



# Donald R. Kirk

SHAREHOLDER

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## Overview

Donald Kirk is a board certified attorney who represents clients in high-value insolvency and financial restructuring matters, officer and director fiduciary duty litigation, and commercial litigation. He regularly represents secured lenders, purchasers of assets from troubled companies, debtors, fiduciaries, committees, and other stakeholders in multiparty disputes and reorganizations.

His practice has recently focused on the highly specialized health care insolvency industry, particularly on behalf of institutional buyers of health care practices such as hospitals and skilled care facilities. Donald has represented stalking horse buyers in cases in and out of Florida, secured lenders that are participants in complex financing facilities, physician practice groups in contract disputes such as risk share agreements, and defending officers and directors of hospitals.

Donald's representation of officers and directors is expansive and typically involves taking the lead defense role in matters involving numerous defendants and their legal teams. His clients include executives of public, private, and not-for-profit companies, advising them on their duties, risks, and obligations as financial concerns arise, defending and resolving litigation involving breaches of fiduciary duty, and advisory services concerning governmental investigations. His expertise includes navigating the nuanced insurance issues that arise in such circumstances. He has successfully led multiparty negotiations for his clients in numerous such matters ranging in size from several million to hundreds of million dollars in claims. These resolutions often involve permanent relief from future claims.

Donald has handled contested matters, through trial, in numerous state and federal courts, including those in Colorado, Delaware, New York, California, Georgia, Pennsylvania, Massachusetts, Washington, New Hampshire, and U.S. Virgin Islands.

Donald is board certified in Business Bankruptcy by the American Board of Certification. He is the former president of the Tampa Bay Bankruptcy Bar Association. As co-chair of the Florida Bar's Proceeding Supplementary Task Force, his team revised Florida's proceeding supplementary judgment execution statute. He also chaired the American Bar Association's successful effort to draft a model asset purchase agreement for bankruptcy sales.

*Chambers USA*, a leading guide to the legal profession, noted that he "is very experienced in a wide variety of representations and a wide variety of cases. He's very bright, very capable, and does a good job across the board."

## Experience

### Representative Experience

- Lead counsel to assignee of Butler & Hosch law firm and its 15 affiliated entities, overseeing the orderly liquidation of one of the nation's largest foreclosure law firms. The case involved novel and complex consumer and financial privacy issues, asserted claims of nearly \$100 million, and breach of fiduciary duty claims.
- Represented 10 insurers in contested matters in the Hovensa LLC bankruptcy case pending in the District of the Virgin Islands, the largest Chapter 11 proceedings in that district's history. Our clients faced demands exceeding \$100 million.
- Defended six board members of a well-known not-for-profit against claims of breaches of fiduciary duties where claims exceeded \$50 million.
- Defended six former officers of bankrupt public aviation company (Avantair) against claims exceeding several hundred million dollars.
- Represented national financial institution in restructure of \$200 million credit facility with prominent South Florida commercial real estate developer.
- Represented debtor in confirmed Chapter 11 bankruptcy case for 18-store Church's Chicken franchisee (Quick Service Foods, No. 08-02797).
- Represented the unsecured creditors' committee and, post-confirmation, the liquidation trustee in the Tropical Sportswear Inc. Chapter 11 cases (No. 04-24134). The case involved the \$88.5 million sale of assets to Perry Ellis International.
- Represented the ad hoc committee of 11% senior secured noteholders and certain of those noteholders providing DIP financing in the Anchor Glass Container Corp. Chapter 11 proceeding (No. 05-15606). The bondholders (approximately \$350 million) became the owners of the reorganized company.
- Represented a Norwegian general partner in the Kaiser Aluminum Corp. Chapter 11 proceedings in the District of Delaware where at trial we preserved a valuable but highly contested right of first refusal relating to a \$331 million partnership interest in a bauxite mine in Jamaica.
- Represented FINOVA Capital Corp. in the Optical Technologies Chapter 11 cases. The client financed thousands of equipment leases pre-petition and provided post-petition financing. The case evolved into important precedent over the extent of the bankruptcy court's post-confirmation jurisdiction over thousands of third parties.

### Significant Recent Reported Decisions

- *Wells Fargo Equip. Fin. v. Bacjet*, 221 So. 3d 671 (Fla. 4th DCA 2017) (successfully establishing personal jurisdiction over foreign corporation in aviation-related dispute).
- *In re Petroforte Brasileiro de Petroleo Ltda.*, 530 B.R. 503 (Bankr. M.D. Fla. 2015) (further defining constitutional limits in Chapter 15 foreign bankruptcy proceedings).
- *Republic Credit Corp. I v. Upshaw*, 10 So. 3d 1103 (Fla. 4th DCA 2009) (evaluating whether Florida's tenants by the entirety protection extends to California real estate).

- *In re Fultonville Metal Prods. Co.*, 330 B.R. 305 (Bankr. M.D. Fla. 2005) (discussing fraudulent transfer and preference defenses relative to critical vendor status).
- *In re Eigsti*, 323 B.R. 778 (Bankr. M.D. Fla. 2005) (successfully prosecuted fraud claims on behalf of Syngenta Seeds Inc.).
- *In re Tropical Sportswear Int'l Corp.*, 320 B.R. 15 (Bankr. M.D. Fla. 2005) (establishing legal framework for critical vendor status in Eleventh Circuit).
- *In re Alvarez*, 224 F.3d 1273 (11th Cir. 2000) (establishing Eleventh Circuit guidelines concerning whether a cause of action is property of the bankruptcy estate).

## All Insights

05.14.2020 Lessons Learned: Receiverships

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03.31.2020 COVID-19: What a Lender Can Do to Prepare for the Inevitable Defaults Part 2

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03.19.2020 COVID-19: What a Lender Can Do to Prepare for the Inevitable Defaults

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03.17.2020 COVID-19: What Can a Lender Do to Prepare for the Inevitable Defaults?

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09.16.2016 Model Asset Purchase Agreement for Bankruptcy Sales

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06.08.2016 New Road Map for Proceedings Supplementary in Florida

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05.03.2016 The New Roadmap for Proceedings Supplementary in Florida

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03.29.2016 New Statute Clarifies Florida's Judgment Execution Law

## All News

06.28.2021 Carlton Fields Named Top Firm and Attorneys Named Legal Leaders in Florida Trend's 2021 "Legal Elite"

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06.02.2021 Will Zoom Glitches Open the Door for New Deposition Technology for Litigators?

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05.21.2021 Carlton Fields Ranks Among Best in Chambers USA 2021 Guide

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08.20.2020 11 Carlton Fields Attorneys Named 2021 "Lawyers of the Year"

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07.23.2020 Carlton Fields Adds Trial Vet Robert L. Shannon Jr. in Atlanta

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05.13.2020	Debtor-in-Possession Lenders' Strings May Pose Concerns for Creditors
04.23.2020	Carlton Fields Ranks Among Best in Chambers USA 2020 Guide
05.06.2019	Carlton Fields Adds Experienced Bankruptcy Attorney in Miami
05.03.2019	Carlton Fields Ranks Among Best in Chambers USA 2019 Guide
05.02.2019	Prominent Bankruptcy Attorney David L. Gay Joins Carlton Fields in Miami
03.26.2019	Carlton Fields' Donald R. Kirk Appointed Chair of ABA Business Law Section Publications Committee
10.10.2018	Carlton Fields Selected As Finalist for The American Lawyer's Litigation Department of the Year Award
07.09.2018	Super Lawyers Honors 81 Carlton Fields Attorneys on 2018 Florida "Super Lawyers" and "Rising Stars"
06.29.2018	Carlton Fields Ranked Top Firm and Attorneys Named Legal Leaders in Florida Trend Magazine's 2018 "Legal Elite"
05.04.2018	Carlton Fields Ranks Among Best in 2018 Chambers USA Guide
08.15.2017	78 Carlton Fields Attorneys Named "Best Lawyers in America"
07.31.2017	Fiduciary Duty Claims in Bankruptcy: Mitigating The Risks
06.23.2017	Florida Super Lawyers Ranks 92 Carlton Fields Attorneys as 2017 "Super Lawyers" and "Rising Stars"
06.21.2017	Carlton Fields Ranked Top Firm and Attorneys Named Legal Leaders in Florida Trend Magazine's 2017 "Legal Elite"
01.23.2017	Fla. Heart Doctor's FCA Settlement OK'd By Bankruptcy Judge

## Recognition

- Board Certified in Business Bankruptcy by the American Board of Certification
- *The Best Lawyers in America*
  - Tampa "Lawyer of the Year," Litigation – Bankruptcy (2021)
  - Bankruptcy and Creditor Debtor Rights/Insolvency and

- *Chambers USA* (2010–2021)
- Top 50 Tampa Bay Super Lawyers, *Super Lawyers Magazine* (2013–2021)
- Top 100 Florida Super Lawyers, *Super Lawyers Magazine* (2011–2021)
- Florida Super Lawyers, *Super Lawyers Magazine* (2008–2021)
- Florida Legal Elite, *Florida Trend Magazine* (2009–2021)

## Professional & Community Involvement

- American Bar Association
  - Chair, Business Law Section's Publications Board (2019–2022)
  - Chair, Use and Disposition of Property Subcommittee (2011–2013)
  - Chair, Executory Contracts Subcommittee (2013–2014)
  - Chair, Bankruptcy Model Asset Purchase Agreement Task Force (2011–2016)
  - Chair, Corporate Governance Committee (2017–present)
- Asian Pacific American Bar Association of Tampa Bay
- The Florida Bar
  - Chair, Proceeding Supplementary Task Force (2013–2016)
- Leadership Tampa, Class of 2007
- Tampa Bay Bankruptcy Bar Association
  - President (2008–2009)
- U.S. Bankruptcy Court for the Middle District of Florida
  - Chair, Local Rules Committee (2014–2017)
- Children's Dream Fund
  - Past President

## Speaking Engagements

- "Next Steps for Lenders as Deferred Payments Deadlines Approach," Carlton Fields (May 8, 2020)
- "Post-Shutdown: Economic Indicators & Outlook for Legal Departments and Law Firms," Latitude and AllianceBernstein (May 7, 2020)
- "COVID-19: What a Lender Can Do to Prepare for the Inevitable Defaults – Part Two," Carlton Fields (March 31, 2020)
- "COVID-19: What a Lender Can Do to Prepare for the Inevitable Defaults," Carlton Fields (March 19, 2020)
- "The Swamp Hasn't Been Cleaned Up: Recent Developments in Sales and Disposition of Estate Assets," National Conference of Bankruptcy Judges, San Antonio, TX (October 28–31, 2018)

- "Bankruptcy and Restructuring Hot Topics," 2014 Turnaround Management Association Annual Conference, Toronto, Canada (September 30, 2014)
- "Hot Topics Related to Use & Disposition of Property: Efficient Exits From Bankruptcy; Credit Bidding in Light of RadLAX; and ABA Model Bankruptcy APA," ABA 2012 Business Bankruptcy Committee Meeting, San Diego, CA (October 2012)
- "What Happens When a Bank Fails?," Washington, D.C. (October 2010)
- "Global Navigation Through the Uncertainties of Insolvency and Restructuring – Distressed M&A Issues," Hong Kong (November 2009)
- "Subprime Mortgage Meltdown – Lawsuits, Defenses, Strategies, and Best Practices," Mexico City, Mexico (September 2007)

## Credentials

### EDUCATION

- University of Florida College of Law (J.D., with high honors, 1996)
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- University of Florida (B.A., 1993)

### BAR ADMISSIONS

- Florida

### INDUSTRY SPECIALIZATION CERTIFICATIONS

- Business Bankruptcy

### COURT ADMISSIONS

- U.S. Court of Appeals, Eleventh Circuit
- U.S. District Court, Middle District of Florida
- U.S. District Court, Northern District of Florida
- U.S. District Court, Southern District of Florida
- Florida State Courts

## Areas of Focus

### PRACTICES

- Aviation
- Coronavirus
- Creditors' Rights and Bankruptcy
- Crypto Insolvency and Fiduciary Practice
- Distressed Asset and Workout
- Litigation and Trials
- Pharmaceuticals and Medical Devices
- Real Property Litigation
- Securities and Derivative Litigation

### INDUSTRIES

- Banking, Commercial, and Consumer Finance