



## Joshua Cash

Partner

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Joshua Cash is a civil litigator who handles all aspects of civil and commercial litigation for his clients in state and federal courts throughout New York State, from claim investigations, risk analysis and initial pleadings through discovery, motion practice, trials and appeals. Joshua focuses his practice on general liability, with a strong emphasis on defending premises liability claims involving commercial, retail, hospitality and residential property owners; sports, gaming and other entertainment-related risks; Labor Law; construction cases; automobile and transportation liability; and security-related matters. Joshua also works closely with clients to provide risk management services to identify potential measures they can take to prevent litigation or defend against claims that arise by offering innovative strategies and resolutions to achieve the desired result.

Joshua's practice also focuses on a variety of commercial and business litigation matters, with extensive experience representing lenders and other creditors in workouts, foreclosures, restructurings and resulting collection work.

Joshua holds an M.B.A. degree in addition to his law degree, giving him a deeper understanding of his clients' businesses in terms of both operations and finances, and providing him with an added appreciation of the non-legal logistics involved in running a business.

### **Complex Tort & General Casualty**

Joshua has defended many well-known real estate investment trusts, commercial real estate conglomerates, global investment firms and national construction entities in their capacities as owners and contractors. His practice also involves representation of commercial transportation companies in automobile liability claims arising from accidents involving their drivers. Joshua has defended these entities in every aspect of complex litigation matters, from inception through resolution. He also has significant experience defending property damage claims, products liability matters and navigation law claims

### **Services**

- Commercial Litigation
- Complex Tort & General Casualty
- Hospitality
- Transportation
- Professional Liability & Services

against petroleum companies and commercial carriers.

### **Commercial Litigation**

Joshua regularly advises banks, corporations, insurance companies and government institutions on a wide variety of commercial litigation matters, including various aspects of securities, business tort, fraud, breach of fiduciary duty, breach of contract and creditors' rights litigation. He has represented various financial institutions enforcing remedies for secured creditors and other UCC-related litigation.

### **Education**

- Long Island University C.W. Post Campus (M.B.A., 2007)
- Touro College Jacob D. Fuchsberg Law Center (J.D., 2006)
  - Touro Law Review, business manager
- The Pennsylvania State University (B.S., 2003)

### **Bar Admissions**

- New York

### **Court Admissions**

- U.S. Court of Appeals, Second Circuit
- U.S. District Court, Eastern District of New York
- U.S. District Court, Southern District of New York

### **Professional Affiliations**

- New York State Bar Association
- New York City Bar Association

### **Awards & Honors**

- Selected for inclusion in *Rising Stars for New York Super Lawyers*, 2015-2017

## **Client Wins**

### **Cash and Lembersky Secure Unanimous Defense Verdict for New York City Casino**

Joshua Cash (Partner-New York, NY) and Antony Lembersky (Of Counsel-New York, NY) secured a unanimous defense verdict in Queens County Supreme Court in a liability matter involving a patron who allegedly tripped, but did not fall, at their casino client's facility – the first in New York City with live table games. The plaintiff, a 43-year-old male casino regular, alleged that while he was exiting the casino, he tripped over a raised metal floor saddle serving as the transition between the casino floor's indoor carpeting and the cement MTA Skybridge leading to the A-Train. He alleged that because his right big toe struck the metal, his open-toed sandal, or slide, violently ripped open. Fortunately for the

casino, the incident was captured on surveillance video and was played for the jury multiple times. Even the plaintiff's counsel acknowledged, in both his opening and closing remarks to the jury, that after seeing the video, you may ask yourself, "That's it?" Joshua and Antony emphasized that the plaintiff merely stubbed his toe, and that the jury should focus on the credible evidence and the more likely scenario: his slide ripped first, causing his right toe to fall out and hit the metal floor saddle. They used approximately 35 minutes of video recorded before the incident to show the jury that as many as 167 people walked over the same metal floor saddle where the plaintiff stubbed his toe without issue. The 11-minute video filmed post-incident also showed dozens of additional patrons traversing the area, many wearing similar open-toe sandals. In addition, the responding security officer testified on behalf of the casino that his inspection of the metal floor saddle immediately after the incident revealed no signs that it was raised or bent, and that it was flush with the surrounding floor. The jury deliberated for less than 20 minutes before unanimously deciding that the area where the plaintiff fell was reasonably safe. Although the matter never got to damages, the plaintiff underwent bunion surgery on his right toe/foot, which he claimed was traumatically induced, and formally demanded \$495,000 to settle the case. Prior to jury selection, the plaintiff's counsel reduced the demand to \$80,000, but the client chose to have the Wilson Elser team make its case in the courtroom.

#### **Cash, Zemsky, and Hall Secure Unanimous Defense Verdict for New York City Casino**

Joshua Cash (Partner-New York, NY), Jessica Zemsky (Partner-White Plains, NY), and Kyle Hall (Associate-New York, NY) secured a unanimous defense verdict in the Supreme Court of New York, Queens County, for Wilson Elser's casino client. The elderly plaintiff in this case alleged that she slipped and fell on water in the casino's food court due to a purported ceiling leak. Plaintiff relied on a water-stained ceiling tile she observed after the fall while looking up, but admitted she never saw water leaking and could not establish how long the condition existed. Surveillance footage was central to the defense. We presented a video showing 44 patrons traversing the area without incident in the 12 minutes before the fall and demonstrated that a separate slip that occurred just minutes earlier in a different location effectively defeated notice. Expert testing further undermined plaintiff's claims: our expert confirmed the floor was slip-resistant even when wet, and on cross-examination, plaintiff's expert conceded his testing did not reveal a hazardous condition and that his leak theory was speculative. The court also denied the plaintiff's request for a missing document charge related to alleged post-incident photographs. We argued that there was no willful or contumacious conduct on our client's part, as the officer who allegedly took the photos was no longer employed, the plaintiff never sought his deposition or the photos, and no trial testimony established that the photos currently exist, an essential requirement under PJI 1:77. The Wilson Elser team ultimately argued that any theories as to how the water got on the floor were merely speculative, no dangerous condition could be pinpointed, and the plaintiff failed to prove notice. Despite the plaintiff's arthroscopic knee surgery and a \$300,000 demand (reduced to \$100,000 during trial), the jury deliberated briefly after rewatching the video and returned a unanimous verdict finding the area reasonably safe.

#### **Cash & Ledwin Obtain Final Judgment Against Credit Union Ex-CEO in Excess of \$7.3 Million**

Joshua Cash (Partner-New York, NY) and Mark Ledwin (Partner-White Plains, NY)

commenced an action in 2023 on behalf of the National Credit Union Administration (NCUA) against the ex-CEO of a Credit Union, under New York's Faithless Servant Doctrine. The NCUA argued that the ex-CEO should forfeit \$7,323,557 in compensation and a \$1.5 million collateral assignment split-dollar insurance policy because of his criminal convictions, alleged financial improprieties, and policy violations. The ex-CEO's misconduct began during the height of the taxicab industry and ultimately led to his conviction in 2021, after the Credit Union was liquidated by the NCUA. As a result of the criminal trial, the ex-CEO was sentenced to 46 months in prison and was ordered to pay \$2 million in restitution (he currently remains incarcerated in Otisville, NY). The improprieties included accepting illegal gratuities from taxi medallion owners and brokers, approving tens of millions of dollars in the Credit Union's loans to its detriment, and accepting luxury vacations and gifts without the approval of the Credit Union's board.

Judge Nina R. Morrison of the U.S. District Court for the Eastern District of New York approved the final judgment based on the Federal Magistrate's report and recommendation after the NCUA was successful on its motion for partial summary judgment on liability. The final money judgment amounts to \$7,323,557.15, which is the total amount of the ex-CEO's salary from February 10, 2011, until his termination of employment in 2016 (and provides for an equitable lien on the ex-CEO's interest in his life insurance policy, up to the amount of the money judgment). Together with an early settlement obtained from the Credit Union's ex-General Counsel for nearly \$1 million, the NCUA stands to recover more than \$8 million.

#### **Cash & Santana Successfully Defend against Allegations of False Imprisonment and Assault by Security Staff**

Joshua Cash (Partner-New York, NY) and David Santana (Associate-New York, NY) secured a unanimous defense verdict in Kings County Supreme Court on behalf of New York City's only casino in alleged claims of false imprisonment, assault, and battery perpetrated by the security staff. The plaintiff demanded \$150,000 for the indignity of having been detained for 15 minutes and 18 seconds and submitted to unsubstantiated threats and assault. The plaintiff was abusing the casino's rewards program to capitalize on the "free play" feature by using rewards cards belonging to other individuals, insisting he had permission to use the cards, but could not tell the jury who they were or where he got the cards. The casino is operated by a gaming agent for the State of New York's Lottery Division (which owns and benefits from the revenue from the casino). The gaming agent is always sued as a private actor possessor and operator of the casino. Under the NY State Gaming Commission Rules and Regulations, the gaming agent is authorized to exclude anyone deemed to be engaging in conduct detrimental to the interests of the casino, and to reasonably detain that person to duly process the exclusion. The plaintiff received a lifetime ban and exclusion as a result of his egregious conduct and was detained incident to the exclusion process. The jury was presented with five questions in the verdict sheet regarding the gaming agent's conduct, all five of which needed to be answered in favor of the agent for it to prevail. The jury deliberated for approximately 22 minutes to answer these five questions against the plaintiff.

#### **Greenfield, Cash and Lum Defeat Certification of a Class Action for Casino Client for Second Time in Three Months**

Benjamin Greenfield (Partner-Philadelphia, PA) and New York City partners Joshua Cash

and Larry Lum succeeded in convincing the Kings County Supreme Court, Civil Term, to grant their pre-answer motion on behalf of the largest casino operator in New York City, to dismiss plaintiff's claims in their entirety, including the dismissal of plaintiff's individual and putative class action claims. Essentially, plaintiff, by and through her counsel, set forth conspiratorial claims that the casino is engaged in a deceptive practice to deprive patrons of their loose change. The plaintiff alleges that after receiving her cash-out voucher from the machine at the casino, she was only paid out the amount in whole dollars, and was not paid the full balance due, including the cents. The plaintiff sought to represent a class of all casino customers who were similarly deprived of their loose change. Notably, plaintiff's counsel appeared to be taking the lead from similar attempted class actions claims sought to be certified against at least two other casinos in other jurisdictions around the country. Ben, Joshua and Larry obtained dismissal of the multiple causes of action set forth in plaintiff's complaint, including violation of New York Business Law §§ 349 and 350, Breach of Contract, Conversion and Unjust Enrichment, and relied successfully on affidavits from casino personnel and photographic evidence that demonstrated conclusively there was nothing misleading about the defendant's practices and that any forfeiture of such change was plaintiff's own deliberate choice. The court also was convinced to dismiss plaintiff's proposed class action claims insofar as the class definition was overbroad, sought to certify what was effectively a sham proceeding (the court specifically referenced within its 15-page decision the adage that "the law does not concern itself with trifles"), and would not be composed of persons with identical interests.

#### **Stephenson, Cash and Jolley Prevail on Appeal of Defense Verdict for National Self-Storage Company**

Jeremy Stephenson (Of Counsel-Charlotte, NC), Joshua Cash (Partner-New York, NY) and Eleanor Jolley (Partner-Atlanta, GA) successfully defended the second-largest self-storage company in the country on appeal before the North Carolina Court of Appeals. The plaintiff, a customer of the client, sued under various commercial tort theories after her units were burglarized. After a winning defense in the jury trial, including a directed verdict on most counts and others prevailing before the jury, the plaintiff appealed and the appellate court issued an Opinion finding no error by the trial court, and securing a complete victory for the client.

#### **Cash and Graham Secure Summary Judgment in Inverse Condemnation Matter**

Josh Cash (Partner-New York, NY) and Omar Graham (Associate-New York, NY) secured summary judgment for a major wireless network operator in a matter involving inverse condemnation (an allegation under section 27 of the New York Transportation Corporations Law that property was taken without payment). In the same complaint, the plaintiffs tacitly admitted that they gave our client permission to use the land. The plaintiffs refused to discuss settlement in good faith and were apparently seeking somewhere in the range of \$200,000 to \$300,000 for the continued presence of a pole in their backyard. Consequently, litigation lasted more than four years and even saw plaintiffs denounce their own signature and instead claim for the first time during their depositions that our client must have forged it. We were able to move for summary judgment, argued in Kings County Supreme Court (Civil Term), Second Judicial District of New York. The court agreed with all of our arguments and denied plaintiffs' cross motion to amend the complaint to contradict the original complaint and allege that they did not sign the document permitting our client to replace the subject utility pole. The motion was prepared

and argued by Omar Graham.

**Greenfield, Cash and Lum Prevail in Notorious Pro-Plaintiff Bronx County on Behalf of Largest Casino Operator in New York City**

Benjamin Greenfield (Of Counsel-Philadelphia, PA), Joshua Cash (Partner-New York, NY) and Larry Lum (Partner-New York, NY) succeeded in convincing the Supreme Court of the State of New York County of Bronx, Civil Term, to deny the plaintiff's motion to certify its action as a class action on behalf of their client, the largest casino operator in New York City. The plaintiff was banned from the casino for smashing a gaming machine at which he was losing money (and his refusal to pay for the damage). The plaintiff attempted to certify his claims as a class action arguing that the casino improperly demands restitution and threatens arrest if patrons refuse to pay for the costs of repairs to the property they damaged. Ben, Joshua and Larry relied on NYS Gaming Bulletin #22, which required the casino to detain individuals suspected of damaging casino property and to conduct an individualized investigation into the actions of each patron. The plaintiff argued that the Bulletin was null and void and without legal effect as it was not filed in the office of the department of state, and that it denied those patrons due process. The Hon. Veronica G. Hummel, A.J.S.C., in an extremely notable manner, ruled that Bulletin # 22 is "a valid directive issued by the Gaming Commission that is legally binding on [the casino] and governs and authorizes certain actions by [the casino]." At the very early stages of this matter, the plaintiff's attorneys attempted to force our client into an early settlement by having an article published in the *New York Post*.