



Bernard Kornberg

Partner

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Bernie Kornberg's practice focuses on commercial litigation, mostly in the areas of insolvency and bankruptcy. Generally, his clients are lenders, or other third parties such as commercial landlords and lessors, real estate developers, vendors, and intellectual property licensees affected by a financially stressed or insolvent entity. Bernie represents creditors seeking to recover misappropriated property or funds and defendants when wrongfully charged with failure to pay a debt, fraudulent transfers, or related litigation. He also handles workouts and forbearances to avoid litigation and bring a contract back into compliance. Bernie is also an experienced appellate attorney in the area of insolvency and has handled and prevailed in appeals before the Ninth Circuit Court of Appeal, the Ninth Circuit Bankruptcy Appellate Panel, and the California Court of Appeal.

Additionally, Bernie has extensive experience with representing lenders in non-litigated matters. He has assisted numerous lenders with regulatory examinations and investigations as well as with the drafting of proposed legislative language as to regulatory bills in various states. He also advises lenders regarding new proposed products and compliance strategies.

Never one to shy away from interesting and difficult cases, Bernie is always willing to engage in new and unusual litigation to the benefits of his clients. For his efforts, he has been written about in the *Wall Street Journal* and *Wine Spectator*, represented a Chinese company in a Hong Kong arbitration, and helped push legislation regarding bankruptcy venue to Congress. Bernie prides himself on this versatility and creative lawyering, and will always bring it to every engagement.

Professional Activities

- California State Bar Association, Member
 - Business Law Section, Insolvency Law Committee, Legislative Subcommittee, Chair

Education

J.D., University of Arizona
James E. Rogers College
of Law, *magna cum laude*,
2007

- Order of the Coif

B.A., University of
California, Berkeley,
political science and
English, 2002

Bar Admissions

California, 2007

Court Admissions

U.S. Court of Appeals for
the Ninth Circuit

Representative Experience

Bankruptcy and Creditor's Rights

- Prevailing attorney of record in the published appellate opinions of *In re Turner*, 859 F.3d 1145 (9th Cir. 2017) (denying the standing of a third-party to challenge a loan sale, *Opperwall v. Bank of Am. N.A.*, 561 B.R. 775 (N.D.Cal. 2016) (deciding the res judicata effect of a confirmed plan), and *In re Goldstein*, 526 B.R. 13 (B.A.P. 9th Cir. 2015) determining when claims vest as property of the bankruptcy estate).
- Represent prominent SBA lender in all California default matters and litigation. Handle matters including replevin and sale of collateral, collection of guarantees, and workout of defaulted loans. Defend lender in litigated matters regarding allegations of defects in the origination or servicing of loans.
- Currently representing foreign licensor of intellectual property in prominent Silicon Valley Chapter 11 bankruptcy case and post-bankruptcy matters. Representation involves defense of license within bankruptcy case and ancillary litigation, negotiation with debtor and creditor committee regarding resolution of disputes, and potential purchase of estate assets by licensor.
- Advising San Francisco-based real estate developer in near nine figure purchase of New York residential hotel in bankruptcy case venued in the Southern District of New York.
- Defended inter-lender litigation alleging that lender induced borrower to breach loan agreement with prior lender. The matter was settled on nearly identical and favorable terms that were offered by lender client before litigation began.
- Represented landlord against lessee and foreign guarantor regarding break of commercial lease. Secured writ of attachment on guarantor's real property after guarantor left country and put property on the market. Attachment lien resulted in settlement of lawsuit on highly favorable terms to landlord, rather than the near total loss expected when the matter was initially referred.
- Represented equipment leasing company in claims for negligence arising out of construction accident. Settled at mediation with a complete dismissal of claims against client and reimbursement of 90% of expended attorneys' fees and costs.
- Defended lender in lawsuit alleging that collateral assignment of key man life insurance policy was void. The policy was sole collateral for an otherwise uncollectible five-million-dollar loan. The case ultimately settled with full payment of the policy and complete satisfaction of the loan.
- Successfully defended a national bank against lawsuit alleging that bank aided and abetted controlling owner of corporation in perpetuating a Ponzi scheme. Prevailed on the dual grounds that plaintiff failed to show actual knowledge and that the suit was barred due to the owner's illegal acts by the doctrine of *in pari delicto*.

Personal Activities

Bernie has the pleasure of residing of raising two boys and a mutt in San Francisco. The practice of law and parenting occupies most of his time, but when free, he can be found rooting for the 49ers, Warriors, and Giants, riding his electric bike up and down the many hills of the city, or enjoying the ever-changing restaurant scene.