

## THE AM LAW LITIGATION DAILY

# Litigation Leaders: Joshua Goldberg of Patterson Belknap on the Value of Having 130 Litigators Under One Roof

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Welcome to another edition of our *Litigation Leaders* series, featuring the litigation practice leaders at some of the biggest and most innovative law firms in the country.

Meet **Joshua Goldberg**, chair of the litigation department at **Patterson Belknap Webb & Tyler**, who is based in the firm's sole New York office. Goldberg, a white-collar litigator and former federal prosecutor, was elected department chair last year, succeeding **Saul Shapiro**, who remains the head of the firm's media and entertainment practice.

**Lit Daily: Tell us a little about yourself—perhaps even a thing or two your partners would be surprised to learn about you.**

Josh Goldberg: I initially joined Patterson Belknap in 1998 after clerking for Judge Barbara S. Jones. I worked for three years as a litigation associate, and then went to the U.S. Attorney's Office in the Southern District of New York where I served for eight years as an AUSA, splitting my time between prosecuting violent crime and securities fraud. I returned to the firm in 2009 to help build up our white-collar defense and investigations practice. Coming home to Patterson Belknap was an easy decision because I had a great experience as a junior associate and I kept in touch with many close friends at the firm while

I was away. Throughout my career, I've been surrounded by talented and committed colleagues who have challenged and inspired me. I'm a better—and happier—lawyer because of the colleagues I've had over the past 25 years.

My practice focuses on white-collar defense and investigations, related civil actions, and complex commercial litigation. One of my favorite things about the practice—and the firm as a whole—is the diversity of our clients and of the types of matters we handle. Every day offers exciting challenges and opportunities to learn something new.

I've known many of my colleagues for more than a decade, so I'm hard-pressed to think of something that might surprise them; maybe that I was born in Alaska, though I only lived there for a year before moving to Milwaukee, so claiming to be from Alaska seems like a stretch. I moved to New York City more than 30 years ago, but I still claim Midwestern roots, as anyone who has been in my office and seen my share of Green Bay Packers stock and the Milwaukee Bucks paraphernalia can attest.



**Joshua A. Goldberg**, chair of the litigation department at Patterson Belknap Webb & Tyler.

Courtesy photo

**You were elected as Patterson Belknap's litigation department chair in September. What does that process look like at the firm?**

We're a tight-knit partnership that acts thoughtfully and by consensus. We have remarkably little drama. We work together in the same building and sit together in the same room when we make decisions, which typically are made by unanimous consent. As New York litigators, we, of course, have strong opinions, but we're unified in our commitment to our clients, to practicing law at the highest level, and to preserving the firm's unique culture. I'm honored that I was selected to serve as chair of the department.

**Does it help to have all your litigators based in New York?**

Our firm's approximately 200 lawyers, including our 130 litigators, work from a single office in New York City. I've always considered that to be one of our strengths.

Being together under one roof is a big part of our identity. It fosters collaboration and cohesion. When I was an associate, it was important to know that I could walk down the hall and talk to others on the team, all the way up to the most senior litigators. As a junior partner, I appreciated that the leaders who were making decisions about the firm's future were people I knew well and saw every day. We all benefit from being able to walk into each other's offices so that we can brainstorm ideas, hash out thorny legal issues, and map out long-term strategy. Plus, when cases are at their most intense, it's essential to be surrounded by people who you know and trust. That's especially true during trials. Clients have said they appreciate that we're truly one firm, and not merely a brand bearing the firm's name. They know that if they are hiring a Patterson Belknap lawyer, they are getting someone who litigates a certain way and who is committed to reaching the best result. One of the comments I get most often from recruits is that our lawyers genuinely seem to know and like each other. That's absolutely true, and it's a big reason why we've been successful.

It's worth noting that while our offices are located in New York, our practice is international, just like

the businesses of many of our clients. We litigate cases in federal and state courts across the country, and we've overseen investigations in all corners of the globe. One of my first cases after returning to the firm involved an international arbitration in The Hague, and over the years I've handled criminal and civil matters across the country and involving England, France, Germany, Belgium, Luxembourg, Mexico, Brazil, Greece, Singapore, and various countries in the Middle East. In this respect, we have the best of both worlds—a dynamic and exciting national and international practice housed in a single office.

**About how much of your time is spent on management issues versus your own practice?**

My practice is busy, but I take time out of my day to address vital issues such as client retention and expansion, attorney satisfaction, talent development, recruitment, and diversity, equity and inclusion. These are the issues that will determine whether the firm will continue to be successful for another 100 years. My predecessors as chair of the litigation department have included **Bill Cavanaugh**, **Steve Zalesin**, and most recently Saul Shapiro, all of whom maintained successful practices while serving as chair and supporting others and promoting the firm's values. I view each of them as role models, and I've been fortunate to be able to call on them and others for advice.

**What do you see as hallmarks of Patterson Belknap litigators? What makes you different?**

We see ourselves first and foremost as trial lawyers. Many cases resolve before trial, but having a mindset that a case is going to settle often leads to worse results. And not all cases should settle. Our clients trust us to handle their most important matters and they know we are willing and able to take the cases to trial when settlement is not a viable option. That means we are thinking from the outset about how we are going to try the case, including as we investigate the facts, embark on discovery and depositions, and formulate our case strategies. Having significant trial experience means knowing that the decisions you make early in a case have ramifications later. It also means that we're willing to turn down settlements when they are not in our clients' best

interest. A few years ago, we handled a matter for a client that was under investigation by the DOJ for alleged healthcare fraud and violations of the False Claims Act. After a lengthy investigation, the DOJ threatened to indict our client unless they paid several hundred million dollars. We felt the client was in the right and could win at trial, and the client entrusted us to call the government's bluff. Several months later, the DOJ closed its investigation without pursuing any charges. If we had been afraid to go to trial, we never could have achieved that result.

We have an incredibly diverse practice built on long-standing relationships with our clients. Many of our biggest clients have been with the firm for decades and draw on Patterson Belknap litigators to handle their most important matters in a wide array of practice areas. For newer clients, we are able to offer a breadth of experience across different legal areas and industries to suit their needs. We partner with our clients to develop strategies that go beyond one-off cases or investigations. We pride ourselves on understanding our clients' businesses and appreciating how a decision may impact not just a particular matter, but the client's broader interests as well. There's no higher compliment than being introduced as a client's long-time, trusted counsel.

We have an incredibly talented and diverse group of lawyers, starting with our high-caliber associates, who are the backbone of the firm. Over 70% of our litigation associates are former clerks from federal district and appellate courts throughout the country. Many of those started their careers elsewhere, but came to us after their clerkships because of what they heard around the courthouse or saw in the courtroom. They enter the firm with an understanding of what goes on in court and what helps judges decide cases. This type of significant experience, which we buttress with hands-on training and mentoring, allows our associates to take on meaningful responsibility early in their careers. This unique model continues to help us attract and retain the best talent. Clients know that the partners they hire to lead their matters are going to be deeply involved in all aspects of the case, from inception through trial and appeal, and that they are going to be supported by excellent associates.

**In what three areas of litigation do you have the deepest bench? (I know it's hard, but please name just three.)**

We're privileged to have preeminent trial lawyers and brilliant legal minds throughout our litigation department, and the diversity of our practice makes it difficult to single out any specific areas. Our litigators handle matters in traditional areas (such as antitrust; complex commercial litigation; class actions; false advertising; False Claims Act and whistleblower defense; patent litigation; products liability; and structured finance), as well as more niche areas (such as our top-tier anti-counterfeiting, trademark and brand protection group; media, entertainment and sports practice; law firm defense practice, and litigation and investigations to support our tax-exempt organizations and art & museum law practices).

If I had to single out three areas, based on our most recent successes, I would highlight complex commercial litigation, intellectual property, and white-collar defense and investigations. Our commercial litigation bench is particularly strong because of the group's extensive trial experience and our generalist approach, which gives our lawyers well-rounded exposure through our many commercial litigation matters. Our intellectual property practice features litigators who focus on patent disputes in a wide array of areas, false advertising and consumer fraud, trade secrets, and anti-counterfeiting and brand protection. And, our white-collar defense and investigations practice continues to grow; in 2021, we welcomed two new former government attorneys to the group, bringing us to a partner team that includes six former federal prosecutors, a former senior counsel for the SEC Enforcement Division, and a former attorney general of the State of New Jersey.

**What were two or three of the firm's biggest in-court wins in the past year, and can you cite tactics that exemplify your firm's approach to success?**

Over the past year, we had numerous significant trial wins across our litigation department. We won a jury verdict of more than \$2 billion for a software company in a trade secrets case, successfully defended against challenges to the

patent protecting one of Johnson & Johnson's most important drugs, and secured a \$1.84 billion settlement during trial in a case arising from the mortgage collapse associated with the 2008 financial crisis.

In the trade secrets trial, in which we represented Appian Corp., a Virginia court found that Pegasystems Inc. willfully and maliciously misappropriated Appian's trade secrets, and additionally violated the Virginia Computer Crimes Act. During trial, our team effectively sifted through the factual morass, distilling the key aspects of Pegasystems' conduct and the highly complex nature of the software in a manner that was digestible to the jury. Pegasystems was ordered to pay Appian \$2.036 billion in damages, the largest award in the history of Virginia, as well as legal fees.

In a closely watched Hatch-Waxman case, we successfully defended against challenges to the patent protecting Johnson & Johnson subsidiary Janssen's blockbuster antipsychotic drug, Invega Sustenna. At stake were 10 years of patent protection for a product having nearly \$2 billion in annual sales. Following a three-week bench trial against Teva, the court rejected Teva's theories and ruled in Janssen's favor on all claims, finding that Janssen's expert witnesses were "persuasive" while Teva's experts had "credibility issues."

And, after 15 days of trial that placed a valuable bookend on the 2008 financial crisis, we secured a \$1.84 billion settlement for Ambac Assurance Corp. in a series of lawsuits against Bank of America entities related to residential mortgage-backed securities insured by Ambac. The case went before New York's intermediate appellate court seven times and the state's highest court twice before making it to trial. The ultimate trial victory, co-led by Patterson Belknap, was driven by our deep knowledge of Ambac's business, careful analysis of the mortgage loans, and our ability to recruit and work with key expert witnesses.

These are just a few of our firm's big wins from the past year. We're fortunate to have a deep bench of incredibly talented trial lawyers and a formidable track record of high-stakes court wins.

### **What does the firm's coming trial docket look like?**

We are excited about several high-profile litigations that are proceeding toward trial. Our docket includes cases involving pharmaceutical patents, contractual disputes concerning medical devices and the manufacture of drug substance for a COVID-19 vaccine, Delaware's use of its false claims act with regard to purported unclaimed property, law firm defense cases, anti-counterfeiting actions related to HIV drugs and diabetes test strips, and a class action related to author royalties. In addition to these matters, we have two other interesting cases that are worth singling out.

First, we are currently litigating a bench trial in Alabama seeking preliminary injunctive relief against the Director of the Alabama Department of Transportation. Our client, the Baldwin County Bridge Company LLC, owns and operates a bridge in Baldwin County, Alabama, and is seeking a court order to enjoin bad faith conduct on the part of the Director of the Alabama Department of Transportation. It's our client's position that the Director decided in bad faith to build a new, unnecessary bridge a mile away from the existing bridge for the purpose of putting the bridge company out of business and concealed that purpose both from the bridge company and the public.

Second, we are representing Johnson & Johnson in a multibillion-dollar litigation concerning the company's acquisition of Auris Health, Inc., a developer of robotically assisted surgical devices. The plaintiff, purportedly acting on behalf of Auris's former shareholders (including the venture capital firms that made a windfall from the acquisition), has made outlandish allegations of fraud and breach of contract based on the fact that the technology Johnson & Johnson purchased ultimately did not meet certain regulatory and net sales milestones. The case involved a plethora of interesting issues related to robotics technology, regulatory pathways, and contract interpretation, among other things. We are eagerly looking forward to defending our client against these claims. The case is scheduled to go to trial in Delaware's Court of Chancery in January 2024.

These matters are examples of the types of diverse and challenging litigations we handle.