



Albert E. Fowerbaugh, Jr.

For nearly 30 years, Al has represented clients in bet-the-company litigation in both state and federal trial courts and in private arbitrations. He has defended insurers, banks and other financial institutions in complex commercial litigation, reinsurance arbitrations, commercial foreclosures and nationwide class action lawsuits brought under both federal and state consumer protection statutes. In addition to defending his clients in court, he counsels them on litigation prevention and mitigation.

Representative Matters

- Represented an insurer of first lien mortgages, and an insurer of second lien mortgages in both lawsuits filed in state and federal courts throughout the country, as well as in arbitrations. These actions arose out of the great recession and were brought by lenders and mortgage loan servicers who alleged that the reinsuring entities each improperly rescinded or cancelled insurance coverage for loans due to misrepresentations made by the borrowers in the loan application regarding their employment and income, misrepresentations made by appraisers who submitted inflated appraisals in connection with the origination of the loans or by misconduct by the loan originator who knowingly originated fraudulent loans.
- Obtained judgment for a title insurance company after a three-day trial on a \$2.8 million claim under a zoning endorsement to a title insurance policy. The court found for the title company on all claims, finding that the zoning endorsement was not part of the title insurance policy when initially issued and that the plaintiff had made a material misrepresentation because it was aware of the zoning defect before it requested the endorsement be issued, but did not disclose.
- Won summary judgment for an international shipping and cruise line company in a nationwide class action lawsuit claiming violations of the Telephone Consumer Protection Act by allegedly sending unsolicited fax solicitations. The appellate court affirmed the judgment.
- Represented a national title underwriter in prosecuting claims to recover over \$40 million that was misappropriated from real estate escrow accounts.

Partner

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EDUCATION

University of Michigan Law School,
J.D., 1989

Kenyon College, B.A., *magna cum laude*, 1986

SERVICES

Reinsurance Litigation & Arbitration

Litigation

- Commercial litigation
- Non-competition and trade secrets litigation
- Arbitration and mediation
- Insurance litigation
- Construction
- Class actions, mass torts and MDLs
- Financial services litigation

Business Competition, Advice & Litigation

- Non-compete, non-solicitation, non-recruitment and non-disclosure agreements

Financial Institutions

- Financial services litigation

Real Estate

- Real estate litigation
- Foreclosures, receiverships and workouts



- Defended and obtained summary judgment for a national title underwriter in claims brought against it by the receiver of a failed trust company seeking to recover over \$68 million from the underwriter.
- Defended title insurance company in multiple consolidated class actions claiming violations of the Illinois Consumer Fraud Act and breach of contract by allegedly overcharging customers to record documents with the recorder's office.
- Defended multiple downstate Illinois class action lawsuits claiming violations of the Illinois Consumer Fraud Act and breach of contract by allegedly overcharging customers to record documents with the recorder's office.
- Won dismissal for a title insurance underwriter of a class action lawsuit alleging violations of the Real Estate Settlement Procedures Act, the Illinois Consumer Fraud Act, common-law fraud, breach of contract and unjust enrichment.
- Served as national counsel for an insurance company in defense of all class action lawsuits relating to force-placed single interest insurance policies.
- Obtained dismissal of one nationwide class action filed in Oregon, and ultimately settled on an additional nationwide class action lawsuit initially filed in Tennessee state court, but transferred the Delaware Bankruptcy Court.
- Defended a local Chicago restaurant chain in a class action lawsuit alleging it misstated the volume of beer served.
- Defended a national bank holding company, in both the trial courts and appellate courts, against claim of tortious interference with contract in connection with the purchase of a loan portfolio from the FDIC. After a four-week jury trial, the parties reached a highly favorable settlement.
- Represented a local bank in a lawsuit in a suit against another bank for fraud and breach of an acquisition contract. After a two-week bench trial, the judge found in our client's favor on both counts, awarding \$1.2 million in compensatory damages and another \$1.3 million in punitive damages and costs.
- Defended a national furniture retailer in three related class action lawsuits alleging that it violated customer's constitutional rights to due process and committed wrongful replevin by commencing replevin actions against consumers without notice. Claims were dismissed.
- Obtained summary judgment for a local furniture retailer in a class action lawsuit alleging violations of the Truth-in-Lending Act and the Illinois Consumer Fraud Act relating to the disclosures of credit application fees in consumer credit sales.
- Obtained dismissal of all claims against one of the nation's largest toothbrush manufacturers in a nationwide class action lawsuit in which the plaintiff claimed that the toothbrush's labeling was misleading because it did not contain warnings about toothbrush abrasion or instructions on how to use the toothbrushes.



Bar Admissions

Illinois

U.S. Court of Appeals for the Fourth Circuit

U.S. Court of Appeals for the Seventh Circuit

U.S. Court of Appeals for the Ninth Circuit

U.S. District Court for the Eastern District of Wisconsin

U.S. District Court for the Northern District of Illinois

U.S. District Court for the Northern District of Texas

Supreme Court of the United States

Publications

- "What if the auto loan securitization market crashes?," *Law360*, Aug. 13, 2018
- "Concepcion progeny wrestle with open questions surrounding class action waivers in arbitration agreements," *Corporate Counsel*, November 2012, reprinted in *Corporate Counsel Connect*, December 2012/January 2013
- "The death of consumer class actions?," *Corporate Counsel*, July 2011

Honors | Awards

- *Illinois Super Lawyers*[®]
- *The Best Lawyers in America*[®], Commercial Litigation
- *Illinois Leading Lawyers*, Class Action/Mass Tort Defense Law, Commercial Litigation and Insurance, Insurance Coverage and Reinsurance Law
- Phi Beta Kappa