BERGER SINGERMAN
FLORIDA'S BUSINESS LAW FIRM

DIRECTOR/OFFICER LITIGATION & PARTNERSHIP DISPUTES

Berger Singerman understands that today's business environment is a minefield of litigation against officers and directors of corporations and members of LLC's. In addition to the more common actions brought by shareholders and members, claims now include regulatory enforcement actions, cyber security breaches, creditor claims, and class-actions alleging violations of federal employment laws. In each instance, litigants may assert claims directly for themselves or, alternatively, seek to advance shareholder derivative claims that belong to the company. The claims can impair on-going business and all present risks of extensive financial and reputational losses. We have experience in each of these realms.

In the corporate setting, the law provides a possible alternative to such litigation. We are well suited to act independently and capably as counsel to special litigation committees composed of independent directors when boards of directors form such committees for the purpose of thoroughly investigating proposed litigation and determining whether such litigation is in the best interests of the corporation. We also have extensive experience managing the complexities of derivative litigation, including collaborating on the development of business solutions and implementing early mediation to avoid or short circuit litigation.

Berger Singerman has long been recognized as a leader among law firms in the use of technology for internal operations, organization of massive amounts of documentary and electronic evidence, and coordination of the claims of hundreds of competing interests. Cyber security breaches can rapidly generate enormous liabilities and, with them, claims that companies and their officers and directors failed adequately to avoid such breaches. The risks involve breaches of privacy and of the security of the financial information of the companies and their customers. Berger Singerman's proficiency in electronic data management in the context of complex litigation well situates the firm to advise and represent companies that face such claims.

Class-action litigation involving claims that company policies and practices violate federal employment laws such as the Fair Labor Standards Act (FLSA), Fair Credit Reporting Act, and employment discrimination laws pose risks of significant liabilities for our clients. Creditor claims in this area are another emerging threat.

Florida has long led the United States and its territories in the numbers of federal court cases in which employees seek recoveries of overtime pay under FLSA. Berger Singerman represents companies and executives in such cases.

Representative Matters

FORMER CEO AND PRESIDENT OF MAJOR SPORTSWEAR COMPANY

Berger Singerman attorneys represented the former CEO and President of a major sportswear company in connection with two separate lawsuits: one by the shareholders of the company alleging securities violations, and another that was first filed by the Unsecured Creditors Committee in the company's Chapter 11 case. The Creditors Committee alleged that the former officers and directors breached their fiduciary duties of care and loyalty to the company and sought damages in excess of $89 million. Both cases resulted in a quick and very favorable settlement for the client, with the settlements being paid completely from the primary D&O policy, and a second layer of excess coverage.

FORMER CFO OF DELAWARE-BASED COMPANY

Berger Singerman attorneys represented the former CFO of a public company based in Delaware, and many of its related entities in connection with two lawsuits: one brought by the liquidating trustee of a plan confirmed by the Bankruptcy Court, and a second one brought by the debtor's lenders. Both lawsuits involved alleged breaches of fiduciary duties, misrepresentations, fraud, and other allegations of wrongdoing. The amount of the secured creditor's claim when the bankruptcy cases were filed was $243 million. Berger Singerman attorneys moved to dismiss both lawsuits on behalf of the CFO, which led the Plaintiffs to voluntarily dismiss both lawsuits, with prejudice, with no funds being paid from the D&O insurance policies.

FORMER OFFICERS AND DIRECTORS OF MAJOR CRUISE LINE

Berger Singerman attorneys represented five former officers and directors of a major cruise line in connection with an adversary proceeding that was instituted by the Liquidating Trustee appointed as part of the confirmation of a confirmed Chapter 11 Plan. The Plaintiff asserted causes of action for breach of fiduciary duty, fraud, Federal RICO, under Florida Deceptive and Unfair Trade Practices Act, fraudulent and negligent misrepresentation, various conspiracies, and unjust enrichment, and was seeking in excess of $100 million in damages against the directors and officers. Ultimately, the case settled shortly after answers were filed in response to the Plaintiff's Third Amended Complaint, with the insurance carrier paying the settlement amount from the proceeds of a D&O policy.

FORMER OFFICERS AND DIRECTORS OF MAJOR STAFFING COMPANY

Berger Singerman attorneys represented eight former officers and directors of a major staffing company in an adversary proceeding that was instituted in Bankruptcy Court by the Chapter 7 Trustee of the staffing company. The Trustee was seeking in excess of $15 million alleging that the directors and officers breached their fiduciary duties to the staffing company under Florida law. After careful strategizing and excellent execution, Berger Singerman attorneys reached a favorable resolution on behalf of the directors and officers that resulted in the insurance carrier paying the plaintiff from the proceeds of the D&O policy.

FORMER OUTSIDE DIRECTOR OF HEALTHCARE COMPANY

Berger Singerman attorneys represented former outside director of a Delaware healthcare company that provided rehabilitation, pharmacy, medical equipment, and home health services, in an adversary proceeding brought by the Chapter 7 trustee. The Plaintiff was seeking damages in the amount of $45 million and alleged that the directors and officers of the company breached their duty of care to the company by taking unnecessary risks when the company was allegedly grossly undercapitalized. We successfully had the Bankruptcy Court dismiss the Trustee's complaint, with prejudice.

FORMER RADIO STATION OWNER

Berger Singerman attorneys represented a 3% owner of a major radio station after he was terminated without being paid his stock distribution. Notwithstanding a vigorous defense by the radio station, Berger Singerman attorneys successfully proceeded against the radio station through trial and obtained a substantial jury award in the shareholder's favor.

LIMITED PARTNERS IN DISPUTE OF THREE PARTNERSHIPS

Berger Singerman attorneys represented limited partners of three partnerships who were being defrauded by the general partner, and strategically forced the partnerships into involuntary bankruptcies where we were able to force the sale of the properties and successfully obtain the lion's share of all sale proceeds.