



## Gary S. Posner

PARTNER

[gposner@wtplaw.com](mailto:gposner@wtplaw.com)

**BALTIMORE**

T: 410.347.9406

F: 410.223.4306

### BIOGRAPHY

Mr. Posner, practicing for over 28 years, primarily concentrates his practices in the areas of business and bankruptcy litigation, appellate and alternative dispute resolution and has litigated cases in Maryland and throughout the country with permission of the host courts from Florida to New York to Nevada and places in between. He has handled such cases in which he has obtained a \$13 million judgment on behalf of litigation trust in leveraged buyout/fraudulent conveyance action and recovered through litigation and negotiation a \$16 million settlement on behalf of another litigation trustee in leveraged buyout/fraudulent conveyance action. He has also represented creditors in acquisition of bankrupt debtor's ownership interests in amusement company, real estate holding company and automated teller machine business. Among his business litigation cases, Mr. Posner, succeeded in obtaining not-for-profit entity's consensual reinstatement into a trade organization after extensive litigation, defeated class certification on behalf of nationwide credit counseling service in action brought by allegedly aggrieved consumers; obtained jury verdict and judgment in favor of individuals and against bank under Maryland's Deceptive and Unfair Trade Practices Act, after bank swept money from their account to cover allegedly bad checks; obtained complete summary judgment on behalf of defendant credit counseling

### PRACTICES & INDUSTRIES

**Trustee and Receiver Representations**

**Business Litigation**

**Appellate Practice**

**Alternative Dispute Resolution**

### EDUCATION

Emory University, 1988, J.D., with distinction, Order of the Coif

Loyola College, 1984, B.S.

### ADMISSIONS

Maryland

U.S. Bankruptcy Court: District of Columbia

U.S. Bankruptcy Court: District of Maryland

U.S. Court of Appeals: Second Circuit

U.S. Court of Appeals: Fourth Circuit

service in case brought by consumer alleging credit counseling service violated Minnesota Debt Prorating Agencies Act, Minnesota Credit Services Organization Act, Minnesota Consumer Fraud Act and unjust enrichment and obtained judgment in favor of a factoring company enforcing termination fee in a factoring agreement against the invoice seller and obtained judgment at trial defending a seven-figure counterclaim brought by invoice seller against his client.

U.S. District Court: District of Columbia

U.S. District Court: District of Maryland

U.S. Tax Court

## RECOGNITIONS

- AV Peer Review Rated: Martindale-Hubbell
- Listed in *Best Lawyers in America*, 2011 - present
- Listed in *Maryland Super Lawyers*, 2013 - present
- *Awarded*: Governor's Citation for Volunteer Efforts on Behalf of Literacy

## MEMBERSHIPS & ACTIVITIES

- Member: Maryland State Bar Association
- Member: MSBA Public Awareness Committee (1989-1995)
- Member: American Bankruptcy Institute
- Board Member: Learning Bank of COIL, Inc., Chairman (1998 - 2000), Member of Executive Board (1996 - 2000)
- Adat Chaim Congregation: President (2004-2006); First Vice President (2002-2004); Second Vice President (2000-2002)

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## BANKRUPTCY LITIGATION

- Obtained \$13 million judgment on behalf of litigation trust in leveraged buyout/fraudulent conveyance action in United States Bankruptcy Court for the Western District of New York
- Recovered \$16 million settlement on behalf of litigation in leveraged buyout/fraudulent conveyance action in United States Bankruptcy Court for the District of Delaware
- Obtained nearly \$500,000 judgment on behalf of bankruptcy estate and intervening surety company in preference action in United States Bankruptcy Court for Middle District of Pennsylvania
- Obtained judgment for recovery of assets on behalf of Chapter 11 Trustee, including recovery of gold bars, silver and other treasure that had been salvaged from the *Nuestra Senora de Atocha*, which ship sunk in 1622 off the Florida Keys, in the United States Bankruptcy Court for the District of

## Maryland

- Represented Chapter 7 and Chapter 11 trustees in assorted litigation to recover and administer assets and defended trustees against claims of dispossessed debtors
- Represented creditor in acquisition of bankrupt debtor's ownership interests in amusement company, real estate holding company and automated teller machine business
- Successfully defended creditors in numerous preference action adversary proceedings
- Litigated numerous bankruptcy issues including plan confirmation, disclosure statement adequacy, use of cash collateral, lift stays cases, dismissal motions, allowance of claims and valuation of assets

## **BUSINESS LITIGATION**

- Obtained summary judgment on behalf of investment firm in the United States District Court for the Eastern District of Pennsylvania to avoid developer-borrower's a fraudulent transfer of tax refund deposited into principal's tenants-by-the-entireties bank account
- Enforced judgment in a contested civil garnishment on behalf of creditors in the United States District Court for the District of Maryland defeating debtor's claims that assets to be garnished were exempt as proceeds of personal injury settlement
- Obtained approximately \$300,000 judgment on behalf of a hotel equipment lessor and seller against trucking company agent for damage to goods, in the United States District Court for the District of Maryland
- Obtained favorable resolution on behalf of tax exempt organization of IRS's revocation of exemption after extensive litigation in the United States District Court for the District of Columbia and parallel litigation in the United States Tax Court
- Succeeded in obtaining not-for-profit entity's consensual reinstatement into a trade organization after extensive litigation in the Circuit Court of the 18th Judicial Circuit in and for Seminole County, Florida
- Defeated class certification on behalf of nationwide credit counseling service in action brought by allegedly aggrieved consumers in the Superior Court of New Jersey, Burlington County
- Obtained jury verdict and judgment in favor of individuals and against bank under Maryland's Deceptive and Unfair Trade Practices Act, after bank swept money from their account to cover allegedly bad checks, in the Circuit Court of

Maryland for Baltimore City

- Obtained complete summary judgment on behalf of defendant credit counseling service in case brought by consumer alleging credit counseling service violated Minnesota Debt Prorating Agencies Act, Minnesota Credit Services Organization Act, Minnesota Consumer Fraud Act and unjust enrichment, in State of Minnesota, County of Dakota, District Court, First Judicial District
- Obtained judgment in favor of factoring company enforcing termination fee in factoring agreement against invoice seller and defending seven-figure counterclaim brought by invoice seller against factoring company, Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida
- Representation of hotel industry-related equipment supplier in enforcing equipment leases and defending breach of warranty claims
- Defense of construction equipment seller against breach of warranty claims
- Defense of federally chartered banks against lender liability claims
- Defense of borrowers in confessed judgment action and prosecution of lender liability claims
- Class action representation of children in foster care in effort to resolve systemic problems and enhance conditions for said children

## **APPELLATE EXPERIENCE**

- Argued appeal before the United States Court of Appeals for the Fourth Circuit (obtained affirmance of District Court's decision declining to recognize exemption from attachment claimed by judgment-debtor)
- Argued appeal before Court of Appeals, First Appellate District, Hamilton County, Ohio (obtained reversal of lower court's decision that had declined to enforce arbitration clause in agreement)
- Argued appeals before the Court of Special Appeals of Maryland

## **ALTERNATIVE DISPUTE RESOLUTION AND OTHER EXPERIENCE**

- Served as counsel to parties in multiple arbitration and mediations of before U.S. Magistrates, retired judges, court-appointed arbitrators and mediators as well as party-selected ones, in a range of commercial disputes
- Representation of certified public accounting professional association in Maryland legislature and before Attorney General regarding pending legislation and Attorney General Opinions