

Mark F. Hebbeln

Partner

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Mark F. Hebbeln concentrates his practice in corporate restructuring, focusing on the representation of indenture trustees and other creditors and creditors' committees in Chapter 11 cases. He is a partner in the firm's Bankruptcy & Business Reorganization Practice.

Mark has been recognized as one of the top bankruptcy and restructuring attorneys by *Chambers® USA*, which has noted that he is "an unflappable kind of guy who is really calm, and really good at handling tense situations."

Mark has represented indenture trustees and bondholder interests in numerous national bankruptcy cases, including Digicel Group Holdings, Wesco Aircraft Holdings, Invacare Corporation, Chesapeake Energy, The Hertz Corporation, Sun Edison, Breitburn Energy, ASARCO, TerreStar, Bally Total Fitness, Energy Future, Exide Technologies, Abitibi-Bowater, Trico Marine, Kaiser Aluminum, Alpha Natural Resources, Extended Stay, Angiotech, Atlas Air, PG&E, Midstates Petroleum, Hawker Beechcraft, Mirant Corporation, BankUnited, and United Airlines.

He also has significant experience representing official committees of unsecured creditors in Chapter 11 proceedings, including leading the representations of the official committees in the Capitol Bancorp (Detroit) and Shorebank Corporation (Chicago) Chapter 11 cases.

Awards and Recognition

- Ranked as one of the top bankruptcy and restructuring attorneys in Illinois by *Chambers® USA*, which has noted that he is "an unflappable kind of guy who is really calm and really good at handling tense situations"
- *Turnarounds & Workouts* recognized Mark as one of 12 outstanding young restructuring lawyers in the country in 2005 and as one of 14 outstanding young restructuring lawyers in the country in 2006
- Named to the *Illinois Super Lawyers®*

- Named a “Leading Lawyer” in *Illinois for Bankruptcy & Workout Law: Commercial*
- Selected by his peers for inclusion in *The Best Lawyers in America®* in the fields of Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law (2016-2023)*

Affiliations

- American Bar Association Business Law Section
 - Chair of the Committee on Trust Indentures and Indenture Trustees
- The Lawyers Club of Chicago
 - Former president and board member
- Fellow of the American Bar Foundation
- Chicago Bar Foundation
 - Vice-chair of the Investing in Justice Campaign
- *American Bankers Association Trust & Investments Magazine*
 - Served as a member of the editorial board
- Wake Forest University Alumni Council

Community Involvement

- Lycée Français de Chicago
 - Served as board secretary and on the executive committee of the board of trustees
- Volunteer, Constitutional Rights Foundation’s Lawyers in the Classroom program
- Volunteer, C.A.R.E. (Credit Abuse Resistance Education)
- CARE HERO Award Recipient

Presentations and Publications

Mark has written extensively on bankruptcy and insolvency, including articles on indenture trustee and bondholder interests, and law review articles on break-up fees and the automatic stay. He has also presented at numerous conferences, including at American Bar Association Section of Business Law meetings, the Distressed Investing Conference, the Corporate Reorganizations Conference, and the American Bankers Association Capital Markets Conference

- Moderator, “Liability Management Panel A,” Distressed Investing Conference (November 2023)
- Speaker, “From Liability Management to Lender-on-Lender Violence,” Distressed Investing Conference (November 2022)
- Moderator, “Liability Management and Litigation Going into Chapter 11,” Distressed Investing Conference (November 2021)
- 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)

- Telephone Briefing: “Indenture Trustee Duties and Protective Strategies in Default/Bankruptcy,” speaker with Harold L. Kaplan, et al, ABA (American Bankers Association) March 25, 2019
- Telephone Briefing: “Amicus and Case Updates – A Bankruptcy Update for Corporate Trustees,” Speaker with Harold L. Kaplan, et al, ABA (American Bankers Association) February 26, 2019
- Panelist, “The Good, the Bad, and The Ugly: What’s New for Indenture Trustees and Everyone Who Owns Debt Securities,” American Bar Association Business Law Section Annual Meeting, September 13-15, 2018
- Moderator, “International Bond Defaults: Navigating the Thicket of Recalcitrant Sovereigns, Aggressive Bondholders and Conflicting Laws,” American Bar Association Business Law Section Spring Meeting, April 12-14, 2018, Orlando, Florida
- Moderator, “Current Issues Impacting Corporate Trustees,” American Bar Association Business Law Section Annual Meeting, September 17-19, 2015, Chicago, Illinois
- “Motown Bondholders See Red Over City’s Plan of Adjustment,” co-authored with Harold L. Kaplan, Cover Story, June 2014 issue of the *Journal for Corporate Renewal (JCR)*, the official publication of the Turnaround Management Association (TMA)
- Moderator, “That’s a Wrap: Producing and Defending Settlements Among Debtors, Indenture Trustees and Majority and Dissident Bondholders in Chapter 11 Cases and Bond Default,” American Bar Association Business Law Section Spring Meeting, April 10-12, 2014, Los Angeles, California
- Moderator, “Chapter 11 Asset Sales Where Cash Isn’t the Only Consideration: What’s the Government Got to Do with it?” American Bar Association Business Law Section Spring Meeting, April 4-6, 2013, Washington, D.C.
- “Safe Harbor Provisions of Bankruptcy Code § 546(e) Broadened to Limit Preference and Fraudulent Conveyance Actions and Recoveries,” co-authored with Harold L. Kaplan 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) (Mark was co-chair of the American Bar Association Section of Business Law committee that drafted the *Annotated Trust Indenture Act*)
- Panelist, “Financing Mortgage Loans and RMBS/CMBS Litigation: Are We Having Fun Yet? Do We Really Need to Read the TIA?” American Bar Association Business Law Section Annual Meeting, August 3-5, 2012, Chicago, Illinois
- “Investor Standing to be Heard: The Innkeepers Decision and Beyond,” co-authored with Harold L. Kaplan 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 Harold L. Kaplan, Network News Column, *ABA (American Bankers Association) Trust & Investments*, November/December 2011
- “The Indenture Trustee as Target and Protector in an Activist World,” which was co-authored/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 Harold L. Kaplan, 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 Harold L. Kaplan, Corporate Trust section, *ABA (American Bankers Association) Trust & Investments*, May/June 2011
- “The Bank of New England Case and the Rule of Explicitness,” co-authored with Harold L. Kaplan, Network News column, *ABA (American Bankers Association) Trust & Investments*, January/February 2011
- “Chapter 9 Municipal Bankruptcy Primer,” co-authored with Harold L. Kaplan, Corporate Trust section, *ABA (American Bankers Association) Trust & Investments*, November/December 2010
- “To Bid or Not to Bid? Gamesmanship in Credit Bidding,” co-authored with Harold L. Kaplan, Corporate Trust section, *ABA (American Bankers Association) Trust & Investments*, September/October 2010
- “None Dare Call it Champerty – at Least Not in New York,” co-authored with Harold L. Kaplan, Network News column, *ABA (American Bankers Association) Trust & Investments*, July/August 2010
- “Rule 2019 Flurry Distressing ‘Distressed’ Investors,” co-authored with Harold L. Kaplan, Network News column, *ABA (American Bankers Association) Trust & Investments*, March/April 2010
- Speaker, “Breaking News from the Trenches,” ABA Capital Markets Forum for Corporate Trust Professionals, April 18-20, 2010 (St. Petersburg, Florida)
- “Tranche Warfare: Leapfrogging Debt Through Exchange Offers,” co-authored with Harold L. Kaplan, Corporate Trust section, *ABA (American Bankers Association) Trust & Investments*, March/April 2009
- “BCE Post-Mortem,” co-authored with Harold L. Kaplan, Network News column, *ABA (American Bankers Association) Trust & Investments*, January/February 2009
- “BCE: Bondholder ‘Oppression Remedies’ Under Canadian Law,” co-authored with Harold L. Kaplan, Network News column, *ABA (American Bankers Association) Trust & Investments*, November/December 2008
- “Covenants Count: Current Case Law,” includes News Brief: “Loewen Decision on Trustee Pre-Default Ministerial Conduct,” co-authored with Harold L. Kaplan, Network News column, *ABA (American Bankers Association) Trust & Investments*, September/October 2008
- “Doing Well by Doing Right: The Ethical-Legal Challenge of the Indenture Trustee in an Activist World,” co-authored with Harold L. Kaplan, Corporate Trust section, *ABA (American Bankers Association) Trust & Investments*, July/August 2008

- “Keeping a Level Playing Field: The Evolution of Discriminatory Consent Solicitations and Exchange Offers,” co-authored with Harold L. Kaplan, Corporate Trust section, *ABA (American Bankers Association) Trust & Investments*, March/April 2008
- “Aggressive Enforcement of Indenture Covenants: The No-Action Clause in an Activist World,” co-authored with Harold L. Kaplan and Daniel Northrop, Corporate Trust section, *ABA (American Bankers Association) Trust & Investments*, November/December 2007
- “Indenture Trustee Fees and Expenses in Bankruptcy – A Strategic Consideration Update,” co-authored with Harold L. Kaplan and Daniel Northrop, Corporate Trust section, *ABA (American Bankers Association) Trust & Investments*, May/June 2007
- “Update on Trustee Litigation in the United Airlines Case: Lease Recharacterization,” co-authored with Harold L. Kaplan and Daniel Northrop, Network News column, *ABA (American Bankers Association) Trust & Investments*, May/June 2007 (part 2 of 2)
- “Update on Trustee Litigation in the United Airlines Case: Lease Recharacterization,” co-authored with Harold L. Kaplan and Daniel Northrop, Network News column, *ABA (American Bankers Association) Trust & Investments*, March/April 2007 (part 1 of 2)
- “Denial of Antitrust Claims Against United EETC Trustees,” co-authored with Harold L. Kaplan and Daniel Northrop, Network News column, *ABA (American Bankers Association) Trust & Investments*, January/February 2006
- “The Impact of New Bankruptcy Legislation on Indenture Trustees,” co-authored with Harold L. Kaplan and Daniel Northrop, Corporate Trust section, *ABA (American Bankers Association) Trust & Investments*, July/August 2005
- “Indenture Trustees and Lease Recharacterization,” co-authored with Tracy L. Treger and Harold L. Kaplan, Corporate Trust section, *ABA (American Bankers Association) Trust & Investments*, March/April 2005
- “Is ‘Lease’ a Financing Agreement in Disguise? Rights of Both Sides Hinge on the Answer,” *The Journal of Corporate Renewal*, July 2004 (with Tracy L. Treger)
- “Indenture Trustee Fees and Expenses in Bankruptcy: Theory and Practice,” co-authored with Harold L. Kaplan, Corporate Trust section, *ABA (American Bankers Association) Trust & Investments*, May/June 2004
- Contributing author, *Wiley Law Update*, 2002
- “MSRB Proposes Rules for Communicating with Beneficial Owners,” co-authored with Harold L. Kaplan, *ABA (American Bankers Association) Trust & Investments*, May/June 2001
- “Saga Continues in Eastern Case,” co-authored with Harold L. Kaplan, *ABA (American Bankers Association) Trust & Investments*, May/June 2001
- “Prepetition Waivers of the Automatic Stay in Bankruptcy: The Economic Case for Nonenforcement,” 115 *Banking L.J.* 126, February 1998
- “The Economic Case for Judicial Deference to Break-Up Fee Agreements in Bankruptcy,” 13 *Bankr. Dev. J.* 475, Spring 1997

Professional Memberships



FOLEY & LARDNER LLP

- Member of the American Bar Association
- Member of the American Bankruptcy Institute
- Member of the Chicago Bar Association
- Member of the Catholic Lawyers Guild of Chicago

Sectors

- Energy
- Oil & Gas
- Racial Justice & Equity
- Renewables

Practice Areas

- Bankruptcy & Business Reorganizations
- Creditor Committee Representation
- Fiduciary Representation
- Financial Institutions
- Indenture Trustee
- Litigation

Education

- Emory University School of Law (J.D., 1997)
 - Articles editor for the *Bankruptcy Developments Journal*
- Wake Forest University (B.A., cum laude, 1993)
 - Economics and Politics
 - Admitted to Pi Sigma Alpha (political science) and Omicron Delta Epsilon (economics) national honor societies

Admissions

- Illinois
- Georgia

*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.