



James A. Beha II

Partner

Jim Beha's three decades of lawyering experience have covered all phases of litigation, including workouts, investigation and preparation of cases, pretrial discovery, pretrial motion practice and preliminary injunctions, mediations, preparation and examination of experts on issues of liability and damages, trials and arbitrations, appeals, and all manner of settlement negotiations. In most recent years his practice has emphasized civil business fraud, commercial disputes, loan workouts, and civil and bankruptcy proceedings relating to troubled credits. Over the years he has represented clients in cases in the bankruptcy and civil trial courts of numerous federal district courts around the country, in New York State civil courts, in various arbitration and mediation settings, and in federal and New York State appellate courts. His experience as lead counsel includes three federal court jury trials through verdict, various trials and contested hearings before federal judges, state judges and arbitrators, and numerous mediations.

Jim is the author of a number of articles and reports on civil practice and other professional topics that have appeared in the Journal of the New York State Bar Association, the New York Litigator, and the Record of the Association of the Bar of the City of New York, as well as a number of articles on criminal justice issues.

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Academic Background

A.B., with high honors, Princeton University, 1971
 J.D., Harvard Law School, 1975
magna cum laude
 Ph.D. (Sociology), Harvard University, 1986

Bar and Court Admissions

New York
 Second Circuit
 Fourth Circuit
 Eastern District of New York
 Southern District of New York
 United States Tax Court

Professional/Community

Jim Beha has served as the chair of the Association of the Bar of the City of New York's Committee on Legal Education and Admission to the Bar and is now a member of the New York State Bar Association's Committee on that subject, as well as the Committee on Federal Procedure of its Commercial and Federal Litigation Section. He is also a member of the Federal Bar Council, a corporate member of the board of Children of Bellevue, a hospital auxiliary, and a trustee of the H & B Farkas Foundation. Jim also serves as a

Representative Matters

Accounting

- (D.N.J.) Represented publicly held corporation in suit against accounting firm for misrepresentation in an acquisition. \$10b and \$18 claims; accountant's negligence. Settled after completion of discovery and argument of summary judgment motions.
- (S.D.N.Y.) A securities case noted below also involved extensive work on the liability of accountants for conduct as advisors and/or fiduciaries.
- (S.D.N.Y.) A banking case noted below also involved extensive accountants' liability issues in apportioning "equitable fault" under N.Y.G.O.L. § 15-108 as well as the client's own direct claim against accountant, which was settled after extensive discovery and briefing followed by mediation before a retired federal judge.
- (S.D.N.Y.) Represented accounting firm in class actions by investors in real estate partnerships for which firm reviewed and opined on financial projections. Global settlement of case effected without payment by client while motions to dismiss were pending.
- (S.D.N.Y.) Represented accounting firm as witness and potential defendant in extensive discovery concerning audits and "due diligence" investigation of acquisition.

Banking

- (S.D.N.Y. and other Districts) During 1993-2001, led litigation team representing an agent bank in a complex, multi-case litigation concerning responsibility for losses in excess of \$200 million incurred on credit extended to oil trader/refiner. Primary focus was on defending suit against agent bank brought by other syndicate banks; that case settled the day before opening statements were scheduled for an expected four month bench trial. Other related suits included claims against company's accountants,

professionally certified instructor for the Adaptive Sports Foundation at Ski Windham and is a member of the Board of the ASF.

suit to recover from another bank for converted collateral and litigation with bankruptcy trustee, all of which have been settled. Experience included hundreds of days of depositions, numerous court appearances and arguments and three multi-day mediations of various claims before former federal judges.

- (Various Courts) Litigated and supervised numerous collection suits on promissory notes and guarantees. Cases have involved prejudgment attachments, forgery issues, lender liability counterclaims, disputes over authority to complete instruments, computation of attorneys fees, post judgment remedies and similar issues. Related litigation has included fraudulent conveyance suits as well as Chapter 11 representation of lenders.
- (Sup. Ct., N.Y. Cty) Represent national bank in litigation relating to alleged fraudulent conveyances in providing credit support for LBO transaction and in subsequent sale of borrower subsidiary to repay debt; also represent bank in proceedings ancillary to later Chapter 11 of borrower
- (S.D.N.Y.) Represented director of insolvent bank in suit by depositor. Motion to dismiss granted on grounds of pre-emption.
- (S.D.N.Y.) Represented bank in suit by IRS which asserted that bank was "responsible person" for withholding taxes not paid by bankrupt company, on ground that the bank had improperly controlled management in financial decisions. Jury verdict for client.
- (S.D.N.Y.) Represented bank in suit by IRS seeking to recover estate taxes from bank as "statutory executor" for foreign national. Settled on nominal basis after developing legal analysis that undercut IRS position.
- (Workouts) Regularly represent bank in workout negotiations, restructuring loans with corporate borrowers and guarantors in a variety of business settings. Represent lenders in various phases of Chapter 11 proceedings (see Creditors' Rights) and real estate disputes (see Real Estate).

Business and Commercial Disputes

- (A.A.A.) Represent New Jersey energy company in dispute with lessor of oil storage facility over client's contractual rights to obtain access to additional storage at long-term contract prices now well below market. Trial held, and interim award issued directing lessor to provide client with equivalent storage in the open market at the contract price.
- (Sup. Ct., N.J.) Represent national entertainment management company in suit by former advisor claiming "success fee" in connection with development of a stadium complex. The case was dismissed under New Jersey law applicable to "brokerage" claims, and the dismissal was affirmed on appeal.
- (Sup. Ct. N.Y. Cty) Represented real estate developer in defense of fraud case in which several million dollars were allegedly shifted improperly between projects. Case left inactive by bank plaintiff after substantial discovery undercut bulk of damage claims.
- (S.D.N.Y.) Represented family of investors in suit against gas exploration promoters, including accountant. Extensive discovery. Settled shortly before trial.
- (S.D.N.Y.) Represented state agency in suit by elected officials and citizen groups challenging its selection of projects for special tax-exempt financing program. Case dismissed after evidentiary hearing on plaintiffs' motion for a preliminary injunction.
- (S.D.N.Y.) Represented retail chain in suit by prominent manufacturer of handbags alleging that retailer's private label products infringed that manufacturer's "trade dress." Settled without cost to client after Second Circuit reversed trial court's issuance of injunction.
- (S.D.N.Y.) Obtained summary judgment for investment banker in suit to recover fee for consummated transaction. Summary affirmance in Second Circuit.
- (S.D.N.Y.) Represented investment banking firm in suit to recover fee for transaction based on letter agreement with client. Motion for summary judgment dismissing counterclaims and affirmative defenses granted. Case settled when set for trial.
- (Sup. Ct. Queens Cty) Represented distributor of construction equipment in fraud/warranty suit by customer. Extensive jurisdictional and discovery motion practice. Settled.
- (Sup. Ct. West. Cty) Represented former member of oral joint venture in suit for accounting and for interference with contractual relationship. Settled after defeating motions to dismiss.
- (Sup. Ct. Kings Cty) Represented store employees in numerous criminal actions alleging bribing of Consumer Affairs officials. Won dismissal on Speedy Trial grounds.
- (D. Mass. & S.D.N.Y.) Represented retail chain in disputes with contractual licensee operating departments in chain's stores. Disputes centered on exclusivity of license, obligations of licensee to open departments in new stores, rights of chain management with respect to operation of departments. Settled. Also represented retailer in subsequent suit to resolve disputes over implementation of licensee's

withdrawal from stores under settlement agreement; settlement was revised and implemented after an evidentiary hearing on interim injunctive relief.

- (Am. Arb. Assoc.) Represented metal maintenance and fabrication firm in dispute with individual seeking additional compensation for business development. Suit dropped by claimant after first day of trial.

Corporate and Partnership Disputes

- (D.N.J. and Sup. Ct. N.Y. Cty) Represented corporation and liquidating trust in suits with former officer for diversion of funds and breach of fiduciary duty. Former officer's state case dismissed; matter settled after trust's motion for partial summary judgment granted in federal case.
- (Cal. Supr. Ct. and C.D. Cal.) Defended director of oil and gas concern in suit by bankruptcy trustee seeking damages for negligence in failure to stop alleged looting by majority shareholder. Extensive motion practice and extensive discovery. Settled by insurance companies. Also won dismissal of RICO suit against that director brought by a majority shareholder.
- (S.D.N.Y.) Brought suit for shareholder against majority/ management seeking recovery for conversion, forced sale and inadequate disclosure in tender offer. Settled.
- (Sup. Ct. N.Y. Cty) Represented former partners in law firm in suit for withdrawal distributions due them under written formula; issue of oral modification; fiduciary duty counterclaims. Settled after discovery.
- Served as Counsel to Special Committee investigating shareholder's demand that claims be asserted against directors and others in connection with failure to identify misrepresentations in an acquisition.

Creditors' Rights

- (D. Conn.) In banking litigation noted above also represented lender in complex lender liability action by Chapter 7 Trustee, including claims for equitable subordination of liens. Settled after extensive mediation before former federal judge.
- (S.D.N.Y.) Represented lender in renegotiation of undersecured line of credit to national jewelry chain. Later represented lender in chain's Chapter 11. Tried "lift stay" motion. Full recovery obtained.
- (S.D.N.Y.) Represented lender on partially secured claims in Chapter 11 of specialty metal company. Confirmed plan paid out lender in full.
- (S.D.N.Y.) Represented lender in Chapter 11 of video equipment distributor. Collected secured portions of loan; collected substantial portion of loan in suit against guarantor after pre-judgment attachment; balance of loan paid in full by D.I.P. incident to settlement and liquidating plan.
- (N.D. Ill.) Represented lender/agent in inter-bank litigation over proper application of proceeds of multi-million dollar collateral pool to sets of loans with differing participants and tranches. Settled.
- (S.D.N.Y.) Represented mortgage lender in real estate Chapter 11. Litigated "lift stay" motion through trial preparation; debtor consented to lift stay after deposition of its accountant/expert.
- (E.D.N.Y. and Sup. Ct. Queens Cty.) Represented distributor of construction equipment in suit to recover possession of leased equipment and collateral; handled seizure of equipment. Lessee/purchaser went into Chapter 11, and case was settled in that proceeding with all equipment and all pre-petition arrears recovered by client and settlement of preference claim.
- (E.D.N.Y.) Represented mortgage lender in cash collateral dispute and tried "lift stay" motion; relief granted.
- (E.D.N.Y.) Represented lender in Chapter 11 of Long Island fabric "notions" chain; collected secured claim and sold rest of loan to new investor with back-up guaranty from principal of original borrower. Full recovery.

Employment

- (Am. Arb. Assoc.) Represented executive on constructive termination claim under contract. Issues of oral modification. Won award for client in excess of \$1,000,000.
- (S.D.N.Y.) Defended large contracting firm in suit by former executive alleging age discrimination and breach of employment contract. Jury verdict for client.
- (Sup. Ct. N.Y. Cty) Represented specialty printer in suit against former employee and his new employer for breach of contractual non-compete clause, theft of product samples, improper solicitation of customers and clients, etc. Case dismissed after defendant ceased contested activity.
- Conducted extensive investigation of law of fiduciary duty and constructive trust in analyzing potential suits against employees secretly competing (or preparing to compete) against company.
- (Sup. Ct. Suffolk Cty) Obtained dismissal of suit by former employee. N.Y.

“whistleblower” statute involved.

- (S.D.N.Y.) Represented former director of acquired company in suit for various benefits preserved by merger agreement. Settled.
- Regularly advise employment compensation specialist on termination disputes, workouts and covenants

Family and Estate Disputes

- (D. Mass.) Represented trustees in dispute over construction of trust and enforceability of beneficiary’s assignment of interest. Settled during evidentiary hearings.
- (Sup. Ct. N.Y. Cty) Represented certain beneficiaries in proceeding construing family trust and testing validity of testamentary appointment of contingent remainder interest. Court’s decision accepted proposed construction and effected appointment.

Real Estate

- (Sup. Ct. Albany Cty) Represented mortgage lender in dispute with owner over enforcement of cash sweep remedies and interpretation of financial covenants. Settled after court vacated T.R.O. initially obtained by borrower.
- (Sup. Ct. N.Y. Cty) Represented commercial retail tenants in several disputes with landlords over alleged defaults under leases. Cases generally settled after our client obtained interim injunction.
- (Sup. Ct. N.Y. Cty) Represented group of trade contractors in foreclosure action brought by mortgagee; asserted various Lien Law theories in attempt to have mechanics liens “prime” the mortgagee’s building loan and asserted Lien Law trust fund theories. Obtained judgment for over \$3,000,000 in favor of class of trade contractors against one bank on trust fund theory. Case settled after briefing of appeal.
- (Sup. Ct. N.Y. Cty) Represented estate of general partner in suit by tenant/purchasers for alleged frauds in conversion of building to co-op ownership and countersuit for declaratory judgment confirming terms of partnership’s “wrap” mortgage. Settled during trial.
- (Sup. Ct. N.Y. Cty) Represented retail tenant in dispute with landlord over interpretation of “percentage rent” and tax-sharing provisions in lease. Settled.
- (Sup. Ct. N.Y. Cty) Defended investment firm in suit brought by developer seeking recovery of expenses incurred in designing portion of building to fit special needs of firm as anticipated tenant. Settled.
- (Sup. Ct. N.Y. Cty) Defended sponsor in suit by non-resident lessee seeking damages on theory that he, not ex-wife residing in apartment, was “tenant in occupancy” under relevant statutes (because lease was in his name and he paid rent) and thus that he, not ex-wife, should have received “insider” subscription rights for apartment (and profit on resale). Dismissed when other litigation between lessee and his ex-wife was settled.
- (Various) Have represented mortgage lenders in foreclosures and workouts, including proceedings in Bankruptcy Court.

Tax and Shareholder Securities Litigation/ERISA

- (S.D.N.Y.) Represented retirees in ERISA suit attacking trustee’s denial of lump sum distribution. Settled after expediting discovery schedule.
- (S.D.N.Y.) Represented former principal of pension advisory service in suit by Department of Labor and suit by bankruptcy trustee on ERISA and RICO claims. Settled.
- (S.D.N.Y.) In case noted above, represented bank in suit by IRS seeking to recover estate taxes from bank as “statutory executor.” Settled on nominal basis after developing legal analysis that undercut IRS position.
- (S.D.N.Y.) Represented foreign corporation in shareholder suit challenging going-private acquisition of subsidiary. Removed case under SLUSA and plaintiffs agreed to voluntary dismissal.
- (D.N.J.) Represented large foreign corporation in complex suit concerning its issuance of securities as part of a workout of a failed joint venture, allegedly without proper disclosure of impending merger negotiations. Settled after extensive mediation, presentation and defense of our experts’ reports, and development of alternate damage theories which severely limited plaintiff’s case.
- (N.D. Ill.) Represented lead underwriters and syndicate in Securities Act class action alleging misrepresentation in a technology company initial public offering. Also represented lead underwriters in related shareholder derivative suit. Cases settled without cost to underwriters after our deposition examination of plaintiffs’ expert.
- (D.N.J.) Represented corporation in securities suit against parties which sold assets of their company to plaintiff in exchange for plaintiff’s securities and in related action by creditor of former company. Cases settled after favorable decision denying motion

to dismiss.

- (S.D.N.Y. and Sup. Ct. N.Y. Cty) Obtained dismissal of federal securities suit against brokerage house and an employee brought by oil and gas investors. State court fraud action then settled for nominal amount.
- (S.D.N.Y.) Represented individual with substantial investments in oil and gas program in suit against promoters. Extensive discovery. Settled with some defendants. Won RICO verdict in jury trial against remaining defendant.

Publications

“Report on Rule 30(b)(6),” *NY Litigator*, NYSBA, Fall 2004, 72-85 (Committee Report, NYSBA Committee on Federal Procedure, principal author)

“Opposition to Board of Law Examiners’ Proposal to Increase the Passing Score on the New York Bar Examination,” 58 *Record of the Association of the Bar of the City of New York*, 97-120 (2003) (Committee Report, principal author)

“New York’s Statutes of Limitations Affect Counterclaim Strategies And Potential for Recoupment,” *Journal N.Y.S. Bar Ass’n*, January 2003, 22-28

“An Advocate’s Perspective: Mediation in Commercial Cases,” *Journal N.Y.S. Bar Ass’n*, September 2002, 10-16

“In a Suit Based on Intentional Acts, Defendant May Attempt to Raise Comparative Fault Under CPLR 1411,” *Journal N.Y.S. Bar Ass’n*, June 2002, 32-36

“Contribution and Confusion in Settling Commercial Litigation in New York,” *NY Litigator*, NYSBA, Winter 2001, 74-105

“‘And NOBODY Can Get You Out’: The Impact of a Mandatory Sentence for Illegally Carrying a Firearm on Crime and Administration of Justice in Boston,” 57 *Boston University Law Review* 96-146, 289-333 (1977)

“Innovations at a County House of Correction and Their Impact on Recidivism,” *Journal of Research on Crime and Delinquency*, January 1977, 88-106

Sentencing to Community Service, National Institute of Law Enforcement and Criminal Justice, 1977 (with K. Carlson and R.H. Rosenblum)

“Testing the Functions and Effect of the Parole Halfway House: One Case Study,” 67 *Journal of Criminal Law & Criminology* 335-50 (1976)

“The Halfway House in Adult Corrections,” *Criminal Law Bulletin*, July-August 1975, 434-77

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