



Michael A. Kaplan

Partner

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Michael brings strategic judgment and practical solutions to a practice focused on complex commercial litigation, as well as products liability, mass tort, toxic tort, and dram shop cases. He handles a wide array of civil litigation and appeals in both state and federal courts across the country. Clients also value his experience with U.S.-based and international arbitrations.

Michael also has significant experience litigating all phases of bankruptcy matters. That experience encompasses every stage of bankruptcy litigation from investigating potential claims and causes of action to commencing adversary proceedings on behalf of liquidating trusts.

Outside his civil practice, Michael concentrates on white collar criminal law, representing individuals and corporations in matters involving allegations of mail and wire fraud, health care fraud, and tax evasion. He conducts internal investigations and has a strong track record defending entities in investigations and civil proceedings brought by state and federal regulatory authorities.

In addition to his passion for litigation, Michael is committed to giving back to the community. He regularly provides pro bono representation to victims of domestic violence through the firm's relationship with Partners for Women and Justice and the Rachel Coalition.

Prior to joining the firm, Michael served as a judicial law clerk to Chief Judge Gary L. Sharpe of the U.S. District Court for the Northern District of New York.

EXPERIENCE

Business Litigation

- > Successfully tried a civil case brought in state court in Monmouth County, New Jersey, on behalf of Telcordia Technologies Inc., a subsidiary of Ericsson. The plaintiff served as a subcontractor providing temporary employees to a prime contractor, which in turn provided the employees to Telcordia. When the prime contractor declared bankruptcy, the plaintiff sued Telcordia for breach of contract, claiming that the prime contractor was Telcordia's agent, and quantum meruit claims. The three-day bench trial culminated in a comprehensive written opinion from the court entering judgment in favor of Telcordia on all counts.
- > Won a significant victory on behalf of AGL Resources Inc. in a civil case brought in state court in Union County, New Jersey. The plaintiff in the case claimed to suffer from extensive injuries to her lower back and knee, both requiring surgery, from a minor vehicle accident with one of AGL's utility vehicles. The jury determined that AGL was not negligent and rendered a no-cause verdict.
- > Won a significant victory on behalf of Aramark Corporation in a civil case brought in federal court in Rochester, New York. The plaintiff in the case claimed to be totally disabled due to internal head injuries resulting from an accident which occurred on property managed by Aramark. The claim was bifurcated into two phases: liability and damages. The jury determined that Aramark was not liable and therefore prevented the second phase.
- > Represented LifeCell Corporation in multiple products liability cases involving cutting-edge medical technology.

Bankruptcy Litigation

- > Represented the Official Committee of Unsecured Creditors of Mission Coal Company, LLC, in its bankruptcy proceedings in the U.S. Bankruptcy Court for the Northern District of Alabama. Led a Rule 2004 investigation into fraudulent conveyances and insider dealing and filed a motion seeking standing to prosecute a 52-count complaint which included claims for avoidance of fraudulent transfers, recharacterization of debt as equity, equitable subordination, and corporate waste. The matter culminated in a contested confirmation trial, which resulted in the parties resolving all outstanding issues for total consideration of approximately \$29 million for the estate.
- > Represented the Official Committee of Unsecured Creditors of SportCo Holdings, Inc. and its subsidiaries. Prosecuted Rule 2004 motions against the Debtors and the Debtors' sole shareholder and conducted an extensive investigation into potential claims held by the Debtors' estates. Successfully negotiated a resolution with the lender that, in part, established a litigation trust for the benefit of creditors to allow the Committee to prosecute and collect on claims held by the Debtors' estates. Continue to represent the trustee for the litigation trust in prosecuting claims for breach of fiduciary duty, fraudulent transfer, and corporate waste against the private equity firm and its members.
- > Currently representing the Official Committee of Unsecured Creditors of Debtor Bumble Bee Parent, Inc. and its subsidiaries. Successfully litigated the Committee's objections to the Debtors' proposed Key Employee Incentive Plan (KEIP) and Key Employee Retention Plan (KERP). Also successfully prosecuted an objection to the Debtor's proposed section

363 sale. The Committee and the Debtors arrived at a mutually agreeable resolution of the Committee's objection, which provided for the establishment of a litigation trust to allow the Committee to prosecute and collect on claims held by the Debtors' estates for the benefit of creditors.

- > Currently representing the Official Committee of Unsecured Creditors of Fred's Inc., and its affiliated debtors in its bankruptcy proceedings in the District of Delaware. The Committee is in the process of investigating potential causes of action against certain of the Debtors' current and former directors and officers, which, if successful, will bring significant funds into the estate for the benefit of unsecured creditors. Using the findings of the investigation conducted to date, litigated the right to include language in the Liquidating Plan that disclosed the inequitable and improper nature of the third-party releases sought.
- > Represented the Official Committee of Unsecured Creditors of Exide Holdings, Inc. In connection with its investigation, the Committee conducted over a dozen witness interviews and reviewed over 10,000 documents. Based on its findings, the Committee was able to negotiate a global settlement that includes a \$2.4 million cash settlement for unsecured creditors.
- > Represented the Official Committee of Unsecured Creditors of The Northwest Company, LLC.
- > Represented the Official Committee of Unsecured Creditors of GNC Holdings, Inc.

White Collar Criminal Defense

- > Represents numerous investment advisors in connection with government investigations.
- > Represents individuals under investigation for alleged wire fraud by the U.S. Attorney's Office in the District of New Jersey.

HONORS & AWARDS

- > **Order of the Coif**
- > **The Order of Barristers**
- > **ALI-ABA Scholarship and Leadership Award**
- > **National Order of Scribes**
- > **College of Law Ambassador Award**
- > **Partners for Women and Justice: Partner in Justice Award (2018)**
Recognized for dedication and commitment to providing pro bono representation of Partners for Women and Justice clients

NEWS & INSIGHTS

Publications

- > October 15, 2020
"Congress Should Rewrite The Bankruptcy Examiner Mandate," *Law360*
Jeffrey Cohen, Michael A. Kaplan, Rasmeat K. Chahil
- > October 2020
"THIRD-PARTY RELEASES? – NOT SO FAST! An Update on Releases and Warnings on Common Related Pitfalls," *AIRA Journal*
Michael A. Kaplan, Nicole Fulfree, Colleen M. Maker
- > June 10, 2020
"Avoid Claims Of Bankruptcy Fraud Amid Creditor Scrutiny," *Law360*
Rachel Maimin, H. Gregory Baker, Michael A. Kaplan, Rachel Moseson
- > May 28, 2020
"A Bankruptcy Probe Primer For White Collar Attorneys," *Law360*
Rachel Maimin, H. Gregory Baker, Michael A. Kaplan,
- > April 8, 2020
"Vigilance Now Can Help Avoid Scrutiny Later: Fiduciary Duties in the Midst of a Global Pandemic," *Litigation and Bankruptcy Client Alert*
Jeffrey Cohen, Matthew Boxer, Michael A. Kaplan,
- > July 24, 2018
"New Jersey Supreme Court Reinforces the Need for Specificity in Settlement Agreements," *Litigation Client Alert*
Michael A. Kaplan
- > December 14, 2016
"U.S. Supreme Court Affirms: Defrauding Bank Customer Is Also Fraud Against Bank," *White Collar Criminal Defense Client Alert*
Michael T. G. Long, Michael A. Kaplan
- > December 7, 2016
"U.S. Supreme Court Reaffirms Insider Trading Rules, Casting Doubt on Continued Utility of Second Circuit's Newman Decision," *White Collar Criminal Defense Client Alert*

Robert J. Kipnees, Michael A. Kaplan

In the Media

> February 25, 2020

Jeffrey Cohen argued contested issues in a disclosure statement hearing of retailer Fred's in the U.S. Bankruptcy Court for the District of Delaware. As reported in **Law360**, Cohen represented concerns on behalf of the Official Committee of Unsecured Creditors regarding comprehensive releases included in the Chapter 11 plan, which would bar stakeholders from pursuing claims against former directors and officers of the now defunct Fred's. The Lowenstein team includes **Jeffrey L. Cohen, Nicole Fulfree, Michael A. Kaplan, Colleen M. Maker**, and **Lindsay H. Sklar**.

> December 7, 2019

Lowenstein's retention as counsel to the Official Committee of Unsecured Creditors in the bankruptcy case of **Bumble Bee Foods** is highlighted in the **Global Legal Chronicle**. The Lowenstein team includes **Andrew David Behlmann, Eric Chafetz, Michael A. Kaplan**, and **Myles R. MacDonald**. [View Lowenstein's news announcement about this retention.](#)

> November 6, 2019

Jeffrey Cohen, Nicole Fulfree, Michael A. Kaplan, Gabriel L. Olivera, and **Keara Waldron** are cited in a **Global Legal Chronicle** article highlighting Lowenstein's having been selected as counsel to the Committee of Unsecured Creditors in Chapter 11 proceedings for **Fred's, Inc.**, a discount general merchandise store operator. [View Lowenstein's news announcement about this representation.](#)

> November 1, 2019

Jeffrey Cohen is quoted in a **Law360** article detailing a Delaware bankruptcy judge's approval of United Sporting Companies' Chapter 11 plan. As a lawyer for the official committee of unsecured creditors in the case, Cohen expresses satisfaction on behalf of the committee, describing how the confirmation represents the best result for the creditors. The Lowenstein attorneys representing the committee include Jeffrey Cohen, Michael Kaplan, Eric Chafetz, Gabriel L. Olivera, Myles R. MacDonald, Rasmeel K. Chahil, and C. Patrick Thomas.

> August 9, 2018

Law360 quotes **Robert J. Kipnees** and notes Kipnees and **Michael A. Kaplan** as counsel for the Union Mutual Medical Fund and its trustees in an article reporting the U.S. Court of Appeals for the Second Circuit's rejection of a request by the Teamsters Local 210 Affiliated Health and Insurance Fund and its trustees that the court reconsider its June 2018 decision to uphold the trial court's grant of summary judgment and an award of over \$3.7 million on behalf of Lowenstein's clients. [View Lowenstein's news announcement about the June 2018 appellate decision. \(subscription required to access article\)](#)

> June 7, 2018

Law360 quotes **Robert J. Kipnees** and notes Kipnees and **Michael A. Kaplan** as counsel to the Union Mutual Medical Fund (UMMF) and its trustees in an article discussing UMMF's 2nd Circuit victory in a 10-year litigation against the Teamsters Local 210 Affiliated Health and Insurance Fund and its trustees. [View Lowenstein's news announcement about the court's decision. \(subscription required to access article\)](#)

EDUCATION

- > Syracuse University College of Law (J.D. 2011), summa cum laude; Lead Articles Editor, *Syracuse Law Review*; Executive Director, Moot Court Honor Society
- > Temple University (B.A. 2008), Political Science, summa cum laude

ADMISSIONS

- > New York
- > New Jersey
- > District of Columbia
- > Pennsylvania