



# Lawrence J. Bracken II

Partner

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## SERVICES

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### Industries

Energy

Financial Services

Retail and Consumer  
Products

### Practices

Class Action, Multidistrict  
Litigation

Cyber Investigations and  
Privacy Litigation

Retail and Consumer  
Products Litigation

Insurance Coverage

Cyber Insurance

Financial Services Litigation

Energy Litigation

Advertising Litigation

Pipeline

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## EDUCATION

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JD, University of Virginia  
School of Law, 1985

BA, University of Virginia,  
with high distinction, 1981

Larry Bracken has more than 35 years of experience litigating and investigating class action, technology, insurance, environmental and commercial matters.

Larry's class action practice concentrates on the defense of unfair trade practice/false advertising claims, consumer class actions, privacy and data breach claims, and environmental property damage claims. He has represented clients in more than 50 class actions in 16 states.

Larry has served as a faculty member and lecturer at various conferences and seminars, and has lectured about a wide range of topics including unfair and deceptive trade practices actions, class action practice, privacy and cyber security litigation, lender liability issues, and insurance coverage litigation.

Larry is admitted to practice in Georgia, New York and Virginia, as well as before the U.S. Courts of Appeals for the Fourth, Seventh, Ninth and Eleventh Circuits, the U.S. District Courts for the Northern and Middle Districts of Georgia, the Southern District of New York, and the Eastern and Western Districts of Virginia. After earning his law degree, he served as a law clerk for the Honorable D. Dortch Warriner of the U.S. District Court for the Eastern District of Virginia.

### Relevant Experience – Class Action Litigation

- Class action practice concentrates on the defense of unfair trade practice/false advertising claims, privacy and data breach claims and consumer class actions.
- Litigating claim to recover defense costs and amounts paid to settle class claims concerning allegedly improper bank fees and assessments.
- Represents consumer product manufacturers, banks, consumer lending and servicing companies, mortgage lenders, retailers and homebuilders in class actions and other civil litigation involving allegations of unfair and deceptive trade practices, fraud, wrongful foreclosure, breach of warranty, and violations of various federal and state statutes such as the Truth in Lending Act, Real Estate Settlement Procedures Act, the Fair Debt Collection Practices Act and consumer protection statutes.

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## BAR ADMISSIONS

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Georgia

New York

Virginia

- Represents companies in the investigation of privacy issues, actual and threatened cyber security events, cyber intrusions and cyber extortion, as well as in the defense of class actions and other claims arising from such events.
- Represented Fortune 25 company in a 226,000-member consumer class action in which plaintiff alleged false advertising and violation of unfair trade practices statutes in the advertising and sale of consumer electronics products. Obtained defense verdict after a three-week trial.
- Represented Fortune 25 technology company in related state and nationwide consumer class actions in nine different states, involving allegations of unfair and deceptive trade practices and breach of warranty in the advertising and marketing of consumer electronics and computer products. Member of client's defense panel for 20 other cases involving 22 million putative class members. Client obtained a global settlement for a nominal amount after several defense victories.
- Defended national homebuilder and its affiliated mortgage company in defense of purported nationwide class action asserting violations of California Business & Professions Code §§ 17200 and 17500, as well as common law causes of action, alleging a scheme to increase home sale prices through improper practices and nondisclosures in the brokering and arranging subprime mortgages. All claims were dismissed on standing and Rule 12(b)(6) grounds before discovery commenced.
- Representing nation's largest residential mortgage lender and one of the nation's largest banks in putative class action seeking statutory damages for alleged failures to cancel mortgage instruments within statutory period.
- Represented national mortgage lender in putative class action seeking refunds of closing fees and charges that allegedly exceeded limits allowed under state law, resulting in de minimus settlement after District Court granted motion for summary judgment on all counts.
- Represented a national grocery store chain in a privacy class action in which plaintiff asserted violations of state consumer tampering statute, as well as common law claims. The putative class claims that the defendant's website utilized flash cookies to track plaintiff's web browsing activities.
- Represented major payment processor in data breach class action. Case resolved favorably for client prior to discovery and after all except a single count of the complaint were dismissed on motions. The matter involved issues of first impression concerning standing and substantive causes of action.
- Represented major payment processor in class action alleging that client improperly charged early termination fees and allegedly engaged in unfair and deceptive trade practices. Case resolved favorably to our client after motion to dismiss was filed.
- Represented national homebuilder and affiliated mortgage company in defense of federal court nationwide class action, in which plaintiff alleged improper practices and nondisclosures in brokering and arranging subprime mortgages. Court granted defendants' motion to dismiss, resulting in dismissal of all counts with prejudice.

- Represented national homebuilder and affiliated mortgage company in defense of class actions alleging improper practices and nondisclosures in brokering and arranging subprime mortgages. Plaintiffs alleged that defendants' actions resulted in higher-than-average foreclosures in purported class members' neighborhoods, resulting in diminution of the value of class members' residential property. Causes of action included violation of unfair and deceptive trade practice statute and fraudulent concealment. Court granted clients' motion to dismiss all claims with prejudice.
- Defended national homebuilder and affiliated mortgage company in defense of class action alleging violations of RESPA and North Carolina UDTPA, arising out of alleged requirement that homebuyers use defendants' affiliated settlement services and other allegedly illegal mortgage brokerage practices. Obtained dismissal of all but one claim, resulting in highly favorable settlement.
- Defended large national bank in the defense of purported nationwide class action alleging unfair trade practices and breach of common law duties arising from the bank's ATM overdraft charge practices and procedures. Negotiated settlement with named plaintiff and case dismissed.
- Represented national homebuilder and affiliated mortgage company in defense of class action alleging improper practices and nondisclosures in brokering and arranging subprime mortgages. Plaintiffs alleged that defendants' actions caused higher-than-average foreclosures in purported class members' neighborhoods, resulting in diminution of the value of class members' residential property. Other plaintiffs alleged violations of lending statutes and state common law. Causes of action included violation of unfair and deceptive trade practice statutes, federal civil RICO claims, negligence and fraud. Case was settled favorably after one-day mediation.
- Represented Fortune 25 company in alleged nationwide consumer class actions involving allegations of unfair and deceptive trade practices in the advertising and marketing of personal computers. Obtained favorable settlements after discovery, which were approved by trial courts.
- Represented insurance subsidiary of top 20 global financial company in appeal of order granting certification of nationwide class. Obtained reversal of class certification order on appeal and denial of plaintiff's petition for certiorari.
- Represented major internet service provider in alleged nationwide consumer class action claiming that ISP improperly charged fees to subscribers. Obtained dismissal of claims and case ultimately settled.
- Represented national petroleum pipeline company in defense of riparian landowners' claims for property damage resulting from spill of fuel oil from pipeline. Obtained favorable settlement for company.
- Opposed class certification of class of trade creditors for floor covering industry client, causing plaintiff to abandon motion for class certification.
- Regularly advise clients about compliance and risk management issues relating to unfair trade practice statutes.
- Pro bono representation of prisoners in habeas corpus and other actions involving violations of constitutional rights. Received Justice Ally of Year from the Southern Center for Human Rights for work with SCHR.

- Practice lead for pro bono adoption practice in the firm's Atlanta office.

### **Memberships**

- Fellow, American College of Coverage Counsel
- Board of Directors, Atlanta Volunteer Lawyers Foundation
- Member, American Bar Association
- Member, Georgia State Bar Disciplinary Rules and Procedures Committee, 2008-2011, 2015-2018
- Master, Bleckley Inn of the American Inns of Court

### **Clerkships**

- US District Court, Eastern District of Virginia

### **Awards & Recognition**

- Recognized as a Leader in Insurance, Georgia, *Chambers USA*, 2021
- Recommended for Insurance: Advice to Policyholders, Legal 500 United States, 2020
- Named Best Lawyer, Commercial Litigation, Insurance Law, Litigation – Banking and Finance, *The Best Lawyers in America - Georgia*, 2012-2022.
- Selected as a Super Lawyer for Insurance Coverage, *Atlanta Magazine* and *Georgia Super Lawyers Magazine*, 2005-2021.
- 2015 Justice Ally of the Year Award – Southern Center for Human Rights

### **Events**

- Co-presenter, Working with Witnesses, Bleckley Inn of Court, November 9, 2020
- Presenter, *Voir Google—Ethical Jury Research*, Bleckley Inn of Court, April 9, 2018
- Presenter, *Emerging Liability Risks: Are You Covered?*, Community Bankers University, March 29, 2018
- Speaker, *Single Versus Multiple Occurrences Under a CGL Insurance Policy*, Insurance in the Construction Industry CLE, Atlanta, Georgia, March 2017 and March 2018 programs
- Speaker, *Debates, Updates, and Dictates: D&O and Employment Litigation*, Executive Edge conference, Scottsdale, Arizona, May 2014
- Speaker, *Cyber Liability* program, Federal Bar Association, Atlanta Chapter, March 2014
- Speaker, *Data Breach and Privacy Litigation*, International Association of Privacy Professionals, Practical Privacy Series conference, New York, January 2013
- Panelist, *Claims, Crises, Unexpected Issues and the Benefit of Hindsight in the Boardroom*, Executive Edge Conference, San Antonio, May 2012
- Faculty Member and Lecturer, ACI Subprime Litigation Conference
- Program Co-Chair and Lecturer, Georgia Insurance Law Institute
- Speaker, *Consumer Fraud Claims*, Product Liability Advisory Council

- Faculty Member and Lecturer, *Fundamentals of Georgia Environmental Law*

## Publications

- Co-author, Insurer Denies Coverage for Deal Litigation Despite Bank Purchasing Runoff Coverage for Pre-Acquisition Alleged Wrongful Acts, *The Banking Law Journal*, August 20, 2021
- Co-author, Insurer's Duties to Defend and Indemnify: Georgia, *Thomson Reuters Practical Law*, June 2021
- Co-author, Class Certification And Multidistrict Litigation Hurdles For Business Interruption Claims, *Mealey's Litigation Report: Insurance*, December 2, 2020
- Co-author, Protecting Delaware Insureds: Recent Decisions Highlight Importance of State Law, D&O Policy Provisions Governing Coverage, Forum, and Applicable Law, *Business Law Today*, November 18, 2020
- Co-author, Purported COVID-19 Class Actions Face Big Hurdles, *Daily Report*, September 28, 2020
- Co-author, D&O Insurance Issues Arising from the COVID-19 Crisis, *The D & O Diary*, April 15, 2020
- Co-author, Insurer's Duties to Defend and Indemnify: Georgia, *Westlaw*, December 13, 2019
- Co-author, Flood Coverage and High Hazard Zones: Issues Policyholders Should Be Aware Of, *ABA Coverage Journal*, October 10, 2019
- Co-author, Energy industry: Is Your Insurance Sufficient to Handle a Major Cyber Event?, *Electric Light & Power*, September 11, 2019
- Co-author, Be Careful When relying on Insurance Coverage to Contain Utilities' Wildfire Risks, *Electric Light & Power*, February 19, 2019
- Co-author, 3 D&O Questions Regarding Event-Driven Securities Litigation, *Law360*, December 19, 2018
- Co-author, Insurance Mitigates Cyber-Related Risk, *The American Oil & Gas Reporter*, December 2017
- Co-author, Insurers Win Series Against Lakers in TCPA D&O Shootout, *Law360*, August 29, 2017
- Co-author, D.C. Circuit Steadies the Barko Bus: Clarification of the Attorney-client Privilege in Corporate Internal Investigations and Post-Barko Developments, *Bloomberg BNA Corporate Law & Accountability Report*, September 26, 2014
- Co-author, General Insurance Policies May Provide Coverage for Data Breaches, *American Bar Association, Tort Trial & Insurance Practice Section*, Summer 2013
- Co-author, Arbitration Agreements and Class Action Waivers—Practical Steps in an Uncertain Landscape, *U.S. Law Week*, 80 U.S.L.W. 1649, May 29, 2012
- Co-author, Practical Advice in a Changing Landscape: Exhaustion of Underlying Limits and Resolving Coverage Issues Under a Multilayer D&O Insurance Program, *Financier Worldwide*, June 2009
- Co-author, AAA Releases Rules on the Administration of Class Actions, *ABA Franchise Law Journal*, May 26, 2004

- Co-author, *Georgia Environmental Law Handbook* (Litigation and Insurance Coverage), 1997, 2003, 2007

### **Blog Posts**

- Co-author, As Global Supply Chain Risks Continue to Grow, Policyholders Need a Strategy in the Event of a Loss, *Hunton Insurance Recovery Blog*, October 21, 2021
- Co-author, When “Substantially Similar” Means “Fundamentally Identical”: Delaware Court Enforces Related Claim Provision to Deny D&O Coverage for Securities Class Action, *Hunton Insurance Recovery Blog*, July 12, 2021
- Co-author, Insurer Denies Coverage for Deal Litigation Despite Bank Purchasing Runoff Coverage for Pre-Acquisition Alleged Wrongful Acts, *Hunton Insurance Recovery Blog*, April 22, 2021
- Co-author, New Jersey Supreme Court Hears Insurers’ Bid to Overturn a \$400M Decision, *Hunton Insurance Recovery Blog*, January 7, 2021
- Co-author, Georgia Court of Appeals Upholds Denial of Coverage Because Insurance Broker Lacked Agency to Accept Premium Payment, *Hunton Insurance Recovery Blog*, November 5, 2020
- Co-author, Georgia Court Says “Au Revoir” to Henry’s Louisiana Grill’s COVID-19 Business Interruption Claim, *Hunton Insurance Recovery Blog*, October 15, 2020
- Co-author, Eleventh Circuit Determines AEGIS Must Defend Landlord in Security Deposit Class Action, *Hunton Insurance Recovery Blog*, August 5, 2020
- Co-author, D&O Insurance Issues Arising from the COVID-19 Crisis, *The Nickel Report — Energy and Environmental Law*, April 22, 2020
- Co-author, Georgia Jury Awards \$21M against Trucking Insurer and its Insured in Pedestrian Death, *Hunton Insurance Recovery Blog*, February 12, 2020
- Co-author, Insurer on the Hook for Loss Resulting From Phishing Scheme, *Hunton Insurance Recovery Blog*, December 12, 2019
- Co-author, Insurer Cannot Invoke Duty to Cooperate as Affirmative Defense After Denying Coverage, *Hunton Insurance Recovery Blog*, October 15, 2019
- Co-author, Hunton Insurance Lawyers Discuss Cyber Risks to the Energy Grid in Electric Light & Power, *The Nickel Report — Energy and Environmental Law*, September 27, 2019
- Co-author, Georgia Court of Appeals Holds That Insurer Must Defend Oil Company Against Entire Lawsuit, *Hunton Insurance Recovery Blog*, July 18, 2019
- Co-author, California Commission Recommends Switching To Fault-Based Wildfire Liability Standard for Public Utilities, *Hunton Insurance Recovery Blog*, June 6, 2019
- Author, Eleventh Circuit Stakes Limits on Insurer’s Broad Duty to Defend, *Hunton Insurance Recovery Blog*, January 11, 2018
- Author, New Jersey Decision Highlights Importance Of Reviewing Historical Liability Insurance Policies, *Hunton Insurance Recovery Blog*, November 2, 2017