a non-debtor (*In re O'Reilly & Collins*, Case No. 12-33016, Bankr. N.D. Cal, Docket No. 90, *aff'd Danko v. Milgrom (In re O'Reilly & Collins)*, U.S. Dist. Ct., 4:13-cv-03177
- Represented Chapter 7 Trustee in negotiation of asset purchase agreement and sale of FDA-approved cardiac test kits, sold for \$4.75 million at auction following contested procedures motion at which the Court denied the secured creditor assignee the right to credit bid
- Negotiated asset purchase agreement for sale of colocation facility assets on behalf of Chapter 7 Trustee
- Obtained summary judgment for Chapter 7 Trustee to avoid and recover fraudulent transfers to sham trusts of residential real properties in California and Texas
- Obtained judgment against Hong Kong defendant to avoid fraudulent transfer of real property on behalf of Chapter 7 Trustee

- Lead counsel at two-day trial on LLC member's motion to dismiss bankruptcy case. Prevailed on behalf of Chapter 7 Trustee in opposing the dismissal motion

## Speaking Engagements and Publications

- Speaker, "Overview of Application Process, Law School, and Career as an Attorney", Phi Alpha Delta, Northern Arizona University, April 12, 2022
- Speaker, with A. Kyle Everett (DSI Consulting) and John Fiero (Pachulski Stang), "Issues with Ponzi Schemes: Managing Expectations from Investigation to Distribution," Bay Area Bankruptcy Forum, January 27, 2022
- Speaker, with the Hon. Stephen L. Johnson and Ori Katz (Sheppard Mullin), Recent Developments in Business Bankruptcy, Zoom, November 3, 2021
- Speaker, with the Hon. Stephen L. Johnson and Ori Katz (Sheppard Mullin), Recent Developments in Business Bankruptcy, Zoom, November 10, 2020
- Speaker, "Bankruptcy Issue Spotting in the Age of COVID-19", Bar Association of San Francisco, Zoom, August 5, 2020
- Speaker, with the Hon. Stephen L. Johnson and Ori Katz (Sheppard Mullin), Recent Developments in Business Bankruptcy, San Jose and San Francisco, October and November 2019
- Co-Author, Excerpts From Recent Developments in Business Bankruptcy 2018 (Part 3), California Receiver's Forum, Receivership News, Issue 67, Winter 2019
- Co-Author, Excerpts From Recent Developments in Business Bankruptcy 2018 (Part 2), California Receiver's Forum, Receivership News, Issue 66, Summer 2019
- Co-Author, Excerpts From Recent Developments in Business Bankruptcy 2018 (Part 1), California Receiver's Forum, Receivership News, Issue 65, Winter/Spring 2019
- Speaker, with the Hon. Stephen L. Johnson and Ori Katz (Sheppard Mullin), Recent Developments in Business Bankruptcy, San Jose and San Francisco, October and November 2018
- Co-Author, Bankruptcy Basics for Booming Businesses, CEB California Business Law Practitioner, Volume 33, Issue 3, Summer 2018
- Co-Author, Excerpts From Recent Developments in Business Bankruptcy 2017, California Receiver's Forum, Receivership News, Issue 63, Spring 2018
- Speaker, with the Hon. Stephen L. Johnson and Ori Katz (Sheppard Mullin), Recent Developments in Business Bankruptcy, San Jose and San Francisco, October and November 2017
- Speaker, Bankruptcy Basics for Booming Businesses, Bar Association of San Francisco, September 25, 2017
- Panelist, California Bankruptcy Forum, "Concentration" panel, May 2017, San Diego
- Speaker, Northern District of California Judicial Conference, Napa, "Happy Trails? The Changing Landscape for Bankruptcy Lawyers, Courts, and Clients," April 2017
- Emory University School of Law, Guest Lecturer, Bankruptcy Seminar for 3L's, Atlanta, October 2014

- Alameda County Bar Association, “Bankruptcy Pitfalls for Litigators: Things Every Litigator Should Know About Bankruptcy and its Impact on Pending and Future Litigation,” Panel Speaker, September 2014
- Barristers Club of San Francisco, “Bankruptcy Pitfalls for Litigators: Things Every Litigator Should Know About Bankruptcy and its Impact on Litigation,” Panel Speaker, April 2014
- U.C. Hastings College of the Law, Guest Lecturer, Bankruptcy, November 2007
- Co-Author with the Hon. Thomas E. Carlson, U.S. Bankruptcy Judge (retired), N.D. Cal., “The Small Business Provisions of the 2005 Bankruptcy Amendments,” 79 Am. Bankr. L. J. 645, 2005
- Author, “Caught in a Cycle of Neglect: The Accuracy of Business Statistics,” 101 Com. L. J. 307, 1996

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## Committees

Member of Board of Directors, Bay Area Bankruptcy Forum, August 2017 to August 2020

Appointed to Northern District of California Bench-Bar Committee, July 2017 - June 2020

## Conferences

Chair, Bench-Bar Committee’s Bay Area Bankruptcy Judges’ Conference, September 2019

Co-Chair, Bench-Bar Committee’s Bay Area Bankruptcy Judges’ Conference, October 2018

Producer, California Bankruptcy Forum, Homestead Exemption Panel, 2017 Conference

Education Co-Chair, California Bankruptcy Forum, 2016 Conference

Bankruptcy Battleground West, American Bankruptcy Institute, Advisory Board Member, 2014, 2015 and 2016 Conferences

## Admissions

Ninth Circuit Court of Appeals

United States District Court for the Northern, Southern, Central, and Eastern Districts of California

State Bar of California, 1998

State Bar of Texas, 1994

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## Education

University of Texas School of Law, 1995, LL.M., Empirical Bankruptcy Studies, 1994, Juris Doctor

Smith College, 1991, BA (Economics, French, *cum laude*)

Sciences Po, Paris, France, 1989-90 (Economics)