

## Kimberly A. Mello

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Kimberly A. Mello, a member of the firm’s National Appeals & Legal Issues Group, has represented clients in over 600 appellate matters in state and federal courts, including the Florida Supreme Court, the United States Court of Appeals for the Eleventh Circuit, and Florida’s District Courts of Appeal. In her 25 years of practice, she has been involved in a variety of substantive matters, with significant experience in financial services litigation, environmental and toxic tort litigation, and business litigation.

### Concentrations

- Final and non-final appeals
- Dispositive motions
- Post-trial motions
- Extraordinary writs

## Capabilities

[Appeals & Legal Issues](#) | [Litigation](#) | [Financial Services Litigation](#)

## Experience

### Representative Matters

- **Felts v. Wells Fargo Bank, N.A.:** Represented Wells Fargo in a Fair Credit Reporting Act case that was based on allegations that the reporting related to Plaintiff’s mortgage account was inaccurate. The Eleventh Circuit Court of Appeals affirmed the final summary judgment entered in favor of Wells Fargo.
- **Scarry v. Wells Fargo Bank, N.A.:** Represented Wells Fargo in a Real Estate Settlement Procedures Act case that was based on allegations that Wells Fargo did not properly respond to a request for information. The Eleventh Circuit Court of Appeals affirmed both the dismissal of the initial complaint with prejudice and the order denying leave to amend the complaint.
- **HSBC Bank USA, N.A. v. Buset:** Obtained reversal of the trial court’s involuntary dismissal in the Third District Court of Appeal, with directions to the trial court to enter a final judgment of foreclosure in favor of the Trustee. The Third District held that the trial court made multiple erroneous rulings, including its findings that the note was not negotiable, the Trustee lacked standing, the servicer’s business records were inadmissible, and the Trustee had acted with unclean hands.
- **Bowe v. U.S. Bank Nat’l Ass’n:** Obtained reversal of a final judgment of foreclosure in the Fifth

District Court of Appeal. The Fifth District held that the trial court erred in denying the Trustee the right to accelerate the mortgage indebtedness as contracted for in the note and mortgage. As a result, the Fifth District directed the trial court, on remand, to enter an amended final judgment of foreclosure for the entire accelerated amount of the note.

- **Wells Fargo Bank, N.A. v. Quest:** Obtained reversal of an involuntary dismissal in the Second District Court of Appeal on rehearing, with directions to the trial court to enter a final judgment of foreclosure in favor of Wells Fargo on remand. The Second District held that the trial court erred in refusing to consider a loan modification agreement that was self-authenticating.
- **HSBC Bank USA, N.A. v. Alejandro:** Obtained reversal of an involuntary dismissal in the Fourth District Court of Appeal on rehearing, with directions to the trial court to enter a final judgment of foreclosure in favor of the Trustee on remand. The Fourth District held that the trial court's finding that the Trustee lacked standing to bring the action constituted reversible error.
- **HSBC Bank USA, N.A. v. Leone:** Obtained reversal of an involuntary dismissal in the Second District Court of Appeal. The Second District held that the trial court erred in ruling that a new default notice was required prior to the filing of a second foreclosure action.
- **Lankhorst v. Independent Savings Plan Co.:** Represented Independent Savings Plan Co. on appeal in a class action alleging that certain disclosures purportedly required by the Truth in Lending Act were not provided to Plaintiffs. The Eleventh Circuit Court of Appeals affirmed the final summary judgment entered in favor of Independent Savings Plan Co.
- **USAmeriBank v. Sovereign Bank:** Represented Sovereign Bank in an appeal of an eight-figure summary judgment entered in its favor. The case involved an action brought by a syndicated bank lending group against a blind participant to recover a multimillion-dollar setoff exercised against the bank group's borrower. The case resolved on terms favorable to Sovereign Bank prior to oral argument.
- **Mosaic Fertilizer, LLC v. Van Fleet International Airport Development Group, LLC:** Represented Mosaic Fertilizer, LLC in an action seeking damages in excess of \$20 million based on claims arising out of an option to purchase real estate. The Eleventh Circuit Court of Appeals affirmed the final summary judgment entered in favor of Mosaic Fertilizer, LLC.
- **Ferguson v. North Broward Hospital District:** Represented North Broward Hospital District in an action brought under the Family Medical Leave Act. The Eleventh Circuit Court of Appeals affirmed the final summary judgment entered in favor of North Broward Hospital District.
- **Curd v. Mosaic Fertilizer, LLC:** Represented Mosaic Fertilizer, LLC in a putative class action for damages allegedly resulting from a release of approximately 65 million gallons of process water into Hillsborough Bay during Hurricane Frances. Obtained affirmance of the dismissal of the class action in the Second District Court of Appeal, which certified numerous issues to the Florida Supreme Court as questions of great public importance. The Florida Supreme Court held that only commercial fishermen could proceed with their claims, thereby limiting the putative class of persons who may have lost income as a result of the spill. *See Curd v. Mosaic Fertilizer, LLC*, 39 So. 3d 1216 (Fla. 2010).
- **WrestleReunion, LLC v. Live Nation Television Holdings, Inc.:** Represented Live Nation Television Holdings, Inc. in a case involving \$22 million in damages arising from a grant of exclusive rights to market and distribute Plaintiff's television programming. The Eleventh Circuit Court of Appeals affirmed the final judgment entered in favor of Live Nation Television Holdings, Inc.
- **Career Education Corporation Class Action Proceedings:** Briefed numerous motions to

compel arbitration and stay proceedings in multiple putative class actions filed against Career Education Corporation and its subsidiaries based on allegations that they misrepresented the quality of education that students would receive and their post-graduate employment prospects, causing them to incur significant damages. After briefing, the district court compelled arbitration pursuant to the arbitration provisions in the students' Enrollment Agreements.

- **Mims Properties Investments, LLC v. Mosaic Fertilizer, LLC:** Briefed summary judgment motion that resulted in an order reducing damages by approximately \$20 million. The district court found that, under the economic waste doctrine, Plaintiffs were not entitled to restoration damages for alleged improper reclamation of formerly mined lands and, instead, were limited to diminution in value.

## Recognition & Leadership

### Awards & Accolades

- Listed, *The Best Lawyers in America*, Appellate Practice, 2013-2022
- Team Member, *U.S. News - Best Lawyers*<sup>®</sup>, Best Law Firms Edition, "Law Firm of the Year," Banking & Finance - Litigation, 2017
- Team Member, *U.S. News - Best Lawyers*<sup>®</sup>, Best Law Firms Edition, "Law Firm of the Year," Environmental Law, 2016
- Team Member, *Law360* "Appellate Practice Group of the Year," 2010

### Professional & Community Involvement

- Member, American Bar Association
  - Member, Appellate Advocacy Committee
    - Vice-Chair, 2013-2015
    - Chair Elect Designee, 2015
  - Member, Appellate Practice Committee
- Member, Hillsborough County Bar Association
  - Co-Chair, Appellate Section, 2007-2009
- Member, The Florida Bar, Executive Council - Appellate Practice Section, 2000-2006
  - Continuing Legal Education Committee, 2002-2004
  - Chair, Programs Committee, 2001
  - Publications Committee, 1996-2000
  - Civil Appellate Practice Committee, 1995-1997
  - Amicus Curiae Committee, 1995-1997

- Editor, *The Record*, Journal for the Appellate Practice Section, 1998-2000
- Member, Second District Court of Appeal, 50th Anniversary Committee, 2007
- Board Member, Florida Supreme Court Historical Society, Board of Trustees, 2008-2011
- Board Member, Humane Society of Tampa Bay, Board of Directors, 2012-2018
  - Vice-President, 2016-2018

## Credentials

### Education

- J.D., *cum laude*, Stetson University College of Law, 1993
  - Member, *Stetson Law Review*
  - Intern, United States District Judge Elizabeth A. Kovachevich
- B.A., *cum laude*, University of Tampa, 1990

### Admissions

- Florida
- U.S. Court of Appeals for the District of Columbia Circuit
- U.S. Court of Appeals for the Eleventh Circuit
- U.S. District Court for the Middle District of Florida
- U.S. District Court for the Southern District of Florida

## News, Insights & Events

Kimberly is a contributor to GT's Financial Services Observer Blog 

August 30, 2021 PRESS RELEASE

### **Greenberg Traurig Florida Attorneys Recognized in Best Lawyers, Best Lawyers: Ones to Watch 2022 Editions**

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August 24, 2021 MEDIA COVERAGE

### **Greenberg Traurig's Client Prevailed on Appeal But Hasn't Collected on \$500K in Sanctioned Attorney Fees**

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August 23, 2021 MEDIA COVERAGE

**11th Circ ends drama over Venezuelan network in telenovela copyright case**

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August 20, 2021 MEDIA COVERAGE

**Ex-Exec Can't Control Venezuelan Network, 11th Circ. Says**

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April 17, 2018 GT ALERT

**Florida's Third District Court of Appeal Rejects Trial Court's Findings on Borrowers' Defenses, Including "Unclean Hands," and Reverses Involuntary Dismissal in Foreclosure Action**

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February 14, 2017 PUBLISHED ARTICLE

**Florida Supreme Court: Statute Of Limitations Does Not Bar Filing of Second Mortgage Foreclosure Action**

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November 14, 2016 GT ALERT

**In Bartram, Florida Supreme Court Holds That Statute Of Limitations Does Not Bar The Filing Of A Second Mortgage Foreclosure Action**

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April 18, 2016 GT ALERT

**Third District Court Of Appeals Reverses Holding on Statute of Limitations for Florida Foreclosures: The Impact of Deutsche Bank Trust Company Americas, as Trustee v. Beauvais**