



# Kenneth Ken

H. Frenchman

Managing Partner

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## My Approach

Clients say they value my ability to craft a practical and often innovative strategy at the beginning of a matter—always looking for the most streamlined path to victory. If a dispute warrants going to trial or arbitration, I dig in, prepare thoroughly, anticipate legal twists and turns and respond accordingly, argue persuasively, and do all I can to prevail on behalf of my clients.

## Overview

Kenneth H. Frenchman brings extensive experience and top-notch negotiation and trial skills in securing settlements, going to trial, and recovering more than \$3 billion for clients across the country and around the world. Representing primarily large, mid-market, and small corporate policyholders, Ken advocates for clients in litigation and arbitrations for damages and declaratory relief that manifest because of insurance companies' breach of contract, bad faith, attempted rescission of policies, and other actions. He is recognized as one of the top insurance coverage lawyers in the legal profession. According to *Chambers USA*, one client said: "I would trust him to lead any arbitration, nothing escapes him, and he picks his battles properly. He is probably the smartest guy in the room."

Ken understands clients' frustration when they act in good faith to protect themselves and pay premiums timely only to have property and casualty insurance companies deny their justified claims. He distills complex concepts and communicates clearly about all available options. When litigation proves to be the right course of action, Ken draws on his strong strategic skills and sets his sights on gaining the best outcomes possible in arbitrations and litigation. He has handled some of the most prominent, groundbreaking insurance coverage cases in the nation.

These cases include coverage for liabilities involving professional liability, breaches of representations and warranties, asbestos, products, toxic torts, environmental property damage, directors and officers, errors and omissions, sexual abuse and molestations, personal injuries, first-party property damage, business interruption, intellectual property, athletes' disabilities, crime/fidelity, and employment. Ken also serves as a party arbitrator in major insurance coverage matters.

In all of his service delivery, Ken collaborates with clients and builds close relationships with them. He enjoys drawing on his knowledge and experience to help clients recover what they are entitled to and get back to what they do best: Manage profitable businesses, provide good jobs, and invest in their communities.

## Education

New York University School of Law (JD, , 1999)

University of Colorado (BS, , 1993)

## Admissions

### Bar Admissions

New York

### Court Admissions

U.S. Court of Appeals, Second Circuit

U.S. Court of Appeals, Seventh Circuit

U.S. Court of Appeals, Tenth Circuit

U.S. District Court, District of Colorado

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

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

## Relevant Experience

- Representation of **Philadelphia Energy Solutions** and the PES Liquidating Trust in connection with a series of explosions and a fire in the alkylation unit of the PES oil refinery in 2019 which forced PES to file for bankruptcy approximately one month later. In an adversary proceeding in the District of Delaware filed against more than two dozen of PES's property insurers, Ken led his team to victory on all three legal issues presented to the Court for summary judgment prior to trial. These summary judgment wins ensured PES more than **\$100 million** more than the insurers had paid to that point on the property damage claim. The

case then proceeded to trial on the covered value of PES's property damage claim and its bad faith claim (as the business interruption portion of the case was already successfully settled). The two-week trial, in which Ken was acting as first chair, was favorably settled on Day 3 for a confidential amount that exceeded what PES had demanded for its property damage claim during the failed adjustment process.

- Representation of **Givaudan Fragrances Corporation** in securing a victory for corporate policyholders with far-reaching implications in protecting a corporate insured's right to reorganize its business as it sees fit, without fear of risking the forfeiture of its historic insurance coverage. The unanimous New Jersey Supreme Court decision upheld an earlier appellate court ruling that affirmed Givaudan's right to seek more than **\$500 million** in insurance coverage for governmental and private claims related to environmental damage to the Passaic River and Newark Bay. Upon remand, after defeating the defendant-insurers' dispositive summary judgment motions, Ken successfully resolved the dispute on a carrier by carrier basis; the last of which, settled on the first day of trial in which Ken was acting as first chair.
- Representing a power company based in Peru who had bought electric power distributors in Guatemala in a confidential arbitration against an insurer in connection with a claim under a Buyer-Side Representation and Warranties Insurance Policy involving breaches of representations and warranties related to legal and tax obligations. In 2019, Ken first chaired a four-day arbitration before a panel of three arbitrators in which his client was awarded more than **\$30 million**.
- Representing former shareholders of a privately held corporation based in Mexico City in a confidential arbitration against an insurer in connection with a claim under a Seller-Side Representation and Warranties Insurance Policy. In December 2018, after a four-day hearing before a panel of three arbitrators where Ken was acting as first chair, the panel unanimously found for the policyholder and ordered that the insurer must pay nearly **\$10 million**, which was the overwhelming majority of its claim.
- Representing **NJ Transit Corporation** in connection with its claim for coverage under all-risk property insurance policies for water-damage to their property arising out of Hurricane Sandy over-and-above the **\$100 million** flood sublimit. In January 2021, Ken argued before the New Jersey Supreme Court and won. The Supreme Court unanimously affirmed a ruling in favor of his client, New Jersey Transit, entitling it to coverage up to the full **\$400 million** of its policies for its devastating losses caused by Hurricane Sandy. In 2017, Ken had successfully argued before the Superior Court of New Jersey and secured the original decision on summary judgment, and two years later argued and won the appeal in a unanimous Appellate Division decision.
- Representing a corporate policyholder in a confidential arbitration against an insurer for water-damage arising out of Hurricane Sandy. In January 2017, after Ken first-chaired a nine-day hearing before a panel of three arbitrators, the panel unanimously found for the policyholder and declared that the insurer must pay the full extent of the policyholder's claim, up to the **\$17.5 million** limit.

- Lead counsel to **Thor Equities LLC** in **securing a first big win for insurance-coverage policyholders in a COVID-19 case**. The New York federal court held that Thor's interpretation of the contamination exclusion in its policy (which also appeared in many other FM Global policies), that it applies only to costs (and not losses), is reasonable and is entitled to further discovery.
- Representing victims who had been exposed to asbestos-containing products manufactured by now-defunct Jenkins Bros., acting as lead counsel, Ken scored a major victory and established a new category of cases in which the doctrine of pro rata allocation does not apply to limit insurance recovery under New York law. In a lawsuit between these victims and Liberty Mutual, Jenkins Bros. insurer, the victims argued that the doctrine of pro rata allocation only applied to apportion responsibility for liabilities between insurers and policyholders; it did not apply to force victims, which had no say in a policyholder's risk management decisions, to accept less than they were owed. The New York Supreme Court agreed, finding that the doctrine of pro rata allocation was inapplicable to this situation, and that because Liberty Mutual had been found to be the real party in interest in the victims' suits against Jenkins Bros., it is responsible for 100% of the settlements the victims negotiated for their claims against Jenkins Bros.
- Representing former directors of Aegis Defense Services, LLC in connection with obtaining defense costs from their insurer for a counterclaim brought against them relating to alleged misrepresentations in connection with the sale of the business. Acting as lead counsel, Ken moved for summary judgment prior to any discovery and obtained a decisive victory from the United States District Court for the Southern District of New York. The Court ordered National Union to advance all past and future defense costs in connection with the counterclaim.
- Representing **Superior Silica Sands, LLC** in connection with its pursuit of coverage for property damage and business interruption losses stemming from a 2019 berm breach at Superior's sand mining facility in San Antonio, Texas. After aggressively litigating Superior's right to coverage in the Northern District of Texas against numerous insurers, Ken and his team secured a highly favorable settlement for Superior.
- Representing a corporate policyholder in connection with coverage under professional liability policies for more than **\$50 million** of defense and indemnity costs arising out of claims brought by mortgage borrowers as well as regulators. After the trial court erroneously dismissed the case based upon a so-called "fee arrangement exclusion," Ken convinced the New York's Appellate Division, First Department, to reverse and remand. The case is still pending in New York County's Commercial Division.
- Representing **Syracuse University** in pursuing a claim under a Not-For-Profit Individual and Organization Insurance Policy wherein the university sought and was awarded on summary judgment costs it incurred responding to and conducting an investigation in connection with a number of state and federal grand jury subpoenas concerning facts and circumstances relating to allegations of sexual abuse, and in particular the allegations against the university's former associate basketball coach. In December 2013, Ken argued

before the New York's Appellate Division, 4th Department, which unanimously affirmed the trial court's summary judgment ruling.

- Representing **Warren Pumps** in a three-week trial in Delaware against more than a dozen insurance companies, securing a decisive jury verdict which held that the insurance companies were liable to provide defense and indemnity coverage for thousands of asbestos related claims.
- Representing **MBIA** in securing a victory just four months after the filing of the complaint, in which the Southern District of New York granted judgment in favor of MBIA and declared that the London market, under a professional liability policy, must pay tens of millions of dollars of MBIA's costs in defending suits arising from its restructuring of core business operations.
- Representing **Morgans Hotel Group** in its pursuit of coverage under an excess D&O policy for defense and indemnity amounts arising out of a derivative action and three related lawsuits. After filing a breach of contract/bad faith lawsuit in Delaware and bringing two separate motions for partial summary judgment prior to the insurer even filing an answer to the complaint, the policyholder was able to successfully settle the matter in just over two months.
- Representing **TH Agriculture & Nutrition, LLC ("THAN")**, formerly a subsidiary of Philips Electronics, as Special Insurance Counsel in connection with THAN's successful 524(g) "pre-packaged" bankruptcy, wherein THAN's Plan was confirmed, affirmed, and effective in approximately one year from filing.
- Representing **Givaudan Flavors Corporation ("Givaudan")** in connection with its pursuit of coverage for lawsuits alleging bodily injury stemming from exposure to diacetyl-containing products wherein Givaudan successfully settled a breach of contract and bad faith lawsuit for in excess of policy limits.
- Representing **IMO Industries** in connection with a breach of contract and bad faith lawsuit against its former parent and over 50 insurance companies in connection with coverage for asbestos-related liabilities. In connection with this lawsuit, the policyholder won numerous summary judgment motions, prevailed in a trial phase against more than ten excess insurers, and reached favorable settlements with dozens of insurers. With respect to the non-settling excess insurers, the trial court's decision was affirmed on appeal securing more than **\$1 billion** in coverage.
- Representing **Philips Electronics** and its subsidiaries in numerous insurance coverage lawsuits, including coverage lawsuits for asbestos liabilities, toxic torts, and other products-related coverage suits. In connection with these coverage suits, Philips-related entities have collected hundreds of millions of dollars from dozens of insurance companies.
- Representing **ABT Building Products Corp. ("ABTco")** in a case against an AIG-member company relating to insurance coverage for class-action lawsuits arising out of allegedly defective building products. After a nine-day trial, ABTCo was awarded breach of contract damages, trebled damages for violation of North

Carolina's Deceptive and Unfair Trade Practices Act, all of ABTco's attorneys' fees and pre-judgment interest. The jury verdict and court award were affirmed in their entirety by the Fourth Circuit Court of Appeals.

## Recognition and Rankings

- Recognized by *Benchmark Litigation* as a "Litigation Star," 2023
- Selected for New York Metro Super Lawyers, 2023
- Named a Plaintiffs' Lawyers Trailblazers by *The National Law Journal*, 2022
- In the 2020 *The Legal 500 (US)*, Ken Frenchman was "recommended" for *Insurance: Advice to Policyholders*
- Ranked by *Chambers USA* as a leading lawyer in New York (Band 2) for *Insurance: Dispute Resolution: Policyholder*, 2017 - 2021
  - The 2019 edition notes that he "is an experienced practitioner handling significant insurance disputes for policyholder clients." Clients say: "He gets excellent results without wasting time or money on arguments with little merit," and another source remarks: "Soup to nuts he is one of the top coverage lawyers out there."
- Also according to *Chambers USA*, "Ken is hailed by sources as 'very thorough. He thinks outside the box, is knowledgeable, anticipatory and communicates options clearly.'"
- Recognized by *Best Lawyers* as one of the Best Lawyers in America for Insurance Law, 2018-2022
- He has also been recommended in *The Legal 500's* guide to outstanding lawyers nationwide for *Insurance: Advice to Policyholders*, which in 2017 referred to him as a "top-notch trial lawyer and strategist."
- Recognized by *The Legal 500* as a recommended lawyer in the United States for *Insurance: Advice to Policyholders*. The 2016 edition notes that he "does a fantastic job."
- Named an Insurance MVP by *Law360*, 2017, 2021
- Ken has been listed in *New York Metro Super Lawyers*, 2014 - 2021
- Ken is also recognized with an AV® Preeminent™ Peer Review Rating—the highest peer review rating—by **Martindale-Hubbell**.

## Speaking Engagements

- JAMS New York Resolution Center and the New York Law Journal, "Commercial Insurance Claims Arising from Super Storm Sandy: Is There a 'New Normal'?" New York, NY. April 4, 2013.

Perrin Conferences, "Emerging Insurance Coverage & Allocations Issues Conference," New York, NY.  
February 23, 2012.

- Insurance Bad Faith Claims in New York, New York, NY. December 5, 2007.  
Mealey's Mass Tort Insurance Coverage Conference, "Untangling Complicated Corporate Successorship Issues," Philadelphia, PA. March 19, 2007.
- American Conference Institute, Insurance Allocation, "Recent Rulings and Trends in Decision Making Impacting Allocation," October 29, 2014.
- Lorman Education Services, Insurance Bad Faith Claims, "Bad Faith: A Policyholder Perspective," New York, NY. December 5, 2008.
- Perrin Conferences, "Emerging Insurance Coverage & Allocations Issues Conference," New York, NY.  
January 24, 2011.