



## Michael S. Etkin

Partner

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A senior bankruptcy practitioner and seasoned commercial litigator, Mickey brings significant experience to his practice, which focuses on complex business reorganizations, investor litigation in a bankruptcy context, and high-stakes Chapter 11 issues. Mickey is consistently recognized by *Chambers USA* as "a strong lawyer," "brilliant," "fantastic," "very plugged in," and "instrumental in providing tactical advice," noting his skill in "anticipating all the key issues that are likely to arise." Clients have commended his "technical knowledge, attention to detail, and honest and straightforward legal advice."

A key member of the firm's successful bankruptcy and complex business litigation practices, Mickey has represented debtors, trustees, creditors, and investors in a variety of noteworthy bankruptcies and bankruptcy-related litigation. He currently represents a number of institutional shareholder and investor interests in several large and complex Chapter 11 and Chapter 15 proceedings, including cross-border insolvencies, such as Performance Sports Group, Sino-Forest, Pacific Gas & Electric, Windstream, Odebrecht, Aegean Marine Petroleum Network, Synergy Pharmaceuticals, Orexigen Therapeutics, Adeptus Health, Novation/NovaStar, Fisker Automotive, SandRidge Energy, Lehman Brothers, and SFX Entertainment, among others. On the consumer front, he currently represents consumer interests in the Cambridge Analytica, Think Finance and 21st Century Oncology bankruptcy proceedings. He also represents debtors and purchasers in acquisitions of assets of Chapter 11 and Chapter 7 bankruptcy estates.

In addition, Mickey represents major energy companies in connection with bankruptcy proceedings involving their customers and counterparties. He has been invited to speak before financial institutions, bar association groups, and credit associations regarding the rights of counterparties to derivatives and other energy-related contracts in a bankruptcy context, including cutting-edge issues emerging from the Lehman Brothers Chapter 11 and SIPC proceedings. Mickey also is routinely asked to speak at programs discussing the rights of securities fraud claimants and class action plaintiffs in a Chapter 11 context and on the interplay between bankruptcy law and product liability litigation.

## NEWS & INSIGHTS

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### Publications

> April 1, 2020

**"When Financial Stress Turns to Distress—Restructuring Tools to Avoid Disaster Parts 1 and 2: Chapter 11 Checklist and What Else Is in the Toolbox,"**

Kenneth A. Rosen, Bruce D. Buechler, Jeffrey Cohen, Jeffrey D. Prol, Andrew Behlmann, Eric Chafetz, Joseph J. DiPasquale, Michael S. Etkin, Robert M. Hirsh, Wojciech F. Jung, Bruce S. Nathan, Mary E. Seymour

> March 20, 2020

**"Critical Checklists for Business Owners and Management to Mitigate Risk of Financial Distress During the COVID-19 Crisis,"** *Bankruptcy, Financial Reorganization & Creditors' Rights Client Alert*

Kenneth A. Rosen, Bruce D. Buechler, Jeffrey Cohen, Jeffrey D. Prol, Andrew Behlmann, Eric Chafetz, Joseph J. DiPasquale, Michael S. Etkin, Robert M. Hirsh, Wojciech F. Jung, Bruce S. Nathan, Mary E. Seymour

> May 8, 2017

**"Fisker Decision Further Demonstrates that Section 510(b) Subordination of Investor Claims Is Not Absolute,"** *Bankruptcy, Financial Reorganization & Creditors' Rights Client Alert*

Michael S. Etkin, Nicole Fulfree

> 2015

**"Third-Party Releases? – Not So Fast! Changing Trends and Heightened Scrutiny,"** *AIRA Journal, Vol. 29 No. 3*

Michael S. Etkin, Nicole Fulfree

### In the Media

> February 19-20; March 8; April 15; May 20; June 22, 2019

Lowenstein Sandler's role as legal counsel to Aceto Corporation in its Chapter 11 bankruptcy filing and in the proposed \$338 million sale of its chemical business assets to New Mountain Capital is highlighted in **Bankrupt Company News**, **MarketWatch**, **GlobeNewswire**, **Markets Insider**, **StreetInsider.com**, **EIN Presswire**, **MarketScreener.com**, and the **Global Legal Chronicle (May 20, 2019; June 22, 2019)**. The firm's role as legal counsel in Aceto's sale of subsidiary Rising Pharmaceuticals, Inc. is noted in **The Associated Press**, **MarketScreener.com**, and the **Global Legal Chronicle**. (Lowenstein team: **Kenneth A. Rosen**, **Steven E. Siesser**, Paul Kizel, **Michael S. Etkin**, **Jeffrey Cohen**, **Wojciech F.**

**Jung, Philip J. Gross, Michael Savetsky, and Michael Papandrea.)** (*subscription required to view certain content*) **View Lowenstein's news announcements about this representation: March 18, 2019; May 13, 2019.**

> December 5, 2018

**Michael S. Etkin** was interviewed by **Law360** regarding Cambridge Analytica and Julian Wheatland's motion to vacate an order naming him the "person responsible" for Cambridge in the consulting firm's Chapter 7 case. Wheatland sought to vacate the order designating him as the responsible person, claiming that he was served at a temporary address. As bankruptcy counsel for the consumer privacy plaintiffs in the Facebook consumer privacy multidistrict litigation, Etkin explained that there was "no basis" for vacating the order. In a written decision issued by the Court on January 7, 2019, Wheatland's motion to vacate the designation order was denied.

> August 22, 2018

**Michael S. Etkin** is quoted in **WSJ Pro Bankruptcy** regarding the impending decision as to whether the over 1 million consumer borrowers with stated claims against Think Finance, which is accused of predatory payday lending, will be allowed to pursue those claims on a class-wide basis in the company's bankruptcy case. Among the various problems with the bankruptcy notice program is that many borrowers had never heard of Think Finance, as the company used Native American tribes as the face of the lending operation. As the bankruptcy lawyer for a putative nationwide class of consumer borrowers, Etkin informed the judge that for the vast majority of these consumer borrowers, it was either class representation or nothing with respect to these bankruptcy claims. (*subscription required to access article*)

> August 21, 2018

**Michael S. Etkin** is quoted in **Bloomberg, Chicago Tribune, and Law360** regarding the successful developments for the consumer privacy litigation plaintiffs in the Chapter 7 case involving Cambridge Analytica. The plaintiffs, Facebook users whose personal data was misused during the 2016 presidential campaign, commenced multidistrict class action litigation against both the defunct political consulting firm as well as Facebook and others. Working directly with the court-appointed lead counsel to the putative class, which retention was approved by the district court overseeing the multidistrict litigation, Etkin convinced the court to grant relief from the automatic stay resulting from the Chapter 7 filing in New York and order Cambridge Analytica and its affiliate to preserve documents relevant to the consumer privacy litigation. The request to conduct an examination of Cambridge Analytica and its affiliate and for the debtors to produce documents related to their financial condition and pre-petition transactions was adjourned by the Court in view of an agreement by the Chapter 7 Trustee to initially produce some documents to the class plaintiffs. (*subscription required to access certain content*)

> May 31, 2018

**Michael S. Etkin** is quoted in **Bloomberg** regarding the appearance of Lowenstein Sandler on behalf of several putative class plaintiffs in the Facebook/Cambridge Analytica data breach litigation in the Chapter 7 bankruptcy proceedings of Cambridge Analytica and its affiliate. The U.K. political consulting firm filed for Chapter 7 liquidation in May following the scandal concerning the release of personal data in connection with the 2016 U.S. presidential elections. Representing these representative data breach plaintiffs, Etkin contended that all options were being considered in the Chapter 7 cases to protect the interests of the victims of the data breach and release of personal information.

> February 14, 2018

**Michael S. Etkin** is quoted in **Law360** from his argument in the pending bankruptcy case of Millennium Lab Holdings II LLC where our client, Voya Investment Management and other opt-out lenders, objected to the closing of the Chapter 11 case because of the pendency of Voya's appeal of the confirmation order.

> November 7, 2017

**Michael S. Etkin** is quoted in **Law360** regarding his representation as bankruptcy counsel of a putative class of 2.2 million patients in connection with the 2015 data breach involving bankrupt cancer treatment center operator 21st Century Oncology that exposed their personal health information. Etkin represents the putative class of patients, which argued, among other things, that the automatic bankruptcy stay be lifted in order allow the data breach litigation pending in Florida to go forward with any recovery limited to available insurance coverage or, in the alternative, that the class proof of claim filed on behalf of the putative class be allowed to proceed in bankruptcy court.

> September 26-28, 2017

As bankruptcy counsel to lead plaintiffs in the securities litigation and the bankruptcy proceedings involving Adeptus Health Inc., **Michael S. Etkin** is quoted from the trial and oral arguments in **Reorg Research** regarding the Adeptus Health confirmation hearing. The primary confirmation issues were the standards for substantive consolidation and the impact of the U.S. Supreme Court's 2017 **Jevic** decision and other relevant case law on a settlement with the equity committee contained in the plan of reorganization.

> August 25, 2017

**Michael S. Etkin** is highlighted in **Reorg Research**, speaking on behalf of the proposed lead plaintiffs in the securities litigation proceedings involving Adeptus Health Inc. Etkin spoke at a status conference about his concerns regarding the announcement of an agreement between the equity committee, the unsecured creditors' committee, prepetition lender Deerfield, and the debtors.

> March 30, 2017

**Michael S. Etkin** is quoted in **The Street** about the implications of the Chapter 11 filing of Westinghouse Electric Co., including the impact on its parent company, Toshiba.

> January 11, 2017

**Michael S. Etkin** is quoted in **Law360** regarding the decision by the bankruptcy court in the **Fisker Automotive** Chapter 11 case in favor of our clients overruling the objections to claims based upon the mandatory subordination provisions of the Bankruptcy Code. Our clients purchased membership units of a non-debtor special purpose vehicle which itself invested in the preferred stock of Fisker Automotive. Etkin, representing these membership unit purchasers in the bankruptcy proceedings of the electric car maker, argued that the claims of these creditors against Fisker should not be subordinated and junior to all other unsecured creditor claims. In a 21-page opinion, the court agreed.

> January 4, 2017

**Michael S. Etkin** comments in **Law360** about the U.S. Trustee's objection to confirmation of the plan of reorganization in the Caesars' Chapter 11 case, which focuses on the U.S. Trustee's role as independent watchdog and the propriety of the third-party releases under the plan.

> September 29, 2016

**Michael S. Etkin** is mentioned in **Reorg Research** regarding the approval of the SFX Entertainment debtors' disclosure statement. It was noted that Etkin, representing the securities plaintiffs, confirmed that while various disclosure statement objections were resolved by changes to the disclosure statement and plan of reorganization, he reserved all

rights with respect to confirmation of the plan of reorganization and the confirmation hearing, scheduled for November 9, 2016.

> March 16, 2016

**Michael S. Etkin** is quoted in **Law360** from oral argument during the Chapter 11 bankruptcy proceedings of Molycorp. On behalf of defrauded shareholders, Etkin expressed concern that certain notice provisions in connection with the plan of reorganization failed to make purchasers of Molycorp stock aware of the debtor's attempt to release their claims against non-debtor defendants in pending securities litigation.

> March 8, 2016

**Michael S. Etkin** is quoted in **Law360** regarding certain disclosure issues and the Chapter 11 plan in rare earth miner Molycorp's bankruptcy proceedings. Etkin is bankruptcy counsel to the court-appointed lead plaintiffs in the case.

> June 2015

**Michael S. Etkin** comments on the bankruptcy court's recent decision regarding the enforceability of the GM Chapter 11 sale order to enjoin certain claims associated with the well-publicized ignition switch defect in General Motors products. In the June issue of the **Turnarounds & Workouts** newsletter, Etkin doubts that the decision will have a broad effect on Chapter 11 cases in general given the uniqueness of the GM case.

> March 2015

**Michael S. Etkin** discusses the status of the restructuring landscape and factors affecting change in the year ahead in the March issue of the **Turnarounds & Workouts** newsletter.

> January 2, 2015

**Michael S. Etkin** comments in **Debtwire** regarding a recap of restructuring in 2014 and anticipated trends and issues to look for in 2015.

> November 2014

**Michael S. Etkin** is featured and recognized in **IECA Insights**, the newsletter of the International Energy Credit Association. Etkin's longtime involvement to the IECA spans over eight years, as, among other contributions, a speaker and a member of the Contracts and Legal Education Group Committee.

> July 14, 2014

**Michael S. Etkin** is quoted in **Law360** from his oral argument before the Delaware Bankruptcy Court in connection with the objection of defrauded purchasers, who are plaintiffs in a federal securities class action suit, to the scope of the injunction sought by Furniture Brands International Inc. in its Chapter 11 liquidating plan. The Bankruptcy Court sustained that part of the objection. Etkin represents the lead plaintiff.

> May 15, 2014

**Michael S. Etkin** is quoted in **The National Law Journal** as objecting to the proposed scheduling order in the General Motors bankruptcy case relating to the ignition switch litigation and claims. Etkin, co-counsel of plaintiffs, requested more information about a proposal to stay the litigation, as well as adequate communication amongst lawyers with cases against GM.

## SPEAKING ENGAGEMENTS

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> Panelist, **IECA's Preparing for a Potential Bankruptcy Series**, IECA, Webinar, April 15; April 22, 2020

> **International Energy Credit Association (IECA)**, Coronado, CA, March 31, 2019

> **International Energy Credit Association (IECA)**, Naples, FL, September 30, 2018

> **International Energy Credit Association (IECA)**, Palm Desert, CA, March 21, 2017

> **International Energy Credit Association (IECA)**, New York, NY, April 10, 2016

## EDUCATION

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> St. John's University School of Law (J.D. 1978), with honors

> Boston University (B.S. 1975), cum laude

## ADMISSIONS

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> New York

> New Jersey