



Mitchell Berns

Partner

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Mitch is a seasoned litigator who represents institutional and individual clients in complex disputes.

He acts for plaintiffs and defendants in state, federal and bankruptcy courts, in trials and appeals, and in mediations and arbitrations. He also counsels clients concerning contract, transactional, employment and other matters arising out of their business activities.

Mitch served as a federal banking regulator in Washington DC, and is well-versed in the risk management and policy issues that affect financial services institutions.

Services

- Litigation
- Securities Industry
- International
- International Arbitration
- Directors' & Officers' Liability & Corporate Governance
- Financial Services Industry
- Alternative Dispute Resolution
- Retail Industry
- Bankruptcy Litigation
- Fintech & Digital Assets

Beyond Fox Rothschild

Mitch serves on the Council on Judicial Administration of the New York City Bar Association. He previously served on its Banking Law and State Courts of Superior Jurisdiction committees.

He is active in alumni fundraising for Amherst College.

Mitch has been interviewed by media outlets, including *Fortune*.

Before Fox Rothschild

Mitch began his litigation career with an international law firm based in New York before starting his own firm that focused on securities and class action litigation.

From 1996 to 2002, he served as the head of bank supervision for the regulator of the Federal Home Loan Banks, which provides wholesale loans to several thousand banks to support residential mortgage lending. His government experience provided a broad perspective on financial, risk control and housing policy matters. After his government service, he returned to private practice in New York before joining Fox Rothschild.

Bar Admissions

- New York
- District of Columbia

Education

- Yale Law School (J.D.)
- Amherst College (B.A.)

Securities, Swaps and Derivatives

- Defense of a major Mexican retailer in a \$1.5 billion state court contract dispute with several swap dealers arising out of the sale of exotic currency derivatives
- Defense of a government-sponsored bank in a bankruptcy court dispute over the valuation of several hundred interest rate swaps terminated when Lehman failed
- Prosecution of a foreign investor's federal court fraud claim against a global private bank involving the sale of exotic financial derivatives
- Prosecution of federal court class actions on behalf of investors alleging fraud in the sale of interests in limited partnerships organized to develop a fruit orchard and an oil and gas business

Professional Services

- Prosecution of state court breach of fiduciary duty claim against a global accounting firm by an ex-partner arising out of alleged scapegoating for violations of SEC audit independence standards
- Defense of a law firm against legal malpractice and breach of duty claims asserted by a major TV personality alleging multi-million dollar damages
- Prosecution of a state court legal malpractice claim by the owners of a residential cooperative building against counsel who handled the property's sale

Financial Services

- Prosecution and defense of several success fee claims by investment banks in federal and state courts, obtaining summary judgments totaling \$19 million
- Representation of financial institution in connection with government investigations of failure of regional bank
- Representation of hotel investors in connection with disputes involving mezzanine lender and co-investors
- Defense of senior management of a failed community bank against breach of fiduciary duty claims asserted by FDIC and resolved in mediation
- Defense of a commercial mortgage lending joint venture between a global investment management firm and a Canadian bank on a state court claim arising out of the termination of an airport hotel franchise and an associated mortgage default
- Recovery of a foreign investor's \$45 million securities account tied up in a bankruptcy case
- Prosecution of an investor's arbitration claim against a wealth management firm charged with disregarding client instructions, resulting in substantial FINRA award

Commercial

- Defense of Canadian buyer of U.S. software consulting business against claims by sellers arising from the sale and sellers' post-sale employment
- Representation of foreign investors in the bankruptcy purchase of Bed Bath & Beyond's interest in several retail stores in Mexico
- Defense of crypto-asset firm against claim by supplier of software supporting the custody and trading of non-fungible tokens (NFTs)
- Representation of a taxi fleet owner before New York Court of Appeals in challenge to the legality of New York City's "Taxi of Tomorrow" program. Download a [video of the oral argument](#)
- Defense of residential building lessee against lease breach claims asserted by building owner arising from loss of 421-a tax benefits
- Representation of several hospitals in disputes regarding their right to funds arising from the sale of a demutualized medical malpractice insurer
- Representation of seller of proxy solicitation firm in securing recovery of unpaid balance of purchase price
- Defense of public relations firm and founder against AAA arbitration claims by former shareholder challenging contractual buy-out price and charging shareholder oppression
- Counsel to Mexican retail chain regarding litigation strategies relevant to negotiating buy-out of U.S. joint venture partner
- Expert witness testimony on New York contract law in a CAMCA arbitration in Mexico City arising out of the sale of an industrial company