BERGER SINGERMAN
FLORIDA'S BUSINESS LAW FIRM

COMPLEX COMMERCIAL LITIGATION

Berger Singerman's Dispute Resolution Team has earned its strong reputation for successfully and efficiently handling complex commercial litigation matters. Our Team members are committed to delivering appropriately aggressive litigation representation and creative dispute resolution.

The Dispute Resolution Team handles a wide variety of complex commercial disputes in federal and state courts in Florida and across the United States at every stage of litigation, including pre-suit investigation and counseling, discovery, motion practice, settlement, trial preparation, trial and appeal. Our attorneys also regularly practice in alternative dispute resolution forums, including mediation and arbitration. Team members have resolved controversies in matters involving hundreds of millions of dollars, and we have handled many "bet-the-company" engagements.

Berger Singerman represents regional, national and international clients ranging from entrepreneurs to Fortune 500 companies, in matters including:

- Complex commercial fraud, including receiverships, fraudulent transfer actions, securities fraud, and Ponzi schemes
- Labor and employment law, non-solicitation/non-compete cases, Fair Labor Standards Act compliance and litigation, and various employment termination disputes
- Real estate litigation, involving developers and other property owners, governmental agencies, contractors, buyers, sellers, brokers, title companies and lenders
- White collar criminal issues, investigations, and regulatory enforcement matters
- Asset forfeitures
- Contract, warranty, commercial and transactional disputes
- Business torts, such as breach of fiduciary duty, theft of trade secrets, and tortious interference claims
- Disputes among partners or other co-owners of businesses
- Construction litigation
- Government agency litigation
- Professional malpractice litigation
- Intellectual property
- Appellate litigation

Members of the Team have tried numerous significant jury trials to verdict and beyond to post-verdict and appellate proceedings. Our Dispute Resolution Team thrives on delivering our clients the full benefits of aggressive and creative litigation representation, both in and out of the courtroom. The combination of our experience and passion allows us to provide creative and effective counsel and assist our clients in successfully resolving their business and commercial disputes.

Representative Matters

NEPTUNE SOCIETY
Berger Singerman represented the Neptune Society, a national cremation company, against its former President who formed a competing company, and thereafter hired away the company's then President, IT Director, Chief Financial Officer, and Executive Vice President of Sales. The company also sued all of the departing executives, each of whom left without notice, and the competitor. Berger Singerman was able to obtain a preliminary injunction, effective nationwide, enjoining the defendants from hiring away any other Neptune Society employees. The case settled shortly thereafter.

ALL LEISURE GROUP
Berger Singerman represented the U.S. division of All Leisure Group, the largest cruise ship operator in Great Britain, in a theft of trade secrets case brought against the former President of the division and a vendor. Berger Singerman was successful in obtaining an ex parte injunction against its former U.S. President and the vendor in the United States District Court for the Southern Division of Florida. After forensic examinations of all applicable devices determined that all information had been returned, the parties stipulated to the entry of a permanent injunction.

AMERICAN TISSUE
Berger Singerman's Dispute Resolution Team was engaged as special litigation counsel to a number of Chapter 11 debtors in possession comprising a nationally known paper products company. The Team prosecuted cases seeking the recovery of contested multi-million dollar receivables, preferential and/or fraudulent transfers, and other strategic litigation, to maximize the value available to repay secured and unsecured creditors.

AMERICAN TISSUE INC. v. ARTHUR ANDERSEN
Berger Singerman's Dispute Resolution Team represented a nationally known paper products company in Chapter 11 against accountants for negligence in preparing a series of financial documents, seeking $800 million in damages.

AT&T (FORMERLY BELLSOUTH)
Berger Singerman was retained to provide strategic and litigation advice concerning an ordinance that the City of Fort Lauderdale, Florida, is considering for adoption. The proposed ordinance limits the size of certain telecommunications equipment that can be deployed above ground in the City's rights-of-way. The Mayor and some City Commissioners sought to force the new telecommunications equipment placed underground. The equipment is vital to AT&T's continued expansion of its telephony, video, data, and internet service in the City. If the ordinance were adopted, AT&T's expansion plans within the City would have been severely hampered if not rendered impossible. Berger Singerman was retained one week before the proposed ordinance was scheduled for first reading before the City Commission. Berger Singerman assembled a multi-disciplinary team of lawyers to educate the City's legal department about federal and state laws that limit the City's right to adopt such an ordinance and to educate the City Commissioners about alternatives to the proposed ordinance. At the same time, Berger Singerman was developing legal claims and strategies to enable it to move swiftly against the City if it adopted the ordinance. As a result of its ability to develop workable strategies and persuasive legal theories, Berger Singerman's efforts have dampened the City's desire to move forward on the proposed ordinance.

BANCO ESPIRITO SANTO INTERNATIONAL, LTD., V. BDO SEIDMAN, LLP
Berger Singerman served as counsel for Espirito Santo Bank and its affiliates in this well-publicized accounting malpractice case against BDO Seidman, LLP (BDO Seidman) arising out of BDO Seidman's multi-year practice of auditing a factoring company that defrauded Espirito Santo Bank of $170 million. The litigation was filed in the 11th Judicial Circuit Court in and for Miami-Dade County, Florida, and was vigorously contested by Greenberg Traurig on behalf of BDO Seidman. Along with our co-counsel, Sullivan & Cromwell, we participated in extensive discovery and motion practice, including extensive e-discovery disputes, and voluminous dispositive and pre-trial motions. In the course thereof, we achieved a significant sanctions award against BDO Seidman. Through the appointment of a senior judge as Special Magistrate, we argued before the Court on a nearly weekly basis for several months leading up to trial. Following a four-month trial during

which the Sullivan & Cromwell attorneys served as lead trial counsel and we provided legal and trial support, we obtained a jury verdict for $140,000,000.00 in compensatory damages and $351,689,343.00 in punitive damages.

BODY ARMOR MANUFACTURER
Berger Singerman represented a body armor manufacturer in an action against an engineer and director of sales and a new competitive entity they formed, in flagrant violation of non-compete and non-solicitation agreements they had with the company. Following an evidentiary hearing, Berger Singerman secured the issuance of a comprehensive preliminary injunction for our client, as a result of potential lost business.

BRICAN AMERICA, INC.
Berger Singerman defended claims against Brican by a lender for breach of warranty respecting misrepresentations and omissions in the funding of a portfolio of equipment leases.

CALDERA SYSTEMS, INC. D/B/A THE SCO GROUP V. INTERNATIONAL BUSINESS MACHINES CORPORATION
Berger Singerman's Dispute Resolution Team is co-counsel to Caldera in a lawsuit recently filed against IBM. Caldera is the owner of proprietary code for the UNIX operating system as originally developed by AT&T. IBM is a licensee of UNIX and has recently spearheaded a drive to support Linux, a free operating system, to compete with UNIX at an enterprise level. Caldera is suing IBM's improper actions as a licensee of UNIX. Caldera is seeking damages in the range of $1 Billion. The filing of this lawsuit was widely reported and this case is being followed closely by all of the major technology players.

CERAMIC PROTECTION CORPORATION
Berger Singerman represented Ceramic Protection Corporation (CPC), a world leader in the design and manufacture of ceramic and composite ballistic armor systems and industrial wear solutions. CPC was also a supplier of ceramic tile. ArmorWorks, a producer of armor for the U.S. military, agreed to purchase ceramic tile from CPC to be used in armor for the military. ArmorWorks failed to satisfy the terms of the agreement. The total amount at issue was $500 million. On CPC's behalf, we filed a complaint against ArmorWorks alleging tortious interference, breach of contract, business defamation, and breach of the implied covenant of good faith. ArmorWorks, in retaliation, filed a complaint against CPC asserting breach of contract, breach of implied covenant of good faith, breach of warranty, fraud, tortious interference and misappropriation of trade secrets. The dispute was resolved amicably between the parties. By settling this case when it did, Berger Singerman saved the client approximately $2 million in legal fees.

CHS ELECTRONICS INC.
Our Dispute Resolution Team has substantial experience in litigating claims, and coverage disputes, involving directors' and offices' liability in large Chapter 11 cases. The Team recently obtained a multi-million dollar recovery through its efficient prosecution of D&O claims, and currently manages coverage litigation in concert with counsel representing a Chapter 11 debtor in possession in class litigation based on alleged securities law violations.

EAST FLORIDA IMAGING HOLDINGS, LLC
Berger Singerman represented East Florida Imaging Holdings, LLC ("EFIH") in an arbitration initiated by EFIH against MDI of Jupiter, Inc., et al. ("MDI") on claims of fraud and breach of contract. EFIH was a 60% owner of a joint venture with MDI, which collectively owed 100% of a group of outpatient radiology clinics in Miami-Dade and Palm Beach counties. The total amount at issue exceeded $60 million.

Berger Singerman evaluated the potential claims against defendant and its principals, taking into account the market sensitivity to potential regulatory and criminal issues. EFIH elected to proceed with private arbitration in lieu of a state court lawsuit in light of the desired low profile resolution. Through fast-paced litigation (more than 45 depositions were taken in approximately 3 months) and in conjunction with co-counsel, the matter was successfully resolved in a confidential settlement beneficial to the client on the eve of the arbitration final hearing.

FORGIONE v. FORGIONE
Berger Singerman's Dispute Resolution Team represented beneficiaries of a trust seeking control in a corporate shareholders dispute over a nationally known candy manufacturing operation.

G2 DEVELOPMENT
Berger Singerman is lead counsel to G2 Development in defending foreclosure action by Western United Life Insurance Company against a seven-building assemblage on Miami Beach which was to be renovated and converted into a full-time and temporary occupancy condominiums.

GARY BARRON
Berger Singerman represented a CEO and minority shareholder of a national ice cream manufacturer and retailer improperly ousted from his position, with stock interest stripped away. Berger Singerman filed a derivative stockholder lawsuit asserting fraud and fraudulent transfers and obtained appointment of a corporate receiver. The client was reinstated as CEO and took majority ownership control of the business.

HALL V. FINANTRA AND SOMMERS V. CCSI
In two separate securities fraud lawsuits, Berger Singerman represented the plaintiffs, who were defrauded by the officers of unrelated public companies. Our work resulted in the clients recovering nearly all remaining proceeds from those entities' respective officer and director insurance policies. Hall v. Finantra was pending in the 17th Judicial Circuit Court in and for Broward County, Florida, and Sommers v. CCSI was pending in the United States District Court for the Southern District of Florida. In both cases there were numerous other lawsuits filed by various aggrieved plaintiffs suing these public companies and their officers for securities fraud. In every instance, the other plaintiffs either lost their cases through motion practice or at trial, or to the extent one plaintiff in the Hall case won at trial, he failed to collect any money on the officer and director insurance policies. Berger Singerman studied the other plaintiffs' approach and litigation strategy and adjusted his strategy accordingly. As a result, we won all of our motions, found nuances in how the facts and claims were pled and prosecuted, and made appropriate strategic decisions that resulted in the insurance companies ultimately paying out the maximum amount of the remaining policy benefits available.

HERBERT STETTIN, CHAPTER 11 TRUSTEE FOR ROTHSTEIN ROSENFELDT ADLER P.A. ("RRA")
Berger Singerman served as general counsel to Judge Herbert Stettin in his role as Chapter 11 Trustee in the Rothstein, Rosenfeldt & Adler, P.A.'s ("RRA") bankruptcy case, involving the largest Ponzi scheme in the history of the State of Florida. In addition to advising the Trustee regarding numerous firm management and wind-down issues, Berger Singerman, on behalf of the Trustee, lead efforts to recover funds for all creditors of RRA. Those efforts included prosecuting well over 100 adversary proceedings which resulted in total recoveries of well over $150 million [I'm checking on a more accurate number]. As a result of those efforts, RRA's allowed general unsecured creditors will receive distributions equal to 100% of their principal losses, an extremely rare, if not unprecedented result in Ponzi scheme or fraud cases. Many of those adversary proceedings included cutting edge legal issues presented at the bankruptcy court, district court, and appellate court levels – including the authority of a trustee in Ponzi schemes, and the intersection of bankruptcy and forfeiture law – and have been referenced in a number of authorities regarding Ponzi and other fraud schemes.

HDGM HOLDINGS, LLC V. PALM CROSSINGS DEVELOPMENT, LLC
Berger Singermn serves as counsel to several commercial real estate entities that own a 1.3 million square foot industrial and office portfolio valued over $150 million in South Florida in connection with litigation pending in the 17th Judicial Circuit in and for Broward County, Florida. The litigation arose from the termination of the deal by the buyer, HDGM Holdings, LLC (HDGM), on the eve of the closing. Despite electing to terminate the $150 million purchase contract just days before the closing, HDGM seeks to retain almost $2 million in escrowed deposits and maintain a lis pendens over the property without claiming any legal or equitable ownership of the property. We currently have pending a motion to dismiss all equitable claims relating to ownership of the property and a motion to discharge the lis pendens that is clouding title and affecting efforts to sell the $150 million property to other investors. Barely a month into litigation, this case has been publicized in the press as our clients' real estate portfolio is well-known and sizable to the South Florida community.

IN RE: AMERICAN WAY SERVICE CORP.
Berger Singerman's Dispute Resolution Team represented the largest creditor in this bankruptcy estate of eleven related insurance companies, including prosecution of fraudulent transfer claims as special counsel for the estate, declared by the bankruptcy judge to be the largest bankruptcy fraud case in his career.

KINNEY SYSTEMS, INC. V. CONTINENTAL INS. CO.
Berger Singerman's Dispute Resolution Team was retained by the Florida Chamber of Commerce and argued that the then-existing Florida law on forum non conveniens should be altered to comport with the forum non conveniens doctrine as applied in federal courts. The Florida Supreme Court agreed in a major victory for multinational corporations engaged in business in the State of Florida.

MCDANIEL FAMILY ENTITIES
Berger Singerman and co-counsel were retained by the McDaniel Family Entities, the owners of several thousand acres in rural Henry County, Florida, to represent them in a breach of contract suit arising from the sale of approximately 12,000 acres of property valued approximately $60 million. The purchaser, headed up by Edward S. Garcia, intended to develop the property into an upscale, equine-themed residential community, complete with amenities including an airstrip. The purchaser completed a portion of the sale, which was set in stages, but then sued the McDaniel Family Entities seeking damages and specific performance for an alleged breach of the contract. Initially, the purchaser filed suit in federal court but Berger Singerman, along with co-counsel, successfully achieved dismissal after exposing that the purchaser had improperly created a Delaware LLC and assigned the contract in an effort to invoke diversity jurisdiction. The purchaser re-filed in state court where Berger Singerman and co-counsel have filed a counterclaim alleging breach of contract on purchaser's part and have successfully obtained dismissal of purchaser's claim for damages.

METRO CRUISE SERVICES
Berger Singerman represented the plaintiff, Metro Cruise Services, against Broward County, Florida for claims predicated on the County's denial of a franchise to Metro which would allow it to provide stevedoring services to cruise lines at Port Everglades, Florida. Metro is amongst the nation's most successful stevedoring company, and Port Everglades is the nation's largest passenger cruise terminal. The principal claim asserted was that the County violated the Dormant Commerce Clause of the United States Constitution. Focused on the client's main objective of forcing the County to give Metro a franchise, and that the typical Dormant Commerce Clause case lasts five or more years, we strategically moved for an immediate trial, which was granted, so that the parties were to be at trial in only 8 months from filing suit. Simultaneously, we filed a Public Records Act demand against the County, which required it to produce all of its records very quickly. We worked nearly around the clock for a month putting together a compelling case, which was presented to the County at a settlement meeting. Shortly afterwards, the case was settled with the County agreeing to give Metro the franchise it requested.

MUTUAL BENEFITS – VIATICAL RECEIVERSHIP
Berger Singerman served as counsel to a Japanese entity, MBKK, Ltd. (MBKK), an investor in Mutual Benefits Corporation, which was in an SEC receivership pending in the United States District Court for the Southern District of Florida. The case involves one of the largest insurance viatical frauds in the United States. Our client, MBKK, made its investment of $15 million in Mutual Benefits Corporation shortly before the fraud was uncovered and the receivership instituted. Berger Singerman successfully argued to the Court that his client's funds, then in the custody of the SEC receivership, were segregated and trust funds, not comingled with other corporate funds, and belonged solely to his client. As a result, MBKK recovered all of its $15 million investment within 6 months. Although numerous other investors only received small pro rata distributions from the receivership estate, many creditors followed MBKK's lead to recover their funds.

OLT v. MERIDIAN INVESTORS BANK
Berger Singerman's Dispute Resolution Team represented investors who lost $10 million against a shell off shore bank and its principals dealing in non-existent securities.

PALM SPRINGS MILE ASSOCIATES, LTD. V. MERVYN'S LLC
Berger Singerman serves as counsel to Mervyn's LLC (Mervyn's), the lessee of a significantly valued

leasehold interest of a commercial shopping center in South Florida. Pending before the Complex Business Litigation Division of the 11th Judicial Circuit in and for Miami-Dade County, Florida, the parties are seeking declarations as to their respective rights and obligations under various provisions of a multi-term Lease Agreement. This commercial dispute centers in large part on the physical damages to the leased premises caused by Hurricane Wilma in late October 2005, the efforts to seasonably repair the leased premises, and the resulting adverse effects on the leasehold rights and interests of Mervyn's. The damage to the premises is a stumbling block to Mervyn's assignment of the Lease to another commercial retailer. Expert testimony concerning the valuation of Mervyn's leasehold interest (and its resulting damages) is expected to play a key role.

PETROLEUM REALTY I, LLC

Berger Singerman serves as counsel for Petroleum Realty I, LLC and affiliated companies in connection with a multi-jurisdiction matter involving the defense of claims for specific performance arising out of the lease of nearly 50 gasoline stations located in Florida and Georgia and the prosecution of claims for breach of leases, breach of guaranties, breach of a settlement agreement, commercial eviction, and environmental contamination. We have secured a judgment in excess of $17 million on the claims for breach of leases and guaranties and are currently assisting in the prosecution of dispossessory actions in Georgia against unauthorized sub-tenants in possession of the properties as a result of the actions of the defendants. Berger Singerman successfully defended two interlocutory appeals to the Florida Fourth District Court of Appeal, securing the affirmance of the trial court's decisions interpreting the leases and settlement agreement and orders compelling compliance with the settlement agreement, and a third appeal from the final judgment is pending. This case involves novel and significant issues regarding the jurisdiction of a trial court to enforce a settlement agreement, the enforceability of an agreement permitting ex parte relief upon default, and the res judicata effect of a judgment upon a collateral action seeking specific performance of an option to purchase the properties at issue.

RELENTLESS PIZZA CORP. D/B/A LA PIAZZA, ET AL. V. NATIONAL SERVICE INDUSTRIES, INC., ET AL.

Berger Singerman's Dispute Resolution Team successfully defended National Service Industries in a class action lawsuit brought by several plaintiffs against multiple defendants claiming that the defendants improperly added environmental surcharges to their invoices. Our firm was successful in obtaining a dismissal on behalf of National Service Industries.

ROGERS V. NACCHIO

Berger Singerman represented more than a dozen individual defendants affiliated with or previously employed by Qwest Communications International Inc. (Qwest) in a RICO and securities fraud action filed in the United States District Court for the Southern District of Florida by two pro se plaintiffs who allegedly suffered more than $6 million in damages. The 300+ page complaint asserted 25 causes of action (including federal and state RICO claims, securities fraud claims, and a variety of common law claims) against 61 defendants (including Qwest as well as major banks and brokerage companies). Berger Singerman coordinated the defense of the action as between the dozens of defendants and the many different law firms involved in the action. Following a series of motions to dismiss, we obtained a dismissal with prejudice for all the defendants that we represented, and the dismissal was upheld on appeal before the Eleventh Circuit Court of Appeals. In addition, we obtained an award of $231,072.69 in attorneys' fees against the Plaintiffs for the frivolous filing of certain causes of action.

SCHOOL BOARD OF BROWARD COUNTY

As special litigation counsel to the School Board of Broward County, Berger Singerman brought state court claims against a third-party service provider, seeking reimbursement of monies not recovered in a prior settlement of a federal court litigation against the School District, in which the service provider's acts and omissions had exposed the District to economic risk. The firm assisted the School District in reaching a favorable, cost-effective settlement of the state court action. The firm was also successful in crafting a favorable compromise of the prior federal litigation (valued at over $13 million) after having been engaged to defend those claims as that case was heading to a jury trial.

SILVER OAKS TENANT, LLC

Berger Singerman represented Silver Oaks Tenant, LLC in defense of a class action lawsuit on behalf of the residents of the mobile home park that were being evicted in connection with the closure and redevelopment of the mobile home park for other land uses. The residents claimed that the client violated statutory conditions precedent to closure of the park, conspired illegally with the local town to close the park in violation of the town's comprehensive plan, and violated a local moratorium and ordinance as well as other statutory requirements for operation of the mobile home park. Berger Singerman assisted the client in contesting the substantive claims, the class allegations, and in moving to transfer the case to the complex litigation division of the circuit court. In addition, Berger Singerman coordinated efforts of co-counsel who were handling the individual evictions of the residents.

SUNCOAST v. RIVA

Berger Singerman's Dispute Resolution Team represented investors on a $10 million fraud claim against the developers of the prestigious Miami Beach condominium project, the Seacoast Towers, reported by the Miami Herald at the time of the closing as the then single largest real estate transaction in Miami-Dade county history.

US HOLDINGS

Berger Singerman represents US Holdings (USH) to recover its loss in purchasing Auction Rate Securities (ARS) from SunTrust Banks. USH believed it was buying short term, highly liquid securities, when in fact it was acquiring long term bonds, which it cannot sell due to the collapse of the ARS auction market.

VIKING YACHT COMPANY AND POST MARINE COMPANY

Berger Singerman represents Viking Yacht and Post Marine Company against Cook Composites and Polymers (CCP), a subsidiary of Total composites, in a breach of warranty claim that defective gel coat manufactured by CCP damaged over 800 yachts built between 1997 and 2004.

Real Estate Litigation Significant Engagements

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WASHINGTON MUTUAL

Berger Singerman represented Washington Mutual, as successor to Home Savings of America, in a complex workout on a low-income housing tax –credit funded project that had significant cost overruns, delays, and other defalcation that could have jeopardized the tax credits. Additionally, the parties of the borrower engaged in an action in federal court against the investor partners. Despite this, the tax credits were fully preserved and the lender ultimately was paid in full.

SOUTH TRUST BANK

Berger Singerman was engaged by South Trust Bank (Birmingham AL) to foreclose a $13 million construction loan on an unfinished residential project in South Florida, and to defend the Bank against a multi-million dollar lender liability counterclaim brought by the then-current individual owner of the project, who had taken title through a section 1031 exchange. The property had a long history of construction and development approval delays and obstacles, and the case was rife with allegations of misrepresentation or misuse of construction funds, and negligent supervision of the project by Bank-sponsored progress payment inspectors. The owner was represented by a construction law boutique firm and was hotly litigated. After a one and a half week jury trial, we prevailed.