

## Litigation Leaders: Pryor Cashman Co-Chairs Say Being a Litigator ‘Is and Should Be a Passion’

BY ROSS TODD

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 **Todd Soloway** and **Donald Zakarin**, the co-chairs of the litigation group at **Pryor Cashman**, who are both based in New York.

Soloway also heads the firm’s hotel and hospitality group and real estate litigation practice, representing real estate, real estate finance and hospitality clients including *sbe Entertainment Group*, *Highgate Hotels*, *HIG Realty Partners*, *Lloyd Goldman/BLDG Management* and *Vornado Realty Trust*. He also serves on the firm’s executive committee.

Zakarin, who has been at the firm for more than 40 years, is a member of the intellectual property, media and entertainment and digital media groups. He regularly represents major record companies, including *Capitol Records*, *Sony Music*, *UMG* and *Warner Music Group*, as well as their most senior executives, and is the primary outside litigation counsel for

*Sony/ATV Music Publishing* and *EMI Music Publishing*, two of the world’s largest music publishers.

For the full version of the Q&A, including details on the firm’s recent wins and upcoming docket, visit the *Litigation Daily* website.

**Litigation Daily: Tell us a little about yourselves—beyond what’s in your law firm bios.**

Todd Soloway: I am a born and bred New Yorker, raised in Queens and a proud product of the New York City Public School system, having graduated from Jamaica High School. Being a passionate New Yorker relates to my litigation practice: I started my career at two boutique firms that specialized in real estate and real estate litigation. The best thing about coming up through smaller firms was that I was thrown into the deep end of the pool literally from the very first day—when the partner I worked for walked into my office and told me to get my jacket on, I was going to court. As a young associate I was handling contentious landlord-tenant trials, which at their most fundamental are the same as the most complex trials: prove your case (or defense) through witness testimony and documentary evidence; be quick on your



(L-R) Donald Zakarin and Todd Soloway of Pryor Cashman.

Courtesy photos

feet; handle objections; piece it together; expect the unexpected. Through these early experiences, I was able to advance the development of my skills as a trial lawyer. And now, 30 years into my career and 20 years into my tenure at Pryor Cashman, along with my team of terrific, smart and strategic-thinking colleagues, we try the most sophisticated large cases every year.

Don Zakarin: I started out as a bankruptcy lawyer at **Finley Kumble**, a firm that I joined out of law school in 1975, and left for Pryor Cashman in 1978. When I joined Pryor, I was the fifth and youngest associate, and there were five partners; I became the sixth litigation partner in 1983. Initially, I worked on motion picture copyright cases, including one involving the film “*Stir Crazy*” and the Warren Beatty film “*Reds*.” In 1979, I started doing work on

music cases, working on the “My Sweet Lord” copyright infringement case and a multitude of other cases for one of the firm’s music clients. Because of my background in bankruptcy, I also handled all of the firm’s bankruptcy cases (before we developed a bankruptcy practice); because I also had a business background from college, I handled the firm’s securities and commodities cases before we grew that business with lateral acquisitions over the last years. I handled a complex interbank foreign exchange trading case (that had me back and forth to London for depositions over the course of several years). From the late 1990s, I defended executives in several very large securities cases, including the Sunbeam Securities litigation (representing “Chainsaw” Al Dunlap) and the Chairman of Elan Pharmaceuticals (Donal Geany) in an SEC investigation of “off balance sheet” joint ventures (a hot topic at the time after the Worldcom and Enron cases). I even tried a case on CourtTV in 1996 (successfully obtaining a jury verdict for Joan Collins in a publishing case). Having been asked to serve as a commentator, I quickly blew that opportunity in a post-trial interview when I suggested that it would have been nice if CourtTV had covered the bald spot on my head with a blue dot. But my primary work continued to be representing record labels and publishers in the music industry in contract and copyright disputes, and over the past 20 years, the great majority of my work and that of a growing team of lawyers has been in the music industry.

**How big is Pryor Cashman’s litigation department and where are most of your litigators concentrated geographically?**

Zakarin: There are 71 full-time litigators in Pryor Cashman’s litigation department. In addition, there are three lawyers in the intellectual property group that also litigate, four lawyers in the labor and employment group that litigate, 10 lawyers in the family law group that litigate, and 10 lawyers in the bankruptcy group that litigate. So including those lawyers who litigate in these specialized areas, there are some 98 lawyers who litigate. While most of the attorneys are based in our New York office, we also have talented and experienced litigators in both our Miami and Los Angeles offices.

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

Soloway: We believe that being a litigator is not merely a job nor even merely a profession—instead, we believe it is and should be a passion. And we look to hire people who feel that way about being lawyers and, in particular, are passionate about being litigators and representing our clients. To encourage that feeling, and because we firmly believe that lawyers are best able to grow and develop their skills by doing, from the time lawyers join our firm out of law school or laterally from other firms, we try to get them as close to the front lines as possible and expose them to the full breadth of the work of litigators instead of limiting them to research, writing briefs or reviewing documents—

although these are important skills and tasks that we all perform. We include our lawyers in client meetings, expose them to taking or defending depositions, involve them in strategic decision-making and give them the opportunity to argue motions and to work on trials. Their growth and success fuel our firm’s growth and success. And although some cases require large numbers of lawyers, the opinions and ideas of the more junior attorneys are always welcomed and encouraged. Furthermore, wherever possible we try to staff our cases with one or two partners working with one or two associates so that everyone on each team is actually an active part of the whole rather than feeling as if they are doing piecework. Does this make us different from the large firms? We think so, and the young lawyers who have joined us from other firms tell us it is so.

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

Todd Soloway: We have a unique skill set through our experience as litigators who specialize in the real estate, hospitality and music industries. Our firm handles some of the nation’s most high-profile cases in these areas including the most important cases in the hospitality industry; defending high-profile songwriters, artists, record labels and music publishers in music copyright cases; and representing the music publishing and songwriting industry before the Copyright Royalty Board in proceedings to set what is known

as mechanical royalty rates for streaming services like Spotify, Amazon, Apple and YouTube. Within the litigation group, Pryor stands out by having a group of a dozen litigation attorneys who litigate exclusively in the real estate, real estate finance and hospitality industries. We know these industries like the back of our hand and understand the business goals of our clientele, and that advanced knowledge and experience allows us to be efficient in ways that other firms cannot. That is why we represent a who's who of the top stakeholders in these industries.

Zakarin: Our music industry litigation practice, which counts some 12 attorneys whose practice is substantially devoted to the practice and several younger lawyers who get the opportunity to work on our cases, represents all of the major music companies along with world-famous songwriters and recording artists

Business and securities litigation (including corporate investigations) has become a growing part of our practice, with partners we have brought in from other firms as well as the U.S. Attorney's office in New York.

**As litigation department chairs, what are some of your goals or priorities for the next year?**

Zakarin: (1) To continue to provide our associates with opportunities to grow and develop their skills; and in doing so expose our younger attorneys to our clients, to help them develop the in-depth relationships with our clients and their executives so that roots of those relationships run deep within the firm.

(2) Work with our younger partners to help them expand and deepen their own client contacts, provide a sounding board and acting as mentors to help them further develop their skills as litigators.

(3) To further focus our attention and our resources as a department in existing areas of strength in order to expand our profile and client base in the primary areas of our practice.

(4) To continue to identify what we believe will be growth areas of litigation work and determine whether we have within our existing roster, the capability to provide services in those areas or whether we should seek to laterally acquire the talent to handle those emerging areas of work.

(5) To maintain our focus on what has enabled us to grow into what we consider to be one of the strongest and highest-profile litigation practices in our areas of strength in the United States; staying current in the development of the law—indeed, anticipating where the law may be going—in order to provide the highest quality service to our clients every day without sacrificing both the “hands-on” personal touch that has been a hallmark of our practice or with cost efficiencies that we believe cannot be matched by the larger firms in New York, Miami and Los Angeles.

(6) To make sure that every lawyer in the department has quality work and is growing—and, perhaps most importantly, is enjoying their work and their Pryor Cashman experience.

**Given the current economic climate, what is your message to**

**litigation partners as they bring in new litigation matters? Has your intake practice changed at all to make sure that your litigators are handling viable matters for clients who can and will pay?**

Soloway: We are not a “rules” oriented firm, and there is simply no heavy hand of management scrutinizing what each partner is doing. We trust our partners to exercise good judgment and to be realistic about whether we can effectively and economically handle cases. And our partners know that we are both available to discuss and help them work through the intake of a particular client or matter; to help them assess whether the client and/or work can be effectively represented by our firm; and assisting them in formulating fee proposals when needed or presentations when helpful. Pryor Cashman is large enough to handle virtually any case, and small enough that we understand and empower our attorneys to grow along with smaller clients who frequently become bigger clients. This support in the growth of our partners' practices, and the diversification of originations across our partnership has become an absolute strength of our firm.

**What were some 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?**

Zakarin: A team of litigators led by **Jim Janowitz** and **Bill Charron** successfully defended a film production client against a multimillion-dollar breach of contract claim in arbitration

brought by a Chinese film distributor regarding “The Expendables” film franchise. After proving that the claimant had engaged in witness tampering with our expert witness in China, resulting in the loss of our client’s original expert, we recovered attorneys’ fees and sanctions and defeated totally the claimant’s breach of contract claim. (The arbitration was held before the Independent Film & Television Alliance [IFTA] in 2022). This was a case in which it initially appeared as if the claimant had a solid breach of contract claim, but the focused pursuit of discovery and identification of discrepancies in some of the claimant’s submissions led the trial team to question issues of authority, which in turn led to the claimant interfering with our client’s expert. That focus enabled the trial team to completely reverse the case dynamics.

Our trial team (led by **Frank Scibilia**, **Ben Semel** and me) successfully obtained the largest Copyright Royalty Board rate increase ever awarded after a six-week trial in 2017 in the proceeding known as Phonorecords III, only to have aspects of the award overturned on appeal in 2020 and remanded for further proceedings. Those remanded proceedings went forward in 2021 and 2022. In July 2022, in the middle of the trial team’s work in preparing for trial in the Phonorecords IV proceeding, we successfully obtained, on remand, a reaffirmation of the most significant aspect of the original victory—the percent of revenue rate increase for songwriters and publishers. Two

months later, after nearly a year of intense litigation against some of the largest companies in the world—Apple, Amazon, Google and Spotify—which included some 20 depositions and dozens of discovery motions, merely a week before a five-week trial was scheduled to commence, the trial team achieved a favorable settlement in Phonorecords IV setting mechanical rates for the period from 2023 through 2027. As in our 2017 trial, these results were largely the product of the unmatched depth of knowledge of the streaming industry of our music litigators combined with their Copyright Royalty Board experience, which only a few firms in the U.S. have, and their intense commitment, division of labor and collaboration, enabling a 15 person team to confront and match five “big law” firms, each with dozens of lawyers deployed in the proceeding, representing the streaming companies.

Our hospitality team consisting of Todd Soloway, **William L. Charron**, **Bryan T. Mohler**, and joined my **Meghan Hill**, **James Paulson** and **Lara Kasten-Hoffman**, successfully represented Virgin Hotels—a Richard Branson company—in a three-week trial against the owner of the former Virgin Hotel in San Francisco. The Pryor Cashman team secured a complete victory for Virgin, scoring a \$12 million judgment and obtaining an award of attorneys’ fees as well. Critically, the victory was not only monetary but also expressly vindicated Virgin’s business practices.

This case is an indicator of the type of bet-the-company litigation

that the real estate litigation/hospitality group handles on a regular basis.

### **What does your firm’s coming trial docket look like?**

Zakarin: We currently have a number of cases that are slated to go to trial in the next year. In the music industry, we have two cases going to trial in which we are defending Ed Sheeran, Sony Music Publishing and Atlantic Records in infringement actions. We also had two cases going to trial in Miami for Universal Music Group and Sony Music Entertainment, which the defendant’s Chapter 11 filing has put on hold. We have two copyright infringement cases pending in the Central District of California, one of which could go to trial next year (the other likely will see a great deal of motion practice since it asserts copyright infringement claims against 1,700 different songs and several hundred defendants).

Soloway: In the real estate and hospitality groups, we have at least three cases scheduled for full trial in 2023—these cases include partnership disputes and owner-manager disputes in the hotel industry.