

Robert E. Johnston

Partner

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Robert E. Johnston's practice focuses on trials and appeals of complex litigation matters, with an emphasis on defending pharmaceutical product liability litigation and on prosecuting insurance coverage disputes for corporate clients. In 2015, he was selected by *Corporate America* Legal Elite for Best in Product Liability Litigation-Washington, DC.

Mr. Johnston has served as co-lead trial counsel in multiple pharmaceutical products liability trials, including *Hogan v. Novartis Pharm. Corp.*, No. 1-06-CV-00260-BMC (E.D.N.Y. 2011), which resulted in a defense verdict for our client. He manages the defense of class action, consolidated, and serial litigations and represents clients in significant individual matters as well. He has developed key liability defenses to sweeping allegations of corporate misconduct, and he has worked with experts and senior company employees to advance those defenses in depositions and at trial. He defends depositions of corporate employees and has been involved in motions disputing the admissibility at trial of videotaped corporate depositions. He prepared eight corporate witnesses to testify at trial in *Meng v. Novartis Pharm. Corp.*, No. MID-L-7670-07-MT (N.J. Super. Ct. Law Div. May 15, 2013) in New Jersey, and in *Davids v. Novartis Pharm. Corp.*, No. 06-CV-431 (E.D.N.Y.2012) in New York federal court (where he served as co-lead trial counsel). Mr. Johnston has developed and presented the testimony of scientific experts and cross-examined plaintiffs' experts both at deposition and trial. In support of his work developing liability defenses, he is co-leader of the Firm's e-Discovery group. He has experience implementing court-approved document review strategies and stays current on developments regarding Technology Assisted Review and other emerging document review protocols. He has supervised productions numbering in the tens of millions of pages of documents and regularly counsels clients regarding e-Discovery issues. He is a member of The Sedona Conference.

Mr. Johnston has successfully defended class action claims and handled the nationwide defense of matters coordinated in one of the longest-standing multidistrict litigations in the United States, *In re Aredia® and Zometa® Products Liability Litigation*. He has written and spoken on the defense of class action claims and spoken on issues regarding the defense of claims in multidistrict litigation.

Mr. Johnston has prevailed on summary judgment in numerous cases, including cases from the Aredia®/Zometa® litigation involving issues of warnings (proximate) causation, the inapplicability of cross-

Litigation

Common Carrier Liability

Complex Litigation

E-Discovery

Federal Claims

Financial Institutions

Insurance

Pharmaceutical Products

Toxic Torts & Products Liability

Education

Southern Methodist University
(B.A., 1991)

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(B.B.A., 1991)

The George Washington
University Law School (J.D.,
1994, *with high honors, Order of
the Coif*)

Admissions

District of Columbia, Maryland,
Montana

United States Courts of Appeals
for the Second, Fourth, Sixth,
Ninth, and Eleventh Circuits

United States District Courts for
the District of Columbia, the
District of Maryland, and the
District of Montana

United States Court of Federal
Claims

jurisdictional class-action tolling, the applicability of punitive damages limitations, and other topics of interest to medical products liability defense. He has participated in appeals of trial verdicts and summary judgments, including oral argument before the United States Court of Appeals for the Second Circuit.

Mr. Johnston represents clients in both state and federal courts in actions seeking insurance coverage for environmental liabilities, asbestos-related claims, defamation, errors and omissions by insurance agents, and various other business torts. As co-leader of the Firm's insurance coverage practice, he recently obtained a significant recovery for insulation-installer Porter Hayden Company in its decade-long litigation with AIG over asbestos-related bodily injury claims. He also consults with clients regarding the pursuit of insurance proceeds under solvent and insolvent schemes of arrangement. He has written and spoken on numerous issues relevant to insurance coverage, including issues of fidelity insurance and specialty coverages available for e-commerce enterprises.

Mr. Johnston has pursued litigation in connection with government contracts, including procurement-related claims, *Winstar*-related claims, and claims for the taking of property by the government without just compensation. He assisted nuclear power utilities in a successful trial before the Court of Federal Claims regarding the federal government's breach of its contractual obligations to begin removing spent nuclear fuel from power plants by 1998. He has significant experience representing clients in commercial business disputes, including suits arising out of the telecommunications and e-commerce industries. He has written and spoken on issues related to the federal False Claims Act, particularly its *qui tam* provisions.

Mr. Johnston is a member of the National Association of Railroad Trial Counsel (NARTC) and, in June 2015, served on the faculty at NARTC's College of Railroad Trial advocacy – an intensive six-day trial techniques course for thirty young trial attorneys. At NARTC's Winter Meeting in 2014, he spoke on the impact of no-recourse litigation funding for plaintiffs and their counsel.

For 2019, Mr. Johnston is once gain named in the Washington, DC edition of *Super Lawyers*, and is recognized as a 2019 AV Preeminent[®] Lawyer by Martindale-Hubbell™. He is a member of the Defense Research Institute. In law school, he served as a member of *The George Washington Law Review*, where his note on *qui tam* issues was published.

Publications

New Jersey: Now the Product-Liability Defendant's Playground?

Nestle Takes Shelter in Its Supply Chain Safe Harbor

Effective Tactics for Opposing Certification from Recent Food Labeling Class Actions

"Coverage For Claims Involving Allegations of Conspiracy," by Robert E. Johnston for *Insurance Coverage Law Bulletin*.

"Inferring Dishonesty: The Fifth Amendment and Fidelity Coverage," by Robert E. Johnston for *Insurance Coverage Law Bulletin*.

Coverage For Claims Involving Allegations of Conspiracy

Damage to Computer Systems Caused by Installation of Software Not Covered Property Damage

Internet Domain-Name Suit is Covered Advertising Injury

1001 Attorneys General: Executive-Employee Qui Tam Suits and the Constitution