



Zachary Newman

Partner

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INDUSTRIES

- Agriculture & Food
- Financial Services
- Information Technology
- Manufacturing
- Nonprofit and Charitable Organizations
- Real Estate
- Transportation

Zachary delivers practical, tactical, and experienced advice to corporate, lending, and fiduciary clients with respect to all phases of litigation, alternate dispute resolution, and pre-suit evaluation.

Zachary also serves as a Vice-Chair of Thompson Coburn's Business Litigation Group, and is a member of the Firm's Compensation Committee.

For over 25 years, Zachary has established himself to be the one you want with you, and on your side, in and outside of the courtroom. He has successfully litigated a wide array of matters involving many industries and jurisdictions, and, although based in New York City, he often is asked by his clients to serve as lead counsel elsewhere and he has done so in such jurisdictions as Arkansas, California, Connecticut, Delaware, Florida, Georgia, Indiana, Massachusetts, New Hampshire, New Jersey, Pennsylvania, and Texas. These experiences include Zachary trying cases to jury verdicts and bench rulings in numerous courts. He also has extensive alternative dispute resolution experience, focused on pre-suit evaluations, negotiations, and mediation.

Zachary also has wide-ranging appellate experience, having briefed or argued appeals in the First and Second Departments of the Appellate Division of the State of New York, the Court of Appeals for the State of New York, Florida District Court of Appeals, the Supreme Court of New Hampshire, and the First, Second, and Fifth Federal Circuits Courts of Appeals.

Over the years, Zachary's trial and appellate practice has concentrated on Business Litigation (contract and executive compensation disputes, commercial insurance claims, aircraft lease disputes, unfair competition and restrictive covenants, business divorce, bankruptcy disputes, and alter ego and fraud claims); Financial Services Litigation (defense [lender liability, malfeasance unlawful practice, and deceptive trade claims] and affirmative actions [enforcement of multi-million dollar credit facilities, loan-related agreements and documents, and securing provisional remedies]); Fiduciary Litigation (investment-related claims, breach of fiduciary duty claims, and contested accountings); and Complex Collateral and Judgment Recovery (national and international reacquisition of pledged, lost, or stolen collateral, repossessions and liquidations, judgment enforcement, and disputes regarding valuations, fraudulent auctions, consignor-lender

PRACTICES

- Alternate Dispute Resolution
- Appellate
- Automotive
- Banking
- Banking & Financial Services Litigation
- Business Litigation
- Business Ownership and Governance Disputes
- Closely Held Businesses
- Commercial Acquisition and Sale
- Construction and Development
- Corporate Finance & Securities
- Corporate Law
- Electronic Discovery
- Employment Litigation
- Estate Planning
- Family Wealth and Business Collaborative
- Financial Restructuring & Bankruptcy
- Insurance Litigation
- Private Equity Transactions
- Probate and Trust Administration
- Real Estate and Construction Litigation
- Securities and Investment Litigation
- Trust and Estate Litigation
- Workout & Foreclosure

ADMISSIONS

- New Jersey
- New York

issues, and lien priority).

Representative clients include global financial institutions, hedge funds, private equity firms, private companies, and corporate fiduciaries.

Zachary also has served as a court-appointed receiver or counsel thereto, including in such matters involving a multi-million dollar art liquidation with one of the world's largest fine art auction houses and a multi-million dollar phishing fraud that induced investors and resulted in the CEO pleading guilty to securities fraud and wire fraud.

Zachary regularly speaks on topics such as "best lending" practices, lender liability, evidentiary issues, e-discovery, trusts and estates litigation, art loans and the rights of art consignors, and judgment enforcement, and has been invited to speak for the American Bar Association, Business Law Section and Litigation Section, the New York City Bar Association, the New York State Bar Association, and the New York Law Journal.

Zachary's articles span a variety of litigation management, evidentiary, and legal topics, including tortious interference, provisional remedies, electronic discovery and available technologies, fiduciary liability, collateral recovery, and lender liability.

Zachary currently serves on the governing Council of the American Bar Association's Section of Litigation. In this capacity, he helps establish policy and guide the Section, one of the ABA's largest and most active groups, and the premier organization for trial lawyers in the United States.

Experience

- **Successfully defeated a second successive summary judgment motion on multi-million dollar claims brought under the UCC and contract claims on behalf of the largest privately held food importer in the United States. (2021)**
- **Secured an appellate ruling upholding the violation of a filing injunction and affirmed award of costs and attorney's fees. (2020)**
- **Secured the voluntary dismissal of an action on behalf of one of the largest retail salvage companies in the United States following argument on application to dismiss or transfer based on forum non conveniens. (2018)**
- **On behalf of a corporate fiduciary secured an appellate court's affirmances of underlying discovery orders and limitations on depositions imposed by the trial court. (2018)**
- **Secured a judgment on behalf of the largest privately-held food importer in the United States against a vendor for delivering non-conforming merchandise and breach of contract. (2018)**
- **On behalf of a banking client, defeated the plaintiff's summary judgment motion and secured dismissal of plaintiff's complaint alleging, among other things, unlawful trade practices, breach of contract, and promissory estoppel. (2017)**
- **Secured an appellate ruling that dismissed a petition for writ of prohibition in connection with a contested accounting proceeding for an institutional trustee. (2017)**
- **Defeated summary judgment on behalf of largest privately-held food importer in the United States. (2017)**
- **Discovery rulings affirmed on appeal for institutional executor.**

EDUCATION

- Fordham University School of Law, J.D., 1994, International Law Journal, Moot Court Board, Awarded Best Oralist in William H. Mulligan Moot C, Judicial Intern, U.S. Magistrate Judge John Caden, Recipient, New York State Trial Lawyers Associatio, Award for Trial Advocacy
- State University of New York at Binghamton, B.A., 1990

EMPLOYMENT

- Thompson Coburn; Partner, 2021-Present
- Hahn & Hessen; Partner, 2004-2021 Associate, 1998-2004
- Rosner & Goodman LLP; Associate, 1996-1998 Summer Associate, 1993
- Pasternack Popish & Reiff, P.C.; Associate, 1994-1996 Summer Associate, 1992

AFFILIATIONS

- American Bar Association, Governing Council, Section of Litigation, ABA Presidential Working Group on Task Based Billing, 2017-2018, Past Co-Chair, Corporate Counsel Committee, Section of Litigation
- New York State Bar Association
- City Bar Association of the City of New York, Committee on Trusts, Estates & Surrogate's Courts

(2015)

- **On behalf of an aircraft lessor secured an affirmance and ruling that extended safe harbor to the lender prior to the actual repossession of collateral. (2011)**
- **On behalf of an institutional trustee, secured an appellate ruling that reversed and remanded a fee award to petitioners in Article 77 and 81 proceedings and affirmed the trial court's factual findings against petitioners (2011)**
- **Successfully achieved summary judgment in lieu of complaint for a commercial lender. (2010)**
- **Enforced a bank client's rights in a \$50 million loan facility and upheld an ex parte seizure of collateral and an ex parte order of attachment. (2019)**
- **On behalf of court-appointed guardian, secured dismissal of claims against court-appointed guardian based on numerous defenses including res judicata and timeliness. (2009)**
- **For a specialty lender, successfully defended lender liability claims and upheld the post-default disposition of collateral. (2008)**
- **Secured an appellate ruling affirming injunctive relief in a defaulted secured art loan. (2007)**
- **Secured an appellate decision that upheld a bank's rights to collect from guarantors. (2004)**
- **Secured an appellate ruling that affirmed fraudulent conveyance trial findings with respect to a NYC townhouse. (2003)**
- **Won summary judgment for a financial services client on conversion of receivables and upheld the UCC prohibition against disposition of inventory collateral except in the ordinary course of business. (2002)**

Recognitions

- Listed in New York Metro Area Super Lawyers (by Thomson Reuters), 2010-2021*
- *Pursuant to New Jersey requirements (Zachary is admitted in New Jersey, in addition to New York), we provide the following additional information: No aspect of this or any advertisement has been approved by the Supreme Court of New Jersey. For information on award methodologies, please visit thompsoncoburn.com/awards-methodologies.

Presentations

- "Enforcing Money Claims Pre- & Post-Judgment: Turning Your Judgment Into an Actual Financial Recovery," City Bar Association of the City of New York February 2016
- "Tortious Interference with Contracts and Prospective Business Advantage: Proving and Defending Claims" Strafford February 2015
- "Deficiency Liability Of Commercial Loan Guarantors: A Comparison of California, Florida, Georgia, Illinois, and New York Law," ABA Business Law Section, Commercial Finance Committee September 2014
- "Piercing the Corporate Veil & Turning the Judgment into Money CLE,"

The Rossdale Group 2014

- Moderator, "The Changing Face of Electronic Discovery," ABA Corporate Counsel Seminar February 2014
- Panelist, "How Technology Can Help Control Litigation Costs," Global Litigation Conference and Exhibition (Law-IT-Outsourcing) October 2014
- "Bridge-The-Gap, Ethics, Skills & More," City Bar Association of the City of New York July 2012
- "Contested Accountings in Estate Litigation," New York State Bar Association June 2011
- "Structuring Default Provisions in Commercial Loans, Maximizing Borrower Protection and Lender Remedies Through Effective Event of Default Clauses," Strafford June 2011

Publications

- Quoted in "Companies, Beware: Emails are Forever," *American Bar Association Litigation News* 2019
- "Trending Issues in Art Litigation," *NJ Bar Assn Art Law Symposium* September 2018
- Co-Author, "The Anatomy and Proliferation of Fraud-Based Lender Liability Claims," *Journal of Taxation and Regulation of Financial Institutions* May/June 2014
- Author, "Mark Califano of American Express Answers All Our Questions, And for only 25,000 membership rewards points," *American Bar Association* December 2013
- Co-Author, "I've Been Sued for What? Fiduciary Duty Claims Against Hedge Fund Managers and How to Avoid Them," *HedgeCo.Net* August 2013
- Co-Author, "The Enforceability of Fiduciary Duty Waivers," *Commercial & Business Litigation* Spring 2013
- Co-Author, "The Increasing Popularity and Utility of Mediation American Bar Association," February 2013
- "A Primer on Recovering Lost-Profit Damages," *Business Torts & Unfair Competition (ABA Section of Litigation)* October 2012
- Author, "Hot Topics and Recent Court Decisions in E-Discovery," *American Bar Association* June 2012
- Co-Author, "Evidentiary Challenges to Documents for Trial," *Business Torts Journal* May 2012
- Author, "Tuning In with Bob Donohoo, RadioShack's General Counsel," *American Bar Association* February 2012
- "In-House Spotlight: All Things In-House at the Auction House with Jonathan Olsoff, worldwide director of litigation at Sotheby's and leader

in the auction world, discusses his in-house practice," *American Bar Association* September 2011

- Co-Author, "Navigating the Nuances of Tortious Interference Claims," *Business Torts Journal* Summer 2011
- "The Reliability, Admissibility, and Power of Electronic Discovery," *The Committee on Pretrial Practice & Discovery* Fall 2010
- Litigation Alert: "Recent E-Discovery Decision Impacts All Companies, Including Hedge Funds," *FINalternatives* January 2010