

# KELLY HART

ATTORNEYS AT LAW

## DAVID R. KEYES Of Counsel

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*Austin*



### BIOGRAPHY

David R. Keyes represents companies and financial institutions with respect to loans and deposits, structured finance and securitization, project finance, sales of financial assets, energy transactions, check clearing and bank payments systems, letters of credit, bankers acceptances, loan workouts, lender liability, bank insolvencies and related acquisitions, reorganizations and conveyances, and in financial and commercial transactions in the energy, financial institutions, and technology industries and in cross-border transactions.

### EXPERIENCE AND HIGHLIGHTS

#### Structured Finance and Asset Securitization; Sales of Financial Assets

- Represented a public software company in its formation of a global finance company and in its domestic and foreign acquisitions and sales of software license receivables
- Represented a Canadian bank as agent of a syndicated liquidity loan and letter-of-credit facility to support commercial paper programs funding distributors of major energy companies
- Represented a New York bank in the commercial paper-funded securitization of synthetic lease energy projects in Latin America, including liquidity support, credit enhancement, and regulatory matters, and in discussions with credit rating agencies
- Represented an energy company in sales of over \$3 billion of trade receivables and future income streams to commercial paper issuers and financial institutions and in over \$3 billion of other asset securitization programs

#### Financing Transactions, Representing Financial Institutions

- Represented a Canadian bank in its \$300 million financing of the construction and operation of an intrastate pipeline system in Louisiana, including pipeline, contract and letter-of-credit collateral, and the negotiation of special loan participation arrangements, where the Canadian bank was acting as the participating bank but loaning 98% of the funds
- Representation of a European recovery and development bank in extending major amounts of credit for oil and gas exploration and development activities in Russia

- Representation of financial institutions in secured and unsecured lending, letter of credit, and other domestic and foreign transactions across a wide variety of industries

#### Financing Transactions, Representing Companies

- Represented an energy company in bank borrowings and commitments totaling over \$10 billion
- Represented affiliated interstate pipeline companies in over \$2 billion of secured loans and independent oil and gas and refining companies in over \$1 billion of secured and unsecured debt
- Represented an energy company in creating an oil and gas production payment financing program, including asset securitization of acquired production payments
- Represented an airline company in over \$1 billion of syndicated finance transactions, including unsecured loans, loans secured by aircraft, routes and landing slots, and structured finance transactions
- Represented four companies holding a judgment over \$1 billion, in obtaining a \$700 million letter of credit plus other protections pending appeal, and in subsequently obtaining a \$345 million settlement by arranging the sale of the defendant's letter-of-credit-backed promissory note to a New York bank

#### Loan Workouts and Debt Restructuring

- Represented a bank as chair of a group of approximately 50 lenders for the restructuring of \$100 million of international debt of a Mexican industrial company -- which was the initial restructuring of \$3 billion of debt of a consolidated Mexican corporate group -- and as a member of other committees concerned with the restructuring of the debt of the remaining affiliates
- Represented banks in many loan workouts and debt restructurings, in the food, energy, manufacturing and other industries, and conversions of debt to equity (including controlling stock of a public company), and in intercreditor agreements, and in defending, avoiding or releasing lender liability claims

#### Financial Services and Regulatory

- Represented two large regional banking organizations in their insolvencies; a Spanish bank in its acquisition of a failing Puerto Rican bank and in related bank holding company applications; spin-off banks holding low-quality and foreclosed assets of three regional banking organizations; and a nation-wide bank industry trade organization in addressing individual and systemic bank insolvency and default risks affecting inter-bank payments systems
- Represented a national and regional bank payments system clearinghouse, including its organization, corporate, trade association, and contract matters (including master service contracts for the banking industry), its acquisition of a national clearinghouse association, and the writing of regulations governing checks and other payment obligations; regularly attended its Board of Directors meetings; created an anti-fraud rule now used by most banks nationwide
- Represented five major energy companies in regard to the protection from bank insolvency risks of \$20 million of daily deposits at a bank as part of an interstate pipeline's shipper adjustment mechanism for crude qualities; and represented other companies and banks in regard to mitigating bank insolvency risks
- Representation of banks in regard to new activities and offices, and in preparing forms of loan agreements, participation agreements, letters of credit, security agreements, promissory notes and other finance documents; and in developing specialized financial services programs such as for agency reverse repurchase customer investment transactions and for bankers acceptances; and in complying with statutes, regulations, administrative interpretations and orders, and international treaties

#### Representation of Companies in Commercial Transactions

- Represented an international energy company in its construction and financing of a Trans-Andean pipeline across Peru, including frequent travel to Peru to negotiate a Throughput Agreement with PetroPeru for the payment of fixed and variable tariff charges, supporting Japanese bank financing to PetroPeru
- Represented an investing company in the purchase, lease and pass-through trust financing of multiple industrial wastewater treatment facilities in various states

## AFFILIATIONS AND HONORS

### AFFILIATIONS

- American Bar Foundation, Life Fellow
- Texas Bar Foundation, Life Fellow
- Houston Bar Foundation, Life Fellow
- State Bar of Texas Business Law Section  
Chair, 2013-2014  
Governing Council Member, 2008-Present  
Legal Opinions Committee Chair, 2003-2008
- American Law Institute, 2010-Present
- South Texas College of Law, Distinguished Lecturer in Transactional Practice, 2007-Present
- University of Houston Law Center, Adjunct Professor, 2012
- South Texas College of Law, Transactional Practice Center, Advisory Board, 2007-Present
- National Working Group on Legal Opinions, Law Firm Advisory Board, 2007-Present
- Texas Association of Bank Counsel, Former Director
- American Bar Association, Business Law Section, Uniform Commercial Code Committee
- Law Clerk for The Honorable Walter Ely, U.S. Court of Appeals, Ninth Circuit, 1968-1969

### HONORS

- Listed in *The Best Lawyers in America*®, 1986-2020
- *Chambers USA: America's Leading Business Lawyers*, Banking & Finance Law, 2003-2012, 2017-2018
- Named Austin *Best Lawyers*® in Banking and Finance Law Lawyer of the Year, 2013
- The International Whos' Who of Banking Lawyers, 2002-2012
- Texas Super Lawyer in Banking Law, Thomson Reuters, 2003-2010
- Named Houston *Best Lawyers*® in Banking and Finance Law Lawyer of the Year, 2009

## EDUCATION

- The University of Texas School of Law, J.D. with high honors, 1968
  - Chancellors
  - Order of the Coif
  - Phi Delta Phi
- Princeton University, Woodrow Wilson School of Public and International Affairs, A.B., 1965

## ADMISSIONS

- State Bar of Texas, 1968
- State Bar of New York, 2009

## SPEECHES & PUBLICATIONS

### Publications

- Contributing Author, Holderness & Wunnicke, Legal Opinion Letters Formbook (2d ed., 2008 & 2009 Supps.; 3d ed. 2010 & 2011 Supp. Aspen Pub.)
- Co-Author of Supplements to the 1992 Report of the State Bar of Texas Business Law Section Report of the Legal Opinions Committee (1994, 2001, 2006)
- Texas Law Review student Comment on Conflicts of Law (1968) and Notes on Administrative Law and Securities Law (1967-68)

#### Presentation Topics at Institutes and Bar Associations

- Course Director, Advanced Business Law, Texas Bar CLE 2012
- Loan Agreements; Intercreditor and Subordination Agreements
- Loan Participations and Syndications
- Securities Lending
- Bank and Securities Regulations, including Bank Activities and Margin Regulations
- Rights of Set-off
- Uniform Commercial Code and Security Interests
- Bankers' Acceptances
- Lender Liability
- Conflicts of Laws and Choice of Governing Law
- Bankruptcy Preferences and Fraudulent Transfers
- Arbitration Agreements
- Legal Opinions and Professional Responsibility
- Assignments
- True Sales and Bankruptcy Estates