SQUIRE PATTON BOGGS

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About Mitchell

Mitch Berger has been litigating high-value commercial and enforcement disputes for more than 45 years throughout the US, for plaintiffs and defendants, against private parties and government entities. He has tried numerous cases to judgment before judges and juries and has argued in most federal and several state appellate courts.

He regularly counsels US and overseas financial institutions, multinational corporations and foreign governments, agencies and officials. He also represents targets and witnesses before committees of the US Congress, federal enforcement agencies and grand juries.

Mitch serves as global co-chair of our Litigation Practice.

Before joining the firm, he was an assistant US attorney in Washington DC and a trial lawyer at the US Department of Justice, where he represented the government in major civil litigation in trial and appellate courts.

Experience

Foreign Financial Institutions

- In the "9/11 Attacks" litigation, twice obtained dismissal of Anti-Terrorism Act (ATA) claims against Saudi Arabia's largest bank by demonstrating the absence of US jurisdiction. *In re Terrorist Attacks*, 295 F. Supp. 3d 416 (S.D.N.Y. 2018); *O'Neill*, 714 F.3d 659 (2d Cir. 2013), *cert. denied*, 134 S. Ct. 2870 (2014).
- In ATA litigation against a government-owned Chinese bank, obtained the dismissal of foreign law claims alleging the knowing provision of financial services to US-designated FTOs. *Wultz*, 2012 WL 5431013 (S.D.N.Y. Nov. 5, 2012), 2013 WL 1641179 (S.D.N.Y. Apr. 16, 2013).

US Financial Institutions

- Obtained US$96.7 million judgment against the US government for breach of contract to provide economically favorable regulation of savings and loans acquired out of government receivership. *Bluebonnet Savings Bank*, 466 F.3d 1349 (Fed. Cir. 2006).

Foreign Governments and Officials

- Successfully challenged constitutionality of jurisdictional statute targeting foreign government in ATA cases. *Fuld*, 82 F.4th 74 (2d Cir. 2023, *reh'g denied*, 101 F.4th 190 (2d Cir. 2024).
- Defeated US jurisdiction over a foreign government in the first decision to interpret the Anti-Terrorism Clarification Act of 2018 (ATCA). *Klieman*, 923 F.3d 1115 (D.C. Cir. 2019), *reinstated in relevant part* (D.C. Cir. 2020)
- In the "Second Intifada" ATA litigation, obtained reversal of a US$655.5 million judgment against a foreign government by demonstrating the absence of US jurisdiction. *Waldman*, 835 F.3d 317 (2d Cir. 2016), *cert. denied* (2018). Twice defeated motion to recall mandate and reinstate judgment based on ATCA. *Waldman*, 925 F.3d 570 (2d Cir. 2019), 82 F.4th 64 (2d Cir. 2023).
- Established key appellate precedent confirming due process protection against US jurisdiction for a foreign government. *Livnat*, 851 F.3d 45 (D.C. Cir. 2017), *cert. denied* (2018).
- Won summary judgment on ATA claims for a foreign government on key evidentiary grounds. *Gilmore*, 843 F.3d 958 (D.C. Cir. 2016), *cert. denied* (2017).
- Won summary judgment on ATA claims based on lack of proximate cause. *Shatsky*, 955 F.3d 1016 (D.C. Cir. 2020)
- Obtained dismissal of claims against foreign head of state based on official immunity. *Manoharan*, 711 F.3d 178 (D.C. Cir. 2013).
- Ongoing defense of foreign governments, agencies and officials.

Commercial Litigation

- After jury trial, obtained multimillion-dollar judgments for commercial property-owner, an affiliate of a Middle East sovereign wealth fund, for insurance benefits and legal fees based on insurer's refusal to provide policy benefits. Liability judgment and lawyers' fees affirmed by the Ninth Circuit Court of Appeals. *Mosten*, 62 Fed. App'x 175 (9th Cir. 2003).
- On an unusual interlocutory appeal to the Georgia Court of Appeals, obtained summary judgment dismissing fraud and racketeering claims in connection with a commercial real estate transaction. *Savage*, 260 Ga.App. 770 (2003).
- At the trial and appeals court levels, successfully defended fraud claims in connection with a venture capital company's sale of internet-related business. *Valassis Communications*, 304 A.D.2d 448 (N.Y. 1st Dept. 2003).

Credentials

Education

- Harvard Law School, J.D., *cum laude*, 1979
- University of Pennsylvania, M.A., B.A., *summa cum laude*, 1976

Admissions

- District of Columbia, 1985
- New York, 1980

Courts

- U.S. District Courts for the District of Columbia; Southern, Eastern and Western Districts of New York; Northern District of California; and Eastern and Western Districts of Texas
- U.S. Courts of Appeals for the District of Columbia, Federal, 1st, 2nd, 3rd, 4th, 5th, 7th, 9th and 10th Circuits
- U.S. Court of Federal Claims
- U.S. Tax Court
- U.S. Supreme Court

Recognitions

- Recognized for Commercial Litigation by *The Best Lawyers in America* 2020-2027
- Ranked for Commercial Litigation, Financial and White Collar law in the *Lawdragon 500 Leading Litigators in America* 2023-2027
- Recognized Individual, General Corporate, *Benchmark Litigation,* 2013 and 2014
- Washington, D.C. Super Lawyers – Business Litigation, 2007, 2008, 2009 and 2012

Expertise

Services

- Litigation
- Financial Services
- Public Policy
- International Dispute Resolution
- Sovereign Advisory
- Government Investigations & White Collar

About our firm

One of the world's strongest integrated law firms, providing insight at the point where law, business and government meet. We deliver commercially focused business solutions by combining our legal, lobbying and political capabilities and invaluable connections on the ground to a diverse mix of clients, from long-established leading corporations to emerging businesses, startup visionaries and sovereign nations. More than 1,500 lawyers in over 40 offices across four continents provide unrivaled access to expertise.