



Benjamin S. Litman
Senior Counsel

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Education

- Harvard Law School (J.D., *cum laude*, Editor-in-Chief of the Harvard International Law Journal)
- Yale University (B.A. in History, *magna cum laude* and with distinction)

Bar Admissions

- New York

Court Admissions

- US District Court, Southern District of New York
- US District Court, Eastern District of New York
- US Court of Appeals, Second Circuit
- US Court of Appeals, Sixth Circuit

Benjamin is a versatile litigator with a wealth of experience both inside and outside of the courtroom. He has litigated civil and criminal matters in a wide variety of industries and practice areas. Benjamin represents both private clients and institutions in federal and state courts, on appeal, and in arbitration.

At Elman Freiberg, Benjamin represents fiduciaries and individuals in high-stakes litigation arising from contested estate-planning vehicles and their administration, including trusts, wills, and powers of attorney. He also represents large, international law firms and their individual attorneys in defense of multi-million-dollar malpractice and other professional-liability claims and in connection with partnership disputes and attorney-departure issues. Benjamin's practice also includes complex commercial litigation.

Consistent with his experience as an appellate specialist (detailed below), Benjamin spearheads, with Howard Elman, the firm's appellate practice group, which handles appeals for both existing clients and new clients. A former clerk to a federal appellate judge, Benjamin is known for being equally adept at persuading judges through his writing and on his feet. He has argued complex, high-stakes appeals at all levels of New York's appellate courts, including the United States Court of Appeals for the Second Circuit, the New York Court of Appeals (New York's highest court), and both the First Department and Second Department of New York's Appellate Division.

Prior to joining Elman Freiberg, Benjamin worked at Appellate Advocates, where he briefed and argued more than 40 appeals on behalf of indigent criminal defendants, and at Patterson Belknap Webb & Tyler LLP, where he spent nearly seven years and received a *Pro Bono Publico* award from the Legal Aid Society. He began his legal career as a law clerk to the Honorable Ronald Lee Gilman of the United States Court of Appeals for the Sixth Circuit.

Benjamin S. Litman continued



Selected Experience

- On behalf of the Firm's AmLaw 200 client, obtained the complete dismissal of a \$100-million-plus malpractice claim asserted in connection with a failed \$1.3-billion merger. In dismissing the claims, Commercial Division (NY County) Justice Jennifer Schechter called the plaintiff's claims "absurd," holding that "an attorney cannot be held liable for malpractice for failing to inform a client of a fact of which it was plainly aware."
- Prosecuted and defended claims on behalf of a prominent trustee in a multi-state litigation regarding lifetime and testamentary trusts.
- Represented a beneficiary of significant trusts against a major international trust company, and successfully resolved the matter without the need for litigation.
- On behalf of the Firm's publicly traded technology client, convinced the United States Court of Appeals for the Second Circuit to unanimously vacate the district court's decision denying the Firm's motion to impose "inherent powers of the court" sanctions on the plaintiff and the plaintiff's counsel. The Second Circuit's decision is a significant restatement and clarification of the law regarding such inherent powers. Also convinced the Second Circuit to affirm the district court's dismissal of the plaintiff's claims against the Firm's client.
- Helped obtain a \$500-million settlement award on behalf of a major pharmaceutical company following a breach-of-contract arbitration hearing.
- Convinced a federal court to allow a client to obtain reimbursement of the full amount of its attorneys' fees following an eight-year accounting-fraud litigation.
- Represented several monoline-insurance companies against large banks in fraud and breach-of-contract actions arising out of the subprime-mortgage crisis.

Speaking Engagements, Presentations & Articles

- Benjamin Litman quoted in *Law 360* regarding whether potential plaintiffs alleging sexual harassment against former Governor Cuomo might be able to access assets in trust he created for his daughters.
- Author | *When an In Terrorem Hits the Interstate* | *Trusts & Estates Magazine* (May 2021)