



## Shivani Poddar

*Partner*

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Shivani Poddar is a partner with a successful track record in litigation, arbitration and mediation of high-profile cases on a broad range of complex commercial, employment, insurance and real estate disputes. Shivani's clients include public and private companies, institutional investors, fin-tech firms, healthcare companies and start-ups. She counsels clients in all phases of the dispute, taking into account the client's business goals, often obtaining favorable results before litigation.

Shivani has received numerous professional awards and recognitions. For two consecutive years, she has been recognized in the *Benchmark Litigation* 40 & Under List, and in 2024 in *Lawdragon's* 500 X – The Next Generation. She was named to the 2021 *Crain's New York Business'* 40 Under 40 list, honoring accomplished New York-based business professionals under 40 years of age. The *New York Law Journal* recognized her as a Rising Star for 2020, an accolade given to New York City's most promising lawyers under 40 for their contributions to the law and the legal community. She also ranked among New York *Super Lawyers* for the last several years and previously received the New York Legal Services Pro Bono Recognition Award for her commitment to pro bono work.

Shivani is a driver of diversity and inclusion at Herrick and within the legal community. She has taken active leadership roles in numerous organizations and programs designed to increase diversity in the legal field, including in the Leadership Council on Legal Diversity ("LCLD")— an organization of more than 400 corporate chief legal officers and law firm managing partners, who have pledged themselves to creating a truly diverse U.S. legal profession. Her work has resulted in numerous awards and accolades in this area. She was named to *Crain's New York Business* Notable Diverse Leaders in Law for 2022 and was recognized as a Woman Worth Watching® and a Diverse Lawyer Making a Difference by *Profiles in Diversity Journal*.

### Complex Commercial Litigation

As an avid angel investor in start-ups, Shivani is keenly aware of issues that arise from investing in private and public companies. Shivani is often called upon to represent sophisticated investors in disputes arising from complex financial transactions.

Shivani's representations include representing 95 investors (individuals and institutions), who invested over \$100 million into now-defunct hedge funds, in an action against the funds' auditors and administrator, asserting claims for breach of contract, breach of fiduciary duty and negligence; representing the offshore liquidator of the largest Madoff feeder fund to recover billions paid out to investors; defending an investment advisor against fraud claims arising from investments in collateralized debt obligations; defending a Canadian hedge fund against breach of contract claims asserted by its placement agent; and defending a home healthcare agency in a partnership dispute related to valuation.

Shivani frequently handles complex bankruptcy litigation matters as well, including representing a debtor ice cream brand in Chapter 11 proceedings (during the COVID pandemic); representing over 100 investors in a fraudulent conveyance action, arising from a \$2 billion leveraged recapitalization; representing the bankruptcy trustee in a fraudulent transfer action, stemming from one of the largest leveraged buy-out transactions on record; and representing a mortgage originator in an adversary proceeding, stemming from the Lehman bankruptcy, related to breach of warranties in the sale of mortgage loans.

### Employment Litigation

Shivani frequently represents employers in individual, class and collective actions involving claims of federal and state wage and hour laws, the Fair Labor Standards Act, the New York Labor Law, discrimination, harassment, retaliation, wrongful termination and breach of contract, among others. She is well-versed in legal issues surrounding minimum wage, overtime, spread of hours, 13/24-hour rule for home health care aides, tip credit, tip misappropriation, misclassification, unlawful deductions, exemptions, off the clock time/on the clock time, lunch breaks, fluctuating work week and joint employer liability.

Shivani also helps clients minimize and manage exposure to wage and hour-related risks. This includes performing preventative audits, developing and implementing best practices, responding to inquiries from government agencies such as the Department of Labor, ensuring clients' compliance with current laws and regulations, and drafting employment policies, handbooks and employment agreements.

Shivani's clients span several industries, including healthcare (hospitals, home health care agencies, nursing centers, rehabilitation centers), consumer products, hospitality and real estate.

The American Arbitration Association ("AAA") recently asked Shivani to join their roster of employment arbitrators, which is generally reserved for attorneys that have been practicing for multiple decades.

### Insurance Litigation

Shivani Poddar has vast experience litigating in the insurance arena. She routinely represents global insurance companies in complex insurance coverage litigations, arbitrations and mediations arising from contribution/indemnification claims and priority of coverage disputes between insurance companies. Shivani's insurance work involves a variety of lines of insurance, including commercial general liability, commercial property, directors' and officers' liability, employment practices liability and fiduciary liability insurance policies.

### Real Estate Litigation

Shivani also has extensive experience representing clients in disputes related to real estate transactions, representing owners, developers, commercial tenants and title insurers in litigation involving breach of contract, breach of fiduciary duty, negligence and fraud claims.

### Services

- Litigation
- Corporate Litigation
- Securities Litigation and Enforcement
- Employment
- Employment Litigation
- Employment Counseling & Risk Management
- Real Estate Litigation & Dispute Resolution

- Restructuring & Finance Litigation
- Banking & Financial Services
- Business Divorce & Partnership Disputes
- Insurance & Reinsurance

#### Education

- American University, Washington College of Law (J.D., *cum laude*, 2010)
  - American University International Law Review, Note and Comment Editor
- Boston University (B.A., *cum laude*, 2006)

#### Languages

- Hindi

#### Recognitions and Accolades

- *Profiles in Diversity Journal*, Diverse Lawyer Making a Difference Award (2024)
- *Lawdragon 500 X* - The Next Generation (2024)
- *Benchmark Litigation*, 40 & Under List (2022 - 2024)
- *Crain's New York Business*, Notable Diverse Leaders in Law (2022)
- *Profiles in Diversity Journal*, Women Worth Watching® Awards (2022)
- *Crain's New York Business*, 40 Under Forty (2021)
- *New York Law Journal*, Rising Star (2020)
- *Thomson Reuters New York Metro Super Lawyers* Rising Star (2020 - 2024)



- New York Legal Services Pro Bono Recognition Award (2011)  
[Award Methodology](#)

#### Memberships & Associations

- Co-chair, Herrick's Diversity, Equity and Inclusion Committee
- Herrick's Mentorship Program

#### Matters

##### In re Ample Hills (Bankr. E.D.N.Y.) – Debtor in Chapter 11

Represented debtors who operated 10 retail ice-cream stores in the New York metropolitan area. Sold stores pursuant to section 363 sale in early days of COVID crisis (*E.D.N.Y. 2020*).

##### JMH Development - Dispute Over Luxury Residential Development

Herrick achieved a significant victory for JMH Development, the managing member in a joint venture created to develop a luxury residential development in Miami, Florida, in a dispute

against PSB, the joint venture's partner, who asserted false claims including breach of contract and fiduciary duty, among others. After a lengthy and contentious litigation culminating in a 3-day bench trial, the court ruled in favor of JMH Development on every single claim and issue and dismissed the case.

#### Global Insurance Company – Successful Defense in Contribution Dispute with Insurer

Successfully defended a global insurance company in an appeal of a summary judgment decision before the Appellate Division, First Department, in which another insurer sought contribution in connection with its \$5 million policy limit paid under a contaminated products insurance policy, arising out of the recall of Sabra hummus products. The decision was unanimously affirmed in its entirety by the First Department.

#### Hedge Fund Investors – Litigation Against Hedge Funds' Auditors and Administrator

Representing 95 investors, who invested over \$100 million into now-defunct hedge funds, in an action against the funds' auditors and administrator, asserting claims for breach of contract, breach of fiduciary duty and negligence.

#### In re Boston Generating LLC, et al. – Adversary Defendants - Appellees

Represented the largest ad hoc group of defendants-appellees in a matter that has been litigated for over a decade involving fraudulent conveyance claims arising from a \$2 billion leveraged recapitalization. The Second Circuit affirmed the dismissal of all claims *In re: Boston Generating, LLC*. In so doing, the Second Circuit ruled that the Bankruptcy Code's safe harbor provision for securities contracts payments, 11 U.S.C. § 546(e), applied to the leveraged buyout and pre-empted the plaintiff-appellant-trustee's state-law fraudulent conveyance claims, which attempted to claw back approximately \$708 million from the defendants-appellees.

#### Luxury Residential Developer - Dispute with Investor

Representing the management company of a real estate joint venture, created to develop luxury residential properties in Miami, against claims asserted by a joint venture investor.

#### Commercial Real Estate Tenants – Pre-Discovery Summary Judgment Ruling Granting Specific Performance of Lease with Purchase Option

Represented Split Rail Holdings, LLC, tenants of a commercial real estate building in the Lower East Side and secured a victory on a pre-discovery summary judgment motion, obtaining specific performance of the lease, allowing Split Rail to purchase the property for \$6.3 million. The decision was affirmed by the Appellate Division, First Department.

#### Real Estate Lender - Foreclosure Proceedings

Represent a New York-based lender, who provides loans to revitalize and recapitalize commercial real estate properties, in foreclosure and deficiency proceedings.

#### Title Insurance Company - Insurance Coverage Claim

Successfully defended a title insurance company in an action brought by a commercial property owner by obtaining dismissal of all claims on a motion to dismiss and defeating a motion to reargue.

#### Nursing and Rehabilitation Center - Dismissal of FLSA Class Action

Successfully defended New York City-based nursing and rehabilitation center in a purported class action claiming violations of FLSA overtime provisions. Obtained a full dismissal of the complaint on a pre-answer motion to dismiss, which was converted into a motion for summary judgment.

#### International Luxury Cosmetics Company - Employment Counseling

Advised an international, luxury makeup and skincare brand on employment contracts and employment policies.

#### Fin-Tech Company - Employment Counseling

Advise a fin-tech company on employment claims and employment contracts.

#### Employers - Wage and Hour Litigation

Successfully obtained dismissal or early settlement of state and federal wage and hour individual and class claims (NYLL and FLSA), against employers in the real estate, healthcare, hospitality industries.