



## Vincent J. Vitkowsky

PARTNER

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Vince Vitkowsky represents clients in counseling, litigation, and arbitration. He has cutting edge knowledge of cyber risks, liabilities, and insurance. He represents clients in coverage evaluations and related dispute resolution across many lines of business, including cyber, CGL, tech E&O, professional liability, and crime insurance. Vince also assists in complex claim evaluations and, if necessary, the defense of insureds in complex claims. He represents cyber insurers in product development, policy drafting, review, and interpretation. In matters involving cyber risks, Vince combines his experience as a veteran insurance and reinsurance lawyer with a strong background in terrorism and national security law.

Vince also represents clients in reinsurance disputes, addressing commonly recurring issues, as well as unique points of contract interpretation. He also represents insurers, reinsurers, and brokers in commercial disputes such as post-acquisition purchase price disputes, alleged business torts, breach of trade secrets, matters involving runoff companies and managing general agents, and disputes with liquidators.

Vince has served as counsel in well over 100 arbitrations involving insurance, reinsurance, and commercial matters. He has been the prevailing counsel in many arbitrations involving millions or tens of millions of dollars. In addition, he has served as an arbitrator in international commercial arbitrations. He is a member of the Panel of Arbitrators of the AAA International Centre for Dispute Resolution. In that capacity, he has served in cases involving agency, sales, distribution, licensing, technology development, employment, joint venture,

shareholder and other contracts, in industries such as financial services, aviation, textile and apparel, telecommunications, entertainment, and real estate development.

Vince has been the lead and prevailing counsel in a dozen state and federal lower court and appellate decisions. These have included subjects such as federal abstention, the interaction between the McCarran-Ferguson Act and the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“UN Convention”), the interaction of the Federal Arbitration Act, the UN Convention, and Guernsey Law, *functus officio*, manifest disregard and evident partiality, the pollution exclusion under reinsurance contracts, follow-the-fortunes, and the interpretation of claims-made professional liability policies.

Vince’s practice is national and international. He has appeared *pro hac vice* in courts across the U.S. and has assisted in arbitrations in several countries.

Chambers America’s Leading Lawyers for Business has described Vince as “a well-prepared operator,” and noted that “clients appreciate his intelligence and tactics, which make a tough case seem a lot more manageable.” The International Who’s Who of Business Lawyers described him as “renowned for his litigation and dispute resolution counsel.”.

## Experience

- Providing coverage advice to insurers in matters such as whether certain cyber incidents constituted privacy wrongful acts, network attacks, or other applicable policy triggers, the application of war and cyber operation exclusions, prior knowledge, retroactive date, and related acts exclusions, the operation of claims cooperation clauses, other insurance clauses, social engineering provisions, the interaction of coverages for cyber, technology, and other professional services, and many other issues of policy interpretation.
- Assisting clients in evaluating and monitoring high-value, complex cyber incidents.
- Advising clients in high-value ransomware attacks, some with OFAC implications.
- Negotiating the allocation of HIPAA fines among multiple insurers.
- Analyzing the breach of a leading telecommunications company whose offshore contractors engaged in SIM swaps, allowing theft from cryptocurrency accounts.
- Analyzing coverage of BIPA claims with overlapping facts, allegations, and time periods.
- Evaluating portfolios and providing detailed advice on non-affirmative “silent cyber” risks under all lines of business, analyzing many dozen policy forms, and assisting in defending numerous claims.

- Defending insureds in claims arising from a business e-mail compromises, including evaluating comparative culpability for the purpose of allocating liability.
- Under a CGL policy, defending a school board in a cyberbullying case, testing the parameters of Section 230 liability.
- Providing overviews and updates on claims and case law developments concerning emerging cyber risks, including BIPA and other biometric privacy statutes, broad state privacy statutes, regulation of dark patterns, tracking pixels, the Video Privacy Protection Act, and the California Invasion of Privacy Act.
- Advising on evaluating and drafting War and State-Sponsored Cyber Operation Exclusions, Infrastructure Exclusions, and other provisions addressing systemic cyber risk.
- Reviewing, analyzing and drafting cyber insurance policy wordings, including unique and hybrid policies. This includes drafting a cyber policy covering business interruption for large industrial companies, and a difference-in-conditions policy to address that risk.
- Identifying emerging risks in specific industries, such as healthcare, retail, financial services, and energy and utilities, and developing specialized endorsements and exclusions addressing them.
- Reviewing, analyzing, and drafting bespoke policy terms and endorsements concerning matters such as bricking, consequential reputational loss, review bombing, cyber crime, affiliate coverage variations, allocation of partially covered claims, sunset coverage, tail off coverage, aggregate limit applications, difference in conditions, extended reporting periods, GDPR and other data processing regimes, individual limits within pool coverages, Internet media liability, mass accumulation exposures, contractual service credit, law enforcement cooperation, personal identity theft cyber protections, social engineering and phishing, system failure, contingent and dependent system failure, voluntary shutdown, digital currency, tailored overlapping insurance provisions, third-party recall costs, and carvebacks for regulatory compliance, trade secrets, contractual damages, contributory copyright infringement, and unauthorized collection.
- Lead counsel in over hundreds of arbitrations and litigations and appeals on insurance, reinsurance, and commercial matters.

## Honors

- Finalist for the 2023 Zywave Cyber Risk Attorney of the Year
- Who's Who Legal: Insurance and Reinsurance
- The Best Lawyers in America
- New York Super Lawyers®

## Professional Affiliations

- National Security Institute Cyber and Tech Center at George Mason University Law School, Fellow
- Claims & Litigation Management Alliance, Cyber, Management & Professional Liability Community (Fellow and Member)
- International Arbitration Club of New York, Founding Member
- Center for Law and Counterterrorism, Former Adjunct Fellow
- American Bar Association Insurance Section, Former Chair of Committee on Public Regulation of Insurance Law and International Committee
- International Bar Association Committee on Insurance, Former Vice-Chair

## Publications

- “Artificial Intelligence, Legal Liability, and Insurance,” *Advisen Cyber FPN*, November 2023.
- “Cyberbullying, Harassment, and CGL Coverage A,” *Advisen Professional FPN*, September 2023.
- “Whither War and Cyber Operation Exclusions?,” *Insurance Journal*, April 2023.
- “Cyber Risks and Insurance Coverage Decisions in 2022,” *Advisen Cyber FPN*, January 2023.
- “Why Insurers Need to Modernize Their War Exclusions,” *Advisen Cyber FPN*, June 2022.
- “The Russian Invasion of Ukraine, Worldwide Cyberattacks, and War Exclusions in Property and Casualty Insurance Policies,” *Insurance Journal*, March 2022.
- “Cyber Risks and Insurance Coverage Decisions in 2021,” *Advisen Cyber FPN*, January 2022.
- “New LMA War, Cyber War and Cyber Operation Exclusions for Cyber Insurance Policies,” *Advisen Cyber FPN*, January 2022.
- “A Legal Guide to Insurance Coverage for Violent Protests, Terrorism, Insurrection and Revolution,” *Journal of Reinsurance* and *Advisen Professional FPN*, October 2021.
- “Insurance Coverage for Cyber Losses,” Chapter 14 in *Data Security and Privacy Law*, treatise by Thompson Reuters (co-author with Richard J. Bortnick), 2021, 2022, and 2023 eds.
- “A Primer on Insurance Coverage for Civil Unrest,” *Claims Journal*, March 2021.
- “Dark Patterns and Privacy Regulation,” *Advisen Cyber FPN* and *Professional FPN*, September 2021.
- “Cyber Risks and Insurance Coverage Decisions 2020,” *Advisen Cyber FPN*, January 2021.
- “Healthcare Cyber Risks and COVID-19,” *Advisen Cyber FPN*, 2020.

- “Responding to China at the United Nations,” George Mason National Security Institute Law and Policy Paper, November 2020.
- “Cyber Risks and Insurance Coverage Decisions 2015-2019,” *Advisen Cyber FPN*, January 2020.
- “The Insurability of Cyber and Privacy Fines,” *Advisen Cyber FPN*, August 2020.
- “Cyber Risks and Insurance Coverage Decisions 2018,” *Advisen Cyber FPN*, January 2019.
- “War Exclusions and Cyber Threats from States and State-Sponsored Hackers,” *Advisen Cyber FPN*, May 2017.
- “2016 Showed Active Cyber and Privacy Coverage Litigation Landscape,” *Advisen Cyber FPN*, January 2017.
- “Will Emerging Weapons Change the Law of War?” A review of Jeremy Rabkin and John Yoo’s Striking Power: How Cyber, Robots, and Space Weapons Change the Rules of War (Encounter Books, 2017). *Lawfare*, November 2017.
- “Cybersecurity and the Board of Directors,” *Advisen Cyber FPN*, December 2016.
- “Insurance for Media Liability Risks,” *Advisen Cyber FPN*, May 2016.
- “Cyber and Privacy Coverage Litigation 2015,” *Advisen Cyber FPN*, January 2016.
- “The Internet of Things: A New Era of Cyber Liability and Insurance,” *Declarations*, November 2015.
- “War, Terrorism, and Hacktivism under Cyber Insurance Policies,” *Advisen Cyber FPN*, September 2014.
- “Key Takeaways in Newly Released Homeland Security Insurance Industry Report,” *NetDiligence Junto*, 2014.
- “Snowden Affair Fuels the Conflict for Control of the Internet,” *Advisen FPN, Cyber*, November 2013.
- “The Cyber Threat Matrix to Energy and Utility Companies,” *Advisen Cyber Liability Journal*, Vol. 3, August 2012.
- “Industrial Cyber Attacks Generate Wide Range of Coverage Concerns,” *Business Insurance*, May 2012.
- “The Insurance Industry’s Fight against Terrorism,” *Business Insurance*, September 2011.

## Speaking Engagements

- “The New War and State-Backed Cyber-Attack Exclusions,” Cyber Liability Insurance ExecuSummit, 2023.
- “Advanced Seminar on Cyber War and Terrorism,” NetDiligence Cyber Summit, 2022
- “Policy Crafting for a Sustainable Future,” Advisen Cyber Risks Insights Conference, 2022

- “Could NotPetya Case Outcomes Pressure Insurers to Reword War Exclusions?,” Insurance Journal Podcast, 2022.
- “Peace in Cyberspace: How It Was Lost and How to Restore It,” Moderator, Federalist Society Podcast, 2022.
- “Insurance Coverage for Violent Protests, Terrorism, Insurrection and Revolution,” Reinsurance Association of America Discussion Series, 2021.
- “Cracking the Cyber Code on War and Terrorism,” Advisen Cyber Risks Conference, 2019.
- “Cyber War and Terrorism,” NetDiligence Cyber Summit, 2018.
- “The Urgency of Cyber Threats to U.S. and Global Critical Infrastructure,” HB Litigation Conferences, 2018.
- “Legal and Regulatory Issues,” IRUA Cyber Coverage and Reinsurance Seminar, 2018.
- “Cyber Masterclass: The Cutting Edge of Regulatory, Coverage, and Claims Issues,” CLM Cyber Summit, 2017.
- “Geopolitics, Cyber Risk and Insurance,” NetDiligence Cyber Summit, 2017.
- “Communication and Confidentiality,” Advisen Cyber Risks Insights Conference London, 2017.
- “Cyber Case Law and Board Perspectives,” PCIAA Northeast General Counsel Seminar, 2016.
- “The Internet of Things,” Cyber Liability Insurance ExecuSummit, 2016.
- “Are You and Your Insurer Connecting on Cyber Risk?” HB Northeast Corporate Counsel Forum, 2016.
- “Cyber Liability,” CPCU Society Reinsurance Symposium, 2016.
- “Cyber Coverage Advanced,” NetDiligence Cyber Risk Forum, 2015.
- “Conflict Resolution: Strategies for Resolving Disputes Quickly and Cost-Effectively,” ACI Forum on Run-Off and Commutations, 2015.
- “Dispute Resolution – Arbitration, Mediation, Litigation,” Reinsurance Association of America Re Contracts, 2012.
- “Cyber Risks – What Are They and Who Is Affected,” LMA Lloyd’s Market Academy Masterclass, 2012.
- “Reinsurance, National Security and Terrorism,” Reinsurance Association of America Members Forum, 2011.
- “Continuing Challenges in Commercial Arbitration,” CPR International Institute, 2005.
- “The Reinsurance Market’s Perspective on September 11,” British Insurance Law Association, 2002.

## Capabilities

## Practice Areas

- Insurance
- Bad Faith/Extra Contractual Liability
- Cyber Risks, Data Privacy and Insurance
- Policy Wording and Program Implementation
- Reinsurance
- Commercial Litigation

## Credentials

### Admitted to Practice

- New York
- United States District Court, Southern District of New York
- United States District Court, Eastern District of New York

## Education

- Northwestern University, B.A.
- Cornell Law School, J.D.