

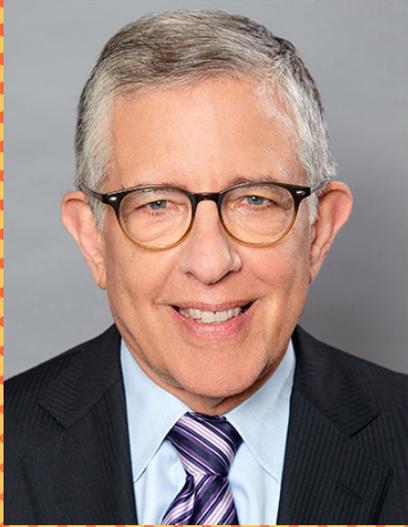
# Daily Journal

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# TOP BANKRUPTCY LAWYERS

## 2022



## ROBERT B. KAPLAN

JEFFER MANGELS BUTLER  
& MITCHELL LLP  
SAN FRANCISCO

Since he began practicing in 1978, Robert B. Kaplan has only represented creditors, primarily banks and similar institutions. They also tend to be the biggest creditors.

One pair of very big bankruptcy cases indeed have kept him and his team busy nearly full time since Halloween night. The cases are being jointly administered in Delaware. He won't name the clients, but they are CBMS, or collateralized mortgage-backed securities, lenders who hold mortgages on two office buildings, one in Chicago and one in Manhattan.

"It's all essentially one big case with different case numbers," he said.

The mortgage on the Chicago building is \$240 million. It's the smaller one. The New York mortgage is for \$1.2 billion.

"Everything in these cases is so complicated," Kaplan said. The loan agreements are several hundred pages long.

Among the complications, the debtor-borrower in New York wanted to fire the property manager. The move was complicated by the fact that the property manager also has an ownership interest in the property. But after a day-long hearing, the judge allowed the debtor to reject the manager's contract.

Kaplan and his team also spent a couple of months negotiating an agreed-upon cash collateral order for

the Chicago property. It governs the rights of the debtor to use rents on operating expenses and pay the lender.

The debtor also needed to hire an investment banker to try to sell the buildings or equity interests in them. The Manhattan building attracted only one bidder, one of the equity owners. No one bid on the Chicago building.

One particularly tricky legal issue for both cases was whether the debtor's bankruptcy filings were authorized. According to the organizational documents, it could not seek bankruptcy protection unless certain equity holders consented.

That's a burning issue in bankruptcy law right now, Kaplan said. Should a court enforce provisions in organizational documents or lenders' loan agreements that attempt to prohibit a debtor from filing bankruptcy?

The judge in this case refused to do so. "Judges don't like them," Kaplan said. "They want the courts to be open."

A confirmation hearing is scheduled for the last two days of August. Although there are only two cases, nine plans will be before the court.

If they are confirmed, the case will be over for Kaplan and his team. Except for signing all the documents. "That could take a month or two."

— DON DEBENEDICTIS