

Michael McMahon

Partner



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Boston

Commercial Litigation
Post Acquisition Disputes and Advisory
Class Action Litigation
White Collar Defense and Investigations
False Claims Act/Qui Tam/FIRREA
Trade Secret Litigation and Dispute Counseling
Pro Bono

Michael has extensive experience, both at Cooley and as a former Department of Justice (DOJ) trial attorney, leading complex, multijurisdictional commercial matters, post-acquisition disputes and internal investigations. He has represented purchasers, sellers and underwriters in nearly 100 post-acquisition disputes, and he regularly provides pre-deal counseling on litigation matters in M&A transactions. Michael has served as lead trial counsel on behalf of plaintiffs and defendants in matters involving claims of fraud, trade secret misappropriation, misuse of confidential information and breach of contract, among others. He also represents companies and individuals facing investigations from federal and state government entities – such as the DOJ, the Securities and Exchange Commission (SEC) and state attorneys general offices.

Before joining Cooley, Michael served as a trial attorney in the Commercial Litigation Branch of the DOJ's Civil Division, which he joined through the Attorney General's Honors Program. At the DOJ, Michael led dozens of investigations of home health agencies, skilled nursing facilities, assisted living facilities and other federal government contractors, and he recovered millions of dollars for the US government under the False Claims Act, Anti-Kickback Statute and Anti-Kickback Act.

Michael was included on Best Lawyers' Ones to Watch list for white collar criminal defense from 2021 to 2023, and for commercial litigation in 2022 and 2023.

Michael's representative post-acquisition matters include:

- Won a multimillion-dollar earnout payment for the former shareholders of a patient engagement software company following arbitration
- Won summary judgment for the former shareholders of a medical software company in arbitration regarding a buyer's breach of a merger agreement for failure to release funds
- Represented a venture-backed seller of a food safety testing platform during a five-day trial in Delaware Superior Court relating to claims of fraud arising from an asset sale
- Represented a medical device manufacturer in a dispute regarding a failed share purchase, after successfully compelling arbitration
- Obtained a decisive victory for a buyer (a private equity-backed manufacturer of vibration testing equipment) before the American Arbitration Association after a six-day hearing
- Secured a favorable settlement for a private equity buyer of a software company in litigation in the US District Court for the District of Massachusetts
- Negotiated a favorable settlement at mediation for a private equity-backed buyer of a software company for breaches of representations and warranties pertaining to customer contracts

- Guided an institutional shareholder representative through 14 indemnity claims stemming from a single merger agreement – including issues of international tax and cross-border litigation
- Represented an individual selling shareholder of a travel company in an earnout dispute
- Represented an acquirer of a building management software company in a holdback dispute
- Represented an institutional shareholder representative in a post-closing tax claim
- Represented numerous buyers and sellers in purchase price adjustments, milestone disputes and related litigation

Michael's representative complex litigation matters and investigations include:

- Served as lead counsel in complex, multiyear litigation for a private equity-backed software company in breach of contract, tortious interference and fraud matters before the California Superior Court and the American Arbitration Association, resulting in a favorable settlement
- Secured a preliminary injunction obtaining confidentiality restraints from the Delaware Court of Chancery following an evidentiary hearing
- Won a significant plaintiff's verdict and attorneys' fee award for a cutting-edge technology company in a hotly contested breach of contract and trade secret action tried over five days before the American Arbitration Association in New York City, along with companion court cases in California and New York
- Won a preliminary injunction in an arbitration ensuring continued software-hosting services for an insurance company
- Guided a publicly traded software company in a more than \$100 million dispute with a shipping and logistics vendor
- Obtained judicial recognition of a foreign arbitration award and a multimillion-dollar attachment order for a prestigious private university
- Obtained several injunctions in Connecticut federal court enforcing noncompetition and nonsolicitation agreements on behalf of an industry-leading manufacturer in cases involving theft and misuse of company trade secrets by former employees to create a competing business

Michael's representative white collar matters while at Cooley include:

- Defended a large medical device manufacturer in connection with a DOJ investigation of alleged Food, Drug, and Cosmetic Act violations and potential False Claims Act exposure – including assessment and development of a corporate compliance plan
- Represented a private life sciences company and CEO in connection with an SEC investigation into disclosures regarding Food and Drug Administration communications
- Defended a venture-backed technology company in response to a DOJ False Claims Act investigation regarding accounting practices
- Defended a healthcare company in response to a DOJ investigation into alleged false billings and receipt of overpayments
- Conducted an internal investigation into allegations of executive misconduct for a multibillion-dollar publicly traded company
- Obtained a complete dismissal of administrative action brought by a Massachusetts professional licensing organization against a private school
- Represented numerous individual and corporate clients in internal investigations regarding compliance with the Foreign Corrupt Practices Act (FCPA), revenue recognition principles, disclosure obligations, and billing and reimbursement practices, as well as in response to investigations and inquiries by the DOJ and

Giving back

Michael is actively engaged in the firm's pro bono practice. Since 2014, he has assisted several juveniles fleeing violence in their home countries with US immigration matters. In 2016, Michael obtained a favorable settlement in an Employee Retirement Income Security Act matter involving an indigent, incapacitated widow. In 2018, Michael received Cooley's Pro Bono Achievement Award for his outstanding contribution to the firm's pro bono practice. In 2022, Michael led a team of Cooley lawyers and co-counsel in securing a preliminary injunction ensuring critical procedural due process protections for migrant children in US government custody.

Publications

- Co-author, "[4 Tips For Drafting Earnouts To Avoid Disputes](#)", Law360, June 2024
- Co-author, "[DOJ Announces First Civil Settlement for PPP Fraud](#)", Cooley Investigations and Enforcement Watch blog, January 2021
- Co-author, "[Massachusetts Federal Court Proposes Change to What Constitutes a Related Case](#)", Cooley alert, June 2020
- Co-author, "[Paycheck Protection Program Loans and Risk of Government Investigation: Advice From Former Federal Prosecutors](#)", Forbes.com, May 2020
- Co-author, "[What You Need to Know About Potential Exposure If You've Gotten a CARES Act Loan](#)", Cooley alert, April 2020
- Co-author, "[Remaining Vigilant to Compliance and Enforcement Concerns in Times of Crisis](#)", Cooley alert, March 2020
- Co-author, "[Massachusetts Passes Reform Bill to Limit Enforcement of Noncompetition Agreements](#)", Cooley alert, August 2018
- Co-author, "[The Massachusetts Securities Division and Its Recent ICO Actions](#)", Cooley alert, April 2018
- Co-author, "[Evaluating FCPA Pilot Program: A Look at SEC Involvement](#)", Law360, April 2017

Speaking engagements

- Co-moderator, View From the Bench: Litigating Trade Secrets Cases in Massachusetts State and Federal Courts, Boston Bar Association, March 2024
- Speaker, Negotiating Earnouts in M&A Transactions: Effective Approaches to Bridging the Valuation Gap, Strafford webinar, February 2024
- Speaker, Earnouts in M&A Agreements: Drafting and Litigation Considerations, Cooley CLE Speaker Series, January 2024
- Speaker, The False Claims Act: What to Do When the DOJ Comes Knocking, Cooley event, August 2018
- Speaker, The 2016 False Claims Act Settlements: Implications to the Road Ahead, The Knowledge Group webcast, May 2016

Education

Boston College Law School
JD, 2010

Boston College
BA, 2004

Admissions & Credentials

Massachusetts

Court Admissions

US Court of Appeals for the First Circuit

US District Court for the District of Massachusetts

Rankings & Accolades

Best Lawyers: Ones to Watch in Commercial Litigation and Criminal Defense-White Collar