



Kathleen A. McGee

Counsel

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Kathleen is a highly accomplished technology and regulatory lawyer and former prosecutor with more than 17 years' experience in the public sector. Her practice has a dual focus on compliance and investigations.

As Bureau Chief of the Bureau of Internet & Technology for the New York State Attorney General's Office, Kathleen was at the forefront of regulation, enforcement initiatives, and public policy involving privacy, data security, and consumer protection, among other issues. Earlier in her career, she served as Director of the Office of Special Enforcement in the New York City Mayor's Office, where, as lead counsel, she directed litigation on a number of intellectual property and civil nuisance matters and was a policy leader on issues ranging from data analytics to human trafficking. While with the Mayor's Office, Kathleen also developed the New Business Acceleration Team to streamline regulations and fast-track new business development. Kathleen started her legal career as an Assistant District Attorney for the Bronx County District Attorney's Office in New York, where she prosecuted domestic violence, child abuse, and sex crimes.

Kathleen's public sector experience gives her an edge in counseling emerging and mature companies on a broad spectrum of regulatory issues concerning technology, data security, and privacy. She has in-depth knowledge of matters involving unfair, deceptive, or abusive acts and practices (UDAAPs), as well as the Children's Online Privacy Protection Rule (COPPA), the Consumer Financial Protection Bureau, the Securities and Exchange Commission, the Federal Communications Commission, and the Federal Trade Commission. In addition, Kathleen's experience in municipal government and her understanding of how the administrative code affects business has given her a unique perspective on the intersection of commerce and the law. Clients appreciate her insights into how to identify unanticipated problems and develop creative, business-focused solutions.

Kathleen also provides counsel to individuals and companies facing investigations. As outside counsel on internal investigations, she is an effective fact-finder on matters such as alleged employee malfeasance and intellectual property claims, among others. She also represents clients in government-facing investigations, including white collar criminal defense. Clients in this area benefit from both her sophisticated grasp of technology-related criminal matters and her on-the-ground experience as a lead prosecutor in both jury and bench trials.

Kathleen is admitted to appear before the U.S. District Court for the Southern and Eastern Districts of New York.

NEWS & INSIGHTS

Publications

- > May 26, 2020
"SBA Announces: "SBA may begin a review of any PPP loan of any size at any time in SBA's discretion" & DOJ Announces Multiple Enforcement Actions," *Debt Financing & The Tech Group Client Alert*
Ed Zimmerman, Kathleen A. McGee, Kimberly E. Lomot, Raymond P. Thek, Lowell A. Citron
- > May 18, 2020
"Dear Tech Company Founders & VCs: Eligible on Main Street," *Debt Financing & The Tech Group Client Alert*
Anthony O. Pergola, Bryan D. LaPlant, Kathleen A. McGee, Kimberly E. Lomot, Lowell A. Citron, Ed Zimmerman
- > May 15, 2020
"Minimizing Director Liability: Best Practices for PPP Recipients," *The Tech Group & White Collar Client Alert*
Kathleen A. McGee, Matthew J. Moisan, Kimberly E. Lomot, Cecily Larison CIPP/US
- > May 14, 2020
"FAQ 46 & 47: Crime & Punishment (or the Lack of Either) for PPP Loans Large and Small," *Lowenstein Sandler LLP*
Raymond P. Thek, Kathleen A. McGee, Ed Zimmerman, Kimberly E. Lomot
- > May 6, 2020
"PPP Loan Scrutiny Requires Immediate Borrower Attention," *Law360*
Rachel Maimin, H. Gregory Baker, Jamie Gottlieb Furia, Kathleen A. McGee, Rebecca J. Ryan

- > April 29, 2020
"The Treasury Wants Its PPP Money Back by May 7. How Do We Level the Playing Field for Small Businesses?," *The National Law Journal*
 Ed Zimmerman, Anne M. Milgram, Kathleen A. McGee
- > April 27, 2020
"How To Avoid Federal Criminal and Civil Penalties in Connection With Applications for PPP Loans," *New York Law Journal*
 H. Gregory Baker, Jamie Gottlieb Furia, Rachel Maimin, Kathleen A. McGee, Camila A. Garces
- > April 24, 2020
"Heightened Scrutiny for Public Companies and Portfolio Companies of Funds for PPP Loans and No PPP Loans for Funds Themselves," *Lowenstein Sandler Client Alert*
 Lowell A. Citron, Ed Zimmerman, Michael A. Buxbaum, Theodore C. Sica, Kimberly E. Lomot, Jesse S. O'Connell
- > April 24, 2020
"Consider Reconvening Your Board Before May 7 if You Received or Are In Process on SBA Loans Under PPP," *Lowenstein Sandler LLP*
 Ed Zimmerman, Kathleen A. McGee, Raymond P. Thek
- > April 15, 2020
"The Paycheck Protection Program: FOIA and Potential Implications for Applicants and Investors," *Tech Group Client Alert*
 Kathleen A. McGee, Matthew J. Moisan, Jesse S. O'Connell
- > April 14, 2020
"PPP Loans For Startups/Growth Companies—Former Attorney General's Perspective—Lessons From Hurricane Sandy & 9/11," *Forbes*
 Ed Zimmerman, Christopher Porrino, Elie Honig, Kathleen A. McGee, Kimberly E. Lomot, Lowell A. Citron
- > April 8, 2020
"The Paycheck Protection Program: FOIA and Potential Implications for Applicants and Investors," *Tech Group Client Alert*
 Kathleen A. McGee, Matthew J. Moisan, Jesse S. O'Connell
- > March 27, 2020
"Essential Business Order Violations," *Litigation Client Alert*
 Kathleen A. McGee, Camila A. Garces
- > March 27, 2020
"Best Practices for Responding to Subpoenas That Conflict With Foreign Data Privacy Laws," *New York Law Journal*
 H. Gregory Baker, Rachel Maimin, Kathleen A. McGee, Alexandra S. Droz
- > March 24, 2020
"Price Gouging Investigations Are Ramping Up—What Your Business Needs to Know," *Litigation Client Alert*
 Christopher Porrino, Peter Slocum, Kathleen A. McGee, Camila A. Garces
- > February 19, 2020
"Cryptocurrencies Are Now a Target of OFAC Economic Sanctions," *Legaltech News*
 Doreen M. Edelman, Kathleen A. McGee, Abbey E. Baker
- > February 12, 2020
"Key Issues for Boards 2020," *Lowenstein Sandler LLP*
 Valeska Pederson Hintz, Kathleen A. McGee, Zarema A. Jaramillo
- > October 3, 2019
"New York Attorney General's Office Launches First-in-Nation Whistleblower Portal," *White Collar Criminal Defense Client Alert*
 Rachel Maimin, Kathleen A. McGee
- > June 20, 2019
"New York on Verge of Passing Landmark Data Security Legislation," *Privacy & Cybersecurity Client Alert*
 Mary J. Hildebrand CIPP/US/E, Kathleen A. McGee
- > March 16, 2019
"What does the FTC's new task force mean to data aggregators?," *VentureBeat*
 Zarema A. Jaramillo, Kathleen A. McGee
- > December 27, 2018
"No More Child's Play: The Regulatory Assault on Digital Advertising Continues," *Legaltech News*
 Kathleen A. McGee, Matt Savare

In the Media

- > July 8, 2020
 In **Business Insider**, **Kathleen A. McGee** discusses why some companies backed by venture capital or public-equity investors received small-business loans under the PPP. She explains that the rules never explicitly prohibited venture-backed startups from taking part in the program and that startups do not necessarily have access to all of their backers' capital. "There is a misconception amongst the public that if you have a VC that you are automatically rolling in money," she says, "And if you talk to any startup, they will tell you

that is absolutely not true."

> May 18, 2020

Kathleen A. McGee is quoted in **Law360** on the federal government's evolving guidance about qualifications for SBA PPP loans and the next steps for companies now that the deadline to return those loans has passed. "Initially, there weren't a lot of questions," she says. "Although from the start we were advising clients that ... you did have to show need and you had to establish that need was immediate need." When the SBA issued clarifications in late April regarding ownership and affiliation that especially affected technology and VC-backed companies, "that's when people really started to, I would say, panic," she says. McGee notes that even companies with loans under \$2 million may still face Department of Justice scrutiny and possible whistleblower suits under the False Claims Act. (*subscription required to access article*)

> April 17, 2020

Ed Zimmerman and **Kathleen A. McGee** of Lowenstein's **Tech Group** are quoted in **The New York Times** and **Reuters** on the risks for venture-backed startups seeking government stimulus aid. McGee warns companies with large cash reserves that applying for SBA loans now could "probably ... be a flag raised for regulators who are combing through these applications at another time." Zimmerman also advises caution: "One thing that I have said to one or two clients is you might not like me very much today or in three months, but I think you'll like me four years from now when you're reading about investigations and private lawsuits in the paper and you don't have this in your background."

> April 17, 2020

In **Built In**, **Ed Zimmerman**, **Kathleen A. McGee**, and **Kimberly E. Lomot** discuss the confusion regarding startups' eligibility under PPP for SBA loans, including how venture capital-backed growth companies should consider certifying "need" under the CARES Act. "The reporting in the press was, 'Startups are totally ineligible or almost totally ineligible,'" says Zimmerman. "But that's not what the law says. That's analysis under Section 103, and the proper way to do the analysis is under 301." He goes on to clarify under what conditions "negative control" by minority owners may constitute affiliation so as to bar PPP loan eligibility, and how to avoid this through irrevocable waivers or amended charters.

Both Zimmerman and McGee emphasize the importance of documentation. McGee, former Bureau Chief at the New York State Attorney General's Office, explains the potential risk of future prosecution for companies applying for PPP without having properly assessed the "necessity" certification: "If it is demonstrable on the budget in the Excel spreadsheet you're keeping that things are going to get much tighter because of COVID-19, then I think you're justified. ... But you have to have that good faith justification. If you have a year of bank, it's probably going to be a flag raised for regulators."

Lomot, who has years of experience counseling both borrowers and lenders on SBA loans, also urges caution in taking the certifications seriously: "eagerness to claim available funds...could get startups in trouble if they're not applying in good faith."

> June 28, 2019

Kathleen A. McGee comments for **CNET** on privacy issues associated with Sony's robot dog Aibo, a device equipped with facial recognition cameras and always-listening microphones, warning that "there are legitimate privacy concerns about the products in our homes that gather data about us." McGee says that information can be "bundled and sold in ways that the consumer is not necessarily aware of or may not approve of if she knew about them...What if I'm on a health care regimen with my doctor and I cheat on my diet? Am I now going to be profiled for insurance companies in a less than attractive way?" She cautions that the privacy policy may not offer much guidance on how to erase the device's memory: "The privacy policy is designed to mitigate regulatory concerns...It is not an instrument for the consumer's use. Full stop."

> April 18, 2019

Lowenstein Sandler was featured prominently in **Diversity in Action** magazine in a piece focused on opportunities in tech law for diverse people with backgrounds in STEM.

Madhumita Datta, Ph.D., discusses her transition from engineer to patent agent to intellectual property lawyer, finding satisfaction in working with inventors by "giving voice to their invention, protecting their legal rights, and bringing their inventions closer to market." **Kathleen A. McGee** considers lawyers working the area of tech law "to be some of the luckiest because we get to shape the law in the way that very few practices do."

The article also highlights the work of **Ed Zimmerman**, Chair of Lowenstein's **Tech Group**, on behalf of LGBTQ rights and against gender bias in the tech field. Ed comments on how recent law school graduates are attracted to tech law because "they grew up in the space and are early adopters." **A. Faith English**, the firm's Manager, Diversity & Inclusion, adds that her early experiences in private practice, public policy, and social justice have enhanced her ability to develop successful diversity initiatives, remarking on the importance of "having someone who looks like you at the power table."

> April 9, 2019

Kathleen A. McGee is quoted in **CNET** discussing Facebook's use of data tracking on deactivated accounts. McGee notes her concern that such tracking is a deceptive practice from a consumer transparency standpoint and suggests that Facebook work to remedy this by not collecting information when an account has been deactivated.

> March 8, 2019

Law.com highlights how Lowenstein Sandler's **White Collar Criminal Defense** practice has grown rapidly through the recent recruitment of experienced former prosecutors, including **Paul B. Matey**, **Ryan M. Wilson**, **Peter Slocum**, **Elie Honig**, **Kathleen A. McGee**, and two former New Jersey Attorneys General, **Anne M. Milgram**, and **Christopher Porrino**. The article quotes Chairman and Managing Partner **Gary M. Wiggins**, who states that the practice's notable growth in business and top-tier talent is the result of a deliberate effort to increase "the depth and breadth of our skill set." He cites Milgram's heading an internal investigation on behalf of the Dallas Mavericks as an example of the caliber of work the group handles and notes that "clients want to see critical mass in the practice" and a team of lawyers "with different backgrounds who can handle lots of parallel investigations."

> March 7, 2019

Kathleen A. McGee is quoted in **CNET** discussing the rising popularity of smart homes and internet-of-things (IoT) devices among apartment landlords. The article analyzes the benefits and risks that face landlords and tenants when it comes to the use of these innovative products. McGee notes that "landlords are, in theory, in your apartment every day collecting information; tenants suddenly have to choose between no home and a place where they perceive themselves to be spied on."

> June 11-12, 2018

The **New York Law Journal** (including **this abbreviated coverage**), **Law360**, and **ABL Advisor** highlight **Ryan M. Wilson**'s return to Lowenstein, now as partner in the **Capital Markets Litigation** and **White Collar Criminal Defense** practices, following his tenure as an Assistant U.S. Attorney on President Obama's Residential Mortgage-Backed Securities (RMBS) Task Force in the U.S. Attorney's Office for the Eastern District of New York. **Law360** quotes Wilson on his government experience and mentions **Zachary D. Rosenbaum** (Chair, Capital Markets Litigation) as a draw in coming back to the firm. All three articles quote Wilson on his reasons for returning to Lowenstein, and they note that

Wilson is the latest in a series of former prosecutors and trial lawyers to join or return to the firm. Each article mentions one or more of the following former government lawyers who have come to Lowenstein in the past few years: **Christopher Porrino** (Chair, **Litigation Department**), **Kathleen A. McGee**, **Elie Honig**, **Scott B. McBride**, and **Matthew Boxer**. (*subscription required to access the New York Law Journal and Law360*)

> May 2, 2018

Law360 notes **Kathleen A. McGee's** joining Lowenstein after serving as Bureau Chief of the Bureau of Internet & Technology for the New York State Attorney General's Office. (*subscription required to access article*)

> April 12, 2018

The New York Law Journal notes **Kathleen McGee's** joining Lowenstein Sandler after serving as Chief of the Bureau of Internet & Technology for the New York State Attorney General's Office. (*subscription required to access article*)

SPEAKING ENGAGEMENTS

- > Speaker, **The Specter of Whistleblower Actions & the CARES Act: An Overview**, Lowenstein Sandler LLP, Webinar, June 16, 2020
- > Panelist, **Business Is Not as Usual**, Shibolet & Co., Webinar, May 11, 2020
- > Speaker, **PPP Loans: Startups & Ending the Limited Safe Harbor—What Does the Future Hold for VCs & Startups?**, Lowenstein Sandler LLP, May 5, 2020
- > Speaker, **SBA Section 7(a) Loans: The Former Attorney General's Perspective**, Lowenstein Sandler LLP, Webinar, April 9, 2020
- > Speaker, **No Longer Business as Usual? What Boards of Directors and General Counsel Need to Know About Running a Business During a Pandemic**, Lowenstein Sandler LLP, Webinar, March 20, 2020
- > Speaker, **No Longer Business As Usual? Key Legal Advisors Discuss And Answer Questions On How To Respond to COVID-19 Related Issues**, Lowenstein Sandler, March 20, 2020
- > Speaker, **Scope and Limits of Government Investigation of a Data Breach**, PLI, New York, NY, January 31, 2020
- > Speaker, **Lowenstein Sandler and ACC New Jersey's 5th Annual Cyber Day**, Lowenstein Sandler; ACC New Jersey, Roseland, NJ, October 3, 2019
- > Panelist, **2019 NAAG Consumer Protection Spring Conference**, National Association of Attorneys General, Washington, D.C., May 20, 2019
- > Panelist, **Reputational Risk**, 100 Women in Finance, New York, NY, May 7, 2019
- > Speaker, **Government Investigations 2019: Investigations Arising From Data Breach and Privacy Concerns and Parallel Proceedings**, Practising Law Institute (PLI), New York, NY, February 1, 2019
- > Panelist, **Deploying State Unfair and Deceptive Acts and Practices Statutes in Business-to-Business Litigation**, American Bar Association's Section of Antitrust Law, November 29, 2018
- > Speaker, **Administrative Law: "Pardon the Disruption"**, New York Law School, New York, NY, November 7, 2018
- > Speaker, **Lowenstein Sandler and ACC New Jersey's 4th Annual Cyber Day**, Lowenstein Sandler; ACC New Jersey, Roseland, New Jersey, October 10, 2018
- > Speaker, **Big Data and Advertising – The Current Practices and Legal Issues**, Practising Law Institute (PLI), New York, NY, October 4, 2018
- > Panelist, **Privacy Thru the POC Lens: Exploring Data Privacy and Security From the Perspective of Communities of Color**, Hispanic National Bar Association, New York, NY, June 19, 2018; 6:30-9:00 p.m.
- > Panelist, **Wanna Bet? The Supreme Court Says You Can**, 1A (distributed by NPR; produced by WAMU 88.5), radio program, May 21, 2018
- > Panelist, **Money Laundering and Terrorist Financing Risks in the Online Gaming Sector**, May 9, 2018; 12:00 - 2:00 p.m.

EDUCATION

- > Boston University (J.D. 2001)
- > University of Chicago (M.A. 1996)
- > Sarah Lawrence College (B.A. 1994)

ADMISSIONS

- > New York