



James M. Westerlind

PARTNER

James focuses on insurance coverage issues, particularly those recently arising from COVID-19.



Industries

Transportation & Mobility
— Automotive

Practices

Complex Litigation
Privacy, Data Protection & Data Security
Insurance & Reinsurance

Education

St. John's University School of Law, JD, cum laude, 2001

State University of New York at Stony Brook, magna cum laude, 1997

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During the pandemic, James has heavily focused on the vast and various insurance issues, including coverage, legislative, and policy considerations, arising from the coronavirus and the effects that it has had on clients.

James' practice also focuses on resolving insurance and reinsurance disputes, including insurance and reinsurance coverage issues on behalf of policyholders and carriers. James has also represented brokers, agents, and MGAs in disputes with insurance and reinsurance carriers.

James has substantial litigation experience in both state and federal trial courts within and outside of New York, representing plaintiffs and defendants in insurance and noninsurance disputes. In addition to insurance litigation, he has defended a number of prominent US companies in product liability actions. He has also defended toxic tort cases. He has first-chaired and second-chaired numerous evidentiary hearings and trials. He tried a major jury trial in the Southern District of Florida, obtaining a jury verdict finding that a life insurance policy was valid and enforceable, despite the jury finding that the trust that owned the policy made material misrepresentations in the policy's application and engaged in a civil conspiracy to defraud the insurance company and engage in a stranger-originated life insurance (STOLI) scheme. He has also defended a number of well-known tire manufacturers and large domestic retailers in product liability actions commenced in New York state and federal courts by alleged injured product users.

James also represents auto dealers in franchise disputes with auto manufacturers in various federal and state actions and administrative proceedings. He first-chaired a termination case, prevailing on behalf of his dealer client after a two-week trial before the New York State Department of Motor Vehicles Division of Safety and Business Hearings in *Beck Chevrolet Co., Inc. v. General Motors LLC*, Case No. FMD 2013-02. [A copy of the Administrative Law Judge's decision in the Beck matter can be viewed by clicking here](#). The recent Department of Motor Vehicles Appeals Board decision affirming [the Administrative Law Judge's decision can be viewed by clicking here](#). He also assisted in the appeal decided by the New York Court of Appeals in favor of Beck Chevrolet on two certified questions from the U.S. Second Circuit Court of Appeals in a related federal lawsuit, which decision concluded that GM's sales measurement protocol is illegal. [A copy of the N.Y. Court of Appeals decision is available here](#).

James has also taken the lead in a number of appeals in the New York State Supreme Court, First and Second Judicial Departments, and the Second, Ninth, and Eleventh Circuits of the US Courts of

Appeals.

James has devoted a substantial portion of his time to *pro bono* matters, including not-for-profit public interest endeavors and family court litigation. In fact, James is a recipient of the ArentFox Schiff Albert E. Arent Award for outstanding *pro bono* achievement (Fall 2013) and the Commitment to Justice Award (February 2014) from Her Justice, a nonprofit organization devoted to helping women in need. In addition, he was a member of the Insurance Law Committee of the New York City Bar Association, where he assisted in shaping New York insurance law and public policy in an effort to help the public and the profession.

Client Work

James' recent matters have included:

- Representation of auto dealers on Long Island in an add-point dispute against Audi of America.
- Representation of an auto dealer on Long Island in a facility renovation dispute against Audi of America.
- Representation of auto dealers in Westchester in a lawsuit against Jaguar Land Rover North America, LLC.
- Representation of Beck Chevrolet in both DMV and federal lawsuit proceedings against General Motors LLC.
- Representation of a life insurance trust in a lawsuit against an insurer to recover a multimillion dollar death benefit and success in obtaining a jury verdict in Florida federal court, finding that the policy had requisite insurable interest and that the insurer did not reasonably rely upon, and was not injured by, material misrepresentations in the policy's application and conspiracy by the trust to engage in a STOLI scheme.
- Representation of products manufacturers and retailers in defending product liability lawsuits.
- Representation of a school that employs teachers abroad in an action against an insurer that provided insurance coverage for the school's employee benefits package, where the insurer misrepresented its financial ability to underwrite the insurance program, abruptly stopped paying health insurance claims made by the teachers under the insurance program and absconded with millions of dollars in premiums paid under the program.
- Representation of a Long Island co-op in a lawsuit by one of its tenants / shareholders alleging bodily injuries and property damage from exposure to toxic mold in her unit.
- Representation of numerous investors and secured lenders in life settlements litigation in state and federal courts across the United States.
- Representation of agent and insurance company in workers' compensation reinsurance fronting arrangement.
- Representation of Fortress Re, a reinsurance pool managing general agent, and its principals in a \$1 billion fraud action and arbitration commenced by its Japanese pool members.

Representative cases litigated by James include the following:

- *Int'l Schools Services v. AAUG Ins. Co., Ltd.*, Nos. 10-15846-GG, 11-10595-GG, 2012 WL 5199262 (11th Cir. Jan. 6, 2012)
- *Fondation Dixhuit v. Pruco Life Ins. Co. of N.J.*, No. 14-CV-2165 (VEC), 2014 WL 4230586 (S.D.N.Y. Aug. 27, 2014)
- *Int'l Schools Services v. AAUG Ins. Co., Ltd.*, No. 10-62115-CIV., 2012 WL 5635590 (S.D. Fla. Nov. 15, 2012)
- *Int'l Schools Services v. AAUG Ins. Co., Ltd.*, No. 10-62115-CIV., 2012 WL 4936054 (S.D. Fla. Oct. 17, 2012)
- *Int'l Schools Services v. AAUG Ins. Co., Ltd.*, No. 10-62115-CIV., 2012 WL 5192265 (S.D. Fla. Jul. 25, 2012)
- *Int'l Schools Services v. AAUG Ins. Co., Ltd.*, No. 10-62115-CIV., 2012 WL 5192599 (S.D. Fla. Jun. 6, 2012)
- *Int'l Schools Services v. AAUG Ins. Co., Ltd.*, No. 10-62115-CIV., 2011 WL 9362401 (S.D. Fla. Dec. 13, 2011)
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- Int'l Schools Services v. AAUG Ins. Co., Ltd.*, No. 10-62115-CIV., 2011 WL 9352076 (S.D. Fla. Oct. 4, 2011)
- *Int'l Schools Services v. AAUG Ins. Co., Ltd.*, No. 10-62115-CIV., 2011 WL 9360209 (S.D. Fla. Jul. 14, 2011)
 - *Sciarretta v. The Lincoln National Life Insurance Company*, No. 9:11-cv-80427 (S.D. Fla. 2011) (favorable jury verdict)
 - *Sciarretta v. The Lincoln National Life Insurance Company*, No. 9:11-cv-80427, 2012 WL 5195944 (S.D. Fla. Feb. 15, 2011)
 - *Pacific Employers Ins. Co. v. AXA Belgium, S.A.*, 785 F. Supp. 2d 457 (E.D. Pa. 2011)
 - *Int'l Schools Services v. AAUG Ins. Co., Ltd.*, No. 10-62115-CIV., 2011 WL 915692 (S.D. Fla. Mar. 16, 2011)
 - *Int'l Schools Services v. AAUG Ins. Co., Ltd.*, No. 10-62115-CIV., 2011 WL 9357633 (S.D. Fla. Feb. 18, 2011)
 - *Int'l Schools Services v. AAUG Ins. Co., Ltd.*, No. 10-62115-CIV., 2010 WL 9004379 (S.D. Fla. Dec. 30, 2011)
 - *Int'l Schools Services v. AAUG Ins. Co., Ltd.*, No. 10-62115-CIV., 2010 WL 4810847 (S.D. Fla. Nov. 19, 2010)

Previous Work

Prior to joining ArentFox Schiff, James was an associate in the New York office of a large law firm.

Publications, Presentations & Recognitions

James' recent presentations include:

- Panelist at Fasano 18th Annual Longevity Conference presenting on Legal and Regulatory Outlook in Washington, DC on November 1, 2021
- Panelist in the Expert Webcast discussion “[Insurance Implications of the Pandemic for Your Company](#)” on December 3, 2020
- Panelist in the “[AF COVID-19 Podcast: Business Interruption Coverage, Do You Have a Claim?](#)” on April 3, 2020
- Panelist in the Expert Webcast discussion “[Mitigating Cyber Issues in M&A](#)” on September 26, 2017
- Panelist in [presentation on data breach litigation](#) at the 2016 ABA annual meeting.
- Panelist in the Expert Webcast discussion “[Crisis and Risk Management for Boards of Directors, Management and General Counsel](#)” on August 4, 2016
- Panelist in the Expert Webcast discussion “[What Companies, General Counsel and Their Advisors Need to Know About Cybersecurity, Privacy and Data Management](#)” on May 19, 2016
- Panelist in the Expert Webcast discussion “[Cybersecurity Issues in M&A](#)” on February 4, 2016

James' recent published works include:

- “[Massachusetts High Court Finds COVID-19 Income Loss Excluded From “All-Risk” Business Insurance Policies](#),” April 2022
- “[Recent Proposed State Legislation Concerning Business Interruption Coverage for COVID-19 Claims](#),” April 2020
- “[Key Exclusions That Can Limit Your Insurance Coverage For COVID-19](#),” March 2020
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- [“Event Cancellation Insurance In The Age Of COVID-19,”](#) March 2020
- [“New York Requests Preparedness Plans to Manage COVID-19 Risk,”](#) March 2020
- [“COVID-19 and WC Claims: The Facts Are Key, But Employees Face A Significant Evidentiary Burden,”](#) March 2020
- [“State Legislative and Insurance Regulatory Responses to COVID-19 – Maryland ,”](#) March 2020
- [“Is There Civil Authority Coverage for COVID-19 Claims? ,”](#) March 2020
- [“Making and Documenting a COVID-19 Contingent Business Insurance Claim ,”](#) March 2020
- [“Is There Business Interruption Coverage for Coronavirus Under an Insurance Policy? ,”](#) March 2020
- [“Coronavirus Impacts: What Insurance Coverage May Be Available ,”](#) March 2020
- [“Survey of Data Breach Notification Statutes ,”](#) September 2019
- [“Cyber Phishing Scams: Do You Have Coverage? – Part II ,”](#) Privacy & Cybersecurity Law Report, September 2018
- [“Cyber Phishing Scams: Do You Have Coverage? – Part I ,”](#) Privacy & Cybersecurity Law Report, July/August, 2018
- [“Second Circuit Affirms Big Win for Life Settlement Investor ,”](#) *FC&S Legal: The Insurance Coverage Law Information Center*, July 25, 2018
- [“Cyber Phishing Scams: Do You Have Coverage? - Part I ,”](#) *Pratt’s Privacy & Cybersecurity Law Report*, July/August 2018
- [“‘Disgorgment’ Payments May Be Insurable In NY ,”](#) *Law360*, July 2018
- [“Stop the Bleeding: Challenging The Manufacturers’ Control of Dealers Through Incentives ,”](#) *DEFENDER, National Association of Dealer Counsel*, September 2017
- [“Data Breach Class Action Lawsuits: First Response for Defense - Motion to Dismiss for Lack of Standing ,”](#) *Pratt’s Privacy & Cybersecurity Law Report*, January 2017
- [“Privacy, cybersecurity, connected cars and driverless vehicles ,”](#) *Westlaw Journal Automotive*, November 29, 2016
- [“The Board’s Cybersecurity Responsibility ,”](#) *RIMs*, May 2016
- [“Careful Negotiations Reduce Risk of Being Held to Cyber Ransom ,”](#) *Business Insurance*, May 2016
- [“Captive Insurance Companies: An Alternative Risk Transfer Vehicle ,”](#) *Financier Worldwide*, March 2016
- [“Cyber Insurance: What Are You Buying? ,”](#) *Mealey’s Emerging Insurance Disputes*, January 2016
[Download a PDF](#)
- [“Caveat Manufacturer: A Basic Guide for Non-U.S. Manufacturers and Distributors to Understand the Judicial System and Products Liability Law in the United States ,”](#) 2014
[Download a PDF](#)
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“Survey of Damage Laws of the 50 States including the District of Columbia and Puerto Rico,” co-authored with Elliott M. Kroll, 2012

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- “[Insurance Coverage For Lanham Act Claims Under Section B Of Standard CGL Policies](#),” *Mealey’s Emerging Insurance Disputes*, August 2011
- “[The Preclusive Effect Of Arbitration Awards](#),” *Mealey’s Litigation Report Reinsurance*, August 2010
- “Blowing the Cobwebs Off Trademark Infringement Insurance,” *INTA Bulletin*, co-authored with Barry Werbin, September 2008

Bar Admissions

[New York](#)

[Connecticut](#)

[Florida](#)

[Texas](#)

Court Admissions

[US District Court, Eastern District of Michigan](#)

[US District Court, Eastern District of New York](#)

[US District Court, Southern District of New York](#)

[US District Court, Western District of New York](#)

[US Court of Appeals, 2nd Circuit](#)

[US Court of Appeals, 9th Circuit](#)

[US Court of Appeals, 11th Circuit](#)