

## Harold L. Kaplan



**PARTNER**

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Harold L. Kaplan is a partner and litigation attorney with Foley & Lardner LLP. Over the last three decades, Mr. Kaplan has represented financial institutions, debtors, trustees under the Bankruptcy Code and the Securities Investors Protection Act, foreign liquidators in ancillary proceedings, creditors committees, and other creditor groups, including representing indenture trustees and bondholder interests. He, among other things, is the leader of the firm's Corporate Trust and Bondholders Rights Team and is a member of the firm's Bankruptcy & Business Reorganizations Practice.

In addition to more traditional areas of practice, he has extensive experience in claims trading and regulated industry matters, including railroad, airline and other transportation reorganizations; utility industry matters; securities industry and broker-dealer matters; insurance and bank insolvencies; telecommunications, gaming, oil and gas and mining proceedings; and health care industry matters, including health care finance, reorganizations, insolvencies, and other proceedings.

### **Representative Experience**

#### **Previous and Current Representative Major Bond/Indenture Trustee/Creditor Cases:**

ASARCO, TerreStar Networks, Inc., Trico Marine, Evergreen Solar, Travelport Limited, Hawker Beechcraft, Reddy Ice, AbitibiBowater, Aleris International, Bally Total Fitness, Charter Communications, Primus Telecommunications, Simmons Bedding, Extended Stay, Inc., General Growth, Hartmarx, HRP Myrtle Beach Holdings LLC, Kimball Hill, Remy International, UAL Corp., Northwest Airlines Corp., FLYi, Inc., Mirant Corp., Loral Orion, USGen New England, Atlas Air, Tower Automotive, WHX Corp., Kaiser Aluminum, Consec, Petro-Geo, HealthSouth, Magellan Health Services, NCS Healthcare, AHERF, Home Products International, Inc., Fleming, Kmart, Redback Networks, USN Communications, Favorite Brands, Southern Mineral, United Companies Financial, ContiFinancial, Sunterra, Crown Vantage, Kitty Hawk, Safety-Kleen, Reliant Building Products, Wheeling-Pittsburgh, Metal Management, Armstrong World Industries, Outboard Marine, Loewen Group, Globe Manufacturing, Pacific Gas & Electric, AMRESKO, Goss Holdings,

Thermadyne Holdings, Jacobson Stores, Farmland Industries, Hunt International Resources, Sunshine Mining, Eastern Air Lines, Telemundo, Bally's Grand, Wedtech, Manville Forest Products, Venture Stores, Rock Island Railroad, Milwaukee Road, and WPPSS.

## Recognition

Mr. Kaplan has been Peer Review Rated as AV® Preeminent™, the highest performance rating in Martindale-Hubbell's peer review rating system. He was named one of 12 outstanding bankruptcy lawyers in the country in 2005, 2004 and 2003, and one of 13 in 2001, by *Turnarounds & Workouts* magazine. Mr. Kaplan is recognized as one of *Chambers USA's* 2006-2014 "Leaders in their Field" for bankruptcy. Mr. Kaplan has been selected for inclusion in *The Best Lawyers in America*® since 2007 in the specialties of bankruptcy and creditor-debtor rights law, corporate law, and bankruptcy litigation. He was also selected for inclusion in the 2005-2014 *Illinois Super Lawyers*® lists. In 2010-2013, the *Legal 500* recognized Mr. Kaplan for his work in corporate restructuring.

## Professional Memberships and Affiliations

He is a past chair of the Chicago Bar Association Bankruptcy and Reorganization Committee; past chair of the American Bar Association Health Care and Nonprofits in Bankruptcy Subcommittee; and chair of the American Bar Association Committee on Trust Indentures and Indenture Trustees, as well as serving on several related committees, including the advisory drafting group of the Subcommittee on Revision of the Model Simplified Indenture. He has served as a member of the editorial board of the American Bankers Association *Trust and Investments* magazine, and was a member of the editorial board of *Network News*, a publication for corporate trustees. He is a member of the American Bankruptcy Institute, where he has served as a contributing editor to the *ABI Journal's* "Intensive Care" column on health care related issues. He served as an original member of the Cornerstone Council, an advisory group that makes recommendations to the Turnaround Management Association (TMA) Management Committee on the uses of Cornerstone 15 funds for academic research.

## Education

Mr. Kaplan received his law degree from the University of Chicago Law School (J.D. 1975). He is a graduate of the University of Wisconsin (M.A. 1975, B.A. 1972).

## Admissions

Mr. Kaplan is admitted to practice in Illinois and New York and has appeared in courts and cases throughout the United States.

## Thought Leadership

Mr. Kaplan has authored numerous articles and spoken at numerous conferences on transactional, corporate trust, bondholder rights, corporate reorganization, distressed debt, distressed real estate, health care financing and restructuring and bond defaults and chaired the Annual Corporate Reorganizations Conference held in Chicago. His recent publications and speaking engagements include:

- "[Motown Bondholders See Red Over City's Plan of Adjustment](#)," co-authored with Mark F. Hebbeln, Cover Story, June 2014 issue of the *Journal for Corporate Renewal (JCR)*, the official publication of the Turnaround Management Association (TMA).
- "Safe Harbor Provisions of Bankruptcy Code § 546(e) Broadened to Limit Preference and

Fraudulent Conveyance Actions and Recoveries," co-authored with Mark F. Hebbeln and Derek L. Wright, Network News Column, October 2012 issue of *ABA (American Bankers Association) Trust Letter* newsletter.

- "Annotated Trust Indenture Act," 67 *The Business Lawyer* 977 (August 2012) (Mr. Kaplan was a contributor and chair of the ABA Trust Indenture and Indenture Trustee committee that drafted the *Annotated Trust Indenture Act*).
- Contributed to "Insolvency and Bankruptcy" section in Chapter 9 of the *Guidebook for Directors of Nonprofit Corporations* (Third Edition), pp 224-232, published by the American Bar Association, August 2012.
- "Investor Standing to be Heard: The Innkeepers Decision and Beyond," co-authored with Mark F. Hebbeln and Lars A. Peterson, Corporate Trust Section, *ABA (American Bankers Association) Trust & Investments*, May/June 2012.
- "The U.S. Indenture Trustee in an Activist World," co-authored for a panel presentation on "Lessons Learned From Around the World – Recent Bondholder and Indenture Trustee Issues From the U.S., Canada, U.K., France, Mexico, and Beyond" presented at Business Law Section Spring Meeting, March 22-24, 2012, Las Vegas, Nevada.
- "Recent Bankruptcy Legal Developments," co-authored with Mark F. Hebbeln, Network News Column, *ABA (American Bankers Association) Trust & Investments*, November/December 2011.
- "Chapter 9 and Municipal Health Care Bankruptcy: A Collision and Evolution of Bankruptcy Code Provisions," authored a chapter of *Inside the Minds: Chapter 9 Bankruptcy Strategies*, pp 87-105, Aspatore Books (West), 2011.
- "Health Exam: Muni Health Care Bankruptcy Under Chapter 9," *Bankruptcy Law360* and *Health Law360*, September 16, 2011.
- Moderator and Speaker, and co-authored paper entitled: "The Indenture Trustee as Target and Protector in an Activist World," which was prepared for a panel presentation on "Who's Happy Now?" ABS Disputes: Trustees Under Siege, Investors Enraged, and the Litigation Settlements That Will Determine Who Will "Win," presented at Business Law Section Annual Meeting, August 4-9, 2011, Toronto, Ontario.
- "Transparency and Protection: Notice and Disclosure Issues for Indenture Trustees: Part 2 of 2," co-authored with Mark F. Hebbeln, Corporate Trust Section, *ABA (American Bankers Association) Trust & Investments*, July/August 2011.
- "Transparency and Protection: Notice and Disclosure Issues for Indenture Trustees: Part 1 of 2," co-authored with Mark F. Hebbeln, Corporate Trust Section, *ABA (American Bankers Association) Trust & Investments*, May/June 2011.
- Moderator and Speaker, "The Amazing Shrinking Government Credit Market: Who Said Government Credit Ambac(k)?" American Bar Association (ABA), Business Law Section Spring Meeting, April 14-16, 2011, Boston, MA.
- Speaker, "Treatment of Municipal G.O. and Special Revenue Bonds Under Chapter 9: A Bondholder and Trustee Perspective," American Bar Association (ABA), Business Law Section Spring Meeting, April 14-16, 2011, Boston, MA.
- *A Guide for Patient Care Ombudsman*, co-authored e-publication, published by the American Bar Association, 2010.
- "The Bank of New England Case and the Rule of Explicitness," co-authored with Mark F. Hebbeln, Network News Column, *ABA (American Bankers Association) Trust & Investments*, January/February 2011.
- "Chapter 9 Municipal Bankruptcy Primer," co-authored with Mark F. Hebbeln, Corporate Trust Section, *ABA (American Bankers Association) Trust & Investments*, November/December 2010.
- "Diagnosing Medical Malpractice Coverage and Treatment in Health Care Chapter 11s: Part 2 of 2," co-authored with Andrew M. Troop, *ABI (American Bankruptcy Institute) Journal, Intensive Care*, September/October 2010.

- "To Bid or Not to Bid? Gamesmanship in Credit Bidding," co-authored with Mark F. Hebbeln, Corporate Trust Section, *ABA (American Bankers Association) Trust & Investments*, September/October 2010.
- "Diagnosing Medical Malpractice Coverage and Treatment in Health Care Chapter 11s: Part 1 of 2," co-authored with Andrew M. Troop, *ABI (American Bankruptcy Institute) Journal, Intensive Care*, July/August 2010.
- "None Dare Call it Champerty - at Least Not in New York," co-authored with Mark F. Hebbeln, Network News Column, *ABA (American Bankers Association) Trust & Investments*, July/August 2010.
- "Rule 2019 Flurry Distressing 'Distressed' Investors," co-authored with Mark F. Hebbeln, Network News Column, *ABA (American Bankers Association) Trust & Investments*, March/April 2010.
- Speaker, "Secured Debt in a Low Valuation Tight Credit Economy – Trustees and Bondholders Caught in the Middles," ABA Capital Markets Forum for Corporate Trust Professionals, April 18-20, 2010 (St. Petersburg, Florida).
- Speaker, "Breaking News from the Trenches," ABA Capital Markets Forum for Corporate Trust Professionals, April 18-20, 2010 (St. Petersburg, Florida).
- "General Growth Decision Undercuts Presumption of SPE Insulation From Bankruptcy," Network News Column, *ABA (American Bankers Association) Trust & Investments*, January/February 2010.
- "Sigma Finance Redux--Uncertain Victory of Pari Passu," Network News Column, *ABA (American Bankers Association) Trust & Investments*, January/February 2010.
- "Rating Agencies Under the Microscope," co-authored with Nick Colic and James Sorrels, Network News column, *ABA (American Bankers Association) Trust & Investments*, November/December 2009.
- Speaker, "Maximizing Profits in the Distressed Debt Market," 16th Annual Distressed Investing Conference, November 30, 2009 (New York).
- "Trustee Lessons From the United Kingdom: The SIV Cases," co-authored with Daniel R. Fisher, Corporate Trust Section, *ABA (American Bankers Association) Trust & Investments*, July/August 2009.
- "The Opportunity and "Duty" to Restructure Nonprofit Health Care Debt," co-authored with Anu R. Singh, *ABI (American Bankruptcy Institute) Journal, Intensive Care*, June 2009.
- "Tranche Warfare: Leapfrogging Debt Through Exchange Offers," co-authored with Mark F. Hebbeln, Corporate Trust Section, *ABA (American Bankers Association) Trust & Investments*, March/April 2009.
- "BCE Post-Mortem," co-authored with Mark F. Hebbeln, Network News column, *ABA (American Bankers Association) Trust & Investments*, January/February 2009.

Publications and speaking engagements before 2009 are available upon request.

#### **Recent honors (partial list):**

- Chair of Gardner Carton & Douglas (2004-2006); Co-Chair of Corporate Restructuring Group (1999-2007)
- Named to List of 12 Outstanding Bankruptcy Lawyers for 2005, *Turnarounds & Workouts*, December 15, 2005
- Named to List of 12 Outstanding Bankruptcy Lawyers for 2004, *Turnarounds & Workouts*, December 15, 2004
- Named to List of 12 Outstanding Bankruptcy Lawyers for 2003, *Turnarounds & Workouts*, December 15, 2003
- Named to List of 13 Outstanding Bankruptcy Lawyers for 2001, *Turnarounds & Workouts*, December 15, 2001

- *ABI (American Bankruptcy Institute) Journal*, Contributing Editor, "Intensive Care" Column (2004-present)
- American Bar Association Healthcare and Nonprofits in Bankruptcy Subcommittee, Chair (2000-2009)
- American Bar Association Health Care-Related Insolvency Working Group, Vice Chair (1998-2000)
- American Bar Association Committee on Trust Indentures and Indenture Trustees, Chair (2009-present) and former Vice Chair (2006-2009)
- American Bar Association Subcommittee on Revision of the Model Simplified Indenture, Advisory Drafting Group Member (Revised Model Simplified Indenture Published in 2000)
- American Bankers Association, *Trust & Investments*, Editorial Board (2000-present)
- American Bankers Association *Network News*, Editorial Board (1998-1999)
- Chicago Bar Association, Bankruptcy & Reorganization Committee, Chair (2002-2003)
- Chicago Bar Association, Bankruptcy & Reorganization Committee, Vice Chair (2001-2002)
- Chicago Bar Association, Bankruptcy & Reorganization Committee, Educational Chair (2000-2001)
- Chicago Bar Association, Large Law Firm Committee, Co-Chair (2005-2006)
- Annual Renaissance American Management, Inc. & Beard Group Corporate Reorganization Conference (Chicago), Chair (1998-2008)
- Annual Renaissance American Management, Inc. & Beard Group Healthcare Restructuring/Transactions Conference (Chicago), Chair and/or Sponsor (2000-2009)
- Faculty, Cannon Banking Institute (1999)
- Turnaround Management Association, Cornerstone Council 15 Member (2004-2008)
- Jewish National Fund Lawyers for Israel, National Chair (2009-present)
- Jewish National Fund, 2010 Negev Nights/Tree of Life Honoree
- Jewish National Fund, Regional Board (2008-present)
- Jewish United Fund (Chicago), Chair 2006 Lawyers Division Event
- Anti-Defamation League, Regional Board Member (2005-present)

\*The Illinois Supreme Court does not recognize certifications of specialties in the practice of law and no award or recognition is a requirement to practice law in Illinois.