

People



Mark S. Bernstein

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Mark Bernstein serves as managing partner of Akerman's Chicago office. He represents business interests in complex disputes with a focus on financial services and manufacturing companies. Mark is often retained to resolve disputes that are a threat to a company's existence or that could have a significant impact on a company's business strategy or market position. Mark has extensive experience in class action defense, securities fraud litigation, consumer fraud litigation, ERISA litigation, contract and transaction disputes and real estate, construction and land use litigation. Mark has tried cases involving claims for professional liability, securities fraud, commodities fraud, construction delays and cost overruns, land use, breach of warranty, post-closing indemnity after mergers, acquisitions or divestitures and state taxation.

Notable Work

Financial Services and Securities: Represented an affiliated registered investment advisor, trustee, and custodian in claims related to a \$175,000,000 investment fraud perpetrated by First Farmers Financial, LLC, a counterparty of the investment advisor. The claims were made by over 53 investors comprised of 11 customers of the investment advisor and 42 Employee Stock Ownership Plans that were core customers of the trustee. The available assets, including insurance, amounted to less than 8 percent of the losses. After two separate mediations over a three-year period, a settlement was achieved without insolvency proceedings or other litigation funded primarily with available insurance that allowed the trustee to maintain the vast majority of its Employee Stock Ownership Plans customer relationships and at the same time resolved an investigation by the United States Department of Labor.

Financial Services Class Action: Represented West Suburban Bank in the defense of a nationwide class action alleging breach of contract and violations of the Illinois Consumer Fraud Act brought by purchaser of a prepaid foreign currency card against claims of

Areas of Experience

Commercial Disputes
Litigation
Financial Institutions Commercial Litigation
Class Action Defense
Securities Litigation
Construction Litigation and Dispute Resolution
State and Local Tax Consulting and Controversy
Financial Services
Professional Liability
Probate and Fiduciary Litigation
Distressed and Special Assets

Education

J.D., University of Michigan Law School, 1988, cum laude
B.S., University of Illinois, 1985, high honors

Admissions

Bars

Illinois

Courts

U.S. District Court, Northern District of Illinois
U.S. District Court, Central District of Illinois
U.S. District Court, Eastern District of Michigan
U.S. District Court, District of Minnesota
U.S. Court of Appeals, Fifth Circuit
U.S. Court of Appeals, Sixth Circuit
U.S. Court of Appeals, Seventh Circuit
U.S. Supreme Court

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over charges for unauthorized and improper fees. The case was dismissed with prejudice after the Plaintiff was allowed to file a second amended complaint. *Pennington v. Travelex Currency Servs. et al*, 114 F. Supp 3d 697 (N.D. Ill 2015)

Securities Fraud Class Action: Represented GreatBanc Trust Company in the defense of a securities fraud class action arising out of cherry-picking scheme perpetrated by an investment advisor. The case involved successive state court and federal court class actions. After dismissal by the state court on jurisdictional grounds, the federal court dismissed the case with prejudice, and concluded that it would award GreatBanc sanctions under the Private Securities Litigation Reform Act. GreatBanc ultimately recovered more than \$100,000 in legal fees. *Pomeroy v. GreatBanc Trust Co.et al.*, 2014 U.S. Dist. LEXIS 173490 (N.D. Ill 2014)

State Taxation: Represented Brandenburg Industrial Service Company as plaintiff in a tax refund litigation against the states of Illinois and Indiana. The litigation was filed as part of a long term effort to obtain a legal ruling that Brandenburg was eligible to certain tax exemptions to the states' sales and use tax. After approximately six years of litigation and two separate trials, Brandenburg prevailed and secured rulings, settlements and refunds in 2017 that confirmed Brandenburg's eligibility for the exemptions at issue.

Legal Malpractice: Defended law firm in legal malpractice action arising out of real estate transaction and secured dismissal affirmed on appeal.

Legal Malpractice: Managed insurer retained defense counsel for client in legal malpractice action arising out securities fraud litigation.

Legal Malpractice: Defended law firm in legal malpractice action arising out criminal defense representation, and secured dismissal.

Director and Officer Liability: Defended numerous claims against directors and officers arising out of alleged securities fraud and alleged violations of ERISA.

Fiduciary Litigation: Representation of community bank in lawsuit brought by trustee and trust settlor for breach of fiduciary duty and securities fraud related to discretionary account investments made by trust officer also functioning as an investment adviser. The matter was settled primarily with insurance funds for less than 25 percent of the claim.

Fiduciary Litigation: Representation of community bank in lawsuit by trustee and trust beneficiaries for breach of fiduciary duty for failure to warn them about the misconduct of a trust officer that was terminated by the bank for conduct detrimental to the bank. After the trust officer was terminated and started a competing business, the bank attempted to retain the trust as a customer, but did not disclose the reason for the trust officer's termination. The trust decided to move the trust's assets to the competing business through which it later claimed it was defrauded. The case was settled with insurance funds for less than 15 percent of the claim.

Fiduciary Litigation: Representation of institutional trust company in both individual and class action litigation accusing the trust company of breach of fiduciary duty and securities fraud (primarily and as an aider and abettor) for failing to detect and stop a Ponzi scheme being operated by an independent investment adviser

Eleven Akerman Attorneys Recognized Among 2025 Illinois Super Lawyers
February 05, 2025

Benchmark Litigation Recognizes 34 Akerman Lawyers in its 2025 Rankings of the Leading Litigators in the United States
October 17, 2024

chosen by the trust customers. Both cases were resolved by motions to dismiss.

Fiduciary Litigation: Representation of institutional trust company in several matters accusing the trust company of breach of fiduciary duty for approving an ESOP transaction prohibited by ERISA.

Published Work and Lectures

- *Illinois Bar Journal*, Co-Author, Vol. 110, “Illinois Supreme Court Leaves Questions Concerning the Statute of Limitations on Legal Malpractice,” June 2022
- *Illinois Bar Journal*, Author, Vol. 106., “Standing Here or There (Standing and Jurisdiction after *Spokeo*),” October 2018
- *Law360*, Co-Author, “Biometrics In The Workplace: Best Practices For Compliance,” December 14, 2017
- After *Spokeo v. Robins*: Tips and Considerations, Litigation Counsel of America, May 5, 2017
- *Contract Law*, Author, “Contract Disputes and Litigation,” 2008 Edition
- *Advising Illinois Financial Institutions*, Author, “Class Action Lawsuits,” 2002 Edition and 2006 Supplement

Affiliations

- American Bar Association
- Fellow, American Bar Foundation
- Illinois State Bar Association
- Order of the Coif
- University of Michigan Law Review, Associate and Articles Editor
- Litigation Counsel of America, Fellow
- University of Chicago Intensive Trial Practice Workshop, Instructor, 2006-2007, 2009-2018
- Center for Enriched Living, Board Member, 2018
- Illinois Spina Bifida Association, Board Member, 2008-2015; Board President, 2008-2013
- YMCA Camp Independence, Board Member, 2008-2013

Honors and Distinctions

- *Best Lawyers*, 2015-2023, Listed in Illinois for Commercial Litigation
- *Super Lawyers* Magazine, 2007, 2009-2025, Listed in Illinois for Business Litigation
- *Benchmark Litigation*, 2023-2025, Listed in Illinois as a “Local Litigation Star” for Commercial
- *America’s Top 100 High Stakes Litigators*, 2019, Listed in Illinois
- Leading Lawyers Network 2011-2018, Listed in Illinois for Class Actions and Commercial Litigation