

## Harold L. Kaplan

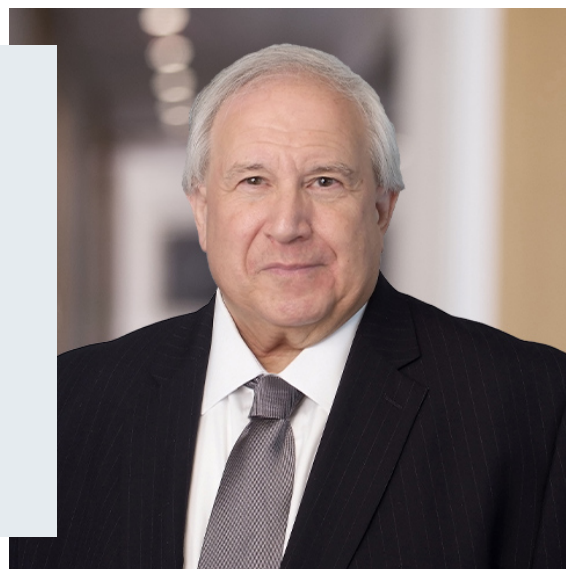
### Partner

[hkaplan@foley.com](mailto:hkaplan@foley.com)

Chicago

312.832.4393

New York



Over the last three decades, Harold 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 focusing on and being nationally recognized for representing Indenture Trustees and Bondholder Interests. He is the leader of the firm's Corporate Trust and Bondholders Rights Team and is a Partner in the firm's Bankruptcy & Business Reorganizations Practice.

In addition to more traditional areas of practice, Harold has extensive experience in structured finance and securitization, cross-border matters, claims trading and regulated industry matters, including railroad, airline, and other transportation reorganizations. He also has handled utility, energy industry, oil and gas and mining proceedings, securities industry and broker-dealer matters, insurance and bank insolvencies, and telecommunications, gaming, and health care industry matters, including health care finance, reorganizations, insolvencies, and other proceedings.

### Representative Experience

- Recent major (multibillion-dollar) bond default representations for Indenture Trustees include: Chesapeake, J.C. Penney, Hertz, Digicel, Tacora and Invacare
- Recent service as Litigation Trustee in the White Star Oil & Gas case
- Ad Hoc Equityholder Group in Intelsat

### Prior Representative Major Bond/Indenture Trustee/Creditor Cases Include:

- Energy Future
- SunEdison

- Bristow
- Sanchez Energy
- Alpha Natural
- Walter Energy
- Exide Technologies
- Altegrity
- Caesars Entertainment Operating Company
- ASARCO
- TerreStar Networks, Inc.
- Trico Marine
- Evergreen Solar
- Travelport Limited
- Hawker Beechcraft
- Angiotech
- 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
- Conseco
- 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

- WPPSS

## Awards and Recognition

- Recognized as one of *Chambers USA's* 2006 – 2023 “Leaders in their Field” for bankruptcy/restructuring
- Named one of 12 outstanding bankruptcy lawyers in the country in 2014, 2005, 2004 and 2003, and one of 13 in 2001, by *Turnarounds & Workouts*
- Peer and judicial review rated as AV Preeminent®, the highest performance rating in Martindale-Hubbell® Peer Review Ratings™ system
- Selected by his peers for inclusion in *The Best Lawyers in America*® in among other fields Bankruptcy and Creditor-Debtor Rights Law (2010, 2011) Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law (2012-2023)

## Affiliations

- Past 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
- Current Member of the American Bankers Association Corporate Trust Committee.
- Past chair of the American Bar Association Health Care and Nonprofits in Bankruptcy Subcommittee
- Co-chair of the Annual Beard Group Distressed Investing Conference, the longest-standing distressed investing conference in the United States
- Frequent speaker and writer (with upwards of 100 articles and presentations) on, *inter alia*, Corporate Trust, Structured Finance and Bond Default matters
- Served as a past chair of the Chicago Bar Association Bankruptcy and Reorganization Committee
- Served as a member of the editorial board of the American Bankers Association *Trust and Investments* magazine
- Former member of the editorial board of *Network News*, a publication for corporate trustees
- Member of the American Bankruptcy Institute, where he served as a contributing editor to the *ABI Journal's* “Intensive Care” column on health care related issues
- 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

## Presentations and Publications

Harold 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 chairs the Annual Beard Distressed Investing Conference held in New York City. His recent publications and speaking engagements include:

- Conference Co-Chair, Distressed Investing 29th Annual Conference, New York City (November 28, 2022)
- Speaker, presentation focused on Crypto Assets, the Revlon Decision, and “Lender on Lender Violence,” ABA (*American Bankers Association*) Corporate Trust Committee Meeting (October 19, 2022)
- Presentation, “Best Practices for Indenture Trustees in Bringing Litigation at the Impetus of Noteholders – Impact and Responses To The Neiman Marcus Decision”, Beard Annual Distressed Investing Conference, Panel: Liability Management and Litigation Going into Chapter 11 (November 29, 2021)
- Conference Co-Chair, Distressed Investing 28th Annual Conference, New York City (November 29, 2021)
- Speaker, “Best Practices for Indenture Trustees in Bringing Litigation at ‘the Impetus of Noteholders’ – Impact and Responses to the Neiman Marcus Decision,” ABA (*American Bankers Association*) Corporate Trust Committee Meeting (April 26, 2021)
- Panelist, “Best Practices for Indenture Trustees in Bringing Litigation on Behalf of Bondholders,” Corporate Trust/Distressed Investing Roundtable (April 7, 2021)
- Conference Co-Chair, Beard 27th Annual Distressed Investing Virtual Conference (Nov. 30 – Dec 2, 2020)
- Speaker, “Coming Defaults and Bankruptcy – Tsunami, Wave or Puddle?” ABA (*American Bankers Association*) (September 28, 2020)
- Guest Commentator, “Secrets of Monetizing Non-Cash Recoveries,” Corporate Trust/Distressed Investing Roundtable (March 11, 2020) Speaker, “LIBOR and Case Law Updates for Corporate Trustees – More Significant Than You Think,” American Bankers Association (February 19, 2020)
- Presenter, “Case Law Updates For Trustees in an Activist Investor World,” American Bankers Association Corporate Trust Committee (February 19, 2020)
- Brief of the *American Bankers Association* (“ABA”) as *Amicus Curiae* in Opposition to the Neiman Marcus Defendant’s Motion to Dismiss (submitted December 13, 2019 in *UMB Bank, N.A. v. Neiman Marcus Group, et al*, NYS Sup.Ct. #654509/2019)
- Conference Co-Chair, Distressed Investing 2019 26th Annual Conference, New York City (December 2, 2019)
- Speaker, “Indenture Trustee Duties and Protective Strategies in Default/Bankruptcy,” ABA (*American Bankers Association*) Corporate Trust Committee Meeting (October 23, 2019)  
Speaker and Author, “Indenture Trustee Duties and Protective Strategies in Default/Bankruptcy,” with Mark F. Hebbeln for the ABA (*American Bankers Association*) Corporate Trust Series Webinar (March 25, 2019)
- Speaker and Author, “Trends In Bond Defaults and New Imperatives to Interface with Bondholders,” with Mark F. Hebbeln, et al, for the ABA (*American Bankers Association*) Corporate Trust Series Webinar Amicus and Case Updates – A Bankruptcy Update for Corporate Trustees (February 26, 2019)

- “[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) (Harold 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, Las Vegas, Nevada (March 22–24, 2012)
- “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, 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, Toronto, Ontario (August 4–9, 2011)
- “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, Boston,

MA (April 14–16, 2011)

- 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, Boston, MA (April 14–16, 2011)
- *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, St. Petersburg, Florida (April 18–20, 2010)
- Speaker, “Breaking News from the Trenches,” ABA Capital Markets Forum for Corporate Trust Professionals, St. Petersburg, Florida (April 18–20, 2010)
- “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, New York (November 30, 2009)
- “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.

### Thought Leadership

Harold 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 chairs the Annual Beard Distressed Investing Conference held in New York City.

### Recent honors (partial list)

- American Bankers Association, Ex-Officio Member Corporate Trust Committee (2019–present)
- Beard Group Distressed Investing Conference (New York), Co-Chair (2015–present)
- Friends of Tel Aviv University, Board Member (2014–present)
- Jewish National Fund National Board (2017–present), Chair Constitution/Governance/Compliance Committee (2017–present)
- Jewish National Fund, Regional Board (2008–present)
- Jewish National Fund, President’s Award, the organization’s highest honor, awarded at National Conference (October 29, 2020)
- Jewish National Fund, Tree of Life Honoree (2010)
- Jewish National Fund Lawyers for Israel, National Chair (2009–2012)
- Anti-Defamation League, Regional Board Member (2005–2015)
- Named to List of 12 Outstanding Bankruptcy Lawyers for 2014, *Turnarounds & Workouts* (December 15, 2014)
- *ABI (American Bankruptcy Institute) Journal*, Contributing Editor, “Intensive Care” Column (2004–2012)
- American Bar Association Committee on Trust Indentures and Indenture Trustees, Chair (2009–2012) and former Vice Chair (2006–2009)
- American Bankers Association, *Trust & Investments*, Editorial Board (2000–2011)
- American Bar Association Healthcare and Nonprofits in Bankruptcy Subcommittee, Chair (2000–2009)
- Annual Renaissance American Management, Inc. & Beard Group Healthcare Restructuring/Transactions Conference (Chicago), Chair and/or Sponsor (2000–2009)
- Turnaround Management Association, Cornerstone Council 15 Member (2004–2008)
- Annual Renaissance American Management, Inc. & Beard Group Corporate Reorganization Conference (Chicago), Chair (1998–2008)



- Chair of Gardner Carton & Douglas (2004–2006); Co-Chair of Corporate Restructuring Group (1999–2007)
- Chicago Bar Association, Large Law Firm Committee, Co-Chair (2005–2006)
- Jewish United Fund (Chicago), Chair Lawyers Division Event (2006)
- 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)
- Chicago Bar Association, Bankruptcy & Reorganization Committee, Chair (2002–2003)
- Chicago Bar Association, Bankruptcy & Reorganization Committee, Vice Chair (2001–2002)
- Named to List of 13 Outstanding Bankruptcy Lawyers for 2001, *Turnarounds & Workouts* (December 15, 2001)
- Chicago Bar Association, Bankruptcy & Reorganization Committee, Educational Chair (2000–2001)
- American Bar Association Subcommittee on Revision of the Model Simplified Indenture, Advisory Drafting Group Member (Revised Model Simplified Indenture Published in 2000)
- American Bar Association Health Care-Related Insolvency Working Group, Vice Chair (1998–2000)
- Faculty, Cannon Banking Institute (1999)
- American Bankers Association *Network News*, Editorial Board (1998–1999)

## Sectors

- [Energy](#)
- [Health Care & Life Sciences](#)

## Practice Areas

- [Bankruptcy & Business Reorganizations](#)
- [Creditor Committee Representation](#)
- [Financial Institutions](#)
- [Indenture Trustee](#)
- [Litigation](#)

## Education

- University of Chicago Law School (J.D., 1975)
- University of Wisconsin (M.A., 1975; B.A., 1972)

## Admissions



FOLEY & LARDNER LLP

- Illinois
- New York

\*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.