

THE
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Litigation Leaders: Sheppard Mullin's Robert Friedman on Splitting Leadership of the Business Trial Group Three Ways

By Ross Todd

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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 **Robert Friedman**, one of the three co-leaders of the business trials practice group at **Sheppard Mullin**. Friedman, who is based in New York, has tried more than 70 cases in his career. He focuses on business and corporate litigation, as well as internal investigations. Before entering private practice, Friedman was a senior trial attorney in the homicide bureau of the Kings County District Attorney's Office.

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

Rob Friedman: First and most important is family. I've been married 29 years and have three grown children, ages 25 to 28 (a medical school student, a social worker and a tech company channel partner manager). My wife is an attorney as well and works for a non-profit representing victims of domestic violence. Core values come from my parents—my mom was a special education teacher and my father was a retailer who grew up working in my grandfather's fruit market in Worcester, Massachusetts. I was a homicide prosecutor in Brooklyn during the height of the crack epidemic in the 90s. Unfortunately, New York City (and Brooklyn) were setting murder records during this time. The work was relentless and important, trying cases and advocating for families of homicide victims. I later became a deputy bureau chief super-

vising trial lawyers. I moved to private practice in 1996.

Things my partners may not know:

1. At one point I held my college's (Tufts) record for most interceptions in a game (three), which stood for 14 years.

2. I play baseball (hardball) every Sunday.

3. My great-uncle is Gabe Paul,

who was the president-general manager of the Yankees during the 1970s.

4. I started a Big Brother/Big Sister program while in college.

How big is the firm's business trial practice group and where are most of its members concentrated geographically?

We have 206 lawyers in the practice group. We are not concentrated in any particular office—rather we are spread out in each of our 11 domestic offices and also in Seoul. Dallas and Houston are our newest offices and part of our strategic plan for growth.

How does Sheppard Mullin structure its broader litigation practice? I gather your practice group is



Rob Friedman of Sheppard Mullin.

Courtesy photo

where most of the firm's litigators sit, but there are some litigators in other practice groups as well, right?

Several other practice groups have litigators, such as intellectual property, labor & employment, environmental, and white collar and government investigations. However, all of our business trial lawyers are primarily litigators and trial lawyers, and we work closely with litigators and transactional lawyers in the other practice groups. The core for most of our team is commercial litigation. Several of our attorneys have niche specialty areas, including insurance, fiduciary, healthcare, class action, construction, retail and food & beverage litigation, to name a few. We are doing a large amount of trade secret work and having great success for our clients.

You lead the practice group alongside Sascha Henry in Los Angeles and John Brooks in San Diego. How do you three divide the management duties? And how do you split your time personally between practice and management?

This is a great question and one that highlights a real point of distinction in the way Sheppard Mullin structures and manages its practice groups. Each of us is a full-time practitioner and none of us is a "titular" practice group leader in name only. We are equally involved and accountable for every area of the practice group management, including strategic direction; marketing; staffing; training; associate reviews and promotion; diversity; and recruiting. We all have three "jobs": legal work for our clients; our own business development; and practice group leader responsibility. In my view, this is the best formula, although demanding. I believe being "player coaches" fosters respect and buy-in from our group.

What do you see as hallmarks of Sheppard Mullin litigators? What makes you different?

We stress early responsibility for our litigators. This is what litigators want and it promotes stability and retention. We have a wide range of cases, not only the huge document reviews. Our associates get deposition and in-court experience under supervision from our partners. We couple this with formal training, including mock trials, appeals and mediations. When we promote associates and special counsel to partners, they have tried cases and examined witnesses in court. And we feel strongly about internal promotion. Our new and junior partners have been

extremely successful and pay it forward on a daily basis. Our folks know this is meritocracy and their efforts and ability will be rewarded.

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

Deep is different than a blue-chip point of distinction practice. I would say that our "deepest" sub-areas are insurance, class action and trade secrets. But our fiduciary and construction teams, while having less pure numbers, are elite nationwide practices of renown.

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?

We've been fortunate to have a very busy year across all of our offices and litigation teams. It's hard to narrow in on just a few, but these are some of the highlights:

In January, partner **Adam Streisand** had a significant win in the California Court of Appeal interpreting a new statute enacted in response to the controversy over the Britney Spears conservatorship, which we think exemplifies the firm's ability to shape issues on the cutting edge of the law.

In the wake of the storm over the 13-year conservatorship of pop superstar Britney Spears, the California Legislature enacted a new law intended to redress what the #FreeBritney movement saw as perhaps the first cardinal sin: A judge's refusal to allow Britney to be represented by the lawyer of her choice, Adam Streisand. Many believed that much of what ensued might have been avoided had Britney been allowed the lawyer of her choosing. The new California law is intended to ensure that people facing similar fates will have the right to choose their own counsel.

However, in the first decision by a California Court of Appeal interpreting the statute, it was Streisand who successfully persuaded the court that the new law also has important limits. In *White v Davis*, the court agreed with Streisand that the new statute permits courts to prevent lawyers with conflicted motives from representing a conservatee. Streisand was lead counsel for the daughters of a conservatee seeking elder abuse restraining orders against a group of lawyers, the conservatee's second wife, her friend and her daughter. The conservatee in *White* could not identify the lawyers purporting to represent

him by their names, much less understand what it is they were doing for him. Streisand is the leader of Sheppard Mullin's private wealth and fiduciary litigation practice.

The decision also affirmed a ruling in Streisand's favor that held that these same persons, a group, labeled by the Court of Appeal itself as "undue influencers", could be brought to justice under the elder abuse statute notwithstanding their claims that the suit filed by Streisand infringed their constitutional rights to petition the courts.

The decision is the first of its kind to resolve a conflict between what is known as the anti-SLAPP statute, aimed at weeding out meritless attempts to chill constitutional rights and California's elder abuse statutes. It affirmed Streisand's victory and agreed with him that the trial court abused its discretion by not proceeding with the suit notwithstanding the undue influencers' appeal from the order denying their anti-SLAPP motion.

Streisand's team on the case included partner **Golnaz Yazdchi**, special counsel **Valerie Alter** and associates **Bryan Wittlin**, **Meghan McCormick** and **Kendal Fletcher**.

Last June, after a four-week jury trial in Santa Clara Superior Court, partners **Theona Zhordania** and **Charles Danaher** obtained a defense verdict for Unum and Provident Life & Accident Insurance Company in *Kelpe v. Unum Group*.

Kelpe, a former partner of Ernst & Young, sued for breach of contract, bad faith and punitive damages arising out of the denial of his disability claim. Kelpe claimed that he was totally disabled as a result of a heart attack and was experiencing continued angina and fatigue. Kelpe rejected settlement offers totaling seven figures before trial. At trial, he sought more than \$70 million in damages. He argued that the defendants failed to conduct a thorough investigation and denied his claim due to company-wide claim denial targets and goals. The jury returned a unanimous verdict (12-0) in favor of Sheppard Mullin's client.

We also are proud of the pro bono litigation work that we do, especially in the area of disability rights. Most recently, we helped achieve a historic settlement of two class action lawsuits to make the New York City subway system accessible for people with disabilities who cannot use stairs.

In April 2017, Sheppard Mullin and co-counsel **Disability Rights Advocates** (DRA) filed a class action lawsuit in state court on behalf of several disability rights organizations and individuals against the New York Metropolitan Transit Authority (MTA) and the City alleging that the overwhelming inaccessibility of the current subway system violated the New York City Human Rights Law, a novel and untested theory. In 2021, following a decision by the New York Appellate Division, First Department (decision available here), the trial court certified a class of all people with disabilities affecting their mobility who are unable to access the subway. The second lawsuit, filed in 2019 in federal court, alleged that the MTA renovates subway stations without adding stair-free access in violation of the Americans with Disabilities Act.

In April 2023, both courts granted approval to a settlement agreement that requires the MTA to make at least 95% of the New York City subway's 364 currently inaccessible stations (more than 75%) accessible, requires the MTA to dedicate 14.69% of each of its five-year capital plan budgets to station accessibility, and also ensures that stations will be made accessible as part of renovation and rehabilitation projects. This agreement resolves both class action lawsuits, entitled *Center for Independence of the Disabled, New York v. Metropolitan Transportation Authority* and *De La Rosa v. Metropolitan Transportation Authority*.

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

We have active litigation practices around the country with impending trials in numerous areas of law. By way of example, we are representing Octo, an IBM technology company, in multi-jurisdictional litigation brought against it by a former owner, board member and executive following Octo's earlier \$200 million acquisition of the executive's company.

There are four suits spanning two states (Virginia and Delaware), three courts (Virginia circuit court, Delaware superior court and Delaware Chancery court), and complex claims involving allegations of breaches of fiduciary duties, breaches of contract, defamation and real estate matters. The team tried the real estate claims in June and is trying the defamation claims in October—before the same court that heard the Johnny Depp defamation claims.