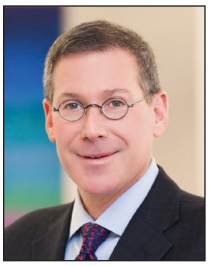
President's Column

Are We Becoming Too Specialized?



ABI President Stephen D. Lerner
Squire Patton Boggs Cincinnati and New York

Stephen Lerner is a partner with Squire Patton Boggs and global chair of its Restructuring & Insolvency Practice Group in Cincinnati and New York. He previously served as ABI's Vice President-International.

A few weeks after my legal career began at Weil Gotshal, Harvey Miller asked me why I wanted to become a bankruptcy lawyer. I replied that I wanted to be a specialist because then I would be valued by clients more-so than a jack of all trades would be. Specialized expertise was the ticket to a successful career. And, I thought, what could be more specialized than bankruptcy and restructuring work?

His reaction surprised me; he said that if I wanted to be a specialist, I was in the wrong department. He explained that the restructuring field was perhaps the most generalized area of the law. Remedying the financial and operational distress of a complex business required lawyers to have broad expertise — across virtually all legal practices and industries. One could not effectively address a restructuring client's needs without at least a basic understanding of bankruptcy law, commercial transactions, the Uniform Commercial Code, corporate, banking, securities, real estate, tax, environmental and other areas.

It was not good enough that we had other lawyers who were the experts in these other areas. As a restructuring lawyer, I was expected to understand how the distress world intersects with the rest of the legal universe. That was eye-opening to me. As a result, over the last 40+ years, I have purposely not pigeon-holed myself into any particular segment(s) of an even more complicated restructuring landscape than existed when Harvey and I had this career-defining discussion.

Over the years, prospective clients ask whether I am a company-side lawyer or a creditor-side lawyer. Some are surprised when I say I am both and more. I am also a restructuring M&A lawyer, a corporate governance lawyer, a commercial finance lawyer and more. Why, they ask? Because I am a better company-side lawyer if I understand the motivations, interests and goals of the other stakeholders in a restructuring. If you don't know what the other parties are thinking, what is motivating them and what their likely strategies are, you are at a disadvantage in advising your company/borrower client. The converse is true as well.

In observing the present restructuring industry, I wonder whether we have collectively veered sharply away from the Miller perspective. Are we becoming too specialized?

Today, we have specialists in nearly everything that touches a complex restructuring. There are lawyers within bankruptcy and restructuring practice groups and departments who focus primarily, if not exclusively, on creditors' rights, others who concentrate on debtor representations, and others who specialize in distressed M&A, liability management, litigation, bankruptcy tax, structured finance, cross-border matters or particular industries. Financial advisers likewise have become increasingly specialized. Private credit has created another layer of specialization. So have distressed funds, claims-trading and litigation finance.

Don't get me wrong. Specialization is not inherently a bad thing; it's quite the opposite. Modern restructurings can be extraordinarily complicated, and clients need people who understand the details. A complicated tax issue might require a tax specialist. A sophisticated valuation dispute might require someone who spends virtually all of their time thinking about valuation. A cross-border restructuring might require professionals who understand the laws and customs of multiple jurisdictions.

The question is not whether specialization is good. The question is whether we are losing something in the process.

Seeing the Whole Chessboard

A restructuring professional needs to see the whole chessboard. Consider a relatively simple question: Should a distressed company sell an asset? The answer might depend on valuation, financing documents, tax consequences, intellectual property, employee issues, regulatory approvals, litigation exposure, the company's liquidity needs, the interests of different creditor constituencies and the availability of alternative transactions. A specialist might be able to provide an excellent answer to one piece of that question, but someone still needs to put all of the pieces together.

That person needs something that is harder to acquire than specialized knowledge: judgment. Judgment comes from experience, but experience itself is not enough. It comes from seeing how different parts of a restructuring interact. It comes from understanding not only what the law permits but what the parties are likely to do. It comes from knowing when a technically perfect answer is not the best answer. And it comes from understanding the client's business well enough to recognize that the legal or financial problem sitting in front of you might not actually be the most important problem.

That broad perspective has always been one of the great strengths of the restructuring profession. We should be careful not to lose it.

The Rise of the Specialist

There are good reasons why specialization has increased. Restructurings have become more complicated. Capital structures are more sophisticated. Financial products are more intricate. Cross-border transactions are now commonplace. European jurisdictions are now being used to restructure U.S. businesses in ways no one dreamed of even five years ago. Private credit has created new forms of lending and new creditor relationships. Liability-management transactions have generated novel questions about intercreditor arrangements and creditor rights. And companies increasingly operate across multiple jurisdictions and regulatory regimes.

It is impossible, of course, for any single professional to know everything. The best restructuring professionals I know do not pretend otherwise. They know when they need help. They bring in the right colleague with specialized expertise at the right time. But there is a difference between using specialists and becoming specialized. I believe the former makes a restructuring team stronger. The latter can sometimes make the individual professional less capable of seeing the big picture. That distinction matters.

What Do We Teach the Next Generation?

Perhaps nowhere is this issue more important than in training younger professionals. This is something that ABI excels in: providing a host of resources to train the next generation of restructuring professionals.

Young professionals today can become very good at a very narrow subject very quickly. A junior lawyer and financial professional could spend years becoming extraordinarily knowledgeable about one aspect of restructuring without having the opportunity to see how that issue fits into the larger transaction.

This is understandable, because clients want expertise, and firms want efficiency. Young professionals want to develop marketable skills. And sophisticated matters require people who know their particular areas exceptionally well.

But there is a danger in learning only one piece of the puzzle. I want my young associates to understand why a secured lender is taking a particular position, even when our client is the debtor. My colleagues should understand why a financial adviser is recommending a particular transaction. Conversely, a financial adviser should understand the legal constraints affecting the transaction the adviser is considering. We all should understand enough about the business and industry to appreciate why a particular outcome may or may not make sense. That does not mean everyone needs to become an expert in everything. It means everyone should become conversant in everything that matters. There is an important difference.

The Generalist Is Not the Opposite of the Specialist

With the utmost respect to my first mentor, I do not think the answer is to return to the world in which everyone tries to do everything. The current restructuring world is simply too complicated for that.

However, perhaps we need to think differently about what a successful restructuring team looks like. The strongest teams have specialists who are exceptionally good at what they do, but they also have people who can connect those specialists. They have professionals who can move comfortably between legal, financial, operational and strategic issues. They have people who can explain a complicated issue in terms that everyone else at the table can understand.

The best restructuring professional might not be the person who knows the most about one particular subject. It might be the person who can take the expertise of 10 different people and turn it into a coherent strategy. That is not a lesser skill. It might be the most important skill of all.

The 3 a.m. Test

There is another way to think about this. Invariably, in every presidential election cycle one candidate or another asks voters to consider whether they are comfortable with the other candidate being woken up at 3 a.m. faced with an extraordinary crisis that requires an immediate response with no room for error.

Now imagine that you are the lead professional in a complex restructuring. The CEO of your client calls you at 3 a.m. to advise you that she has just learned that her company has an unexpected liquidity crisis because the company's lender has unexpectedly ceased lending. The existing restructuring strategy is out the window. The CEO and board want to know what happens next. There are legal, financial and business questions all at once. Are you the right person to answer that call? Don't you need to be both specialized enough to understand the precise legal or financial issue that has arisen, *and* a generalist who can step back and say, "Here is what is really happening," then say, "Here are our three options. Here is what I think the other side will do. Here is what we should do next."? You need to be the person with well-rounded experience and judgment.

ABI's Role

This is one reason I believe organizations like ABI are so important. Our members do not need ABI to tell them that they should become better specialists. They already have plenty of incentives to do that.

What ABI can provide is the opportunity to broaden their perspective. A lawyer who spends most of the day negotiating with lenders can hear from judges and financial advisers. A financial professional can learn from turnaround experts. A young lawyer can meet a seasoned practitioner who has handled a dozen situations that look very different on paper but have remarkably similar dynamics in practice. Our committees, conferences, webinars and publications create opportunities to move outside one's normal lane.

One of the things I have always found most valuable about the restructuring community is that we learn from one another. A conversation over coffee at an ABI conference can sometimes be more useful than an hour of

research. A panelist may say something that changes the way you think about a problem. A colleague from another jurisdiction may point out an issue you never considered. That is professional development, even if it does not appear on a CLE certificate. And it is one of the reasons I believe multidisciplinary organizations are particularly valuable in a profession that is becoming increasingly specialized.

We should encourage young professionals to become excellent at something. But we should also encourage them to have a well-rounded understanding of the entire chessboard. Read an *ABI Journal* article about cases you are not working on. Attend an ABI conference or webinar about a subject outside your practice. Don't spend the entirety of your networking time speaking with peers at other law firms; rather, take the time to talk to an investment banker or financial advisor. And, if you are a financial professional, seek out lawyers to obtain their perspectives on issues you face in your practice. And, occasionally, do something that has nothing to do with your specialty.

I know you will agree that ABI offers young professionals a wealth of learning opportunities. But I am curious as to whether you agree with my views about our profession becoming too specialized. Please let me hear from you. **abi**