



# Merrick L. Gross

SHAREHOLDER

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## Overview

Rick Gross has more than 32 years of legal experience serving a variety of business clients. His multifaceted commercial litigation practice includes aspects of banking, real estate, securities, business torts, and creditors' rights, including bankruptcy. Rick litigates cases involving such claims in federal and state courts in Florida and throughout the United States. Rick also handles commercial loan workouts and foreclosures involving all types of real property including raw land, retail, office, multifamily, and condominiums throughout the country.

Rick is a former president of the Dade County Bar Association, former chair of The Florida Bar Business Law Section, and a former chair of The Florida Bar Constitutional Judiciary Committee. He also is a former and current chair of a number of ABA Section of Litigation and ABA Business Law Section Committees, and a former member of the Council of the ABA Section of Litigation. He currently serves as co-chair of the firm's Business Litigation Practice.

## Experience

Rick has been involved in numerous litigation matters throughout his career. Matters handled since 2000 include:

- *Branch Banking & Tr. Co. v. FTP Inv. Corp. & Bart Seidler*, No. 12-18634-CA-15 (Fla. Cir. Ct.). Acted as lead trial counsel for plaintiff (who acquired the loan at issue from BB&T after suit was filed) in a commercial foreclosure action, which resulted in the entry of a money judgment in favor of client in an amount in excess of \$5.6 million.
- *MUNB Loan Holdings, LLC v. Ponce Trust, LLC*, No. 10-63470-CA-15 (Fla. Cir. Ct.); *In re Ponce Trust, LLC*, No. 12-14247 (Bankr. S.D. Fla.). Acted as lead trial counsel in a commercial foreclosure action filed in Florida state court involving a condominium development in Coral Gables, Florida, which resulted in the entry of a foreclosure judgment in favor of client in an amount in excess of \$38.1 million. On the eve of a foreclosure sale borrower filed a Chapter 11 bankruptcy proceeding and client became the largest secured creditor in the case. The Chapter 11 proceeding confirmed a plan of reorganization which included all of the protections requested by the client and pays the client 100 percent on its secured claim. The plan also allows the client to retain its lien on the property until paid in full.

- *Ellipsis, Inc. v. Color Works, Inc.*, No. 2:03-cv-02939, 2006 WL 1207589 (W.D. Tenn. May 4, 2006). Obtained summary judgment in favor of client resulting in dismissal with prejudice of all of plaintiff's claims in case in which \$54 million in damages was sought.
- *Ellipsis, Inc. v. Color Works, Inc.*, 428 F. Supp. 2d 752(W.D. Tenn. 2006). Had plaintiff's expert witnesses stricken with prejudice based upon failure of plaintiff's proposed expert testimony to comply with Federal Rule of Evidence 702 and Daubert.
- *Ellipsis, Inc. v. Color Works, Inc.*, 227 F.R.D. 496 (W.D. Tenn. 2005). Obtained order from court that defendant was entitled to depose attorney from opposing law firm, who was not plaintiff's trial counsel, and whose deposition would not expose plaintiff's trial strategy.
- *Rodriguez v. Amstar Ins. Co.*, 888 So. 3d 760 (Fla. 3d DCA 2004). Obtained dismissal with prejudice of claims against insurance company client in class action suit asserting that process of taking betterment deductions when processing claims was improper.
- *In re United Container, LLC*, 284 B.R. 162 (Bankr. S.D. Fla. 2002). Obtained remand of case from bankruptcy court to state court, a more favorable forum for client to present defenses.
- *Information Tech. & Eng'g Corp. v. Reno*, 813 So. 2d 1053 (Fla. 4th DCA 2002).
- *CFI Sales & Mktg., Ltd. v. Fla. Marlins Baseball, Ltd.*, 837 So. 2d 423 (Fla. 3d DCA 2002).
- *Temple v. Gorman*, 201 F. Supp. 2d 1238 (S.D. Fla. 2002). Obtained dismissal with prejudice of claims against individual client in multi-party suit asserting federal and state securities law violation claims arising from investments in a startup dot-com entity.
- *Warner v. Wireless Broad. Sys. of Am., Inc.*, No. 8:96-cv-02214 (M.D. Fla. 2000), *aff'd*, F.3d (11th Cir. 2001). Obtained summary judgment for client in a breach of contract/Florida Securities Investors Protection Act case, which was upheld by the Eleventh Circuit Court of Appeals, resulting in an award of attorneys' fees to defendant client.
- *Molenda v. Hoechst Celanese Corp.*, 60 F. Supp. 2d 1294 (S.D. Fla. 1999), *aff'd*, 212 F.3d 600 (11th Cir. 2000). Obtained summary judgment and directed verdict for client in a breach of contract/defamation/Florida Whistleblower Act/ADEA case, which was upheld by the Eleventh Circuit Court of Appeals, resulting in an award of attorneys' fees to defendant client.

## All Insights

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| 04.23.2020 | Economic Impact Payments Authorized by the CARES Act Are Not Exempt From Garnishment in Florida |
| 04.10.2020 | COVID-19 Causes High Uptick in Cannabis Sales, Delays State Regulation                          |
| 03.31.2020 | COVID-19: What a Lender Can Do to Prepare for the Inevitable Defaults Part 2                    |

03.30.2020	States Introduce Emergency Laws Seeking to Retroactively Expand Business Interruption Insurance for Small Businesses to Include Claims Related to COVID-19 Despite Policy Exclusions Providing Otherwise
03.19.2020	Loan Restructuring and Forbearance Agreements in the Face of COVID-19 – The Lender’s Perspective
03.19.2020	COVID-19: What a Lender Can Do to Prepare for the Inevitable Defaults
03.17.2020	COVID-19: What Can a Lender Do to Prepare for the Inevitable Defaults?
02.28.2020	THC: To Cap or Not to Cap; That Is the Question
02.13.2020	Credit Unions Ask Senate Banking Committee to Make Cannabis Banking Safe
01.27.2020	House Members Strongly Urge Senate Banking Committee to Make “Legal” Cannabis SAFE for Banking
12.12.2019	Are Bank Regulators "Mellowing Out" on Cannabis?
11.04.2019	Is Cannabis Banking Safe Yet? It’s a Definite, Maybe
10.10.2019	Protecting Against Illegal Rentals in Miami Beach
04.17.2019	Senate Follows House Seeking to Make Cannabis Banking "S.A.F.E."
04.01.2019	Is Cannabis Banking "SAFE"? Marijuana and Its Secure and Fair Enforcement
06.08.2016	New Road Map for Proceedings Supplementary in Florida
05.03.2016	The New Roadmap for Proceedings Supplementary in Florida
03.25.2015	Use of Prior Servicer’s Records at Trial Depends on Proper Foundation
01.01.2005	Confusion of Source

03.01.2004 Fifty State Survey of the Standards Governing the Admissibility of Expert Scientific Evidence

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01.01.2002 Florida Constitution Protects Homestead Property From Creditors Even if Purchased With Non-Exempt Funds With Intent to Defraud Creditors

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01.01.2002 Survey of State Class Action Law

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### **All News**

06.17.2021 New Ruling: Lawyers Can No Longer Finance Chapter 7 Bankruptcy Fees

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06.22.2020 Carlton Fields' Rick Gross Appointed to American Bar Association Section of Litigation and Florida Bar Leadership Positions

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05.27.2020 International Litigator Roger S. Kobert Joins Carlton Fields

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08.19.2019 Carlton Fields' Rick Gross and Robert Simpson Appointed to ABA Section of Litigation Leadership Positions

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08.07.2019 Carlton Fields' Rick Gross Appointed to Two ABA Section of Litigation Leadership Positions

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06.10.2019 Carlton Fields' Rick Gross Named Chair-Elect of CREFC High Yield Distressed Realty Assets Forum

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02.01.2019 Carlton Fields' Rick Gross Appointed to ABA Section of Litigation Task Force on Efficient Justice

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01.31.2019 Carlton Fields' Rick Gross Featured in ABA Cannabis Law Roundtable

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01.02.2019 Carlton Fields' Rick Gross Re-Appointed as Co-Chair of ABA Section of Litigation Business Torts and Unfair Competition Litigation Committee

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01.02.2019 Carlton Fields' Rick Gross Appointed to ABA Section of Litigation Membership and Marketing Committee

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12.03.2018 Renowned Litigator Lee Stapleton Joins Carlton Fields in Miami

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10.17.2018 Carlton Fields Attorneys Co-Author ABA Business Torts Journal Article on Attorney-Client Privilege

09.14.2018	Carlton Fields' Rick Gross Featured on ABA Business Law Panel
08.01.2018	Carlton Fields' Rick Gross Appointed to New Florida Bar Task Force
07.09.2018	Super Lawyers Honors 81 Carlton Fields Attorneys on 2018 Florida "Super Lawyers" and "Rising Stars"
06.30.2018	Carlton Fields' Rick Gross Re-Appointed to Florida Bar Constitutional Judiciary Committee
06.01.2018	Carlton Fields' Rick Gross Re-Appointed to Florida Bar Civil Procedure Rules Committee
05.18.2018	Rick Gross Appointed to Bar Leadership Roles
04.11.2018	Considerations Regarding Attorney-Client Privilege in the Joint Representation of Multiple Clients
10.23.2017	Merrick L "Rick" Gross Speaks at Trigild Lenders Conference
08.15.2017	78 Carlton Fields Attorneys Named "Best Lawyers in America"
06.23.2017	Florida Super Lawyers Ranks 92 Carlton Fields Attorneys as 2017 "Super Lawyers" and "Rising Stars"
06.23.2017	Rick Gross Chosen to Serve in ABA Leadership Positions
01.02.2017	Carlton Fields Attorneys Named to the 2017 "South Florida Legal Guide"

## Recognition

- AV Rated by Martindale-Hubbell
- *The Best Lawyers in America*, Commercial Litigation, Litigation – Real Estate (2010–2022)
- Florida Super Lawyers, *Super Lawyers Magazine* (2006–2021)
- Florida Legal Elite, *Florida Trend Magazine* (2006–2014)
- Top Lawyers, *South Florida Legal Guide* (2014–2015)
- Section Member of the Year Award, The Florida Bar Business Law Section (2002–2003)
- Committee Chair Exceptional Service Award, Dade County Bar Association (1999–2005)
- Outstanding Subcommittee Chair Award, American Bar Association Section of

## Professional & Community Involvement

- American Bar Association
  - Litigation Section
    - Leadership Development Coordinator
    - Rules Roadshow Task Force
    - Task Force on Efficient Justice Committee
    - Membership and Marketing Committee
    - Co-Chair, Section Annual Conference (2009–2011, 2020–2021)
    - Co-Chair, Torts and Unfair Competition Litigation Committee
    - Council of the ABA Section of Litigation (2016)
    - Co-Chair, Membership and Marketing Committee (2016)
    - Co-Director, Division of Substantive Law (2012–present)
    - Co-Director, Division of Public Services (2011–2012)
    - Co-Chair, Trial Evidence Committee (2008–2009)
    - Vice Chair, Business Torts Committee (2006–2008)
    - Co-Chair, Corporate Counsel CLE Meeting (2007–2008)
    - Co-Chair, Business Torts Committee Books Subcommittee (2005–2007)
    - Co-Chair, Business Torts Committee Programming Subcommittee (2001–2006)
    - Chair, Business Torts Committee 11th Circuit Subcommittee (1999–2002)
    - Commercial and Business Litigation Committee
    - Appellate Litigation Committee
    - Committee on Class Actions and Derivative Suits
  - Business Law Section
    - Co-Chair, Judge Initiative Committee (2011–present)
    - Chair, Business and Corporate Litigation Committee Business Courts Subcommittee (2005–2011)
    - Vice Chair, Business and Corporate Litigation Committee Business Courts Subcommittee (2004–2005)
- American Bar Foundation
  - Fellow (2010–present)
- The Florida Bar
  - Civil Procedure Rules Committee (2020–2021)
  - Judicial Administration and Evaluation Committee (2016)

- Chair, Constitutional Judiciary Committee (2012–2013)
- Business Law Section
  - Business Courts Task Force
  - Civil Procedure Rules Committee
  - Constitutional Judiciary Committee
  - Immediate Past Chair (2008–2009)
  - Chair (2007–2008)
  - Chair-Elect (2006–2007)
  - Treasurer/Secretary (2005–2006)
  - Executive Council (1997–present)
  - Long Range Planning Committee (2009–present)
  - Chair, Business Litigation Committee (1998–1999)
  - Co-Chair, Business Courts Committee (1999–2004)
  - Chair, Legislative Committee (2004–2005)
  - Co-Chair, Section Annual Retreat Committee (2002–2005)
  - Co-Chair, MJP Committee (2003–2005)
- Florida Bar Foundation
  - Fellow (2008–present)
- Dade County Bar Association
  - President (2006–2007)
  - President-Elect (2005–2006)
  - Vice President (2004–2005)
  - Director (1997–2000, 2001–2004)
  - Chairman, Civil Litigation Committee (2000–2002)
  - Chairman, Banking and Corporate Litigation Committee (1998–2000, 2002–2003)
  - Chairman, Federal Courts Committee (2003–2005)
- U.S. District Court for the Southern District of Florida
  - Ad Hoc Rules Committee (2003–2007)
- Eleventh Judicial Circuit Business Courts Committee (2005–present)
- Eleventh Circuit Historical Society (2006–present)
- Florida Supreme Court Task Force on Management of Cases Involving Complex Litigation, appointed by Chief Justice R. Fred Lewis (2006–2008)
- Emory College Alumni Board (2013–present)
- Peter T. Fay American Inn of Court
- Temple Beth Ahm Israel Board of Trustees
  - Trustee (2002–2004, 2011–2012)

## Speaking Engagements

Rick is frequently asked to speak on various aspects of the law, and has recently been involved in the following speaking engagements and educational events:

- "May Market Update: Hosted by Top CRE Industry Pros," Ten-X Commercial (May 28, 2020)
- "Next Steps for Lenders as Deferred Payments Deadlines Approach," Carlton Fields (May 8, 2020)
- "COVID-19: What a Lender Can Do to Prepare for the Inevitable Defaults – Part Two," Carlton Fields (March 31, 2020)
- "COVID-19: What a Lender Can Do to Prepare for the Inevitable Defaults," Carlton Fields (March 19, 2020)
- "Banking and Opinion Letters," CBD Seminar, PLAC, Miami, FL (January 15, 2020)
- "Up in Smoke: Cannabis Law Roundtable," ABA Section of Litigation (January 31, 2019)
- "Sharing the Attorney-Client Privilege – Too Much of a Good Thing," ABA Business Law Section Annual Meeting, Austin, TX (September 14, 2018)
- "That's a Wrap: The Good, the Bad, and the Reversible in Closing Argument," ABA Annual Meeting, San Francisco, CA (2016)
- "The Real World: Case History of Resolutions by Special Servicers," Trigild Fall Lender Conference (2013)
- "Business Court Judges Roundtable," The Florida Bar Business Law Section Annual Retreat (2013)
- "Workout Case Study," CREFC West Coast High Yield Debt Forum Summit (2013)
- "Monetizing Recourse Obligations," Trigild Spring Conference (2013)
- "Issues in the Enforcement of Foreclosure Rights," CREFC High Yield Debt Forum Distressed Debt Summit (2013)
- "Current Issues Specific to Special Servicers: Part 2," Trigild Fall Lender Conference (2012)
- "Business Court Judges Roundtable," The Florida Bar Business Law Section Annual Retreat (2012)
- "How to Get the Resolution That Lenders Want – Direct Lender Track Panel," Trigild Lenders Conference (2011)
- "Business Court Judges Roundtable," The Florida Bar Business Law Section Annual Retreat (2011)
- "Receivership Updates," Trigild Fall Lender Conference (2010)
- "Business Court Judges Roundtable," The Florida Bar Business Law Section Annual Retreat (2010)
- "How to Make and Respond to Objections at Trial – Observe It in Real Time," ABA Annual Meeting (2009)
- "Complex Litigation Tactics," Florida College of Advanced Judicial Studies (2009)
- "Business Courts Around the World," ABA Business Law Section Spring



Meeting (2009)

- "Expert Witnesses from A to Z – How to Choose Them and Use Them," ABA Section of Litigation Annual Conference (2009)
- "Business Courts in the United States – What Works Best and Why" and "Business Courts – The Case for and Status of Throughout the U.S.," ABA Business Law Section Business Bar Leaders Conference (2008–2009)
- "An Introduction to Business Courts and Complex Litigation Courts – What Works Best and Why," ABA Annual Meeting (August 2007)
- "An Introduction to Business Courts and Complex Litigation Courts – What Works Best and Why," ABA BLT Live Teleconference (April 9, 2008)
- "2006 Review of Recent Developments in Business and Corporate Litigation," ABA Business Law Section Annual Spring Meeting (April 2006)
- "Will the Court Allow My Damages Expert to Testify: How to Survive a *Daubert* Challenge – A Live Demonstration," ABA Annual Meeting (August 2005)

## Credentials

### EDUCATION

- Boston University School of Law (J.D., 1987)
- Emory University (B.A., summa cum laude, 1984)

### BAR ADMISSIONS

- Florida

### COURT ADMISSIONS

- U.S. Court of Appeals, Eleventh Circuit
- U.S. District Court, Northern District of Florida
- U.S. District Court, Middle District of Florida
- U.S. District Court, Southern District of Florida
- Florida State Courts

## Background

- Of Counsel and Shareholder, Akerman Senterfitt, Miami, FL (1995–2008)
- Of Counsel, Siemon, Larson & Marsh, Boca Raton, FL (1994–1995)
- Associate, Stroock & Stroock & Lavan, Miami, FL (1990–1994)
- Associate, Hornsby & Whisenand, P.A., Miami, FL (1987–1990)

## Areas of Focus

### PRACTICES

- Cannabis Law
- Consumer Finance
- Coronavirus
- Creditors' Rights and Bankruptcy
- Distressed Asset and Workout
- Distressed Health Care

### INDUSTRIES

- Banking, Commercial, and Consumer Finance
- Real Estate

- Litigation and Trials
- Real Property Litigation
- Title Insurance