



Donald R. Kirk

SHAREHOLDER

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Overview

Donald Kirk represents clients in high-value bankruptcy matters, financial restructurings, and commercial litigation. He represents secured lenders, purchasers of assets from troubled companies, debtors, fiduciaries, creditors' committees, and other stakeholders in multi-party disputes and reorganizations.

Donald also represents officers and directors of public, private, and not-for-profit companies, counseling them as financial concerns arise, in litigation involving breaches of fiduciary duty, and concerning governmental investigations. He has discreetly and successfully negotiated resolutions for his clients, typically involving permanent relief from future claims.

Donald provides guidance on ways to identify and mitigate bankruptcy risk, and works with clients on both in-court and out-of-court debt restructurings. He has handled matters in numerous state and federal courts, including those in Colorado, Delaware, New York, California, Georgia, Pennsylvania, Massachusetts, Washington, 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 Proceeding Supplementary Task Force, his team revised and updated Florida's law on judgment execution law. He also chaired the ABA's Business Bankruptcy Task Force to draft the 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."

Donald is the chair of the firm's Bankruptcy and Creditors' Rights Practice and co-chair of the Business Litigation Practice.

Experience

Representative Experience

- Lead counsel in a pro bono civil rights matter, including a two-day federal jury trial through verdict.
- Lead counsel to assignee of Butler & Hosch law firm and its 15 affiliated entities, overseeing the liquidation of one of the nation's largest foreclosure law firms. The case involved complex consumer privacy issues and asserted claims of nearly \$100 million.
- Represents 10 insurers in litigation in connection with Hovensa LLC bankruptcy case pending in the District of the Virgin Islands, the largest Chapter 11 proceedings in that district's history.
- Defended board of well-known not-for-profit against claims of breaches of fiduciary duties.
- Defended six former officers of bankrupt public aviation company (Avantair) against claims exceeding several hundred million dollars.
- Represented secured lender in restructure of \$200 million in loans to significant commercial real estate developer.
- Represented debtor in confirmed Chapter 11 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 the general partner in the *Kaiser Aluminum Corp.* Chapter 11 proceedings in the District of Delaware wherein we preserved a right of first refusal relating to the auction of a \$331 million partnership interest.
- Represented a national financing company and plan proponent in the *Optical Technologies* Chapter 11 cases (No. 96-00805). The client financed thousands of equipment leases pre-petition and provided post-petition financing. We have continued to represent the financing entity post-confirmation in liquidating their portfolio.
- Represented Chapter 11 trustee in *Premier Mortgage Funding Inc.* Chapter 11 case (No. 07-5713).

Significant Reported Decisions

- *Wells Fargo Equip. Fin. v. Bacjet*, 221 So. 3d 671 (Fla. 4th DCA 2017).
- *In re Petroforte Brasileiro de Petroleo Ltda.*, 530 B.R. 503 (Bankr. M.D. Fla. 2015).
- *Republic Credit Corp. I v. Upshaw*, 10 So. 3d 1103 (Fla. 4th DCA 2009).
- *In re Wingate*, 377 B.R. 687 (Bankr. M.D. Fla. 2006).
- *In re J & D Sciences, Inc.*, 335 B.R. 79 (Bankr. M.D. Fla. 2006).
- *In re Unger*, 333 B.R. 461 (Bankr. M.D. Fla. 2005).
- *In re TSLC I, Inc.*, 332 B.R. 476 (Bankr. M.D. Fla. 2005).
- *In re Unger*, 333 B.R. 461 (Bankr. M.D. Fla. Sept. 21, 2005).

- *In re Fultonville Metal Prods. Co.*, 330 B.R. 305 (Bankr. M.D. Fla. 2005).
- *In re Eigsti*, 323 B.R. 778 (Bankr. M.D. Fla. 2005).
- *In re Tropical Sportswear Int'l Corp.*, 320 B.R. 15 (Bankr. M.D. Fla. 2005).
- *Ferguson v. Credit Mgmt. Control, Inc.*, 140 F. Supp. 2d 1293 (M.D. Fla. 2001).
- *In re Alvarez*, 224 F.3d 1273 (11th Cir. 2000).
- *Gill v. Kostroff*, 82 F. Supp. 2d 135 (M.D. Fla. 2000).

All Insights

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| 06.08.2018 | Playing the Blame Game: Fiduciary Duty Litigation in Bankruptcy Proceedings |
| 09.16.2016 | Model Asset Purchase Agreement for Bankruptcy Sales |
| 06.08.2016 | New Road Map for Proceedings Supplementary in Florida |
| 05.03.2016 | The New Roadmap for Proceedings Supplementary in Florida |
| 03.29.2016 | New Statute Clarifies Florida's Judgment Execution Law |
| 05.01.2011 | Investing in State Tax Liens: Understanding the Mechanics of Acquisition |
| 01.01.2010 | The Impact of Changes in Bankruptcy Law |
| 11.01.2009 | Due Diligence Concerns in Loan Transactions |
| 03.01.2009 | Creditors' Rights in Chapter 11 Cases - Leading Lawyers on Navigating the Reorganization Process, Exercising Creditors' Rights, and Understanding the Impact of Current Developments |
| 01.01.2008 | How to Prepare for Subprime-Related Litigation |
| 04.01.2002 | Application of Florida's Homestead Exemption to Citizens of Foreign Countries |
| 01.01.1997 | Franchise Dual-branding: The Irony of Association |

All News

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| 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
- AV Rated by Martindale-Hubbell
- *The Best Lawyers in America*, Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law, Commercial Litigation (2010–2020)
- *Chambers USA*, Bankruptcy (2010–2019)
- Florida Legal Elite, *Florida Trend Magazine*, ranked in the top 2% of practicing Florida Bar members (2009–2019)
- Florida Super Lawyers, *Super Lawyers Magazine* (2008–2019)
- Top 100 Florida Super Lawyers, *Super Lawyers Magazine* (2011–2019)
- Top 50 Tampa Bay Super Lawyers, *Super Lawyers Magazine* (2013–2019)
- Florida Legal Elite "Up & Comers," *Florida Trend Magazine* (2006–2007)

Professional & Community Involvement

- American Bankruptcy Institute
- American Bar Association
 - Business Law Section's Publications Board
 - President (2019–2022)
 - Chair (2019)
 - Vice Chair (2017–2019)
 - Business Bankruptcy Committee, Business Law Section
 - Chair, Use and Disposition of Property Subcommittee (2011–2013)
 - Chair, Executory Contracts Subcommittee (2013–2014)
 - Chair, Membership Subcommittee (2014–2016)
 - Chair, Model Bankruptcy APA Task Force (2011–2016)
 - Chair, Corporate Governance Committee (2017–present)
- The Florida Bar
 - Business Law Section
 - Receivership Study Group (2010)
 - Chair, Proceeding Supplementary Task Force (2013–2016)
- Asian Pacific American Bar Association of Tampa Bay
- Greater Tampa Chamber of Commerce
 - Leadership Tampa Alumni Board of Advisors (2013)
 - Leadership Tampa, Class of 2007
- Hillsborough County Bar Associate
 - Board of Directors, Trial Lawyers Section (1999)
- Tampa Bay Bankruptcy Bar Association
 - President (2008–2009)
 - Board of Directors (2002–2007)
- Tampa Hillsborough Economic Development Corporation
 - Financial Services and Cross Business Functions Task Force (2012–2014)
- U.S. Bankruptcy Court for the Middle District of Florida
 - Local Rules Committee (2007–2017)
 - Chair (2014–2017)
- Children's Dream Fund
 - President (2001–2006)
 - Board of Directors (2009–2012)

Speaking Engagements

- "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)
- "A Potpourri of Current Problems in Restructuring," 2014 Alexander L. Paskay Memorial Bankruptcy Seminar, Tampa, FL (March 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)
- "Anatomy of a Workout," Florida Bar Annual Convention, Orlando, FL (June 2012)
- "All You Could Ever Want to Know About the Receivership Process," ICSC Tampa Next Generation, Tampa, FL (October 2010)
- "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)
- "New Solutions for Lenders to Know," Jacksonville, FL (March 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)
 - Order of the Coif
- University of Florida (B.A., 1993)

BAR ADMISSIONS

- Florida

BOARD 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

Background

- Shareholder, Fowler White Boggs, Tampa, FL

Areas of Focus

PRACTICES

INDUSTRIES

- Aviation
- Creditors' Rights and Bankruptcy
- Distressed Asset and Workout
- Litigation and Trials
- Pharmaceuticals and Medical Devices
- Real Property Litigation
- Securities and Derivative Litigation
- Banking, Commercial, and Consumer Finance