

Michael Berkovits

Special Counsel



mberkovits@cooley.com Trade Secret Litigation and Dispute Counseling
Commercial Litigation
White Collar Defense and Investigations
Trials
Employee Mobility, Competitive Hiring and Unfair Competition

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New York

Michael is an experienced trial lawyer who focuses on protecting trade secrets and defending against trade secret misappropriation claims in high-stakes litigation. He is recognized as a leader in applying computer forensic analysis to trade secret disputes and other legal matters and has written and spoken on the subject for Bloomberg Law and The Sedona Conference. Michael currently serves as co-chair of The Sedona Conference’s team focused on criminal trade secret law and practice.

Michael informs and supplements his trade secrets practice with a broad portfolio of experience across a range of practice areas, including deep experience in white-collar defense and internal investigations, along with subject matter experience in bankruptcy, employment and securities law and other complex commercial disputes. He has taken a number of cases to trial, conducting high-profile, technical examinations of scientists and computer forensic experts in bet-the-company trade secret disputes. In one case, Michael partnered with the current global chair of Cooley’s litigation department to secure a major defense victory for a next-generation medical device manufacturer. According to the trial judge, the team’s performance was “superlative” and “saved the company.” The judgment was twice affirmed on appeal.

Michael has co-authored two amicus briefs on behalf of the New York Council of Defense Lawyers, both of which were cited by the US Supreme Court in cases dealing with criminal asset forfeiture. He maintains an active pro bono practice.

Michael’s representative cases include:

Trade secret disputes and forensic investigations

- Secured trial and appellate victories for a wireless medical device manufacturer in bet-the-company litigation, including establishing through examinations of the company’s chief scientist and computer forensic experts that the company developed its technology on its own
- Defended a next-gen biotech client in bet-the-company litigation, limiting inferences of misappropriation through strategic trial examinations; matter resolved in a favorable settlement
- Resolved a matter for a data storage provider involving misappropriation by a former employee without litigation, negotiating a creative settlement that ensured the destruction of misappropriated information and imposed hiring protocols on a competitor to minimize future misappropriation risk
- Obtained a rare order for monetary sanctions and a favorable jury instruction by leveraging forensic

computer indicators of intentional destruction of evidence

White-collar defense and investigations

- Led an extensive internal investigation of a Fortune 200 company, making recommendations for process improvements while convincing the US Securities and Exchange Commission (SEC) not to pursue enforcement claims for potential fraud
- Represented the former chief financial officer of a Fortune 500 company in a high-profile SEC investigation, achieving a favorable settlement without admission of liability
- Conducted an internal investigation of a large Latin American company concerning four areas of potential criminal financial fraud
- Represented multiple healthcare companies in extensive investigations by two separate US attorney's offices, successfully avoiding charges
- Represented the US subsidiary of a multinational corporation in a US Department of Justice (DOJ) antitrust investigation
- Represented a former bank CEO in one of the few criminal cases arising from the collapse in mortgage-backed securities, securing a favorable plea deal through novel application of lower sentencing guidelines

Complex commercial litigation

- Acted as senior litigator on a large cross-office team representing a committee of tort claimants in a multibillion-dollar bankruptcy proceeding
- Represented a Fortune 50 company in arbitration related to complex agricultural technology, including developing damages strategy, resulting in a mid-trial, favorable settlement
- Represented a client in parallel securities litigation arising from white-collar matters
- Represented a bankruptcy litigation trust, securing large settlements for claims of breaches of fiduciary duty and fraudulent conveyance
- Represented a real estate investment partnership at trial before the US Tax Court

Before joining Cooley, Michael clerked for Judge Richard M. Berman of the US District Court for the Southern District of New York. Before that, he practiced at another leading law firm. During law school, he interned with the criminal division of the US Attorney's Office for the Southern District of New York, the DOJ's Commercial Litigation Branch and a federal judge in the Eastern District of New York.

Education

Columbia Law School JD, James Kent Scholar, Hamilton Fellow, 2010

Harvard College BA, Psychology, magna cum laude, Phi Beta Kappa, 2005

Admissions & Credentials

New York

California

Court Admissions

US Court of Appeals for the Ninth Circuit

US Tax Court

US District Court for the Eastern District of New York

US District Court for the Southern District of New York

US District Court for the Western District of Michigan

Memberships & Affiliations

Federal Bar Council (Inn of Court)

The Sedona Conference, Trade Secrets Working Group