

Michael Berkovits

Special Counsel



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New York

Commercial Litigation

White Collar Defense and Investigations

Trade Secret Litigation and Dispute Counseling

Michael's practice focuses on complex litigation, white collar criminal & regulatory defense and investigations, and trade secret protection and defense. Michael manages high-stakes complex litigation in a wide range of practice areas, including contractual disputes, securities law, intellectual property law, bankruptcy law, employment law, and tax law. Michael also frequently represents individuals and corporations in internal investigations and criminal and regulatory matters involving the Department of Justice, the SEC, and other agencies. Michael has extensive experience in trade secret matters, representing technology and other companies both as plaintiff and defendant, including pre-litigation advisory and dispute resolution work and litigation through trial and appeal. Michael also has a robust practice focusing on the application of computer forensic analysis to legal matters.

Michael has participated on trial teams in multiple trials and arbitrations within the past several years, including serving as second-chair trial attorney in a major trade secret litigation in federal court in California. In that case, Michael secured a major defense victory on behalf of the manufacturer of a next-generation medical device. The win, which was the difference between the company liquidating or continuing operations, was described by the trial judge as "superlative" and having "saved the company," and was twice affirmed on appeal. Michael also served as lead trial counsel in federal Immigration Court on a team of attorneys acting pro bono that secured the legal right to remain in the United States for an individual who had been tortured in Senegal.

Michael has co-authored two amicus briefs on behalf of the New York Council of Defense Lawyers, both of which were cited by the United States Supreme Court in cases dealing with criminal asset forfeiture.

Representative cases include:

Trade Secret Disputes and Forensic Investigations

- In bet-the-company litigation, successfully defended wireless medical device manufacturer at trial, and on appeal, against claims of trade secret misappropriation. Conducted direct examination of company's head of research and development and cross-examination of opponent's computer forensic expert, among other direct and cross-examinations, which were critical in establishing that the company developed its technology on its own.
- Resolved matter for data storage provider involving misappropriation by former employee without the need for litigation. Negotiated creative settlement with competitor that ensured the destruction of any misappropriated information, and required competitor to follow protocol related to hiring of former employees of client company to minimize risk of future misappropriation.
- Obtained rare order for monetary sanctions against an individual, as well as a favorable jury instruction,

using forensic computer indications of intentional destruction of evidence.

White Collar Criminal and Regulatory Defense

- Conducted extensive internal investigation of Fortune 200 company and convinced SEC not to pursue enforcement action.
- Represented ex-CFO of Fortune 500 company in high-profile SEC investigation, including favorable settlement without admission of liability.
- Conducted internal investigation of large Latin American company concerning potential criminal financial fraud.
- Represent U.S. subsidiary of multinational corporation in DOJ Antitrust investigation.
- Represented former bank CEO in one of the few criminal cases brought by the federal government relating to the collapse of the market in mortgage-backed securities. Successfully negotiated for application of lower sentencing guidelines in negotiating favorable plea deal.

Complex Commercial Litigation

- Represented Fortune 50 company in arbitration related to complex agricultural technology. Formulated strategy for cross-examination of opposing party's expert witness on economic damages, resulting in favorable settlement during the proceedings.
- Representations in parallel securities litigation arising from white-collar matters.
- Represent Litigation Trust created by bankruptcy court pursuing claims of breaches of fiduciary duty by former directors and officers, among other claims.
- Represented real estate investment partnership at trial before the United States Tax Court.

Michael joined the firm from a federal district court clerkship with the Honorable Richard M. Berman in the Southern District of New York. Prior to that, he was an associate at Davis Polk & Wardwell. During law school, he interned at the Department of Justice, Commercial Litigation Branch and in the criminal division of the US Attorney's Office for the Southern District of New York.

Education

Columbia Law School
JD, 2010

Harvard College
BA, 2005

Admissions & Credentials

New York

California

Court Admissions

US District Court for the Eastern District of New York

US District Court for the Southern District of New York

US Court of Appeals for the Ninth Circuit

US Tax Court

Memberships & Affiliations

Federal Bar Council

Federal Bar Council Inn of Court

Sedona Conference Trade Secrets Working Group