



David A. Berger

Partner

David Berger is a founding partner of the Firm. He has successfully tried cases in various federal and state courts and before a number of administrative and arbitral tribunals. He routinely counsels clients concerning business transactions and other strategic and sensitive matters. A creative problem solver, Mr. Berger focuses on obtaining positive and cost-effective solutions tailored to each client's individual needs.

Mr. Berger's professional experience covers a broad range of substantive areas, including contract, antitrust, securities and commodities, corporate governance, business torts, partnership, franchising, commercial, intellectual property, licensing, media and entertainment, health care, pharmacy, bankruptcy litigation, employment, and defamation law. His experience includes extensive work in multi-party and multi-district litigation, including class actions, arbitration, and in investigations before such regulatory and self-regulatory authorities as the SEC, FINRA, CFTC, as well as before the Department of Justice, and offices of the United States Attorney and various state attorneys general.

Mr. Berger regularly provides clients with risk assessments in connection with potential transactions or in anticipation of significant business decisions, including corporate actions, and the implementation of new business strategies. Mr. Berger also has an active transactional practice, handling all manner of stock and asset purchases and sales, employment, licensing and intellectual property matters, and frequently represents parties in "business divorces." In addition, he counsels clients in crisis situations, drawing on his prior professional experience in corporate public relations and crisis management.

An experienced mediator, Mr. Berger is called upon to mediate a range of disputes, and serves as a court-appointed mediator for the United States District Court for the Eastern District of New

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▼ [Academic Background](#)

B.A., Sarah Lawrence College, 1983

J.D., Brooklyn Law School, 1989

▼ [Bar and Court Admissions](#)

New York
Second Circuit

Southern District of New York
 Eastern District of New York
 District of Colorado

▼ Professional/Community

Mr. Berger is a member of the Federal Bar Council and of the Association of the Bar of the City of New York.

York. Mr. Berger has published in the *New York Law Journal*.

▼ Representative Matters

Antitrust

- Representation of approximately 3,800 independent pharmacies in multi-district litigation asserting Robinson-Patman and Sherman Act claims against pharmaceutical manufacturers, and in ancillary state court proceedings in multiple jurisdictions.
- Defended apparel manufacturer against New York Donnelly Act claims.
- Representation of trade association concerning potential antitrust liability.

Bankruptcy Litigation

- Representation of trade associations and member retail pharmacies in bankruptcy proceedings of industry factor of pharmacy receivables.
- Represented community organization in fraud and malfeasance claims against former officer.
- Prosecuted class action against numerous defendants on behalf of independent pharmacies, chiropractors, opticians, and veterinarians, in bankruptcy proceedings arising from Ponzi scheme perpetrated by advertising sales company, and defended hundreds of ancillary state court proceedings.
- Prosecuted and defended numerous adversary proceeding preference and fraudulent conveyance actions.

Business and Commercial Disputes

- Representation of bank in various cases involving Letters of Credit and the Uniform Commercial Code.
- Defended major telecommunications company in numerous cases by utilities and others for property damage and claims relating to land use.
- Representation of financial services companies in numerous contractual disputes.
- Representation of monoline insurers in RMBS litigation.

Class and Collective Actions

- Represented retail pharmacy class in multi-jurisdictional class actions alleging fraud over capitation plan for pharmacy services against major health insurance carrier.
- Prosecuted class action against numerous defendants on behalf of independent pharmacies, chiropractors, opticians, and veterinarians, in bankruptcy proceedings arising from Ponzi scheme perpetrated by advertising sales company, and defended hundreds of ancillary state court proceedings.
- Defended telecommunications firm in class action tariff litigation.
- Defended defendant hospitality company in collective wage and hour claim litigations.
- Defended trading firm in class securities fraud cases.

Corporate Counseling and Transactional Matters

- Representation of purchasers and sellers in variety of asset purchase transactions, including sales by and of assets of closely held businesses.
- Representation of licensors and licensees in licensing and technology transfer agreements.
- Representation of clients in purchases and sales of intellectual property.
- Representation of media and entertainment company with respect to major talent and senior management contracts.
- Representation of fashion designer in buy-out transaction.
- Representation of European fashion design firm with respect to risk analyses regarding contemplated corporate actions, implementation of business strategies.
- Representation of pharmaceutical manufacturer in sale of pharmaceutical compound.
- Negotiation of executive and employment compensation packages.
- Negotiation of employment agreement and profit participation for film editor with media company.
- Representation of management consulting firm in joint venture, employment and contractor agreements.
- Negotiation of physicians with respect to partnership agreements.
- Performed “legal audit” and risk assessments for financial services, media and entertainment clients.

Defamation

- Represented pharmacy owners in defamation action against pharmacy benefit management company.
- Defended individual investment banker defendants in defamation action arising from termination of employee.

Employment

- Defense of bank in multiple federal and state court actions alleging claims including wrongful termination, breach of contract, and ERISA violations.
- Negotiated resolution of contract and severance claims on behalf of senior creative director against advertising agency following termination.
- Represented telecine editor in breach of employment contract and New York labor law claims against editing facility arising from facility’s failure to pay commissions due and owing.
- Conducted internal investigation into alleged sexual harassment claims.
- Defended financial services firm in arbitration over alleged breach of employment contract claims.
- Obtained defense verdict in federal jury trial on employment and tortious interference claims by former securities analyst.
- Representation of U.S. subsidiary of leading UK fashion retailer on establishing HR function and all employment matters.

- Representation of hospitality concern in employment matters.
- Defense of numerous wage and hour claim cases.

Franchising

- Representation of franchisor with respect to federal and state franchise registrations, contractual and employment agreements, and legal oversight on operational matters.
- Representation of franchisees with respect to franchise purchases.
- Representation of franchisee in claims against franchisor with respect to earnings claims statements.
- Represented franchisee seeking rescission of franchise agreements.

Health Care

- Representation of Medicaid providers in denial and freezing of claims in administrative proceedings in New York and New Jersey.
- Represented retail pharmacy class in multi-jurisdictional class actions alleging fraud over capitation plan for pharmacy services against major health insurance carrier.
- Representation of pharmacy providers in claims against third party administrators relating to audits.
- Defense of pharmacist in wrongful dispensing claim.
- Representation of not-for-profit mental health provider in administrative proceedings before the Department of Mental Health.
- Representation of various trade associations in health care fields.
- Represented pharmacy in successful administrative proceeding before the New York Department of Health concerning Medicaid claims policy.

Intellectual Property

- Representation of New Jersey trade association in federal Lanham Act litigation.
- Representation of inventor of video-on-demand patent in arbitration over licensing agreement.
- Representation of author in copyright claims against television producer.
- Representation of photographer in copyright claims against European publication in conjunction with European counsel.
- Representation of leading publishing software manufacturer in licensing matters.
- Representation of television production company in copyright infringement action.

Investigations

- Representation of broker-dealer, registered representatives, witnesses in SEC, NASD, FINRA, CFTC, CBOT investigations into insider trading, customer complaints, and disciplinary matters.
- Conducted internal investigation into alleged sexual harassment claims.
- Conducted internal investigation concerning Chief Financial Officer's defalcation.
- Conducted internal investigation into alleged misappropriation of trade secrets and

proprietary business practices.

- Representation of health care firms in numerous regulatory and third party administrator audits.

Media and Entertainment

- Representation of well-known musical performers in copyright action.
- Representation of licensor of celebrity names and likenesses against former joint venturer.
- Represented leading television commercial producer in multi-party arbitration and related litigation over failed implementation of accounting services software and services agreements.
- Representation of recording studio in litigation with equipment lessor.
- Representation of filmmaker in connection with award winning documentary.
- Representation of film company in connection with licensing and the purchase and sale of film rights.
- Representation of production company in litigation brought by former salesperson (defense verdict obtained).

Mediation

- Mediated numerous partnership, corporate control, commercial, intellectual property, and media and entertainment matters.
- Represented clients in numerous mediations in range of substantive areas.

Partnership and Corporate Control

- Represented co-founder of hedge fund against former partner in action asserting breaches of contract and fiduciary duty in the Delaware Chancery Court over membership interests in limited liability company, and in ancillary liquidations of various domestic and offshore hedge funds.
- Represented former management in corporate control dispute among partners in shipping syndicate.
- Representation of partner in venture capital concern against other partner over respective entitlements under partnership agreement.
- Represented faction of family owned businesses against other family faction in jointly coordinated cases concerning ownership interests of family businesses.
- Represented departing member of limited liability company relating to value of interests in real estate development business.
- Negotiated buy-out and related agreements on behalf of co-founder of media company.
- Negotiated separation of partners in health care services company.
- Negotiated buy-out of founding partner in consulting firm.
- Represented cardiologist in litigation and ensuing buyout of outgoing partner in practice.

Securities

- Tried multi-party New York Stock Exchange arbitration on behalf of broker-dealer concerning industry stock loan practices with other broker-dealers.
- Defended federal court action on behalf of public company against minority shareholder claims.
- Representation of broker-dealer, registered representatives, witnesses in SEC, NASD, FINRA, CFTC, CBOT investigations into insider trading, customer complaints, and disciplinary matters.
- Representation of monoline insurers in RMBS litigation.
- Representation of indenture trustee in RMBS litigation.

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