BERGER SINGERMAN
FLORIDA'S BUSINESS LAW FIRM

BANKING & FINANCIAL SERVICES LITIGATION

Berger Singerman represents lenders, loan servicers and financial services companies in connection with commercial litigation and the defense of consumer and regulatory claims in state and federal courts. The Firm handles matters related to consumer and mortgage lending, lender liability, mortgage securitization, deceptive trade practices and state and federal statutory claims, including matters involving RICO, FDCPA, TILA, WARN Act, ECOA and False Claims Acts.

Our experience includes high profile and high-stakes litigation, including the defense of class actions and claims brought by state and federal regulators. The Firm also represents bankruptcy trustees and receivers of failed businesses in connection with the recovery of monies that are the subject of fraudulent transfers and Ponzi schemes. In doing so, we work hand in hand with Berger Singerman's Internal and Corporate Investigations and Compliance Group in connection with crisis response as well as pre-litigation planning and the development of unified strategies to respond to claims that often follow regulatory scrutiny.

Berger Singerman believes that its clients are its partners, and we take a responsive and transparent approach to its engagements. We recognize the burden and expense that complex financial services litigation presents, and we actively evaluate both the attendant risks as well as possibilities for resolution. We know that litigation is often unavoidable, and our team approaches every representation seeking to achieve the optimum result. The volatile economy presents challenges to our clients. Our team members deliver creative and effective business solutions and counsel to our clients.

Representative Matters

- Lead national counsel for a vendor of services and technology within the mortgage industry in connection with litigation based upon allegations of the robo-signing of documents in connection with foreclosures. Successfully defended multiple class actions, including RICO, FDCPA and deceptive trade practices claims, and interacted with government investigators facilitating resolutions of potential claims. Defended deceptive trade practices claims brought by a state attorney general.
- Obtained a $45 million judgment in a highly complex commercial mortgage foreclosure case in Florida state court on behalf of a leading Florida banking institution against a borrower and his development entities after a multi-day, trial, and successfully defeated $100 million in counterclaims against the bank, its parent company and the senior executives alleging breach of construction loan agreements, breach of fiduciary duty, fraud, negligent misrepresentation and violation of the anti-tying provisions of the Bank Holding Company Act.
- Represented a leading integrated retail-commercial bank in South Florida in a complex business case brought by a non-customer in state court in Miami, which faced claims in the approximate amount of $30 million for civil theft, dealing in stolen property, fraud, conversion, breach of fiduciary duty, and trafficking in stolen property. Plaintiff's theory was that the bank was complicit in opening the accounts, accepting wires and wiring funds out, and not closing the accounts, despite allegedly suspicious circumstances. Summary judgment was entered in favor of the bank on all substantive counts, causing the case to be dismissed in its entirety.

- Represented a mid-sized bank foreclosing a commercial mortgage, seeking to recover millions of dollars in damages for breach of promissory notes, and enforcing personal guaranties, as well as defending counterclaims alleging that the bank violated the Equal Credit Opportunity Act. We obtained a final judgment in favor of our client of all affirmative counts, a judgment of no liability on the counterclaim, and a $13 million deficiency judgment. We also successfully won the appeal. After obtaining the deficiency judgment, we utilized creative and aggressive creditor's rights and remedies, including attachment and garnishment, and initiated proceedings supplementary, all of which resulted in a significant recovery for our client on the deficiency judgment.
- Defended an institutional client which purchased $364 million in long-term, commercial loans, used the loans to partially fund the purchase of portfolios of residential mortgage loans, in a federal court case brought by the commercial lender. The lender alleged that the failure to dispose promptly of certain foreclosed real estate owned (REO) properties was a breach of the mortgage and servicing agreements. We prosecuted counterclaims against the lender alleging breach of certain letter agreements, misappropriation of monies from lockbox accounts setup to administer collections from our client's mortgage portfolios, and for antitrust tying violations. The case settled favorably after we structured a highly-complex, and creative business settlement.
- Represented a national automotive financing company in several Florida state court class action lawsuits alleging that the Florida sales taxes collected at the end of each lease were illegal and were unlawfully collected and paid to the Florida Department of Revenue by the leasing companies. Specifically, the claims challenged the collection of Florida sales taxes upon excess mileage, excess wear and tear, and disposition fees, asserting that these charges do not constitute "sales" within the contemplation of the tax laws and regulations of the State of Florida and as such are not subject to taxation.
- Successfully defended a privately-owned commercial bank in New England, which lost $6.2 million resulting from a fraudulent accounts receivables scheme, from "failure to fund" and usury lender liability counterclaims in a three-week federal bench trial
- Represented a Florida bank prosecuting a multi-million commercial foreclosure case, and defending the bank from counterclaims alleging usury and civil remedies for criminal activities. After trial, we obtained a judgment of foreclosure, a multi-million deficiency judgment against the guarantor, and a judgment of no liability on all of the counterclaims.
- Represented a Florida bank collection of a million dollar deficiency judgment against a borrower owing valuable broadcast licenses issued by the Federal Communications Commission
- Defended a Florida financial advisory and wealth management firm in an arbitration brought by a customer claiming unsuitability of investments, negligence, breach of fiduciary duty and breach of contract. Case settled favorably for our client.
- Represented a prominent Florida bank in a Florida state court suing to recover loan proceeds arising from a written loan participation agreement with another bank. The case settled favorably at mediation.