



# Adam Ziffer

Partner

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## My Approach

From the outset of any matter, I read the relevant “room” and emerge as a leader, capturing the attention and intention of judges, jurors, and opposing counsel. This ultimately lends credibility to my clients and helps me prioritize their interests. After I study every factor in the calculus of a case, I strategically craft a narrative designed to precisely tie into our theme the answers to whatever issues emerge. Ultimately, I thrive in the courtroom, where the strategy comes together and I can harmonize the facts and law to achieve success.

## Overview

Nationally and internationally known for his successful litigation and arbitration strategies and execution, Adam S. Ziffer represents policyholders in actions for damages and declaratory relief and counsels clients on a range of insurance-related issues. Adam litigates some of the most cutting-edge, precedent-setting insurance coverage cases in trial and appellate courts throughout the country. They include privacy liability, employee dishonesty, first-party, errors and omissions, directors and officers, product liability, asbestos, environmental, and employment coverage matters. In his global practice, Adam represents clients in arbitrations in London, Bermuda, and other international venues.

Clients have reported to *Chambers* that “Adam is an extremely good advocate in court and a great person to have on your side when the stakes are high,” and that he is one “of the best coverage attorneys we found with an outstanding knowledge of policy coverage law and how to litigate.” Another client told *Chambers* that Adam “does a great job at implementing the strategy and winning at the pleading stage” and “pays great attention to detail.”

Serving as lead counsel in state and federal courts, Adam treats discussions with judges very respectfully but also as if he is in a dinner conversation with them. This approach helps him gain rapport with judges and juries, which sets him apart in a sea of attorneys—Adam becomes the voice that the judge or jury looks to for the direct and candid answer, and this credibility then extends to his clients. A proponent of cultivating relationships and collaborating with opposing counsel, Adam works hard to keep matters moving along smoothly in discovery and other stages of the litigation process. He knows how to identify for judges the key impasse issue in summary judgment motions, which often results in quicker and more efficient positive resolutions for his clients.

While understanding the many granular nuances of a matter, Adam also considers the big-picture perspective and knows when to launch surgical strikes in making pivotal points at trial and during negotiations. He often draws on his diverse general litigation background, which includes cases involving general commercial and contractual disputes, securities fraud claims, and labor and employment issues. Throughout his career, Adam has tried to apply reasonable and thoughtful positions to his matters, which serve as guideposts in representing clients and achieving the most optimal outcomes.

## Education

Fordham University School of Law (JD, , 1995)

Editor, Moot Court Board

University of Florida (BS, , 1992)

## Admissions

### Bar Admissions

New York

### Court Admissions

U.S. Court of Appeals, First Circuit

U.S. Court of Appeals, Fourth Circuit

U.S. Court of Appeals, Ninth Circuit

U.S. Court of Appeals, Second Circuit

U.S. Court of Appeals, Sixth Circuit

U.S. Court of Appeals, Third Circuit

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

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

## Relevant Experience

- Adam led the representation of **Teachers Insurance and Annuity Association of America (“TIAA”)** and other related entities in an insurance coverage lawsuit filed in Delaware Superior Court against certain of TIAA professional liability insurers seeking reimbursement of its costs to defend and settle three class action lawsuits alleging claims relating to delays in processing account holders’ transfer requests in certain investment accounts. Adam obtained a landmark decision from President Judge Jan Jurden granting summary judgment to TIAA, finding that a civil settlement of a lawsuit involving claims for disgorgement was an insurable loss under New York law. He first-chaired the subsequent jury trial, defeated a variety of the insurance company’s remaining defenses, and obtained a verdict worth \$50 million. Adam then successfully argued the appeal in the Delaware Supreme Court, which affirmed the verdict in all respects.
- Adam led the representation of **Medidata Solutions Inc.** in securing a first-of-its-kind summary judgment ruling from the U.S. District Court for the Southern District of New York regarding insurance coverage for cyber-theft losses. The decision, ultimately affirmed by the Second Circuit, allowed Medidata to access coverage under a Federal Insurance Co. commercial crime insurance policy for a loss that the company suffered as a result of a computer fraud incident. The decision is one of the first involving coverage for email “spoofing,” a threat faced by many companies, in which fraudulent transfers of money are induced by emails to employees that appear to be from the email accounts of senior company officers, but are sent by the perpetrators of the fraud with replies routed back to accounts the perpetrators control.
- Adam leads the representation of **Pfizer** in three high-stakes insurance litigations and companion arbitrations to recover under three different towers of D&O insurance for three different underlying shareholder class actions. In Pfizer’s suit against Arch and U.S. Specialty filed in the Delaware Superior Court, he successfully argued in asserting that Delaware law should apply to insurance coverage for directors and officers coverage of a Delaware corporation, rather than New York law where Pfizer’s headquarters is located, and that a variety of “related wrongful acts” exclusions did not bar coverage for Pfizer’s claim. On August 28, 2020, Delaware Superior Court Judge Paul R. Wallace held that Pfizer is entitled to coverage under a \$15 million excess directors and officers policy with U.S. Specialty for its costs in the underlying case of *Morabito v. Pfizer*, even though it previously settled with one of its lower-level excess insurance companies for less than the limit of that insurer's policy, resulting in a judgment in excess of \$18 million.
- Adam serves as counsel to **Walmart Inc.** in seeking insurance coverage for hundreds of millions in defense costs incurred in defense against thousands of opioid-related lawsuits and for more than \$3.1 billion in settlements of certain of those lawsuits.

- Adam serves as lead counsel to **Conduent Inc.** in securing a rare reversal of a jury verdict due to insurer's counsel's violation of evidentiary rulings, which confused the jury and resulted in a verdict that was manifestly unjust. In addition, the firm secured tens of millions of dollars in coverage for Conduent's defense and settlement of a Medicaid investigation and related civil lawsuits by the Texas Attorney General.
- Adam served as lead trial counsel for **Virtu Financial Inc.** and indirect subsidiary **Virtu Americas LLC** in seeking insurance coverage for losses resulting from a hacking incident. Adam led the parties to ultimately reach an agreement to settle the matter.
- Adam secured a favorable decision in Delaware state court on behalf of **The Options Clearing Corp.**, a clearing house based in Chicago. The judge ruled that Options' bid for coverage of a U.S. Securities and Exchange Commission investigation was not barred by an exclusion in its D&O policies, holding that the exclusion barred coverage only of a previous, unrelated SEC investigation.
- Adam led the representation of **Chanel** in its coverage disputes with its general commercial liability insurers, following personal injury and product liability lawsuits alleging that Chanel's products were made with talc contaminated by trace amounts of asbestos fibers. On the eve of oral argument, Adam secured a favorable settlement for Chanel.
- Adam led the representation of **Providence Services Corporation** in a lawsuit in the Delaware Superior Court seeking coverage for a class action against Providence arising out of its provision of private probationary services. Adam prevailed on summary judgment that under applicable Delaware law, coverage was not barred by the insurance company's defense that the underlying class action lawsuit was related to a prior litigation. Following the court's summary judgment ruling, Providence was able to achieve a favorable settlement.
- Adam led the representation of **Standard General** in its insurance coverage litigation in the Southern District of New York, seeking to recover the costs of defense and settlement incurred in connection with a California litigation brought against Standard General by Dov Charney, concerning his relationship with American Apparel. He obtained a summary judgment ruling that Travelers Insurance company owed Standard General a duty to defend. Following that ruling, Standard General was able to effectuate a favorable settlement.
- Adam led the representation of a **Philips Electronics North America Corp.** subsidiary **T.H. Agriculture & Nutrition** in its insurance coverage action in Cook County, Illinois against more than 20 insurance companies relating to asbestos liabilities. Adam has defeated numerous summary judgment motions by the insurers, allowing his client to achieve settlements totaling in the nine figures.
- Adam led the representation of subsidiaries of **Hilco Trading LLC** seeking coverage for an underlying lawsuit concerning a variety of real estate development projects. Adam argued and won an appeal,

convincing the Illinois appeals court to grant Hilco summary judgment, ruling that Liberty Surplus Insurance Corp. had a duty under professional liability policies to defend Hilco's respective subsidiaries against claims that they inflated appraisals.

- Adam led the representation of **Signet Jewelers** in a coverage dispute with a number of domestic and international insurance carriers stemming from numerous underlying D&O lawsuits brought against Signet since August 2016. The lawsuits claim securities law violations and breaches of fiduciary duties arising mainly out of alleged diamond swapping, credit portfolio issues, and sexual harassment. Adam successfully helped Signet obtain insurance funding for a substantial portion of its settlement of the underlying lawsuits.
- Adam also guided the representation of **Convergys Corp.** in a coverage dispute in the District Court for the Southern District of Ohio. He argued and obtained summary judgment requiring the policyholder's umbrella insurance company to immediately pay the policyholder's costs of defending two privacy class actions.
- Adam led the representation of a **Gotham Organization** subsidiary, **DC USA**, in its breach of contract and bad faith claim against its insurer relating to environmental liability arising out of an urban redevelopment project in Washington, D.C. Following successful motion practice, Adam was able to obtain a favorable multimillion-dollar settlement for DC USA.
- Adam also represented a subsidiary of a **Fortune 10 company** that suffered an approximately \$500 million loss arising out of a fire, that culminated in a favorable settlement.
- Adam defended **MidAmerican Holding Company and its subsidiaries** in a shareholder suit in California concerning ownership of a hydro-electric project in the Philippines. He led the trial of the breach of fiduciary duty/bad faith claim, which resulted in a defense verdict.
- Adam represented an individual in her successful prosecution of an Americans with Disabilities Act (ADA) claim through jury trial and appeal. This resulted in multimillion-dollar compensatory and punitive damage awards.

## Recognition and Rankings

- Recognized as a "Plaintiffs' Attorney Trailblazer" by *The National Law Journal*, 2023
- Recognized by *Benchmark Litigation* as a "Litigation Star," 2023
- Selected for New York Metro Super Lawyers, 2023
- Named an "Elite Boutique Trailblazer" by *The National Law Journal*, 2022 (one of only 26 lawyers in the U.S.)
- Named a "Litigation Trailblazer" by *The National Law Journal*, 2021 (one of only 25 lawyers in the U.S.)

- Ranked in *Chambers USA* in New York for Insurance: Dispute Resolution: Policyholder (Band 3), 2020-2023
- Recognized as a "National Insurance Litigation Star" by *Benchmark Litigation*, 2020
- Named an "Insurance MVP" by *Law360*, 2017 and 2022
- Recognized by *The Legal 500* as a recommended lawyer in the United States for Insurance: Advice to Policyholders, 2015-2020
- Named a "Rising Star" by *Law360*, 2010

## Publications

- "Insurance Coverage Alert: More Than 300 Parties Named in Environmental Lawsuit – Is Insurance Coverage Available for the Remediation and Clean-up Costs of the Newark Bay Complex?" Co-author with Robin L. Cohen, William E. Denver, Joseph D. Jean (February 13, 2009)
- "Brief History of SEC Rule 2(E)," *Section of Business Law of the American Bar Association* (November 1995)