

Michael Berkovits

Special Counsel



mberkovits@cooley.com Commercial Litigation
White Collar Defense and Investigations
+1 212 479 6234 Trade Secret Litigation and Dispute Counseling
Trials
Employee Mobility, Competitive Hiring and Unfair Competition
New York

Michael's practice focuses on complex litigation, white collar criminal and regulatory defense and investigations, and trade secret protection and defense. Michael manages high-stakes litigation in a wide range of practice areas – including contractual disputes, securities law, employment law, intellectual property law and bankruptcy law. Michael also frequently represents corporations and individuals in internal investigations and criminal and regulatory matters involving the Department of Justice (DOJ), the Securities and Exchange Commission (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, as well as litigation through trial and appeal. Michael also serves on The Sedona Conference (TSC) drafting committee for a forthcoming commentary on the application of computer forensic analysis to legal matters and correspondingly maintains a robust practice focusing on these issues.

Michael is a trial lawyer and has examined a range of witnesses at trial, including scientists and computer forensic experts in trade secret cases involving tens of millions of dollars in alleged damages. For example, Michael was the second chair attorney in a major trade secret trial in California, securing 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 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.

Michael also served as lead counsel in federal Immigration Court on a team of attorneys acting pro bono that secured the legal right to remain in the US for an individual who had been subjected to physical harm in Senegal.

Michael's representative cases include:

Trade secret disputes and forensic investigations

- Successfully defended a wireless medical device manufacturer in bet-the-company litigation at trial – and on appeal – against claims of trade secret misappropriation, and at trial, conducted examinations, including of the company's head of research and development and computer forensic experts, which were critical in establishing that the company developed its technology on its own
- Defended a next-generation biotech client developing a novel therapeutic in bet-the-company litigation alleging that the client's core technology was misappropriated from the plaintiff, and at trial, conducted examinations dramatically limiting potential inferences of misappropriation of trade secret information; the

decision is pending post-trial briefing

- Resolved a matter for a data storage provider involving misappropriation by a former employee without the need for litigation, and negotiated a creative settlement with the competitor, ensuring the destruction of misappropriated information and requiring the competitor to follow protocol related to the hiring of former employees of the client's company to minimize the risk of future misappropriation
- Obtained a rare order for monetary sanctions against an individual, as well as a favorable jury instruction, using forensic computer indicators of intentional destruction of evidence

White collar criminal and regulatory defense

- Conducted an extensive internal investigation of a Fortune 200 company and convinced the SEC not to pursue enforcement action
- Represented the former chief financial officer of a Fortune 500 company in a high-profile SEC investigation, including favorable settlement without admission of liability
- Conducted an internal investigation of a large Latin American company concerning potential criminal financial fraud, reporting findings to the board of directors
- Represented multiple healthcare companies in extensive investigations by two separate US attorney's offices
- Represented the US subsidiary of a multinational corporation in a DOJ antitrust investigation
- Represented a 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, up through the eve of trial, personally framing the proposal for creative application of lower sentencing guidelines in negotiating a favorable plea deal

Complex commercial litigation

- Acted as senior litigator on a large cross-department, 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 resulting in a mid-trial, favorable settlement, and formulated a strategy for the cross-examination of the opposing party's expert witness on economic damages
- Served as representation in parallel securities litigation arising from white-collar matters
- Represented a litigation trust created by a bankruptcy court pursuing claims of breaches of fiduciary duty by former directors and officers, among other claims
- Represented a real estate investment partnership at trial before the US Tax Court

Michael joined the firm from a federal district court clerkship with Judge Richard M. Berman of the US District Court for the Southern District of New York. Before that, he was an associate at another international law firm. During law school, he spent time in the Commercial Litigation Branch of the DOJ and in the criminal division of the US Attorney's Office for the Southern District of New York.

Education

Columbia Law School

JD James Kent Scholar, Hamilton Fellow, 2010

Harvard College

BA 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)

Sedona Conference, Trade Secrets Working Group