

# Markham R. Leventhal

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## Overview

Markham Leventhal has a national litigation practice focusing on the defense of financial institutions, insurers, and other sophisticated businesses in federal and state courts across the United States. Markham has defended more than 160 class actions and has extensive experience managing multijurisdictional litigation, including the simultaneous defense of multiple class actions in different states and the management of parallel civil and regulatory proceedings. He has served as lead or national coordinating counsel in multiple jurisdictions including New York, New Jersey, Florida, Alabama, Arizona, Arkansas, California, Connecticut, Colorado, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Montana, Nebraska, New Mexico, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Washington, D.C., Washington State, and West Virginia. Markham has also served as lead counsel in MDL proceedings consolidated by the Judicial Panel on Multidistrict Litigation; he has argued before the MDL Panel; and he has briefed positions both for and against motions to transfer filed with the JPML.

Markham is frequently called upon to defend class actions and other high-exposure cases involving claims of fraud, inadequate disclosure, breach of contract, breach of fiduciary duty, bad faith, regulatory violations, deceptive trade practices, false advertising, and alleged statutory violations of ERISA, the TCPA, the FLSA, RICO, privacy statutes, antitrust statutes, and state consumer protection laws. His litigation experience includes insurance coverage litigation, reinsurance litigation, securities litigation, unfair competition, fraudulent transfer litigation, trademark and copyright infringement, arbitration, and federal and state court appeals.

Markham serves as co-chair of the firm's Life, Annuity, and Retirement Solutions Industry Group, and he has defended cases involving virtually every insurance or financial product issued by the life, annuity, and retirement industries, including national ERISA class actions involving retirement plans. Markham also defends some of the largest and most sophisticated property and casualty insurers in class action litigation across the country.

Markham has served as lead counsel in NAIC multistate examinations, disputes with individual state insurance regulators, and he has defended against civil investigative demands, regulatory subpoenas, and lawsuits brought by state attorneys general and other governmental agencies.

In addition to his defense work, Markham frequently assists clients in analyzing class action exposure and avoiding or mitigating the risk of class action litigation through corrective measures and the design of consumer outreach or remediation programs.

A veteran appellate practitioner, Markham has served as lead counsel in appellate matters before the U.S. Supreme Court, the U.S. Court of Appeals for the Second, Third, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, Eleventh, and District of Columbia Circuits, and numerous state appellate courts across the country.

Markham is a member of the Class Actions and Derivative Suits Committee of the ABA Section of Litigation, the DRI's Data Management and Security Committee, and Lawyers for Civil Justice (LCJ).

## Areas of Focus

### Practices

- Life, Annuity, and Retirement Litigation
- Life, Annuity, and Retirement Solutions
- Cost of Insurance and Other Challenges to Non-Guaranteed Element Determinations
- ERISA Employee Benefit Plan Litigation
- Sales Practices – Market Conduct Litigation
- Banking, Commercial, and Consumer Finance
- Labor & Employment
- Litigation and Trials
- Securities Litigation and Enforcement
- Appellate & Trial Support
- Financial Services Regulatory
- Cybersecurity and Privacy
- Real Property Litigation
- Class Actions

### Industries

- Life, Annuity, and Retirement Solutions
- Life, Annuity, and Retirement Solutions
- Banking, Commercial, and Consumer Finance
- Securities & Investment Companies
- Property & Casualty Insurance

# Insights

## Featured Insights

06.28.2021

Supreme Court: "Unharmful" Class Members Are Not Entitled to Damages; \$40M TransUnion Judgment Reversed

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06.10.2020

Insurers' Successful Challenge to 2016 Amendments to Florida's Unclaimed Property Act Reversed on Appeal

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07.11.2016

Trial Pros: Carlton Fields' Markham Leventhal

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08.08.2014

Florida Court Rejects "Date of Death" Trigger for Escheating Life Insurance Death Benefits Under Florida's Unclaimed Property Act

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08.01.2014

Chapter 2, "Preemption," in the Handbook on ERISA Litigation

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01.03.2014

West Virginia Court Dismisses Lawsuits Challenging Life Insurers' Unclaimed Death Benefits Practices

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05.31.1998

Class Actions: Fundamentals of Certification Analysis, Florida Bar Journal

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12.31.1984

Civil Conspiracy and Aiding-Abetting: Discussing the Structure of the Theories and Related Principles of Legal Causation

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# News

02.09.2022

Carlton Fields Attorneys Named 2022 BTI Client Service All-Stars

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10.25.2021

Life Insurers Face Challenge of Loss of Knowledge, Scattered Data

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04.27.2021

2021 Washington, D.C. Super Lawyers Recognizes Carlton Fields Attorneys

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12.09.2020

Carlton Fields Attorneys Markham R. Leventhal and Joseph W. Swanson Named 2020 BTI Client Service All-Stars

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04.17.2020

Washington, D.C. Super Lawyers Honors Carlton Fields Attorneys on 2020 Lists

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07.30.2019

Carlton Fields' Washington, D.C. Office Adds Two Skilled Trial Attorneys

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05.10.2019

Carlton Fields Defends Transamerica in Putative Class Action Involving Long-Term Care Insurance

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04.19.2019

Washington, D.C. Super Lawyers Honors Carlton Fields Attorneys on 2019 List

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04.12.2019

Carlton Fields Defends Transamerica Life Insurance Company in Putative Class Action Involving Long-Term Care Insurance

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03.29.2019

Carlton Fields' Life, Annuity, and Retirement Solutions Industry Group Co-Chair, Markham Leventhal, Named "BTI Client Service All-Star" for 2019

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## Recognition

- Outstanding Contributor Award, Lawyers for Civil Justice (2023)
- BTI Client Service All-Stars (2019, 2020, 2022); BTI All-Star MVP (2022)
- [Washington, D.C., Super Lawyers](#), Class Action, *Super Lawyers Magazine* (2020–2021)
- [Washington, D.C., Super Lawyers](#), Civil Litigation: Defense, *Super Lawyers Magazine* (2014–2019)

## Professional & Community Involvement

- American Bar Association
  - Section of Litigation
    - Class Actions and Derivative Suits Committee
    - Corporate Counsel Committee
  - Tort Trial and Insurance Practice Section
- Defense Research Institute
  - Data Management and Security Committee
- The Sedona Conference
  - Working Group on Data Security and Privacy Liability
- Miami-Dade County Bar Association
  - Federal Court Committee
- Legal Committee USA Triathlon
  - Chair (1998–2005)

## Speaking Engagements

- "Life Industry Litigation: Recent Developments and Updates," National Alliance of Life Companies 2023 Fall Conference, White Sulphur Springs, WV (September 15, 2023)
- "Life Industry Litigation: Hot Topics and Recent Developments," National Alliance of Life Companies 2022 Fall Conference, Sunriver, OR (September 16, 2022)
- "Litigation Update," ACLI Compliance and Legal Sections Annual Meeting 2022 (July 12, 2022)
- "Recent Class Action Litigation Against the Insurance Industry," National Alliance of Life Companies 2021 Spring Conference, Scottsdale, AZ (June 4, 2021)
- "A Pandemic of Litigation: An Update of Class Action Litigation Affecting the Travel Insurance Industry," U.S. Travel Insurance Association Annual Conference (October 20, 2020)

- "'Howey' Doing in the World of Securities Regulation? Rulemaking, Examinations, Enforcement, and Retirement Plan Litigation Development," IRI ACTION19 Conference, Washington, D.C. (May 17, 2019)
- "Class Action Development: Its Effect on the Life Insurance Industry," National Alliance of Life Companies 2018 Spring Conference, Santa Fe, NM (April 2018)
- "Latest Developments and Trends in Significant Annuity and Life Insurance Litigation," IRI Government, Legal & Regulatory Conference, Washington, D.C. (July 2015)
- "IRI Cybersecurity Forum," IRI Government, Legal & Regulatory Conference, Washington, D.C. (July 2015)
- "Litigation Forum: Class Action Litigation and Supreme Court Decisions," IRI Government, Legal & Regulatory Conference, Washington, D.C. (July 2014)
- "Class Action Litigation Against the Life Insurance Industry," National Alliance of Life Companies 2013 Fall Conference, Jackson Hole, WY (September 2013)
- "2013 U.S. Supreme Court Class Action Developments," IRI Government, Legal & Regulatory Conference, Washington, D.C. (June 2013)
- "Class Action and Complex Litigation Developments Affecting the Life Insurance Industry," National Alliance of Life Companies 2011 Spring Conference, Longboat Key, FL (April 2011)
- "Class Action and Individual Litigation Developments," ALI-ABA Conference on Insurance and Financial Services Litigation, Chicago, IL (July 2010)
- "Developments in Life Insurance Class Action Litigation," National Alliance of Life Companies 2005 Spring Conference, Rancho Mirage, CA (April 2005)
- "Emerging Trends in Class Actions, Bad Faith and Market Conduct Examination," ABA Tort Trial and Insurance Practice Section Midwinter Meeting, Phoenix, AZ (January 2005)
- "Class Actions: Developments in Life Insurance and Annuity Litigation," ALI-ABA Conference on Life Insurance Company Products (November 2002)
- "Litigation Technology in the Courtroom," ALI-ABA Conference on Life and Health Insurance Litigation (May 2000)

## Credentials

### Education

- New York University School of Law (LL.M., 1986)
- Seton Hall University School of Law (J.D., 1985)
- Duke University (B.S., 1981)

### Bar Admissions

### Court Admissions

- U.S. Supreme Court
- U.S. Court of Appeals, Second Circuit
- U.S. Court of Appeals, Third Circuit
- U.S. Court of Appeals, Fourth Circuit
- U.S. Court of Appeals, Fifth Circuit

- District of Columbia
- Florida
- Mississippi
- New Jersey
- New York

- U.S. Court of Appeals, Sixth Circuit
- U.S. Court of Appeals, Eighth Circuit
- U.S. Court of Appeals, Ninth Circuit
- U.S. Court of Appeals, Tenth Circuit
- U.S. Court of Appeals, Eleventh Circuit
- U.S. District Court, Eastern District of Arkansas
- U.S. District Court, Western District of Arkansas
- U.S. District Court, District of Columbia
- U.S. District Court, Middle District of Florida
- U.S. District Court, Southern District of Florida
- U.S. District Court, Northern District of Florida
- U.S. District Court, Northern District of Mississippi
- U.S. District Court, Southern District of Mississippi
- U.S. District Court, District of Nebraska
- U.S. District Court, District of New Jersey
- U.S. District Court, Eastern District of New York
- U.S. District Court, Southern District of New York
- U.S. District Court, Western District of New York
- U.S. District Court, Western District of Tennessee
- U.S. District Court, Southern District of Texas