



## Michael A. Kaplan

Partner

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Michael represents clients in high-stakes litigation and appeals in federal and state courts throughout the country, as well as in domestic and international arbitrations.

He has extensive experience in every stage of bankruptcy litigation, from investigating potential claims and causes of action to commencing adversary proceedings on behalf of committees and liquidating trusts. Michael's experience enables him not only to respond to any type of litigation that arises during a bankruptcy case but also to craft litigation strategies that are both effective and efficient. His experience investigating and litigating claims against directors and officers allows him to provide vigorous representation to clients facing such claims or seeking to bring them.

Because of his diverse commercial litigation experience, which includes extensive work on products liability, mass tort, toxic tort, and dram shop cases, Michael understands that litigation is an evolving art and that litigators need to possess a constantly changing array of skills. His focus is always on understanding his clients' goals and then creating and executing a litigation strategy to achieve them.

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

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### Bankruptcy Litigation, Committee Representations:

- > Century 21 Department Stores: Investigated potential estate causes of action relating to prepetition transactions involving the company's family owners and their network of entities. Based on its investigative findings, the Committee was able to negotiate a global settlement that involved the sale of insurance claims and mutual releases for the family and entities in exchange for \$59 million for the estate, plus potential proceedings sharing on the insurance claims.
- > Exide Holdings, Inc.: Investigated potential causes of action for fraudulent conveyances and preference avoidance held by the Debtors' estates. 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 included a \$2.4 million settlement for unsecured creditors.
- > Mission Coal Company, LLC, a Tennessee coal mining company: Led a three-month Rule 2004 investigation 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.
- > SportCo Holdings, Inc.: Prosecuted Rule 2004 motions against the debtors; conducted extensive investigation into potential claims held by the debtors' estates; successfully negotiated a resolution with the lender that established a litigation trust for the benefit of creditors

### Business Litigation:

- > Secured removal of state court action and then successful dismissal of employment based claims against Connecticut-based pharmaceutical company.
- > Telcordia Technologies Inc., a subsidiary of Ericsson: Successfully defended subcontractor in bench trial over breach of contract and quantum meruit claims where the prime contractor had declared bankruptcy.
- > AGL Resources Inc.: Secured significant victory in a civil case arising from claims of injuries from a minor vehicle accident; jury rendered a no-cause verdict and found the client was not negligent.
- > Aramark Corporation: In litigation arising from an accident on property managed by Aramark, the jury determined that the client was not liable.
- > LifeCell Corporation: Multiple products liability cases involving cutting-edge medical technology.

## HONORS & AWARDS

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- > **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

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### Publications

- > August 26, 2021  
**"Loan Forgiveness as Basis for Fraudulent Transfer Claims,"** *Bloomberg Law*  
Jeffrey Cohen, Michael A. Kaplan, Colleen M. Maker
- > August 12, 2021  
**"Insurers Misuse Proof of Claim Forms in Mass Tort Bankruptcy Cases,"** *Bloomberg Law*  
Jeffrey Cohen, Michael A. Kaplan, Rasmeet K. Chahil
- > February 10, 2021  
**"Strategic Considerations in Bankruptcy Discovery: Rule 2004's Limitations in Light of the Pending Proceeding Rule,"** *New York Law Journal*  
Michael A. Kaplan, Rasmeet K. Chahil, Amanda K. Cipriano
- > February 2, 2021  
**"Bankruptcy Ruling Highlights Longer Lookback Trend,"** *Law360*  
Michael A. Kaplan, Rasmeet K. Chahil, Raymond Cooper
- > October 15, 2020  
**"Congress Should Rewrite The Bankruptcy Examiner Mandate,"** *Law360*  
Jeffrey Cohen, Michael A. Kaplan, Rasmeet 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, , Michael A. Kaplan, Rachel Moseson Dikovics
- > May 28, 2020  
**"A Bankruptcy Probe Primer For White Collar Attorneys,"** *Law360*  
Rachel Maimin, , Michael A. Kaplan, C. Patrick Thomas
- > 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, C. Patrick Thomas
- > 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

- > October 12-13, 2021  
**Law.com** and **The Philadelphia Inquirer** report on the rejection by the Official Committee of Tort Claimant Creditors in the Chapter 11 bankruptcy case of the Diocese of Camden, New Jersey, of a proposed bankruptcy reorganization plan that **Jeffrey D. Prol** calls "patently unfair." Prol, Vice Chair of Lowenstein's **Bankruptcy & Restructuring Department**, continues: "I think it stinks. Based on the extreme trauma suffered by the claimants, if their cases were going to trial in the state court system, some of them would be valued at

\$10 million each.”

**Lynda A. Bennett**, Chair of the firm’s **Insurance Recovery** group, calls the offer “woefully inadequate,” adding that the Committee is “not interested at all” in agreeing to \$40 million in payments spread out over time. Bennett says, “The diocese is trying to improperly lowball the value of these claims.”

Prol continues: “We conducted an investigation and we uncovered assets, liquid assets and cash and investments, in excess of \$250 million. The parishes own a lot of real estate, as does the diocese. To propose to release itself and all the other entities from liability for \$26 million when they have assets approaching \$1 billion is patently unfair. We will be opposing that plan.”

In **Law360**, **Michael A. Kaplan**, partner in the firm’s **White Collar Criminal Defense** group, addresses the Committee’s intention to file fraudulent transfer claims against the Diocese with regard to the write-off of more than \$52 million in loans to parishes and schools, calling it another “example of the diocese’s lack of financial transparency and diligence.”

> 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, Rasmeet 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 2<sup>nd</sup> 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)

## SPEAKING ENGAGEMENTS

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> Host, **Virtually Litigating: Pros and Cons of Litigation Practices Developed During COVID-19**, Syracuse University College of Law, Syracuse, NY / Webinar, September 24, 2021

## EDUCATION

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> 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

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> New York

> New Jersey

> District of Columbia

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