



Mark A. Rabinowitz

Member

Chicago

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Mark A. Rabinowitz has substantial experience representing corporations, financial institutions, insurance companies, partnerships and individuals in a wide array of complex commercial litigation matters. These include copyright infringement, real estate, lender liability, consumer fraud class actions, breach of contract, insurance coverage, reinsurance, securities fraud, probate, and violation of the federal Racketeer Influenced and Corrupt Organizations Act.

Mark earned his undergraduate degree, *summa cum laude* and Phi Beta Kappa, from the University of Illinois and his J.D. from Harvard Law School.

Experience

Obtained a TRO in favor of the nation's leading manufacturer and distributor of barcoded and variable information labels in an action against a former sales manager and a former salesman who copied 50 customer lists and sales reports and transferred them to their new employer in violation of non-disclosure and non-competition covenants. After we conducted expedited discovery and filed a motion for preliminary injunction, Defendants agreed to a settlement pursuant to which they promised to refrain from soliciting our client's customers, return or destroy our client's records, allow a digital forensic consultant to verify that they had done so, and pay a portion of our client's legal fees.

Secured an agreement by Plaintiffs to dismiss our investment fund client from a \$50 million securities fraud class action seeking the appointment of a receiver to take possession and control of its business and assets and those of several related entities. Plaintiffs agreed to the dismissal after we filed a motion to dismiss the complaint on the grounds that it did not sufficiently allege any wrongdoing by our client which, we argued, was a mere victim of the fraud rather than a participant.

Secured directed verdicts on behalf of a limited liability company, after a four-day jury trial, on tortious interference, unjust enrichment, and unpaid wage claims against it that totaled \$1.6 million. The client had, through a subsidiary, acquired the business assets of various companies in the restoration services industry. The dispute arose out of the alleged nonpayment of certain "performance payments" allegedly owed to the plaintiffs by a third party to which our client sold its majority interest in the assets. In granting our motion for a directed verdict, the court found that the plaintiffs had not put forth sufficient evidence to support their claims against the client.

Represented a real estate investment trust in an action by a commercial tenant seeking to declare a long-term lease of a \$50 million office building a financing arrangement, rather than a lease, after the tenant failed to timely exercise its option to purchase the premises for \$5 million. Following motion practice, the client entered into very favorable settlement.

Defended a corporate borrower and principal shareholder in an action for mortgage foreclosure and enforcement of guaranty.

Successfully prosecuted a mortgage foreclosure and breach of guaranty action on behalf of the lender involving \$29.9 million debt, obtained summary judgment rejecting multiple affirmative defenses, obtained title to property at judicial sale, and recovered 95 percent of the guaranty amount in settlement.

Practice Areas

- Commercial Litigation
- Real Estate Litigation
- Appellate & Supreme Court
- Class Actions
- Insurance Coverage

Industry Sectors

- Gaming
- Insurance

Education

- Harvard Law School, J.D., 1978
- University of Illinois at Urbana-Champaign, B.A., *summa cum laude*, 1975

Bar Admissions

- Illinois

Court Admissions

- Illinois Supreme Court
- U.S. Court of Appeals for the Second Circuit
- U.S. Court of Appeals for the Seventh Circuit
- U.S. Court of Federal Claims
- U.S. District Court -- Northern District of Illinois
- U.S. Supreme Court

Awards & Honors

- Ranked by *Chambers USA* 2011, 2012, 2013, 2014.
- Leading Lawyers Network, Top Illinois Practitioner, 2017-2022, 2024

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Successfully prosecuted an action by a commercial landlord for declaratory judgment and breach of lease, and defeated a Motion for Temporary Restraining Order seeking to enjoin honor of a \$500,000 Letter of Credit, resulting in highly favorable settlement.

Represented a real estate investment trust in an action for breach of contract to sell real property and enforcement of a guaranty.

Represented a national franchisor and obtained dismissal of a class action seeking to recover sales tax rebates allegedly due under a franchise agreement. This result was affirmed on appeal.

Represented co-trustees of a trust in an action for construction of trust instruments involving almost \$10 million in assets, which resulted in a favorable settlement.

Defended a mortgage lender in three related class actions alleging violation of the Real Estate Settlement Procedures Act, Consumer Fraud and Deceptive Practices Act, breach of contract, and restitution arising out of the alleged collection of a duplicative fee to record releases of a mortgage. The District Court's dismissal of the action was reversed by the Seventh Circuit. *Weizeorick v. ABN AMRO Mortgage Group, Inc.*, 337 F.3d 827 (7th Cir. 2003). On remand, the District Court denied the plaintiff's class certification motion. *Weizeorick v. ABN AMRO Mortgage Group, Inc.*, 2004 WL 1880008 (N.D. Ill. 2004). The Court also denied the plaintiffs' Motion to Reinstate their state law claims, which they previously had voluntarily dismissed and filed in state court. *Weizeorick v. ABN AMRO Mortgage Group, Inc.*, 2004 WL 528006 (N.D. Ill. 2004). These developments resulted in a favorable settlement for the client.

Represented a commercial landlord in an action against a former tenant for breach of deferred maintenance obligations under a lease, which resulted in a favorable settlement.

Represented a real estate investment trust in an action to enforce a \$9 million loan agreement and foreclose an equitable mortgage, which resulted in a favorable settlement.

Represented a corporation in an action to quiet title seeking to remove a cloud on title created by lenders' failure to release mortgages following sale in a bankruptcy proceeding of company free and clear of all liens, mortgages, and encumbrances, which resulted in a favorable settlement.

Represented a property owner against a construction contractor in an action for breach of a construction contract

Represented the owner of television stations in an action for breach of a letter of intent for the purchase of a television station. After the court denied Defendants' summary judgment motion and upheld the validity of an exclusive negotiation covenant in the letter of intent, Defendant closed sale. (*Weigel Broadcasting Co. v. TV-49, Inc.*, 466 F. Supp. 2d 1011 (N.D. Ill. 2006)).

After many years of litigation in four separate actions and two appeals, substituted as counsel for a bank in an action for breach of contract alleging that the bank was a joint venture partner with its borrower and breached a promise contained in the plaintiff's contract with the borrower not to redeem property after the plaintiff purchased delinquent real estate property tax liens. The court granted summary judgment in favor of the bank on all counts, and the plaintiff did not appeal.

Represented a mutual fund investment adviser in related multimillion-dollar class actions brought by investors for violation of the Investment Company Act of 1940, federal securities laws, and other federal and state claims arising out of alleged improper market timing in mutual funds. The Multi-District Litigation Panel dismissed most of the federal and state law claims, resulting in a favorable settlement of the remainder of the case.

Prosecuted an action for copyright infringement arising out of a major international publisher's verbatim copying and publication of the author's compilation work. The District Court entered summary judgment for the plaintiff. *Silverstein v. Penguin Putnam, Inc.*, 2003 WL 1797848 (S.D.N.Y. Apr. 4, 2003). On appeal, the U.S. Court of Appeals for the Second Circuit reversed the judgment on the grounds that genuine issues of material fact existed. *Silverstein v. Penguin Putnam, Inc.*, 368 F.3d 77 (2d Cir. 2004). A three-week bench trial was conducted in July 2007.

Represented the partners of a nationwide commercial laundry business in an action against other partners for breach of fiduciary duty.

Obtained dismissal with prejudice of claims against a reinsurer and third-party claims administrator related to Berkshire Hathaway for assumption of direct insuring obligations and tortious interference with contractual relations in an opinion with national significance that has been cited in national insurance and reinsurance publications (Mealey's Litigation Report – Reinsurance, Vol. 22, Issue 22, March 16, 2012; Mealey's Litigation Report – Insurance, Vol. 26, Issue 19, March 21, 2012).

Represented certain London Market Insurers in a declaratory judgment action brought by a policyholder against its primary and excess carriers. After the London Market Insurers moved to dismiss on grounds that the pleadings failed to demonstrate that the underlying primary and lower level excess policies had been exhausted, the policyholder dismissed the London Market Insurers.

Represented an insurer in a declaratory judgment action regarding coverage for underlying asbestos actions in which the plaintiff sought to recover tens of millions of dollars in losses, which resulted in a favorable settlement.

Represented a third-party claims administrator for an insurer in an action to recover losses allegedly incurred in connection with the remediation of a hazardous waste recycling facility.

Substituted for predecessor counsel for a Berkshire Hathaway-related reinsurance company on appeal from the District Court's affirmance of an arbitration panel's ruling in a \$250 million reinsurance dispute, and obtained reversal of the District Court's ruling on the grounds that the cedent committed fraud by changing its domicile from Massachusetts to Bermuda, and public policy forbids it from benefiting from its fraudulent conduct in a precedent-setting Second Circuit opinion (*Commercial Union Ins. Co. v. Lines*, 378 F.3d 204 (2d Cir. 2004)). On remand, we conducted a three-week bench trial, after which the District Court found that the reinsurer had been prejudiced in the manner that the Court of Appeals considered improper, but narrowly construed its mandate to prohibit only a specific type of injury.

Defended a Berkshire Hathaway subsidiary in an arbitration proceeding relating to a \$100 million claim under a professional liability policy arising out of the policyholder's actions in connection with the failure of the split capital investment trust market in the UK. Following favorable summary judgment rulings, the matter resulted in a very favorable settlement for the client.

Defended Berkshire Hathaway, Inc. in a multimillion-dollar action brought by an insured under a policy issued by its subsidiary. After the defendants removed the action to federal court, the magistrate judge recommended dismissal of the parent as having been fraudulently joined. The magistrate judge then issued an amended recommendation suggesting that the action should be remanded to the Court of Common Pleas of Allegheny County on the grounds that the subsidiary had waived any right to remove the action in a forum selection clause in its insurance policy. The amended recommendation also suggested that the parent's motion to dismiss should be dismissed as moot, subject to renewal in the state court. The District Court entered an Order adopting the magistrate judge's recommendation and remanding the action to the state court. The parent appealed the Court's remand order to the U.S. Court of Appeals for the Third Circuit. While the appeal was pending, the Court of Common Pleas dismissed

the parent as a defendant.

Defended an arbitration on behalf of a Berkshire Hathaway-related insurance company concerning the existence of coverage under professional liability insurance policies for tens of millions of dollars of losses suffered as a result of a United Kingdom investment firm's misconduct in connection with the collapse of the split capital investment trust sector in the United Kingdom. After the plaintiff's summary judgment motion was denied, the case settled very favorably for the client.

Represented a savings and loan association (the "Bank") in an action in the U.S. Court of Federal Claims against the United States (the "Government") in connection with one of 130 Winstar cases involving the Government's breach of its contractual promise to permit the Bank to utilize supervisory goodwill as regulatory capital in connection with the Bank's merger with another thrift. The Bank sought to recover damages, including lost profits, restitution, and reliance damages, in excess of \$10 million against the Government. The Government filed a counterclaim against the Bank seeking forfeiture of the Bank's claims under the Special Plea in Fraud statute alleging that a former employee's defalcation related to a Government Assistance Agreement and was imputed to the Bank. The Court entered summary judgment in favor of the Bank on the counterclaim and as to liability on the complaint. First Federal Savings Bank of Hegewisch v. United States, 52 Fed. Cl. 774 (2002).

Represented an insurer in a declaratory judgment action regarding coverage for underlying asbestos actions in which the policyholder sought to recover tens of millions of dollars in losses.

Represented several insurance companies in multimillion-dollar insurance coverage declaratory judgment actions in various jurisdictions arising out of asbestos and environmental exposures.

Represented a real estate developer in a dispute regarding a partnership to develop a 252-unit multifamily residential development. After an evidentiary hearing, the trial court denied the general partner permission to sell the property. This ruling was upheld on appeal.

Served as lead counsel for a federal savings and loan association as plaintiff in six suits pending in Oklahoma City federal court against almost 100 defendants asserting claims for violation of the RICO Act, fraud, breach of fiduciary duty, breach of contract, and negligence arising out of more than 100 sham real estate loan transactions involving more than \$5 million. Defeated all motions to dismiss raising defenses to RICO. Obtained dismissal of all counterclaims. Conducted dozens of depositions against numerous defense counsel, and obtained damaging admissions. Recovered more than \$6 million in settlements.

Represented officers and directors in a securities fraud action in which the company's prospectus and registration statement allegedly misstated the rights and remedies of the company's lenders in connection with an offering of \$150 million of debentures. After discovery was conducted, the plaintiff agreed to settle on favorable terms.

Represented the Illinois Director of Insurance as liquidator of an insurance company in an action to recover damages in connection with a stock sale where a repurchaser of stock concealed and intention to make a public offering of its stock. After we obtained admissions in depositions, and the sale approval order was vacated, the seller paid \$1 million to the liquidator.

Represented the Illinois Director of Insurance as liquidator of an insurance company in an action to recover on a promissory note. Obtained summary judgment for \$850,000, and collected the judgment.

Represented a real estate developer in a dispute regarding a tenancy in common agreement. The defendant paid the disputed amount.

Represented a broadline foodservice distributor in an action by former officers seeking bonuses and

severance benefits. After obtaining favorable admissions in deposition, the plaintiff agreed to a favorable settlement.

Represented former shareholders of a corporation in an \$8 million securities law proceeding arising out of the sale of the corporation's assets. One week before trial, the plaintiff agreed to settlement on terms favorable to the shareholders.

Represented a doctor in an action to turn over funds recovered from a fraudulent investment fund in Liechtenstein and held by former counsel. After discovery was conducted, the defendant made a favorable settlement.

Conducted a four-day evidentiary hearing as lead counsel for an international long distance telephone reseller on a preliminary injunction motion. Prior to the court ruling, the plaintiff agreed to settle on favorable terms.

Represented a recreational vehicle manufacturer and financing company in a RICO action by a dealer. Won a week-long jury trial and prevailed on the counterclaim.

Represented numerous former shareholders in a dispute regarding a stock purchase agreement, including participation in a week-long trial.

Represented a long distance telephone reseller in an action seeking judicial dissolution of a corporation and alleging fraud and breach of fiduciary duty. Obtained a temporary restraining order enjoining majority shareholders from proceeding with a merger on disadvantageous terms. At the commencement of the preliminary injunction hearing, after obtaining numerous admissions in depositions, defendants settled the case.

Served as lead counsel for a savings and loan association in an action by a construction contractor seeking to recover fire insurance proceeds received by an association as mortgagee. Obtained summary judgment permitting the association to retain the proceeds.

Represented the FDIC in an action brought against Continental Bank asserting claims for breach of contract, fraud, and interference with prospective economic advantage.

Represented a Continental Bank officer in connection with insider trading charges arising out of the Penn Square Bank failure. Obtained summary judgment exonerating the officer.

Served as sole counsel for an heir in a probate claim seeking to recover several million dollars that had been wrongfully diverted by the decedent from the family business. After obtaining significant admissions in depositions, the executor repaid the diverted funds.

Served as lead counsel for a trust company in a declaratory judgment action seeking to construe a trust agreement involving tens of millions of dollars. At trial, the plaintiff agreed to dismiss the action.

Served as lead counsel for a real estate developer in an action for specific performance of a real estate sale contract. After defeating a motion to dismiss and obtaining damaging admissions in depositions, the seller agreed to convey the property.