

Litigation Leaders: Cleary's David Brodsky on Lockstep Compensation, Latin America and Lateral Hires

'We know when and how to pick our fights...We're straight shooters, and strategic about what arguments to make.'

By Jenna Greene
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Welcome to another edition of our Litigation Leaders series, where we spotlight the litigation practice heads of Am Law 200 firms.

Our newest installment features **David Brodsky of Cleary Gottlieb Steen & Hamilton**. A former federal prosecutor in the Southern District of New York, Brodsky has been a partner at Cleary since 1994, specializing in securities enforcement, white collar defense and internal investigations.

Tell us a little about yourself – beyond what's in your law firm bio.

I was born and raised in New Jersey and, as my friends know, I'm a big Bruce Springsteen fan. It's a passion I share with my family. Although I've been to many Bruce concerts, one sticks out in my mind. My 11-year-old daughter and I had tickets in the standing room area near the stage, fondly known as The Pit. My wife and son were not so lucky. They had to stand in the back of the arena and follow the action on the Jumbotrons.

About halfway through the show, Bruce plucked my daughter from the audience and brought her on stage as his "guest vocalist" during "Waitin' on a Sunny Day." I was beside myself. I couldn't believe it. But it got even crazier. An hour later, I spied a stray wristband on the floor, the coveted passport into The Pit.

I pushed my way through the crowd and found my son in the back of the arena. I slipped the wristband on his wrist and we pushed our way back toward the stage. We must have caught Bruce's eye because, unbelievably, he called my son onstage. My son danced with Bruce's side-

man Steve Van Zandt and air-guitared with Bruce during "Dancing in the Dark." Thanks to the smartphones in the crowd, both performances were immortalized on **YouTube**. ([Here](#) and [here](#).)

For a father from New Jersey, it doesn't get much better than that.

How big is your litigation department and where are most of your litigators concentrated geographically?

More than a third of our approximately 600 U.S. lawyers are litigators. We are located in New York and Washington, DC. We also have strong litigation teams throughout Europe, in London, Paris, Brussels, Rome, Milan, Frankfurt and Cologne. Our global footprint—which also includes offices in Sao Paulo, Buenos Aires, Moscow, Hong Kong, Beijing, Seoul and Abu Dhabi—allows us to provide comprehensive and coordinated support to clients on litigation matters that cross multiple jurisdictions.

In what three areas of litigation do you have the deepest bench?

It's difficult to choose just three. We have a particularly strong white-collar defense and investigations practice,



David Brodsky

so let me start there. One of my proudest achievements (not involving the Boss) has been helping to lead the firm's mission to build a world-class enforcement practice. Over the past decade, we have worked hard to make that a reality.

We now have a deep and talented bench. Many of our white-collar partners are seasoned trial lawyers, who served with distinction in U.S. Attorney's Offices, Main Justice, or the Securities and Exchange Commission. Other leaders and rising stars of our white-collar practice are homegrown talents. We represent both companies and individuals in everything from anti-money laundering and sanctions investigations, to FCPA and securities fraud cases. Collectively, I think we have the best white-collar team around.

Complex commercial and securities litigation is another strength. We handle matters from global antitrust cases and bankruptcy disputes to intellectual property cases and M&A-related disputes. We're well known for handling matters for our Wall Street clients. For example, we've represented some of the world's leading financial institutions, such as Goldman Sachs, Citigroup and HSBC, in high-profile investigations and related civil antitrust actions involving various benchmark interest rates (LIBOR, EURIBOR, etc.) and the FX market, and have achieved great results.

And for the past 10 years, we've been representing Citigroup, HSBC, BNPP and others in connection with the Madoff Ponzi scheme. We have devised strategies that extinguished billions of dollars in claims brought by the Madoff Trustee against our clients. Our partners really understand the banking industry, trading and complex financial products.

We also excel in representing public companies in securities litigation and corporate governance disputes. A great example of that is the landmark decision we recently won in the Delaware Supreme Court on behalf of our client Synutra, which established the standard of review for take-private transactions involving controlling shareholders.

A third major area of strength is our international arbitration practice. We have a long and storied history of representing sovereigns and handling international

commercial and investment treaty arbitrations, as well as litigations that raise complex issues of international law. It's in our DNA. Cleary Gottlieb has been an international law firm since the day we opened our doors in 1946.

So, for example, in 2015 we won a landmark ICSID arbitration for the Hellenic Republic. We're currently using our cross-border resources to enforce an UNCITRAL arbitral award for our client Taftnet against Ukraine in the U.S., the U.K. and Russia. And, after engaging in three separate ICC arbitrations, as well as parallel litigations in the U.S. and Japan, we achieved a favorable settlement for Western Digital and its SanDisk subsidiary in a major cross-border dispute with Toshiba, concerning a \$30 billion joint venture for the development of flash memory.

What are some of your goals or priorities as head of the department?

We are always trying to build on our strengths. Our Latin America practice is a great example. It's long been a crown jewel of the firm, and litigation has been a major part of that history.

For example, we helped Petrobras, Brazil's government-controlled oil company, coordinate the worldwide civil litigation it faced as a result of Brazil's historic "Operation Carwash" corruption scandal. We successfully resolved a securities suit against Petrobras that was the largest such action ever brought in the U.S. against a foreign issuer.

We also successfully defended Argentina in litigation arising from its long-running debt-restructuring issues and return to the global markets, securing the vacatur of over \$2 billion in class judgments and the dismissal of a \$350 million purported class action, and we continue to represent the Republic in resolving outstanding claims and related disputes.

We see significant opportunities to broaden our presence in Latin America even further. Our litigation partners have built superb reputations in Latin America. Capitalizing on our momentum in this region and fostering the next generation of leadership is a key priority.

We're also focusing on matters where our clients face government investigations alongside significant civil

litigation. Our work for Robert Bosch GmbH is a perfect example of that. Bosch, which is based in Germany, supplies the sophisticated electronics that control the emissions treatment systems for millions of diesel vehicles worldwide. After Volkswagen acknowledged cheating on its emissions tests, we were hired to represent Bosch's interests in the United States.

Not only have we been handling investigations by the Justice Department and numerous state law enforcement authorities, but we have also been litigating separate consumer class actions involving Volkswagen, Fiat Chrysler, Daimler, General Motors, BMW and Ford. It's the sort of multi-jurisdictional, hydra-like assignment that we thrive on.

Our cybersecurity and privacy practice is another priority. Clients are facing ever-increasing and more sophisticated threats. We have partners who worked on cybersecurity cases while they served in the Department of Justice, and are now applying their expertise to assist clients in addressing the risk of data breaches, and properly responding to breaches when they occur. We're also now publishing a widely-read Cybersecurity and Privacy Watch blog.

What do you see as hallmarks of your firm's litigators? What makes you different?

We know when and how to pick our fights. In the white-collar area, for example, there are times when it's in the client's interest to cooperate and try to settle quickly with the government, and there are other times when it's important to fight back.

We bring that same approach to our litigation and arbitration matters—we're straight shooters, and strategic about what arguments to make. We focus on our client's business objectives, and are commercial and practical in the advice that we give. I think that's why clients come to us with their most sensitive and important matters.

Another difference-maker comes from our lockstep compensation system, which promotes a collegial culture and cross-disciplinary staffing. Firms can talk about collegiality but few structure themselves around that bedrock principle.

Our litigation partners routinely team up with partners in other disciplines and from offices outside the U.S., to

provide a comprehensive, holistic approach to litigation matters. Antitrust, bankruptcy, corporate governance, M&A, private equity, and tax are but a few of the disciplines that regularly contribute to our litigation teams. I think our ability to deliver our firm's substantive experts in all disciplines sets us apart.

How many lateral litigation partners have you hired in the last 12 months? What do you look for in lateral hires?

Our firm is mostly built on organic growth and the cultivation of Cleary talent. We promoted three partners and a counsel in our global litigation practice last year. That said, we also look for opportunistic hires from outside the firm, most often lawyers with exceptional records of public service and trial experience. Sometimes, as with Joon Kim, we're lucky to have those two approaches coincide.

After starting his career here as an associate, Joon served several years as an AUSA in the U.S. Attorney's Office for the Southern District of New York, before rejoining the firm and becoming a partner. In 2013, he returned to the SDNY to serve in the front office, including as Acting U.S. Attorney. Joon rejoined us last year, and has been focusing on internal corporate investigations and complex commercial litigation. We're delighted to have him back—again!

We also recently welcomed back two homegrown partners, Alexis Collins and Rahul Mukhi, who left us to serve as federal prosecutors in the EDNY and Main Justice, and the SDNY, respectively, and we are thrilled that they have rejoined our ranks.

Last year in our London office, we made a rare lateral hire from another firm, adding partner James Norris-Jones. James focuses on English High Court litigation and arbitration, advising clients on banking, shareholder and joint venture disputes, as well as cases involving fraud and insolvency. He is an exceptional litigator and an invaluable addition to our global team.

What were some of your firm's biggest in-court wins in the past year?

We represented a company run by Shari Redstone in a bitter dispute over control of CBS. Our team fought toe-to-toe against no fewer than five other firms representing

CBS and its directors. Shortly before trial, we achieved a settlement on very favorable terms, coinciding with the departure of CBS's long-time president, CEO and chairman Les Moonves. The Cleary partners who led our trial team, Victor Hou and Meredith Kotler, were deservedly selected as Litigators of the Week.

We won victories for National Westminster Bank and Credit Lyonnais in cases where plaintiffs had alleged our clients' banking activities constituted material support to terrorists in the Middle East. Billions of dollars and the banks' reputations were at stake.

Our team convinced the court that no reasonable jury could conclude that the banks had provided support to terrorists. Jon Blackman and Larry Friedman were selected as Litigators of the Week for these groundbreaking victories under the Anti-Terrorism Act.

We won an arbitration involving an iron mine in Guinea owned jointly by our client Vale, one of the world's largest mining companies, and BSGR, a company controlled by Israeli businessman Beny Steinmetz. A team led by Jon Blackman and Jeff Rosenthal in New York, and partners in London and Paris, demonstrated that BSGR paid bribes to obtain the mining rights, and concealed its wrongdoing during the joint venture negotiations. The panel awarded our client \$2 billion in damages and interest. We're now fighting BSGR's attempt to thwart confirmation through a Chapter 15 bankruptcy proceeding.

Can you give an example or two of tactics that exemplify your firm's approach to litigating cases?

We're persistent and creative. For years, we fought on behalf of Ndume Olatushani, a pro bono client who was unjustly convicted of felony murder and sitting on death row in Tennessee. We succeeded in having his death sentence set aside, on the ground that prosecutors suppressed critical evidence. That was a good result, but still left Ndume with a life sentence; so we continued fighting.

Our team found new exculpatory evidence that even the prosecutors were unaware of. We presented it to the courts through something called a writ of error coram nobis, which has been famously described as the legal equivalent of a Hail Mary pass. Well, sometimes Hail Mary passes work. Ndume is now a free man, married with a family. He's spoken before the U.N.'s High Commissioner for Human Rights and travels internationally to advocate against mass incarceration and the death penalty.

We also think outside the box. When our mining clients BHP Billiton and Vale needed to investigate the collapse of their jointly-owned tailings dam in a remote region of Brazil—one of the worst environmental disasters in Brazil's history—our litigators assembled an international panel of experts that identified the cause of the failure.

We developed innovative procedures for analyzing technical documents, commissioned on-site geological testing, and prepared a report that made highly complex findings accessible to diverse stakeholders. It wasn't a typical litigation assignment, but our litigators were able to apply their fact-finding, analytical and presentation skills to help the clients address a challenging issue.

Where are you looking to build or expand in the next year?

Our global crisis management practice will continue to be a major focus. We've been helping clients handle crises for many years. Until recently, though, we hadn't formalized that practice area or taken the opportunity to talk about our comprehensive multi-disciplinary capability and how we can help clients prepare for and, hopefully, avoid crises.

Last year, we published the first edition of our Global Crisis Management Handbook, which is practical guide drawn from our many experiences and we have shared our crisis management lessons with clients around the world. We're looking forward to the publication of our second edition of the handbook later this year.

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