Joseph Evall

Partner

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New York



Joseph Evall is a litigation partner in the New York office of Gibson, Dunn & Crutcher and a member of Gibson Dunn's Litigation, Intellectual Property, Life Sciences, Mass Torts and Product Liability, and FDA and Healthcare Practice Groups.

Joseph primarily litigates cases that involve complex science and technology, including patent lawsuits, product liability actions, and commercial disputes, with an emphasis on pharmaceutical, biotech, and chemical patent litigation. Joseph has led successful courtroom challenges to "junk science," with his examination and cross-examination of expert witnesses resulting in significant client victories. In 2016, litigation on which he was co-lead counsel was recognized by LMG as the most significant Hatch-Waxman case of the year. In 2017, he received a "Research In Action" Award from Treatment Action Group, a research and policy think tank in New York, for his work defeating an "HIV denialism" lawsuit. Joseph's training in science included laboratory research in physical chemistry and DNA technology; one article on self-assembled monolayers (*J. Am. Chem. Soc.*, 111, 321 (1989)) was featured in the 125th anniversary issue of the *Journal of the American Chemical Society* as the 50th most cited paper to date.

Joseph works closely with organizations that promote diversity in the legal profession. He is a member of the Board of the Lesbian and Gay Lawyers of New York Foundation, and was previously on the board of a non-profit organization that provides housing and social services to LGBT youth, and another that combats violence against LGBT people. Joseph has been honored for his work on diversity and inclusion, including a 2010 award by the LGBT Rights Committee of the Association of the Bar of the City of New York. He leads the Diversity Committee of Gibson Dunn's New York office.

Joseph graduated *summa cum laude* from Harvard College in 1982 and received a master's degree in Physical Chemistry from Harvard in 1984. He graduated *magna cum laude* from Harvard Law School in 1990. From 1992-93, Joseph served as a law clerk for the Honorable Sonia Sotomayor, in the United States District Court for the Southern District of New York.

Joseph is admitted to practice in New York.

Representative Matters

Patent Litigation

- *Nalco v. Wisconsin Public Service Corp.* (W.D. Wis.); *Nalco v. Wisconsin Power and Light Comp.* (W.D. Wis.): Represent defendants in patent infringement suits relating to method for reducing mercury in flue gas emissions from coal-burning power plants; *Nalco v. Chem-Mod et al.* (N.D.Ill.): Represented defendant in case dismissed by plaintiff after four years of litigation.
- *Ferring v. Allergan et al.* (S.D.N.Y.): Defended Allergan against inventorship

Capabilities

Intellectual Property
Appellate and Constitutional Law
Consumer Products and Retail
Environmental
FDA and Health Care
Law Firm Defense
Life Sciences
Litigation

Credentials

Education

Harvard University - 1990 Juris Doctor
Harvard University - 1984 Master of Arts
Harvard University - 1982 Bachelor of Arts

Admissions

New York Bar

Clerkships

USDC, Southern District of New York, Hon. Sonia Sotomayor, 1992 - 1993

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challenge to patents directed to low-dose desmopressin products. *See* 932 F. Supp.2d 493 (2013)(dismissing all 14 state law claims); 4 F.Supp.3d 612 (2014)(denying motion for leave to file a second amended complaint); 253 F.Supp.3d 708 (2015)(dismissing plaintiffs' inventorship claims as barred by equitable estoppel); 166 F.Supp.3d 415 (2016)(permitting trial of inventorship counterclaims directed to plaintiffs' patents).

- *Sanofi-Aventis v. Eli Lilly and Co.* (D.Del.)**:** Represented Sanofi in a 505(b)(2) Hatch-Waxman lawsuit concerning its diabetes treatment, Lantus SoloSTAR, one of the best-selling drug products in the world. The morning of trial, Lilly stipulated to infringement, an injunction, and royalties. In 2016, LMG recognized the litigation—which involved patents on formulations and delivery devices—as the Hatch-Waxman Litigation Impact Case of the Year.
- *Isis Pharmaceutical v. Santaris Pharma A/S* (S.D. Cal.): Represented defendants in patent lawsuit involving drugs based on LNA (locked nucleic acid) antisense oligonucleotides; secured dismissal of claims premised on alleged sale or offer for sale of patented methods.
- *Medicis v. Actavis* (D. Del.): Represented plaintiff in Hatch-Waxman lawsuit concerning patented topical dermatological gel formulation.
- *Alcon Laboratories.* Represented Alcon in three patent infringement cases involving glaucoma medications. The technical issues involved organic chemistry, ocular anatomy and physiology, solution chemistry, and statistics. Each case settled on favorable terms just before trial.*
- *Chemical Manufacturing Process***.** Defended an agricultural products company in an E.D. Tenn. patent infringement lawsuit directed to a process used in manufacturing cyclohexanedione herbicides. Summary judgment of non-infringement was affirmed on appeal.*
- *Other Patent Matters.* Joseph has also developed patent, litigation, IPR, and regulatory strategies, and handled litigation and appeals, in matters involving novel "NCE" drug substances; microalgae; pharmaceutical formulations; real-time weather systems for insurers; DVR "time-shift" technology; screen printing machines for fabricating circuit boards; biologics; oligosaccharides and carbohydrates; PCR; silicon carbide crystals; polymers; and transgenic crops. He has advised clients and represented parties in the mediation and arbitration of disputes concerning patent licenses and drug development agreements.

Product Liability Litigation

- **Vaccines.** Joseph directed the efforts relating to expert witnesses and scientific and medical issues in defending hundreds of cases alleging that routinely-administered vaccines caused some children to develop autism. In one Maryland case, he handled five expert witnesses in a ten-day *Frye* hearing that resulted in the preclusion of all of plaintiffs' expert witnesses from testifying, and the dismissal of the case. The Court of Appeals of Maryland affirmed the decision in May 2009, leading scores of other Maryland plaintiffs with similar claims to dismiss their cases. An earlier *Daubert* hearing in the E.D.Tx, was also successful. *
- **Prop 65.** Joseph won a one-week trial in California Superior Court in *People v. Altaire*, establishing that the presence of the preservatives thimerosal and phenylmercuric acetate in certain nasal spray products did not create an obligation to include Proposition 65 warnings. This case was the first in California to establish a maximum allowable dose level under Proposition 65, and the first defense trial victory in a Prop 65 case brought by the California Attorney General.*
- **Other Product Cases.** Joseph has defended against product liability claims directed to a variety of products ranging from manufacturing equipment to the earliest cases involving talc, and participated in a successful appeal challenging the restructuring of a mass tort settlement trust.*

Commercial Litigation

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Many of Joseph's cases involve complex commercial disputes relating to joint venture agreements, joint development agreements, patent licenses, and other contractual rights. He defended telecommunications companies against a putative class action challenging their management of nationwide cellular markets, and against an Article 78 claim challenging a large service contract. He was a member of the team representing the co-owners of the largest oil refinery in Germany in an eight-week trial before the International Chamber of Commerce.

Pro Bono Matters

Joseph leads a team of attorneys representing dozens of LGBT persons seeking asylum in the United States, and supervises all of the office's matters involving name-change applications brought by transgender people. He is leading a team challenging New York's regulations permitting familial DNA searching of the State's DNA databank. He recently represented a Muslim inmate in a religious freedom challenge to accommodations provided during Ramadan. In a case involving "HIV denialism," Joseph obtained summary judgment dismissing defamation claims brought by a journalist against his client, a well-known AIDS policy expert, a ruling unanimously affirmed on appeal. *Farber v. Jefferys*, 941 N.Y.S.2d 537 (N.Y.Sup. 2011), *aff'd*, 103 A.D.2d 514 (1st Dept. 2013). Joseph has obtained the dismissal of libel claims brought against a non-profit LGBT services organization, and another victory on behalf of that client that vindicated the right to provide rape crisis services in New York State without fear of suit.

Recent Publications and Presentations

- Co-Author, "Don't Count On PREP Act To Defend Pandemic IP Infringement," *Law360* (July 2, 2020).
- Moderator, "Illusory Safe Harbors: Exploring Uncertainties in the Boundaries of 271(e)(1)," at ACI Paragraph IV Disputes Conference, New York (April 2017)
- Panelist, "FDA Update—Survey of Agency Activity Impacting Paragraph IV Litigation," at ACI Paragraph IV Disputes Conference, New York (April 2015)
- "Unanimous Supreme Court Decides That Induced Infringement Requires a Direct Infringer" (Gibson Dunn Client Alert, June 3, 2014)
- Speaker, "Biologics and Biosimilars," at ACI Paragraph IV Disputes Conference, New York (April 2013)
- Guest Speaker, "Vaccine Litigation," at Stanford undergraduate seminar on "The Measles Safari" (2012)
- "En Banc Federal Circuit Expands Liability for Induced Infringement of Method Claims," Gibson Dunn Client Alert (September 5, 2012)
- "Leahy-Smith America Invents Act Revises Patent Law," Gibson Dunn Client Alert (September 22, 2011)
- "What Every Product Liability Lawyer Needs to Know About Patents and the Company's Defense of Patent Litigation," DRI Drug and Medical Device Seminar (May 2010)
- Co-Author, "Defending Causation Claims Brought By Plaintiffs Asserting 'Genetic Susceptibility'," DRI Drug and Medical Device Seminar (May 2009)

* *Representations occurred prior to attorney's affiliation with Gibson Dunn.*

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