



## Neil Merkl

Partner

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### About

Neil Merkl is a commercial lawyer, litigator and trial attorney with more than thirty years of experience in contract, commercial law and civil litigation. Neil represents innovative businesses who are facing unprecedented and unpredictable exposure to extreme litigation risk because their disputes arise from new products, new methods, new technologies and complex subject matters unfamiliar to judges and jurors. His job is to fully understand the client's business, assess and accurately price the litigation risk to guide management to an early resolution. Each case made with a plainspoken, convincing narrative supported by the right evidence that assures success with mediators, arbitrators, judges, jurors and our adversaries. If a case cannot be settled, we will try a winning case.

Neil resolves all types of disputes through mediation, arbitration (international, AAA and FINRA) and trials in U.S., state and federal courts. He has been lead counsel in cases as diverse as multimillion-dollar life insurance fraud, federal and state False Claims Act litigation, defense industry contracts, software design litigation and pharmaceutical industry drug pricing claims.

Neil's ability to accurately assess risk, design innovative solutions and offer sound judgement have helped his clients to succeed.

Neil currently serves on the Commercial Division Advisory Council, which is charged with advising on matters concerning the Commercial Division of the Supreme Court of the State of New York. He is a member of the New York State Appellate Division, First Department, Character and Fitness Committee. Previously he was a former Secretary for the New York City Bar Judiciary Committee, and an appointee to New York State Bar Association's Task Force on the Evaluation of Candidates for Election.

### Experience

#### Banking, Financial Services and Creditors' Rights

Member of the trial team that prosecuted claims for approximately \$1.2 billion against 11 insurance companies concerning surety bonds written in connection with transactions that the bank entered into with Enron Corp. *JPMorgan Chase v. Liberty Mutual Insurance, et al.*, S.D. New York.

Successfully defended a New England bank in lender liability/fraud actions. *Albion Alliance Mezzanine Fund, L.P. v. State St. Bank & Trust Co.*, 2 A.D.3d 162 (1<sup>st</sup> Dep't 2003); *In Re Sharp Int'l Corp. & Sharp Sales Corp., Sharp Int'l Corp. v. State St. Bank & Trust Co.*, 403 F.3d 43 (2d Cir. 2005).

Prosecuted a complex fraud/fraudulent conveyance action against reorganized insurance companies. *Marine Midland Bank v. Zurich Ins. Co.*, 263 A.D.2d 382 (1<sup>st</sup> Dep't 1999). *Marine Midland Bank v. Home Ins. Co.*, 263 A.D.2d 374 (1<sup>st</sup> Dep't 1999).

Successfully prosecuted a multimillion-dollar letter of credit claim. *Kvaerner U.S. Inc. v. Merita Bank PLC v. Equatorial Tonopah, Inc.*, 288 A.D.2d 6 (2001).

Successfully defended a N.Y.-based bank in a claim pertaining to multibillion-dollar foreign exchange currency trading. *Chawafaty, v. Chase Manhattan Bank, N.A.*, 288 A.D.2d 58 (1<sup>st</sup> Dep't 2001).

## False Claims Act (State and Federal)

Obtained dismissal of False Claims Act litigation in the healthcare industry. *United State ex rel. Dhawan v. New York City Health & Hosp. Corp.*, No. 95 Civ. 7649, 2000 WL 1610802 (S.D.N.Y. Oct. 27 2000), *aff'd*, 252 F.3d 118 (2d Cir. 2001).

Dismissal of FCA action against defense contractor component parts supplier. See *U.S. ex rel. Ladas v. Exelis, Inc. et al.*, 824 F.3d 16 (2d Cir 2016).

Represented generic pharmaceutical companies in multistate pricing litigation brought by relators and state governments. *United States of America ex rel. Ven-A-Care of the Florida Keys, Inc. v. Actavis Mid Atlantic LLC*, MDL No. 1456, Master File No. 01-CV-12257-PBS, Subcategory No. 06-11337-PBS, Civ. Action No. 08-10852-PBS (United States District Court for the District of Massachusetts); *United States of America ex rel. Ven-A-Care of the Florida Keys, Inc. v. Dey, Inc., et al.*, MDL No. 1456, Master File No. 01-CV-12257-PBS, Subcategory No. 06-11337-PBS, Civ. Action No. 08-10852-PBS (United States District Court for the District of Massachusetts).

Defended federal False Claim Act litigation in the pharmaceutical industry. *The State of Florida ex rel. Ven-A-Care of the Florida Keys v. Mylan Laboratories, Inc.*, Case No. 98-3032G (Leon County Cir. Ct.); *State of Illinois v. Abbott Laboratories, et al.*, No. 05 CH 2474 (Cir. Ct. of Cook County Illinois); *Commonwealth of Massachusetts v. Mylan Laboratories, Inc., et al.*, No. 03-CV-11865-PBS (United States District Court for the District of Massachusetts); *State of Texas ex rel. Ven-A-Care of the Florida Keys, Inc. v. Sandoz, Inc., et al.*, Cause No. D-1-GV-07-001259 (201st Jud. D. Ct. of Travis County, Texas); *State of California ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc., et al.*, Civil Action No. 03-11226, MDL No. 1456, Master File No. 01-12257-PBS, Subcategory Case No. 06-CV-11337-PBS (United States District Court for the District of Massachusetts); *State of California ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc., et al.*, Civil Action No. 03-11226, MDL No. 1456, Master File No. 01-12257-PBS, Subcategory Case No. 06-CV-11337-PBS (United States District Court for the District of Massachusetts); *In Re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456, Civil Action: 01-CV-12257-PBS (United States District Court for the District of Massachusetts).

## Software Litigation

Successful representation of software designer. *County of Orange v. United States District Court*, 784 F.3d 520, (2015), cert. denied; *Tata Consultancy Services v. County of Orange*, 2016 U.S. LEXIS 298 (2016).

## Life Insurance Litigation

Successfully challenged the Illinois Department of Insurance's prohibition against offshoring. *American Council of Life Insurance Inc. v. Boron et cert.*, No. 13 CH 13378 (Cook County Illinois Circuit Court, Chancery Division 2014).

Summary judgment on behalf of life insurer finding that, based on the terms of a life insurance policy, if the insured dies while the policy is in default, the insurer was allowed to deduct the amount of premiums owed. *John Hancock Life Insurance Co. v. Katzman, et al.*, 2015 WL 3767296, 2015 U.S. Dist. LEXIS 78892 (S.D.N.Y. June 17, 2015).

Summary judgment for life insurer dismissing a claim for damages based on a life insurance product that was purchased as part of a plan under Internal Revenue Code Section 419(e); the insurer had no duty to the policy holder and the policy holder was unable to articulate any cognizable injury. *Nassar v. Madera et al.*, 2016 U.S. Dist. LEXIS 94219 (S.D.N.Y. July 19, 2016).

Summary judgment for life insurer for writing premium payment on \$33 million on death claims. *Abraham & Judy, Inc. v. John Hancock et al.*, No. 114287/10, (May 7, 2014 N.Y. County Sup. Ct.).

Successfully defended against an action by funeral homes alleging negligence, fraud, consumer fraud and unjust enrichment in connection with life insurance sales. *Calvert Funeral Homes Ltd. v. Robert W. Ninker, III*, Civ. No. 09 CH 03624 (Cook County, IL).

Amici counsel for a life insurance trade association on issues of first impression certified to the Delaware Supreme Court and involving the enforceability of STOLI policies under Delaware law. *PHL Variable Insurance Co. v. Price Dawe 2006 Insurance Trust*, 28 A.3d 1059 (Del. 2011).

Successfully represented insurers actions for rescission based upon misrepresentations in policy applications.

Successfully represented insurers and brokers in multiple NASD arbitrations regarding annuity and life insurance products.

Successfully represented life insurers in actions arising from an I.R.C. § 419 Plans. *Cathy Daniels, Ltd. v. Weingast*, 91 A.D.3d 431 (1<sup>st</sup> Dep't 2012).

Successful defended vanishing premium litigation. *Goldberg v. Manufacturers Life Ins. Co.*, 242 A.D.2d 175 (1<sup>st</sup> Dep't 1998).

## Property and Liability Insurance Litigation

Insurance coverage actions in New York and California over product liability insurance policy indemnity obligations.

Represented Union Carbide Corporation in all aspects of insurance coverage arising from a Bhopal disaster, including a dispute with the Connecticut County Association over indemnity by the Connecticut State Guaranty Fund. *Connecticut Ins. Guaranty Ass'n. v. Union Carbide Corp.* 217 Conn. 371 (1991).

Represented a *Fortune* 100 company in connection with a declaratory judgment action involving allegations of contamination at multiple industrial sites.

Represented a financial institution/investor in connection with the adjustment of an insurance

casualty claim arising from the First Interstate Bank Tower in Los Angeles fire.

Represented a property and casualty insurance company in connection with the adjustment of a complex, multimillion-dollar construction industry litigation claim.

Litigation of \$1.1 billion of indemnity claims under oil and gas surety bonds issued by the following casualty insurers: Liberty Mutual Insurance Company, Travelers Casualty & Surety Company, St. Paul Fire and Marine Insurance Company, Continental Casualty Company, National Fire Insurance Company of Hartford, Fireman's Fund Insurance Company, Safeco Insurance Company of America, The Travelers Indemnity Company, Federal Insurance Company, Hartford Fire Insurance Company and Lumbermens Mutual Casualty Company.

## General Business Litigation

Successfully defended a class action brought by a vendor in connection with the reorganization of a nationwide retailer. *Celebrity Int'l Inc. v. F.W. Woolworth Co., N.Y.L.J.*, Dec. 22, 1998 (N.Y. Sup.).

Successfully defended a chemical manufacturer at trial and on appeal in a multimillion-dollar breach of contract action related to the acquisition of a subsidiary. *Unisys Corp. v. Hercules, Inc.*, 224 A.D.2d 365 (1<sup>st</sup> Dep't 1996).

Successfully resolved actions and disputes concerning liability insurance obligations following corporate acquisition. *Union Carbide Corp. v. Ralston Purina and Eveready Battery Co.* (S.D.N.Y.).

## Toxic Tort and Product Liability

Successfully defended product liability claims in consumer and commercial cases. *Haran v. Union Carbide Corp.*, 68 N.Y.2d 710 (1986); *Franov v. Exxon Co.*, 178 A.D.2d 327 (1<sup>st</sup> Dep't 1991); *Brady v. Exxon Co.*, 153 A.D.2d 519 (1<sup>st</sup> Dep't 1989).

Defended actions alleging oil spill, ground water pollution and property damage. *Camillery v. Getty Ref. Mktg. Co.*, 170 A.D.2d 567 (2d Dep't 1991).

## Labor and Employment

Defended defamation claims arising from workplace conduct. *Aneser v. Woolworth Corp.*, 98 CV 01868 (S.D.N.Y. Apr. 6, 2000); *Carone v. Venator Group, Inc.*, 289 A.D.2d 185 (2001).

Defended management in union disputes over terms and applicability of collective bargaining agreements. *New York State Teamsters Conference Pension & Ret. Fund v. Boeing Bros., Inc. v. Charles Snyder Beverages, Inc.*

## Other

Obtained a dismissal of all claims against a generic pharmaceutical company in a multidistrict litigation. *In re: Zantac (Ranitidine) Products Liability and Opioids Litigation.*

Represented the New York Archdiocese in First Amendment litigation arising out of church closings. *Committee to Save St. Brigid v. Egan*, 30 A.D.3d 356 (1<sup>st</sup> Dept. 2006).

Represented a New York Supreme Court appointed receiver in connection with the condemnation and sale of real property. *The City of New York v. L.J.W.P. Realty Co., LLC*, N.Y. Court Clerk's Index

No. 43742-84.

Prosecuted fiduciary duty claims in a real estate partnership. *53 West 53<sup>rd</sup> Street, Inc. v. 53<sup>rd</sup> Street Associates, et al.*

## Honors

Conspicuous Service Award, New York County Lawyers Association, 2021.

Listed in New York *Super Lawyers*, 2009–2025.

## Affiliations

New York State Appellate Division, First Department, Character and Fitness Committee, member

Inner City Scholarship Fund, Lawyers Committee, member

New York City Bar, Judiciary Committee, secretary (past)

Legal Aid Society, board of directors (past)

## Related Services

Commercial Litigation

False Claims Act Defense

Financial Institutions

Generic Pharmaceuticals

Life Insurance, Annuity and Health Insurance

Litigation

White Collar, Investigations and Compliance

## Education

Fordham University School of Law, J.D., 1983

- cum laude

Fordham University, B.A., 1980

## Admissions

New York, 1984

## Courts

U.S. Supreme Court

U.S. Court of Appeals–Second Circuit

U.S. Court of Appeals–Third Circuit

U.S. Court of Appeals–Seventh Circuit

U.S. Court of Appeals–Eleventh Circuit

U.S. Court of Appeals–Federal Circuit

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

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

U.S. District Court–Northern District of New York

U.S. District Court–Western District of Wisconsin

U.S. District Court–Eastern District of Wisconsin