



## Steven Mandelsberg

Partner

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### PRACTICES

- Business Litigation
- Banking and Financial Services Litigation
- Workout and Foreclosure Litigation
- Complex Judgment Enforcement
- Bankruptcy Litigation
- Appellate Litigation
- Asbestos Litigation
- Litigation Funding and Finance
- Cybersecurity, Privacy and Data Governance
- Government Contracts

Steve represents financial institutions, businesses and constituencies in major commercial disputes, with a particular focus in lender liability cases, fraud-based investigations and complex litigation. His work representing clients spans state and federal courts around the United States.

Steve successfully litigates, arbitrates and mediates claims, defenses, and issues arising from financial transactions. His experience over the course of a 40-year career, includes loan and security, guaranty, asset based lending, factoring, subordination, inter-creditor, syndication, loan participation, repurchase, mortgage foreclosure, letter of credit, stock/asset purchase and sales agreements, including “failure-to-fund,” “lender domination-and-control,” “deepening insolvency,” implied covenant of good faith, breach of fiduciary duty, fraud, misrepresentation, tortious interference with contract, wrongful setoff, usury, equitable subordination, fraudulent conveyance, RICO, CERCLA, securities law, and related theories.

Steve also represents creditors and other committees, trustees, and other parties in bankruptcy proceedings; governments and companies in recovering costs for removal and abatement of asbestos; litigation funders and financing companies in enforcing funding agreements and obligations; and private equity firms and businesses in cybersecurity-related and right-to-privacy disputes and in international arbitrations.

Steve is the Firm's Risk Management Partner for the New York Office. He is an inaugural member of the Federal Bar Council's Bankruptcy Litigation Committee and served on the ABA's Lender Liability Committee as well as on federal civil procedure subcommittees of the New York State Bar Association and the New York County Lawyers Association. Steve is known for sharing his vast knowledge through programs presented by the American, Canadian and New York State bar associations and the New York County Lawyers Association.

### Experience

- **Representing lenders and other financial institutions in lender liability mortgage foreclosure litigation involving over \$120 million-**

## ADMISSIONS

- New York
- California US Bank Ct, Central District
- California USDC, Central District
- Delaware US Bank Ct
- Delaware USDC
- Florida US Bank Ct, Southern District
- Florida USDC, Southern District
- New Jersey US Bank Ct
- New Jersey USDC
- New York US Bank Ct, Eastern District
- New York US Bank Ct, Northern District
- New York US Bank Ct, Southern District
- New York US Bank Ct, Western District
- New York USDC, Eastern District
- New York USDC, Northern District
- New York USDC, Southern District
- New York USDC, Western District
- Oklahoma US Bank Ct, Northern District
- Oklahoma USDC, Northern District
- Texas US Bank Ct, Northern District
- Texas US Bank Ct, Southern District
- Texas USDC, Northern District
- Texas USDC, Southern District
- US Ct Appeals, 2nd Circuit (CT, NY, VT)
- US Ct Appeals, 3rd Circuit (DE, NJ, PA, Virgin Islands)
- US Ct of Federal Claims
- US Supreme Ct

- plus in construction loan facilities to develop a residential tower in NYC's financial district. Won a contested motion to appoint a temporary receiver, defeating the borrower/guarantors' cross-motion to dismiss or stay the foreclosure action, and obtained an appellate decision that reversed the trial court's denial of a motion to dismiss various fraud-based claims. (2020-present)
- Representing lenders and other financial institutions in defending against mezzanine lender's multi-million dollar fraud and breach of contract suit. (2022-present)
- Represented four charitable trusts sued by a bankruptcy trustee to recover over \$98 million for allegedly participating in a fraudulent scheme and receiving fraudulent transfers. Won pre-answer motion to dismiss all but "subsequent transferee"-related claims, reducing clients' potential exposure by 97 percent and eventually resulting in favorable settlement. (2018-2021)
- Representing private equity investment fund, obtained a favorable settlement with a brokerage firm that had allowed the unauthorized sale of securities valued at over \$5 million, access to clients' accounts and transfers of assets to banks and others in the U.S. and elsewhere. (2020-present)
- On behalf of a German bank, successfully resolved numerous claims and counterclaims exceeding \$651 million arising from the issuance of credit default swaps and collateral obligations. (2014)
- Represented a foreign-based bank in multiple litigations resulting in the issuance of a pre-judgment order of replevin and preliminary injunction, judgments of over \$14 million and substantial recoveries and other relief. (2017)
- Representing a major North American pipeline manufacturer, won summary judgment dismissal of an \$11 million suit by a party contracted to develop a wind power electric generating facility. After pre-trial document and deposition discovery, a New York trial court granted the client's summary judgment in full while denying the other party's summary judgment motion, eventually leading to favorable settlement. (2016)
- Represented a professional services firm in multiple litigations and disputes, including challenges to professional fees in bankruptcy; enforcing and defending against non-compete, restrictive covenant and non-disparagement provisions; enforcing indemnification provisions, responding to third-party subpoenas, preparing witnesses for expert testimony, and assisting in preparation of valuation and forensic investigation reports. (2013-2018)
- Won dismissal with prejudice, on behalf of three directors of a California-based off-road vehicle manufacturer and parts supplier, of an amended complaint seeking over \$100 million in damages for breach of fiduciary duty and fraudulent transfers arising out of the corporate restructuring and UCC Article 9 sale of company assets. (2011)
- While representing one of the country's largest investment banks and serving as lead counsel for a group of seven other lenders in the bankruptcy of a major diamond/gem retailer, won dismissal without leave to further re-plead a third amended complaint that sought over \$129 million based upon fraudulent conveyance, preference and related theories. The dismissal, which was accompanied by a stay of discovery, was affirmed by the Southern District of New York and the Second Circuit in an appeal Steve argued. (2011)

### EDUCATION

- St. John's University School of Law, J.D., 1978
- Yeshiva University, B.A., cum laude, 1975

### EMPLOYMENT

- Thompson Coburn; Partner, 2021-Present
- Hahn & Hessen; Associate 1980-1985; Partner 1985 -2021
- Ploscowe, Dweck & Sladkus; Associate 1979-1980
- New York State Supreme Court; Law Clerk, 1978-1979

### RECOGNITIONS

- Martindale-Hubbell "AV" rating
- Listed in New York Metro Area Super Lawyers (by Thomson Reuters)
  - 2007, 2010, 2012, 2014-2020
- Trial Lawyers Honorary Society of the Litigation Counsel of America

### AFFILIATIONS

- Federal Bar Council, Bankruptcy Litigation Committee Inaugural Member
- American Bar Association, Lender Liability Committee
- New York State Bar, Federal Civil Procedure Subcommittee
- New York County Lawyers Association, Federal Civil Procedure Subcommittee

- **Representing a large state government, obtained reversal of a bankruptcy court decision that granted summary judgment on statute of limitations grounds of that state's \$130 million in claims against an asbestos manufacturer for the recovery of expenses of removing asbestos products from government-owned buildings. (2009)**
- **Representing major commercial bank defrauded by borrower in a \$120 million fraudulent borrowing base certificate scheme, obtained favorable settlement from the successor of a leading bank that acted as loan servicer after receiving favorable court rulings in New York and North Carolina courts. (2007-2008)**
- **Won favorable settlement on behalf of nationally known commercial lender from leading global insurance syndicate after obtaining favorable N.J. federal court decisions in suit against public company to recover "upstream" fraudulent transfers disguised as dividends and distributions to key officer and director.**
- **Secured court approval of a preliminary injunction that prohibited interference with key satellite radio rooftop installation and authorized transmissions as part of multi-billion-dollar satellite radio network. Summary judgment was granted, enforcing the license and related agreements and awarding permanent injunctive relief. (2003)**
- **Represented lender in promissory note/lender liability litigation in three-week bifurcated jury trial that led to a Second Circuit opinion that enforced the notes, dismissed all borrower defenses and counterclaims, and resulted in a judgment in favor of the lender for over \$12 million. (2000)**

### Presentations

- "A Deep Dive Into the Cutting-Edge Arbitration Issues: Compelling It, Resisting It, Who Decides What is Arbitrable, and Appealing Arbitration Decisions," Client Webinar, November 2022.
- "The Upcoming Wave of COVID-19 Era Loan Defaults: Workouts and Insolvencies: A Guide to the Possibly Perplexed," Client Webinar, April 2020
- Panelist, "Fraudulent Transfer Litigation," The Knowledge Group, 2016
- "Hiding the Ball: Preparing Experts' Reports," ABA Section of Litigation Convention, 2007
- "Removing the Cloud of Future Asbestos Demands," Asbestos Bankruptcy Conference, 2006

### Publications

- "Enforcement of Foreign Country Judgments: Expanded Use Confronts Increasing Questions," *New York State Bar Association's NYLitigator*, Fall 2016
- "Should Lenders Share Fault For Damages?," *New York Law Journal*, December 2002

