



## Brett A. Scher

### Overview

Brett A. Scher is a partner at Kaufman Dolowich. His practice includes litigation in the fields of professional and cyber liability, class action defense, insurance coverage disputes, and commercial matters. Mr. Scher's practice addresses litigation on the trial and appellate levels throughout the United States in both state and federal courts. In the area of professional liability, his practice includes complex attorney malpractice claims arising from underlying commercial litigation, securities law, real estate, personal injury, corporate governance, entertainment law, and patent/trademark issues. Mr. Scher also represents insurance brokers/agents, accountants, actuaries, as well as building management companies, HOA's, co-op and condo boards, and other real estate professionals. He handles the defense of individual and class action claims under the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, the Telephone Consumer Protection Act and the Racketeer Influenced and Corrupt Organizations Act.

With respect to cyber liability, Mr. Scher handles data security incident responses for small to medium enterprise companies, including law firms, accounting firms, manufacturers, and insurance professionals. This includes the use of digital forensics, crisis management, breach notification and ensuring regulatory compliance. In addition, Mr. Scher has successfully defended and resolved multiple data breach-related lawsuits and demands.

His insurance coverage practice focuses on policy drafting and coverage services with respect to professional liability policies, technology policies, investment management policies and commercial general liability policies.

### Admissions

- New York
- U.S. District Court
  - Eastern District of New York
  - Southern District of New York
  - Western District of New York
  - Northern District of New York
- U.S. Court of Appeals
  - Second Circuit



Partner  
Co-Chair of Professional Liability Practice Group

### Contact Information

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### Related Practices

- Professional Liability/Errors and Omissions - Defense
- Fair Debt Collections Practices Act (FDCPA)
- Fair Credit Reporting Act (FCRA)
- Telephone Consumer Protection Act (TCPA)
- Data Privacy & Cybersecurity
- Cybersecurity
- Consumer Financial Services
- Commercial Litigation
- Insurance Coverage & Litigation
- Directors and Officers (D&O)
- Notaries, Consulting and Other "Miscellaneous" Professions
- Billing Services (Medical and Non- Medical)
- Homeowners' Associations
- Medical Malpractice and Health Care
- Securities Industry Professionals
- Appellate Law

## Education

- Fordham University School of Law – J.D.
- State University of New York, Albany – B.S.

## Professional Memberships

- New York State Bar Association, Law Practice Management Committee
- Committee for Insurance Programs Member
- American Bar Association
- Trial Lawyers Section of New York State Bar Association, Lawyers Professional Liability and Ethics
- Committee Member
- Professional Liability Underwriting Society
- Claims & Litigation Management Alliance

## Experience

### Representative Litigation

- *Fernandez v. Silverberg*, (N.Y. Supreme Court, Queens Co., August 17, 2016) - Summary judgment granted to attorney on a legal malpractice claim based upon the submission of evidence proving that the plaintiff could not have prevailed in an underlying sidewalk defect lawsuit against the City of New York as a result of a lack of notice.
- *Wenning v. On-Site Manager* (U.S District Court, S.D.N.Y. July 8, 2016) - Summary judgment granted to tenant screening company on claims brought under the Fair Credit Reporting Act.
- *Evert v. Shapiro Beilly & Aronowitz, LLP*, 127 A.D.3d 409 (1st Dep't 2015) - Affirming motion court's dismissal of legal malpractice claim based upon application of collateral estoppel.
- *Dulmovits v. Hayes*, (N.Y. Supreme Court, Suffolk Co., August 19, 2013) - Summary judgment granted to law firm in case alleging the firm negligently allowed a real estate closing to proceed without a certificate of occupancy in place where evidence and testimony established that escrow funds taken from the seller at closing were sufficient to remedy defects and secure a certificate of occupancy.
- *Cole v. Baum*, (U.S District Court, S.D.N.Y. July 11, 2013) - Motion to dismiss granted in class action litigation against a foreclosure law firm under the Fair Debt Collection Practices Act and New York State General Business §349 based upon the argument that the plaintiffs impermissibly asserted claims based solely upon a technical violation of state court procedural rules and regulations.
- *Kosmidis v. Vasilatos* (N.Y. Supreme Court, Queens Co., June 13, 2013) - Motion to dismiss granted in a legal malpractice action based upon the showing that the plaintiff lacked standing to assert claims against the law firm as a result of plaintiff's failure to disclose a purported claim in prior bankruptcy court filings.
- *Fielding v. Kupferman*, 104 A.D.3d 580 (1st Dep't 2013) - Affirming lower court's grant of summary judgment to the defendant attorney based upon submission of evidence establishing that the attorney provided proper legal advice that was financially advantageous to plaintiff and that plaintiff could not demonstrate proximately caused damages as he could not show that he would have reached a better settlement or outcome at trial in the underlying matrimonial litigation.

- *Dong v. Hai*, 108 A.D.3d 599 (2nd Dep't 2013) - Affirming dismissal of defamation claim against the attorney based upon the argument that the plaintiffs failed to plead a prima facie case as a matter of law because they could not establish that defamatory statements were "of and concerning" them.
- *Bisogna v. Borsa*, 101 A.D.3d 780 (2nd Dep't 2012) - Affirming grant of motion to dismiss in a defamation claim based upon the argument that the alleged libelous statements concerning the opposing counsel were made in the course of judicial and quasi-judicial proceedings and, as a matter of law, subject to absolute privilege.
- *DiGiacomo v. Levine*, 2010 N.Y. Slip Op 06566 (2d Dep't September 14, 2010) - Secured dismissal of a legal malpractice claim on motion to dismiss based upon the argument that the dismissal of underlying action due to the successor counsel's failure to appear for jury selection precluded any possibility of a finding that errors committed during the first attorney's representation of the plaintiff were the proximate cause of any damages.
- *Decker v. Nagel Rice LLC*, (U.S. Dist. Ct. S.D.N.Y. May 28, 2010) - Secured dismissal on a 12(b)(6) motion of class action legal malpractice complaint claiming that the law firm defendants were responsible for the dismissal of multiple defendants from underlying action and a reduction in settlement was obtained by the plaintiffs as a result.
- *Ferri v. Berkowitz*, (U.S. Dist. Ct. E.D.N.Y. August 25, 2009) - Secured dismissal of a claim by a lender against a home appraiser alleging that the appraiser fraudulently over-valued commercial property as part of his participation in a Racketeer Influenced and Corrupt Organizations Act conspiracy with the seller.
- *Hass & Gottlieb v. Lee*, 55 A.D.3d 433, 866 N.Y.S.2d 72 (1st Dep't 2008) - Affirming jury verdict on a legal malpractice claim after a six-day trial based upon the trial court's acceptance of credibility of attorney-defendant and cross-examination, establishing that the plaintiffs' testimony was contradictory and not credible.
- *Kristina Denise Enters., Inc. v. Arnold*, 41 A.D.3d 788, 838 N.Y.S.2d 667 (2d Dep't 2007) - Affirming summary judgment on accountant's malpractice claim based upon showing that the plaintiff's injuries were proximately caused by its "financial distress and inability to meet tax obligations" rather than the alleged malpractice of defendants.
- *Mars v. Grant*, 36 A.D.3d 561, 830 N.Y.S.2d 32 (1st Dep't 2007) - Affirming dismissal on motion to dismiss of Judiciary Law §487 claim based upon an allegation that adverse court rulings in an underlying matrimonial action were based on acts of deceit by the defendant attorneys.
- *Schick v. Berg*, 430 F.3d 112 (2d Cir. 2005) - Obtained summary on legal malpractice/breach of fiduciary duty claims against the class action counsel based upon lack of duty owed to putative class members prior to certification and after class settlement.
- *Wells Fargo Home Mortg., Inc. v. Zeichner, Ellman & Krause, LLP*, 5 A.D.3d 128 (1st Dep't 2004) - Affirming dismissal of a multi-million dollar legal malpractice claim as time-barred, rejecting the plaintiff's continuous representation argument despite the attorneys' continued representation of the plaintiff on new matters.

## Awards

## Recognition

- New York Metro Super Lawyers (2013 - 2016)

## Publications

- *Are Legal Malpractice Recoveries Subject to Workers' Compensation Liens?* authors Brett Scher, Esq. and Jonathan Isaacson, Esq., *New York Law Journal*, Sept. 19, 2022
- *NYSBA Gives Lawyers Green Light to Counsel and Partake in Recreational Marijuana Market*, *New York Law Journal*, August 02, 2021, authors Jonathan Isaacson and Brett Scher
- *Viewpoint: Biometric Information Privacy Statutes Could Be a Minefield for Insurers*, *Insurance Journal*
- *Tax Shelters Continue To Present Pitfalls for Attorneys*, *LPL eAdvisory*
- *Is Statute Governing Law Practice on Its Way Out?*, *New York Law Journal*
- *New York Appellate Court potentially narrows recently expanded statute of limitations for fraud or deceit under Judiciary Law §487*, *ABA LPL eAdvisory*
- *KD Alert: New York's High Court Extends Statute Of Limitations For Some Claims Against Lawyers*
- *Atty's Failure To Disclose Illness May Lead To Liability*, *Law360*
- *Attorney's failure to disclose terminal illness can lead to liability*, *ABA LPL eAdvisory*
- *KD Alert: Appellate Division Rejects Claim Administrator's Legal Malpractice Claims Against Assigned Defense Counsel*
- *New York's Appellate Division rejects one of the most creative efforts to circumvent the statute of limitations for legal malpractice claims*, *ABA LPL eAdvisory*
- *KD Alert: NY's Highest Court Further Limits Available Damages in Legal Malpractice Actions*
- *Attorneys Admitted to Practice in New York are Subject to Criminal Liability under New York Judiciary Law Based Upon Conduct in any Court Throughout the World*, *ABA LPL eAdvisory*
- *Second Circuit Decision Focuses on a Potential Pitfall in Appellate Practice and an Attorney's Reliance on Legal Advice From a Judge's Law Clerk*, *ABA LPL eAdvisory*
- *Second Circuit Maintains Privity Requirement for Breach of Fiduciary Duty Claim Arising From Class Action Litigation*, *ABA LPL eAdvisory*

## News

- *Viewpoint: Biometric Information Privacy Statutes Could Be a Minefield for Insurers*, *Insurance Journal*
- *Tax Shelters Continue To Present Pitfalls for Attorneys*, *LPL eAdvisory*

## Speaking Engagements

- *"Cyber - The Mechanics"*, Webinar
- *COVID-19: Legal Malpractice Perspectives on Small and Mid-Sized Law Firms Webinar*, NYSBA, April 24, 2020: *COVID-19: Legal Malpractice Perspectives on Small and Mid-Sized Law Firms Webinar*,
- *E&O Perspectives on Coronavirus*, PLUS Blog, April 10, 2020: *E&O Perspectives on Coronavirus*
- *Brett Scher Speaker at NYS Bar Association*
- *Brett Scher NYS Bar Association Co-Presenter*
- *American Conference Institute's Advanced Forum on LPL - Legal Malpractice: Social Media for Lawyers: Limiting Exposure to Liability and the Latest Insurance Coverage Issues Being Raised*
- *Ethical Issues When an Attorney Leaves the Firm*, Stafford Publications Webinar: *Ethical Issues When an Attorney Leaves the Firm - Managing Client*

*Communications, Client Files, Work Product, and Conflict of Interest*

- *Attorney Conflicts of Interest: Identifying and Resolving Ethical Pitfalls, National CLE Webinar*
- *PLI's Ethics and Conflicts 2013: How to Handle Client Conflicts*
- *NYSBA Legal Malpractice 2013: Identifying and Responding to Professional Liability Claims*
- *2010 American Conference Institute's 2nd National Forum on LPL/Legal Malpractice: Law Firm Risk Management in the New Economy: Minimizing Exposure to Liability and Applying the Lessons Learned from the Economic Downturn*
- *2012 American Conference Institute's Advanced Forum on LPL/Legal Malpractice Claims and Litigation: Defending Allegations Related to Ponzi Schemes, FDIC Bank Failure Claims, FDCPA Debt Collection Claims and Beyond*
- *2012 DRI Professional Liability Seminar: Damages: What Are the Limits?*
- *5th Annual National Errors and Omissions Liability Insurance ExecuSummit: E&O Risks associated with Foreclosures and Bank-Owned Properties*
- *ABA Spring 2013 National Legal Malpractice Conference: Case Law Developments*
- *CNA Insurance 2012 Accountants and Lawyers' Annual Defense Network (ALADN): Social Media, Legal Ethics and Legal Malpractice*
- *"Cyber Risk Management for New Lawyers," CLE, Bronx County Bar Association, 10-18-2023*