

Joe Porcello

He | Him | His

Partner

Syracuse

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Education

- University of Pittsburgh School of Law, *Magna Cum Laude*; *University of Pittsburgh Law Review*, Editorial Staff, JD
- James Madison University, *Magna Cum Laude*, BA

Practices & Industries

- Semiconductor
- Commercial Litigation & Complex Trials
- Nuclear Energy
- Intellectual Property Litigation
- Torts & Products Liability Defense
- Insurance Coverage & Regulation

Admitted to Practice

- New York
- Pennsylvania
- Texas

Biography

Joe helps business clients resolve complex commercial disputes, often involving sophisticated technology and international dimensions. He serves as lead counsel in high-stakes matters in state and federal courts across the United States, working closely with his clients to develop cost-effective strategies to achieve company objectives and resolve disputes, including through mediation and other alternatives to traditional litigation. Joe represents companies across a variety of industries, including hardware and software technology, energy, industrial equipment, building products, health care, consumer electronics, and wineries and vineyards.

Joe also regularly provides company management with strategic advice regarding commercial contracts, supply chain, force majeure, and other business-operations issues, including in an outside general counsel role. He partners with clients to craft strategies to capitalize on business opportunities, mitigate risk, and avoid costly litigation where possible.

In addition to contract and commercial matters, Joe has litigated and advised companies with respect to a wide variety of other business-critical legal matters, including marketing and advertising, antitrust, intellectual property, product liability, insurance coverage, and labor and employment issues. Joe has substantial experience counseling clients regarding advertising, marketing, and brand-protection matters and successfully litigating federal Lanham Act and state law false advertising claims with respect to products as varied as high-technology industrial products installed in power plants, building products used in residential housing, and mass-consumer products.

In addition to his practice, Joe is a member of the firm's Opportunity, Inclusion & Belonging Partner Committee and serves as co–partner in the Syracuse office.

Representative Experience

Contract and Other Commercial Matters

- Successfully resolved a $20 million+ dispute between a multinational company client and a key strategic customer—involving complex technology—through pre-litigation mediation. Counseled the company's senior business executives with respect to the parties' ongoing contractual relationship and strategies to avoid future disputes, mitigate liability, and position the company for productive future dealings.
- Successfully defended a major multinational company in a federal court action involving breach of contract/warranty, fraud, and consumer-protection claims relating to sophisticated health care technology. Successfully moved to dismiss numerous claims, significantly reducing the client's exposure, and thereafter negotiated a favorable settlement in mediation.
- Favorably resolved a hotel owner's federal court breach of contract lawsuit against a national not-for-profit client, where the hotel owner sought substantial event cancellation damages following the client's COVID-19-related force majeure contract termination. Counseled the client's executive director and board of directors regarding contract risk-management issues with respect to future conferences.
- Defeated an attempt by a landlord to evict a major industrial company from its most profitable facility. Negotiated a favorable resolution of related commercial disputes in mediation.
- Advised an industrial equipment manufacturer client regarding compliance with the Defense Production Act and the related Defense Priorities and Allocations System regulation with respect a major rated contract relating to COVID-19 vaccine production. Counseled the company's senior business executives regarding strategies to comply with rated contract obligations despite supply chain issues, labor shortages, and other challenges.
- Advised a US building products company regarding its strategy "reset" for the defense of mass product defect claims in New Zealand. Devised parallel strategies to maximize the client's insurance recovery.
- Successfully defended a hospital client against breach of contract and fraud claims brought by a former radiology group.
- Advised the executives of a food products company regarding force majeure and other excuses for non-performance under critical contracts in connection with COVID-19-related business disruptions.

- Represented an industrial development agency in complex commercial litigation relating to a shopping center development and related eminent domain valuation proceedings.
- Advised various business clients regarding the negotiation of key commercial contracts, including distribution, OEM, power purchase, joint development, teaming, IP licensing, and third-party logistics agreements.

Marketing and Advertising, Brand Protection, and Intellectual Property

- Successfully defended an energy industry client against false advertising, antitrust, and unfair competition claims involving high-technology industrial products installed in power plants worldwide in federal court.
- Developed and implemented a successful strategy for rapid response to a false advertising campaign of a building products client's chief competitor, including preliminary injunction proceedings.
- Secured the early dismissal of significant false advertising claims against a pet food manufacturer client in federal court, which was affirmed by the Sixth Circuit on appeal.
- Represented a financial services company client in successfully resolving a federal court trademark infringement lawsuit.
- Represented a research university client in a successful patent infringement case relating to hard drive technology.
- Represented a market innovator in a successful patent litigation involving a computer-mediated method of conducting online auctions of financial and legal instruments.
- Counseled a consumer electronics company client regarding strategies to combat unauthorized gray market sales of its products.
- Counseled a winery client regarding its efforts to re-brand a newly acquired vineyard and winery in the Finger Lakes region of New York.
- Represented an innovative fresh food products company with respect to trademark and brand protection matters relating to its new product lines.

Insurance Coverage

- Reversed a denial of coverage and negotiated substantial insurer defense costs funding for a health care industry client.
- Counseled a food industry client's executives with respect to a major cybersecurity incident to ensure proper resources for response and to maximize insurance recovery.
- Represented a power management company in significant toxic tort-related insurance coverage actions pending in Ohio state court and Wisconsin federal court.

- Negotiated the resolution of a significant property damage and business interruption insurance coverage dispute—for the full value of the claim plus attorneys' fees—reversing the original denial of coverage. Counseled the client's CFO through a comprehensive accounting to document losses and maximize recovery.

Prior Experience

- Bousquet Holstein PLLC, Member
- K&L Gates LLP, Counsel

Selected Community Activities

- Hal Welsh East Area Family YMCA, Board of Directors Member
- Chatham Baroque, Former Board of Directors Executive Committee Member

Selected Honors

- Selected to *Super Lawyers* Pennsylvania Rising Stars: Business Litigation, 2017

Selected Speaking Engagements

- Syracuse University Blackstone LaunchPad Innovation Hub, "An Introduction to Brand Protection"
- Tomkins County Chamber of Commerce, "Contractual Obligations and COVID-19: Force Majeure and Other Excuses for Non-Performance," Webinar
- Tomkins County Chamber of Commerce, "COVID-19: A Town Hall Discussion of Key legal Issues for Businesses in Unprecedented Times" Webinar Panelist
- Client Training Program, "Marketing & Advertising Rules of the Road"

Selected Media

- Law360, "Ex-Bousquet Holstein Litigator Joins Barclay Damon in NY"