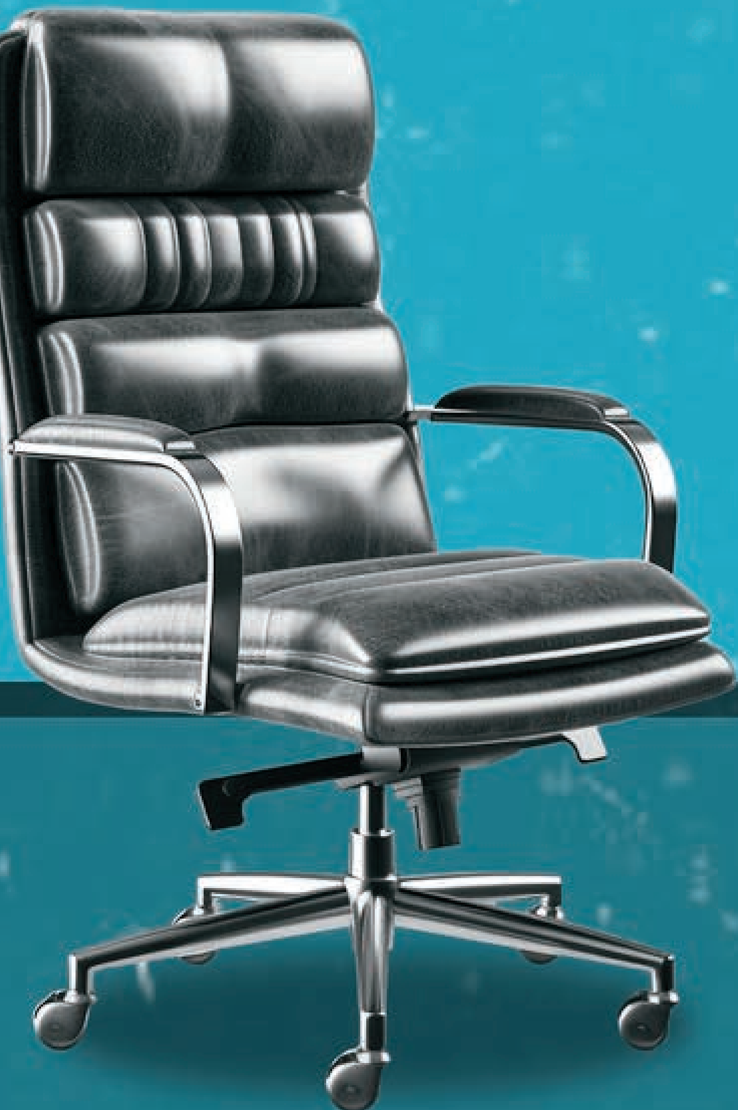
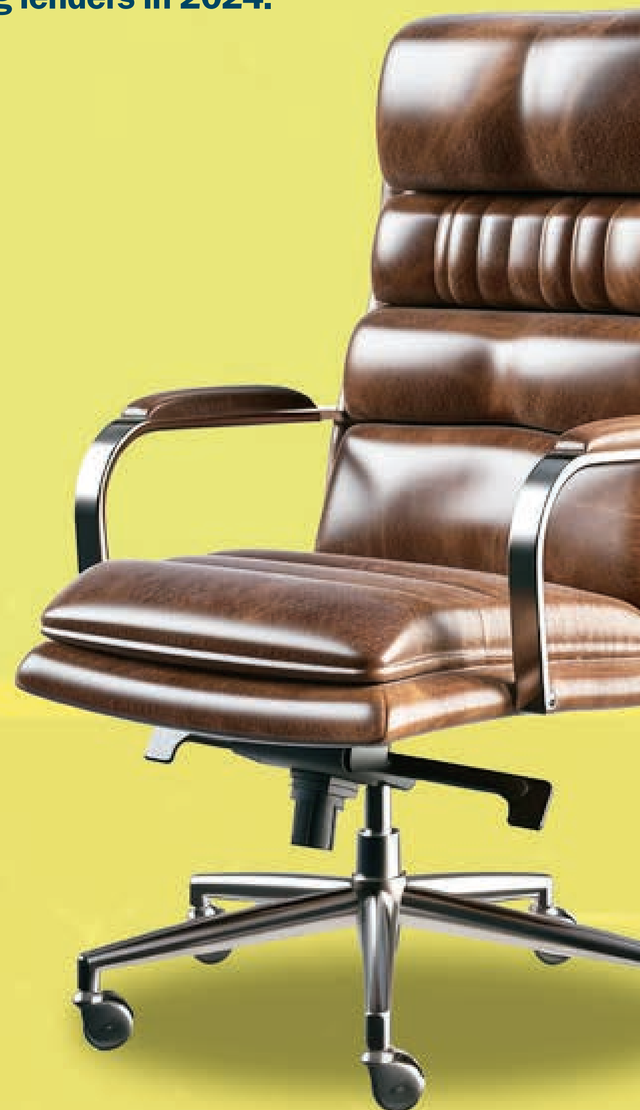
FEATURE STORY

Interview With Holland & Knight ABL Team Members

BY MICHELE OCEJO

TSL's editor-in-chief sat down with key members of Holland & Knight's ABL team, including Wade M. Kennedy, partner and co-lead of the Asset-Based Lending Team; Christopher S. Dillon, partner and co-lead of the Asset-Based Lending Team; Hamid Namazie, financial services partner; Yoojin Lee, financial services partner; and Mark Spitzer, financial services partner. Here, they discuss H&K's strengthening of its finance practice, how they got their start in this specialty and the threats facing lenders in 2024.



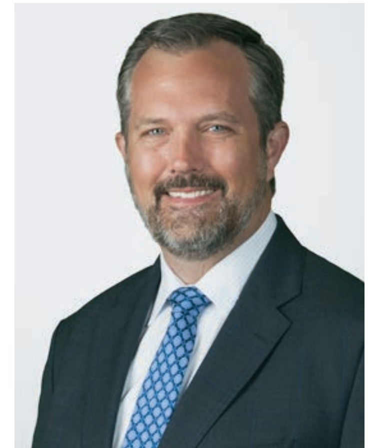


H&K has strengthened its finance practice in the past year. What is driving that mission? Increased need in the geographic areas? Increased deals?

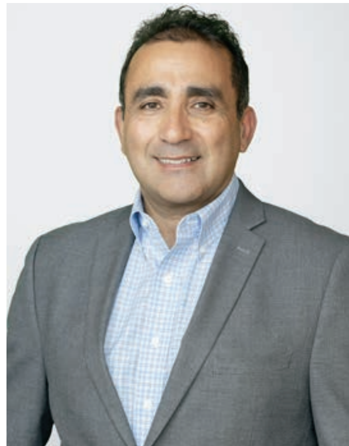
Kennedy: I think it reflects an overall mission of Holland & Knight to strengthen and expand its debt finance practice generally with a special recognition of the critical role asset-based lending plays in the industry. Holland & Knight has long had a geographically broad and experienced group of ABL specialists serving middle-market and money center banks and financial institutions, but the firm wanted to grow in the Midwest and West Coast as well as have national leadership specific to the ABL team. Given my Chicago connection, industry background and experience building one of the largest ABL practice groups in the country, my joining the firm made a lot of sense. Hamid, Yoojin and Mark all joined the firm separately several months after I did, but we all saw the same firm commitment to the practice, both in debt finance generally and ABL in particular. We now have over 65 members of the ABL team in offices across the country and particular depth in New York, Atlanta, Dallas, Los Angeles, Charlotte and Chicago. Chris Dillon and I co-lead the ABL team and have been tasked with providing national leadership to this expanding ABL practice and ensure we have the most efficient and effective ABL group in the nation, bringing our breadth of experience and intellectual capital to bear in the most effective way for our ABL clients. Our growth has been incremental and intentional, however, and we expect steady increases in deal flow in the ABL market over the next couple of years, in both bank and non-bank ABL transactions. Asset-based lending provides an important layer of the debt stack for many industries and transactions and is a particularly attractive financial product in down economic cycles like we are seeing now. It has been around for a long time and has distinct advantages for lenders and borrowers in any economic condition. We think that having a strong ABL practice is a good investment for the future of our firm and our clients.

Dillon: H&K is among the largest law firms in U.S. by headcount and our focus is and has been, for decades, serving clients in the middle market. When I joined the firm seven years ago, we were roughly 1,200 lawyers and we are now bumping up against 2,200. But increased headcount simply for the sake of a "bigger is better" attitude is not a recipe for success. Our expansion efforts in the last three years were strategic from both an industry and geographical perspective. Three years ago, H&K combined with energy-powerhouse Thompson & Knight, adding more than 200 lawyers in Texas, leading to an "Energy Practice Group of the Year" recognition by Law360 in 2021. This year we combined with one of the premier healthcare law firms in the country, Waller Lansden Dortch & Davis, adding another 250 lawyers in the Southeast U.S., placing H&K squarely in an elite group of firms serving the healthcare space. Holland & Knight now boasts the largest healthcare law practice in the United States. In ABL in particular, in the last year we have been very intentional in strengthening our team in the Midwest and on the West Coast through the additions of Wade Kennedy, Hamid Namazie, Yoojin Lee and Mark

WADE KENNEDY
Holland & Knight LLP



CHRISTOPHER DILLON
Holland & Knight LLP



HAMID NAMAZIE
Holland & Knight LLP

YOOJIN LEE
Holland & Knight LLP

MARK SPITZER
Holland & Knight LLP

Spitzer: At their core, these combinations and additions were made to further expand and bolster our already significant client expertise in these practice areas and regions. For ABL lenders, this means that not only do we boast top-tier lending expertise in every region in the U.S., but it also means we have deep subject matter expertise in the most consequential industries ABL lenders serve, whether it be

healthcare, transportation, energy, government contracting and so on. In that sense, "bigger is better," but only if you have both breadth and depth in the areas our ABL lender clients serve. Without reservation, with these combinations and additions I'd say we hit it out of the park not only from a client-service and economic standpoint but, just as importantly, from a cultural standpoint. Simply put, H&K is a place where great lawyers want to be and we're open for business.

Please tell us a bit about how each of you got your start in secured finance law and what advice would you give to young attorneys considering this field.

Kennedy: I showed up at the doorstep of my first firm in Chicago in 1989 and said "Where do you need me?" They threw me into deals for Heller, Sanwa, GECC and a lot of other ABL shops which are no longer with us as standalone entities and I loved it. David Crumbaugh and Greg Murray were a couple of my early mentors in asset-based lending and I learned a lot from them and the partners and associates I worked with. My advice is pretty simple: (i) be willing to work hard and never say no to an opportunity (or assignment), (ii) ask questions (or find the answer somewhere) if you don't understand something and (iii) treat people the way you want to be treated. Do those things and you'll be okay.

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Dillon: I remember it like it was yesterday. I was a first-year associate barely two months into my legal career when Chris Carson, head of my finance group in Atlanta at the time and an ABL "guru" in his own right, sent me on a diligence mission to a borrower's headquarters. I was to perform a task only a true "knuckle dragging" ABL lawyer can appreciate – I had to dig through hundreds of aircraft leases in a dusty storage closet searching for liens. Following that, I was given a two-page term sheet and 150-page Wachovia form credit agreement and told to "have at it," which I did for probably nothing short of 35 hours over two days. Looking back, I am sure this was an intentionally harsh test. Well, 20 years later I'm still at it, so I guess I passed?! I always tell associates that in ABL the details matter and they can matter a great deal in ways they don't necessarily matter in the cash-flow world. To this day I am very often still "searching for liens" so to speak (but thankfully not in a storage closet), in that our practice is ever-changing as new ways of doing business are cropping up at a blistering pace. The business and legal issues that we come across that may have been clearer in the past aren't always as clear anymore. But I also tell associates that while having deep expertise in a particular type of loan transaction is a must, you are missing opportunities if your focus is one type of loan transaction alone. Coming up as an associate I was very fortunate to also work extensively for partners whose primary focus was cash flow lending and, more often than not, on sponsor-backed transactions. So, although I got my start in ABL, my upbringing really consisted of a heavy concentration in both ABL and cash flow lending. To cash flow lenders, ABL is often perceived as being "old school," and it certainly is in some really great ways, but in other ways I think nothing could be further from the truth. In the last few years, private equity, in particular, has become prevalent in core middle- and lower-middle-market ABL space bringing their deal terms with them. In many deals these days there is both an ABL and cash-flow component in the capital structure. Consequently, I tell associates that having a diversity of deal experience in both ABL and cash-flow lending is more important than ever.

Namazie: Out of law school, I was convinced that I wanted to be a litigator until I realized that it wasn't that glamorous! As I was debating my career goals, a friend reached out to me and told me that Marshall Stoddard, one of the partners that he worked with, had asked him if he knew any hard-working junior associates that may be interested in joining his ABL team. After an evening spent in the Loyola Law School library reading about ABL and the legal aspects of it, I decided that it was actually interesting and decided to go for it. Luckily, my interview with Marshall went well and I got the job. I was quickly thrown into the fire and was sitting in

borrower conference rooms reviewing contracts for days and drafting documents, which came back from partners and senior associates with more comments than words that I had drafted! Although it was not an easy first year, I appreciated that I was thrown into the fire. There were long nights and a lot of time spent researching to better understand what I needed to be doing. I fully acknowledge that the world has changed since 1999 and the amount of junior training available within a law firm and outside of it are significantly more than what I had available to me. Not only should those new to ABL take advantage of all of the training programs, but they should also really take ownership of their own development and put in an extra effort to advance their education. No one is more interested in your success than you (and maybe your parents)!

Lee: After practicing cross-border M&A law abroad for two years, a recruiter reached out to me to see if I was interested in moving back to Los Angeles to join the debt finance department with a partner who would be leading the West Coast practice. Despite having no prior experience in debt finance, I was hungry and eager to learn and it sounded like the perfect opportunity to grow. The West Coast finance practice grew exponentially during Hamid's leadership, and while he was busy expanding and growing the practice, it was also a great opportunity for me to be thrown into the trenches – which is often the best way to learn. My advice for younger attorneys would be to (i) not be afraid to take a chance to grow and learn, even though you may feel like you are not ready and (ii) always be open to learn from the people around you. I am so glad I said "yes" to that recruiter years ago and am so grateful to all the senior associates, senior counsels and partners who were instrumental to my growth and development.

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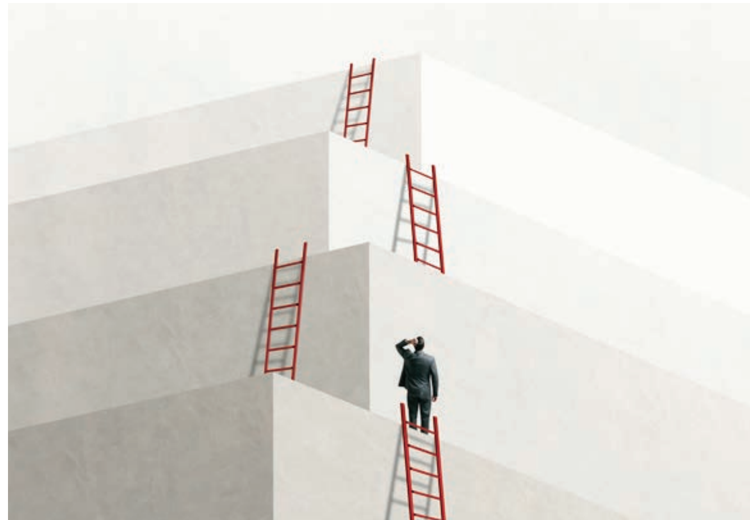
Spitzer: Against my will (but consistent with the firm's "rotation" policy, i.e., new lawyers were required to rotate through two firm practice groups, preferably with one litigation-oriented, the other transactional (six months each)), I started my career as a creditors' rights, workout/restructure and sometime bankruptcy lawyer. I made around 25 state and bankruptcy court appearances my first year (some during my second rotation). I worked on real property foreclosures, personal property remedies enforcement (I "popped" an RV from a deadbeat debtor, for example), and a major music retailer bankruptcy. Fun stuff if you are into that sort of thing. Unfortunately, I was not - having made my intention to become a transactional attorney known from the jump. I got my wish, and my second rotation was in the transactional side of the banking and finance department. Looking back on it, I was, and remain, a beneficiary of the firm's policy of having its young lawyers get at least some introduction to the "other side" – and the theory that an attorney is a better deal lawyer if they have some litigation/workout experience and vice versa – a litigator/bankruptcy lawyer will have a better understanding of why loan documents are drafted and deals structured the way they are if they have some hands-on, in the trenches, loan document drafting and deal experience. My suggestion to young lawyers is colored by that experience – while you can (and if permitted to do so) seek out work/experience on the "other side." It will not only make you a better, more rounded attorney in your specialty, but it may also enable you to pick up work when workflow in that specialty area is otherwise in a lull. My most productive years have been during choppy economic markets when I had a split of new deal/origination work and a portfolio of workout and loan restructure matters. I should not advertise it too much, but it is also a welcome change of pace to represent a borrower every now and then!

From a legal point of view, what should lenders be looking out for in 2024?

Kennedy: I think we will see the sponsor acquisition market

pick up and overall deal-flow improve. On the challenging side, I think we are already seeing increasing workouts for highly leveraged companies that are suffering the double whammy of supply chain and consumer confidence challenges as well as increased costs of capital (interest expense). This will likely continue well into 2024.

Dillon: Let me pull out the ole' crystal ball! Last year at this time we were saying just about the same thing I'll say this time, but this time with a few more cards turned over. Last year we, like many of our clients, expected that the Federal Reserve's inflation countermeasures and tightening credit markets would push more cash-flow borrowers towards ABL and there would be more distress in the system generally, leading to a decrease in new originations, more workouts and restructurings. While all of this did happen to some degree, it didn't happen to the degree many of us expected (and, I daresay, some in our industry hoped for!) due to the amount of cash still left in the system, tighter underwriting standards, relatively weaker deal terms generally, and the patience of lenders to kick the can down the road. Obviously that situation can only go on for so long, but if you ask five financial advisors what 2024 will bring, you'll get five different, though overlapping, answers and most of them will cite some or all of the "X-Factors." For example: Will the Federal Reserve continue to increase rates? And, if so, by how much? Will the conflicts in the Ukraine and the Middle East spill over into wider regional or global conflicts? Will the U.S. and China have more direct "hot" conflict, impacting everything from trade routes, foreign investment, and critical resources? Will there be more bank stress or failures like we saw in early 2023? What will the impact of bank regulation be? Will Harry and Meghan reconcile with the Royal Family?! And, of course, don't forget it's an election year in the U.S.! The answers to all of these questions can have different impacts on different industries and different segments of those industries and, by extension, the lenders who serve those industries. So, the best advice I can offer for lenders in 2024 is the advice I was given by my Scoutmaster father: "Be Prepared."



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Spitzer: A few predictions (my prognostication skills are not particularly noteworthy, however): (i) in somewhat of a "buyer's market", sponsors will be looking to acquire companies experiencing some level (mild to significant) of distress. Private equity firms flush with cash and investor commitments will go bargain-hunting. Target companies fearful of increasing working capital challenges and other market forces will be more willing to cash out – at lower purchase multiples. I suspect a portion of such increased activity will be an uptick in sponsor-to-sponsor transactions where the more sophisticated, better-funded firms snatch up underperforming companies from sponsors that either have less experience in managing portfolio companies in difficult economic environments or have too many anchors in their portfolios. (ii) ABL lenders will face the somewhat contrary pressures of having sponsors insisting on covenant-light, borrower-friendly structures carried over from the cash flow market juxtaposed against tightening internal credit approval requirements – especially for their non-sponsor backed customers. ABL lenders with stronger experience in dealing with distressed or troubled credits – and who are not afraid to finance them - will do particularly well, just as they did in 2008 and the several years that followed. (iii) Increased pressure (some might say interference) from government regulators on ABL lenders to stick to the rules, including stricter review of compliance with credit approval processes, collateral values and other underwriting components.

Is AI having an effect on the legal aspect of secured finance? How so?

Kennedy: Not so directly on the legal and documentation

side. Yet, despite the fact that lenders often have to deal with comments from borrowers that seem to be an AI-generated compilation of our toughest deals, we still interact pretty exclusively with humans on the negotiation front. Insert any joke you like here about lawyers being human…

Seriously though, AI can't be underestimated as a tool. I think currently and in the near term, AI has immediate applications for ABL lenders in credit modeling/underwriting and in process automation. There are also probably very near-term applications coming for ABL lenders in identifying and connecting ABL lenders with potential borrowers and even offering general credit structures that may be optimal for particular transactions. It's a wide-open area and moving fast.

Most importantly for our clients, we can offer legal expertise on understanding and avoiding potential liability in implementing AI-driven processes and giving guidance on how AI can be used in their business. Essentially, we can help identify the risks and limitations of processes that switch from human decision making to machine decision making (data privacy, intellectual property, fair credit standards, etc.) The use of AI raises a lot of issues we don't have legal answers for yet, so institutions need to be cautious, yet not get left behind. It's a difficult dynamic, but we have a lot of folks smarter than me who have been looking at the issues for some time.

From a personal standpoint, I think that I (like a lot of other professionals) have suffered from the driving fear that AI would replace attorneys as the primary means of negotiating and drafting credit documents. Having learned more about current AI applications, I don't think that is going to happen given the complexity and nuance of the lending relationships, but I have come to believe that lawyers who use AI effectively may very well replace those who don't. I can see a number of efficiencies in uses of AI, particularly in the "first draft" area as well as the potential for solutions to problems like resolving the "battler of the precedent documents" and what is "market" in a given circumstance. Crunching large amounts of data to see where and when certain provisions have been used could shorten what now can be very long arguments about the "market" and proper use of certain terms. The obvious problem will be where machine learning will get the data set it uses to solve these problems (i.e., just publicly available deals?). I would hate to see EDGAR determine "the market" for ABL lending into the future. I hope the private market will always be a place where human creativity and social and moral factors always play a part in generating new data.

How are new state and federal laws affecting the industry, particularly state disclosure bills and CFPB 1071?

Namazie: This question has been the subject of many SFNet webinars over the last few years. The answer could be a lengthy article all by itself, but I'll keep it as short as I can. Starting in 2018 with California, we saw a number of states enact commercial lending disclosure bills that require commercial lenders (including ABL lenders and factors) to disclose APR as a metric that borrowers can use to compare different lending products. The good news is that these rules apply to lenders providing loans less than a certain threshold ($500,000 in California and $2,500,000 in New York) and regulated banks are excluded. I became intimately involved in discussing the impacts of this law and its associated regulations with the California legislature and regulators and took on the role of Advocacy Committee Chair for the SFNet to help direct our efforts with such laws popping up in other states. Through our efforts, we saw the enactment of new legislation in California in 2023 which provided a safe harbor for lenders acting in good faith in APR disclosure. It was a huge win for SFNet and its members! I strongly urge lenders to be aware of these rules and the states in which they are popping up and make sure that they are complying to the extent the law applies to them. The SFNet has provided compliance guides to its members on its website with respect to the California and New York requirements.

One more important development for lenders to be aware of is the implementation of Consumer Financial Protection Bureau's rules which implement the small business lending data collection requirements set forth in section 1071 of the Dodd-Frank Act. As these rules can be very overbearing for smaller lenders, the SFNet has been very involved in narrowing the scope of the final rules. As it stands now, the implementation of the rules is subject to an injunction issued by a Texas court, which delays implementation to the later part of 2024. However, lenders should keep an eye on developments with this as it may have a significant impact on them.

Finally, to give a plug to the SFNet, the association has been working hard to stay on top of new legislation that impact its members. For example, very recently, a new legislation popped up in California which restricts lenders from charging "collateral monitoring fees." The law does not define the fee or give any guidance on what is a "collateral monitoring fee." We are working with local lawmakers to better define the intent of this law, but until it is better defined, it is the law of the land in California and lenders need to work around it.

Michele Ocejo is SFNet director of communications and editor-in-chief of The Secured Lender.