



# Alex B. Silverman

ASSOCIATE

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## Overview

Alex Silverman represents U.S. and international insurers, reinsurers, and other businesses in complex commercial litigation and arbitration, including insurance coverage disputes and reinsurance matters. He regularly litigates and counsels insurers and reinsurers in connection with multimillion-dollar first-party and third-party claims in state and federal courts and alternative dispute resolution forums across the country. He has also litigated large-scale commercial health care and insurance fraud actions on behalf of insurers, including False Claims Act and RICO actions.

In addition, Alex regularly represents business in a range of complex commercial litigation, including breach of contract disputes, pharmaceutical product liability actions, shareholder derivative actions, and intellectual property matters concerning trademarks, trade secrets, unfair competition, and false advertising.

Alex is also a frequent writer on insurance and reinsurance-related topics. He was recently recognized for his thought leadership in the areas of insurance, arbitration, and mediation as the recipient of the *National Law Review's* 2019 Go-To Thought Leadership Award.

A passionate photographer, he is in constant search of the perfect landscape.

## Experience

### Insurance/Reinsurance Coverage and Litigation

- Obtained appellate decision affirming dismissal of suit seeking a declaration of insurer's duty to defend a \$50 million antitrust action, finding the action did not fall within the insuring agreement of a media liability policy and also would have been precluded by the policy's antitrust exclusion.
- Obtained voluntary pre-answer discontinuance of ERISA action filed against insurer in federal court.
- Represent insurers and reinsurers in multiparty litigation, arbitration, counseling, and risk management with respect to insurance and reinsurance coverage for hundreds of underlying sexual abuse claims and lawsuits arising from the New York Child Victims Act.
- Counseled life reinsurer in connection with implementing premium rate increases under YRT and other types of reinsurance treaties.

- Counsel primary and excess insurers and reinsurers regarding a host of complex coverage issues, including trigger, number of occurrences, allocation, exhaustion, other insurance, and a range of other issues arising under CGL, D&O, EPL, and professional liability policies, as well as various other lines of (re)insurance.

### **Commercial and Business Litigation**

- Represented investment bank in obtaining favorable settlement of federal court action involving payment of success fee.
- Represented New York City building owner in state court action alleging breach of contract, tortious interference, and specific performance.
- Defended pharmaceutical manufacturer in concurrent product liability actions in New York state court.
- Defended pharmaceutical manufacturer in four-week trial involving alleged misappropriation of trade secrets, tortious interference, and breach of contract.

### **All Insights**

07.08.2021	Wisconsin Federal Court Vacates Order Compelling Arbitration and Reopens District Court Case, Finding “Extraordinary Circumstances” Justified Relief Under FRCP 60(b)
07.06.2021	Texas Federal Court Compels Arbitration of Civil Rights Claims but Stays Proceedings to Avoid Future Statute of Limitations Issues
06.17.2021	SDNY Declines to Adopt Collateral Attack Doctrine, Grants Motion to Compel Arbitration
06.15.2021	Illinois District Court Denies Motion to Vacate Arbitration Award and Imposes Sanctions, Citing “Outright Hostility” to Such Challenges in the Seventh Circuit
05.25.2021	Colorado Federal Court Finds “Kona” Class Actions Did Not Trigger “Personal and Advertising Injury” Insuring Agreement
05.17.2021	Connecticut Supreme Court Finds State Law Statutory Limitation Period to Vacate Arbitration Award Confers Jurisdiction on State Courts and Not Preempted by FAA
04.29.2021	California Federal Court Rejects Unconscionability Claims, Enforces Delegation Clauses in Arbitration Agreements
04.28.2021	New York Federal Court Declines to Modify Arbitration Award to Include Attorneys’ Fees and Costs

03.16.2021	Court Finds Pre-Hearing Nonparty Deposition Subpoenas Permitted by FAA, and Rule 45 Territorial Limit Not a Bar for Virtual Deposition
02.26.2021	New York Court Finds Securities Settlements Not Covered by D&O Policies Due to Insured Capacity and Uninsurable Loss Issues
02.22.2021	Tenth Circuit Agrees Arbitration Award Issued Absent an Arbitration Agreement Was a “Farce,” Orders Sanctions Against Pro Se Petitioner
01.13.2021	New York Court Finds the Term “Exhaustion” in Excess Policy Was Ambiguous, Rules That Full Limits of Underlying Insurance Need Not Be Paid for Excess Policy to Attach
01.12.2021	District Court Transfers Consideration of Motion to Quash Pursuant to Rule 45(f)
12.02.2020	Arkansas District Court Compels Arbitration of Post-Termination Wage Dispute
11.30.2020	California District Court Grants Motion to Compel, Referring Issue of Arbitrability to Hong Kong Arbitration Forum
11.13.2020	Ninth Circuit Adopts General Rule Regarding Circumstances in Which Excess Insurers May Dispute Exhaustion of Underlying Insurance
11.05.2020	Second Circuit Affirms Arbitration Award of Over \$2M in Fees to Prevailing Party
10.15.2020	Ninth Circuit Affirms That Uber Driver Not Engaged in “Foreign or Interstate Commerce” for Purposes of Exemption to FAA
10.13.2020	Washington Supreme Court Declines To Intervene in Ongoing Arbitration, Finding Judicial Authority Under FAA Limited To “Gateway” Disputes and Review of Final Awards
09.24.2020	Georgia Supreme Court Finds Mandatory Arbitration Clause in Law Firm Engagement Agreement Is Neither Unconscionable nor Void as Against State Public Policy
09.22.2020	Federal Court Confirms \$112 Million Foreign Arbitral Award Against Ukraine, Finding No Arbitrator Impartiality

09.02.2020	Washington Federal Court Finds Attorney-Client Privilege Waived by Claims Handler's Inadvertent Disclosure of In-House Counsel's Coverage Opinion to Defense Counsel
09.02.2020	SDNY Finds Insurer, As Subrogee, Lacked Authority to Enforce Arbitration Clause in Fuel Delivery Contract
08.31.2020	Eleventh Circuit Affirms Order Compelling Arbitration of Cruise Liner Class Action
08.20.2020	Eleventh Circuit Affirms Denial of Motion to Arbitrate Where Appellant Was Not a Party to Arbitration Agreement
08.13.2020	Seventh Circuit Rejects Third-Party Administrator's Attempt to Avoid Multimillion-Dollar Arbitration Award
08.11.2020	NJ Supreme Court Finds State Arbitration Law Applies to FAA-Exempt Workers
08.05.2020	When Is an Arbitration a Foreign or International Tribunal? <b><i>Practice Points</i></b>
07.23.2020	Second Circuit Affirms Ruling That Chinese Arbitration Organization Is Not a "Foreign or International Tribunal" Under Section 1782
07.21.2020	Court Denies Petition to Vacate, Finding Petitioner Waived Objection Based on Arbitrator Impartiality
07.02.2020	Fourth Circuit Finds Arbitration Clauses Are Valid and Enforceable, Confirms Chinese Arbitral Award
06.30.2020	Oklahoma Supreme Court Finds Arbitrator, Not Court, to Determine Fraudulent Inducement Attack on Contract Containing Arbitration Clause
06.22.2020	Iowa Supreme Court Finds Fatality Allegedly Caused by Gross Negligence Was a Potential "Accident" Under CGL Policy
06.11.2020	SDNY Grants Motion to Compel Arbitration, Directs Arbitrability Issue to Arbitrators
06.09.2020	Fifth Circuit Affirms Order Denying Motion to Compel Against Non-Signatories to Arbitration Agreement

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05.21.2020	Pennsylvania Court Finds Respondent's "Different Reading" of Arbitration Award Need Not Be Raised in a Timely Motion to Vacate, Modify, or Correct
05.19.2020	Court Affirms Ruling That Insured Cannot Recover From Captive Reinsurer or Affiliated Insurance Brokerage
04.29.2020	Court Affirms Ruling Putting End to Arbitration on Issue and Claim Preclusion Grounds
04.27.2020	Court Confirms Award in Favor of Reinsurer, Including Over \$400,000 in Attorneys' Fees
04.08.2020	Seventh Circuit Agrees Defendant Expressly Waived Right to Arbitrate by Withdrawing Arbitration Argument From Motion to Dismiss
04.06.2020	Court Dismisses Professional Negligence Action Against Insurance Broker for Lack of Personal Jurisdiction
03.06.2020	Ransomware Attack Replacement Costs Are Covered "Direct Physical Loss or Damage" Under Standard Business Owner's Policy, According to Maryland Federal Court
02.05.2020	District Court Enforces Mandatory Arbitration Clause, Despite State Law Prohibiting Such Provisions in Insurance Contracts
02.03.2020	Ninth Circuit Agrees Defendant Waived Right to Arbitrate, Affirms Order Denying Motion to Compel
01.15.2020	Federal Court Dismisses Policyholder's Third-Party Action Against Reinsurers
01.13.2020	Third Circuit Affirms Order Declining to Consolidate Reinsurance Dispute, but Vacates Order Denying Motion to Unseal
12.04.2019	District Court Confirms \$220 Million Award, Finds No Manifest Disregard of Law
12.02.2019	New York Appellate Division Declines to Enjoin Baltimore Orioles' Arbitration Against Washington Nationals

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11.13.2019	Southern District of New York Holds That Arbitrator's Refusal to Postpone Hearing and Consider Witnesses Not "Misconduct" Requiring Vacatur
11.11.2019	SDNY Compels Arbitration Based on Severability Doctrine, Finds Fee-Shifting Clause Not Unconscionable
10.31.2019	Court Finds Animals Incapable of Vandalism or Malicious Mischief for Insurance Purposes (and all other purposes, too)
10.24.2019	Court Finds Medical Bill Reimbursement Claim Subject to "Biblically-Based Mediation and Arbitration"
10.22.2019	New York Court Compels Arbitration of Commercial Marijuana Dispute
10.03.2019	District Court Dismisses Petition to Confirm Interim Arbitration Award for Lack of Subject-Matter Jurisdiction
10.01.2019	District Court Compels Arbitration Citing Insurance Policy's "Service-of-Suit" Provision
09.12.2019	UK High Court Declines to Sanction Transfer of Annuity Portfolio
09.10.2019	Court Stays Yacht-Wreck Coverage Action Pending Concurrent Proceeding to Vacate Arbitration Award in Favor of Insurers
08.21.2019	Court Denies Reinsurer's Motion to Compel, Finding No Basis to Decide Issues Concerning Costs for Which Cedent Has Not Requested Payment
08.19.2019	Court Confirms Arbitration Award, Finding It Was Based in Part on "Plain Error," but Did Not Amount to Manifest Disregard of the Law
08.01.2019	SDNY Dismisses Captive Reinsurer's Counterclaims, Finding Reinsurance Agreement Never Rescinded and Cedent's Duty to Cede Premiums Never Arose
07.30.2019	Ninth Circuit Binds Plaintiff to Arbitration Clause It Never Received, Finding Clause Was "Readily Available" and Incorporated by Reference Into Purchase Order
07.11.2019	Changes to the Patent Landscape for the Insurance and Financial Industries

- 07.10.2019 Failure to Specifically Challenge “Delegation” Clause in Arbitration Agreement Means Motion to Compel Arbitration “Must Be Granted”
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- 07.08.2019 District Court Grants Motion to Compel Arbitration, Finding Arbitration Provision Not Severable From Allegedly Void Contract
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- 06.18.2019 Second Circuit Adopts Standard for Determining Subject-Matter Jurisdiction Over Motions to Confirm Arbitration Awards Under FAA Section 9
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- 06.17.2019 West Virginia Supreme Court Reverses, Finds “Delegation Clause” in Employment Arbitration Agreement Neither Ambiguous nor Unconscionable
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- 06.14.2019 EDNY “Teas” It Up On Additional Insured, Finds Insurer May Withdraw Defense and Recoup Defense Costs
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- 05.29.2019 California Court Denies Defendants’ Motions for Summary Judgment, Finding Evidentiary Support for Odyssey Re’s Fraudulent Transfer Claims
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- 05.10.2019 Tenth Circuit Finds No Jurisdiction to Hear Appeal of District Court Stay Order While Motion to Compel Arbitration Is Pending in Parallel Federal Court Proceeding
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- 05.07.2019 Second Circuit Vacates SDNY Order Enforcing Arbitration Award Against Reinsurer
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- 04.16.2019 District Court Denies Summary Judgment to Trustee of Trust Account Maintained for Beneficiary of “Fronted” Reinsurance Program
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- 04.15.2019 SDNY Vacates Amended Arbitration Award, Confirms Original \$39 Million Award, Finding Panel Exceeded Authority and Manifestly Disregarded Law
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- 03.27.2019 District Court Declines to Decide Procedural Arbitrability Issue, Separately Seals Docket, Finding “Reasonably Significant Privacy Interest” in Reinsurance Treaties
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- 03.26.2019 Ninth Circuit Dismisses Interlocutory Appeal, Finds Order Compelling Arbitration Not a “Final Decision” Under FAA
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03.12.2019	Second Circuit Holds “Offering for Sale” Is “Advertising Injury” Under CGL Policy, But Allegation No
10.12.2018	Eleventh Circuit Finds Exclusion Bars Trademark Infringement and Dependent False Designation and ...
09.28.2018	Ninth Circuit Holds Putative Class Action ERISA Claims Fall Outside Scope of Individual Arbitration
09.06.2018	Promissory Note Issued In Satisfaction of Unpaid Insurance Premiums Is Valid And Enforceable, Even If Allegedly Derived From Unapproved Reinsurance Agreement
06.11.2018	Implications of U.S. Withdrawal from Iran Nuclear Deal on (Re)insurance Industry
05.01.2018	Fourth Circuit Finds Employer Cannot Compel Arbitration of Former Employee’s Discrimination Claims
04.10.2018	U.K. Court Of Appeal Finds Experienced “Insurance Or Reinsurance” Lawyers Are Eligible For Appointment To Arbitration Panel Under Arbitration Clause In Reinsurance Treaty
04.09.2018	New York’s Highest Court Rejects ‘Unavailability of Insurance Exception’ Under ‘Pro Rata Time on the Risk Allocation’
03.21.2018	Seventh Circuit Reverses Order Compelling Arbitration of Dispute Between Two Non-Signatories to Arbitration Agreement
03.01.2018	U.K. Court Finds Arbitration Respondent Did Not Waive Objection to Jurisdiction of Arbitration Tribunal
02.27.2018	Court Enforces Arbitration Award, Finds Reinsurer Must Pay Settlement Between Retrocessionaire and Policyholder
02.06.2018	S.D.N.Y. Dismisses Insurer’s Claims Against Reinsurance Broker Under Economic Loss Doctrine, Finds No Special Relationship
12.29.2017	Major Disruption in the Use of Technology and Trademarks in the Insurance Industry
12.27.2017	Magistrate Judge Recommends Denying Application for \$305M Reinsurance Judgment



12.06.2017	Wisconsin Adopts New Credit for Reinsurance Rule Based on Certified Reinsurers
12.04.2017	Court Finds Confidentiality Provision in Arbitration Agreement Unconscionable, Compels Consumer Arbitration
10.27.2017	SDNY Rules SEC Investigation Is A "Claim" Within Pending and Prior Acts Exclusion
10.26.2017	U.K. Court Approves Multi-Billion Pound Plan to Transfer Annuity Liabilities Under Reinsurance and Business Transfer Agreements
10.24.2017	Fifth Circuit Finds Order Not "Final" for Purposes of Appellate Jurisdiction
09.14.2017	Fourth Circuit Reverses Ruling That Reinsurance Agreement Is an "Insurance Contract" Under Virginia Law
09.12.2017	Sixth Circuit Affirms Vacatur of Arbitration Award Based on Prior Termination of Sales Contract
09.01.2017	Third Circuit Clarifies Abstention Doctrine in Insurance Coverage Declaratory Action

### All News

05.01.2020	Carlton Fields Recognized as 2020 Top Firm for Insurance for Third Consecutive Year
12.06.2019	Carlton Fields Attorneys Recognized as National Law Review Go-To Thought Leaders
08.17.2017	Carlton Fields Adds Property & Casualty Insurance Attorney Alex B. Silverman in New York

### Recognition

- Recognized as a Top Author in insurance by the 2020 *JD Supra* Readers' Choice Awards
- Go-To Thought Leadership Award, Insurance/Reinsurance, *National Law Review* (2019)

### Speaking Engagements

- "Insurance Coverage Issues," Perrin Sexual Abuse Litigation and Coverage Conference (March 18, 2021)

## Credentials

### EDUCATION

- New York Law School (J.D., magna cum laude and with highest honors, 2012)
  - Editor, *New York Law School Law Review*
  - New York Law School Moot Court Association
- University of Rhode Island (B.A., cum laude, 2008)

### COURT ADMISSIONS

- U.S. District Court, Eastern District of New York
- U.S. District Court, Southern District of New York

### BAR ADMISSIONS

- New York

## Background

- Associate, Rivkin Radler LLP, Uniondale, New York, NY (2015–2017)
- Associate, Stern & Montana LLP, New York, NY (2012–2015)

## Areas of Focus

### PRACTICES

- Appellate & Trial Support
- Cybersecurity and Privacy
- Intellectual Property
- Life, Annuity, and Retirement Litigation
- Litigation and Trials
- Property & Casualty Insurance
- Real Property Litigation
- Reinsurance

### INDUSTRIES

- Banking, Commercial, and Consumer Finance