HUSCH BLACKWELL

Michael J. Schrier

PARTNER

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OVERVIEW

Michael represents federal contractors, grant recipients, and companies and institutions doing business with or having matters before the U.S. Government.

In a diverse array of matters including Construction Litigation and Labor & Employment, Michael is a tenacious advocate for government contractors. He has extensive experience advising and litigating employment-related matters for federal contractors including Davis-Bacon Act, Service Contract Act, federal contractor Paid Sick Leave, federal contractor minimum wage, and OFCCP matters. Michael represents clients in Contract Disputes Act, Miller Act and breach of contract claims in federal and state trial and appellate courts and in bid protests before the U.S. Court of Federal Claims and U.S. Government Accountability Office. In addition, he advises government contractors, federal grant recipients, educational institutions and foreign governments on Federal Acquisition Regulation compliance, facilities and security clearances, False Claims Act, Buy American Act and debarment/suspension.

Thanks to his appellate training, Michael has a gift for finding the legal vulnerabilities in a case. He views litigation as a complex chess match where he can outsmart opponents not only on the facts of a matter, but also on the legal framework and the finer points of the law in question.

In addition to his work with the complexities of government contracting and labor and employment law, clients appreciate that Michael has significant experience as a commercial litigator, in intellectual property and trademark matters, and challenging federal agency rulemaking and

Industry

Real Estate, Development, & Construction

Services

Government Contracts
Labor & Employment
Litigation & Alternative Dispute Resolution
Bid Protests
Employment Litigation Defense
Construction Litigation
Construction & Design
Appellate
OFCCP Compliance
Human Trafficking Compliance
Non-Competes & Restrictive Covenants
Trade Secrets & Business Information Protection
Higher Education
COVID-19 Research and Laboratory Testing
Pay Equity
Economic Development Impact

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adjudications under the Administrative Procedure Act. Over more than 25 years of practice, he has also defended employers against trade secret misappropriation, breach of noncompetition and nondisclosure agreements, employment discrimination and retaliation (under a variety of federal and state statutes including Title VII, the Americans with Disabilities Act, Age Discrimination in Employment Act, and False Claims Act), wrongful termination, Fair Labor Standards Act, ERISA, OSHA, and unfair labor practice claims in federal and state trial and appellate courts and administrative hearings.

Clients also appreciate Michael's pragmatism: he puts himself in the client's shoes when he's mapping out a strategy, aiming to ensure that every legal victory truly is a win for the client's business and budget.

Featured Experience

Challenging the Service Contract Act's Reach To Cooperative Agreements

When the Department of Health & Human Services (HHS) retroactively applied Service Contract Act (SCA) clauses and prevailing wage determinations to its cooperative agreements with a nonprofit emergency services provider that provided migrant shelter facilities and related services, the organization found itself facing an existential crisis of both tens of millions of dollars of liability as well as potential debarment. Prior to this, the SCA had never been applied to cooperative agreements. Faced with the possibility of a lengthy administrative review process, Michael boldly decided to pursue this case of first impression in federal court under the Administrative Procedure Act and sued both HHS and Department of Labor (DOL) in the U.S. District Court for the Western District of Texas, arguing that the SCA cannot apply under the plain language of the Federal Grants and Cooperative Agreements Act because the SCA only applies to contracts, and cooperative agreements are not a contracts.

A district court initially ruled against the client on an alleged lack of final agency action despite clear written direction from the Acting Administrator of the Wage and Hour Division and the DOL Solicitor ordering the client to comply with the SCA. Based on DOL's apparent final agency action, Michael appealed to the Fifth Circuit. Because a Fifth Circuit ruling for the client would have been precedential and substantially expanded the scope of DOL actions that constitute final agency action going forward, opening up a broader range of SCA decisions to potential judicial review, the Department of Justice approached Michael and his team weeks before the scheduled oral argument, eager for a settlement. The government ultimately agreed to substantially all of the client's settlement demands made prior to the suit, and the case was dismissed on the eve of appellate oral argument.

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Experience

GOVERNMENT CONTRACTS

- Secured a $47.5 million settlement for TBK Bank, SSB in a four-year lawsuit against the United States Postal Service involving novel contract issues before the U.S. Court of Federal Claims. The case arose from USPS's unilateral cancellation of TBK Bank's assignments on nearly 300 transportation contracts, after TBK had advanced funds to mail carriers to support continued postal delivery during the 2020 peak season. The settlement was reached on TBK Bank's $63 million lawsuit shortly before trial, resolving TBK Bank's claims for breach of contract against the USPS.
- Represented long-time concessions operator at BWI Thurgood Marshall Airport in a protest against a Request for Proposal process and the resulting contract award to a politically connected startup. Unusually, for administrative reasons, the Maryland state bid protest was required to be filed in Maryland state court, resulting in withdrawal of original RFP and a redo of the entire procurement.
- Served as expert witness in Colorado state court on matter involving federal telecommunications grant compliance and due diligence.
- Won construction bid protest against WMATA (Washington Metropolitan Area Transit Authority).
- Advised international electronics manufacturer on state procurement contract issues involving CARES Act funding related to COVID-19 pandemic prevention/remediation.
- Defended Third-Party Administrator from U.S. Department of Labor ERISA civil action in federal court concerning alleged fiduciary breaches and prohibited transactions involving Service Contract Act compliant health and welfare fund for AbilityOne Program federal contractor.
- Represented e-discovery provider in "reverse Freedom of Information Act" case to protect provider's confidential pricing and other information contained in its proposal and resulting government contract.

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Experience

- Won on behalf of military defense contractor U.S. Government Accountability Office (GAO) preaward bid protest, which was filed against Defense Logistics Agency (contracting on behalf of Army, Navy, and Air Force) and concerned lease of multi-function copiers throughout Republic of Korea.
- Advised foreign transportation company on federal and state government contracts compliance issues related to proposals for Maryland Purple Line procurement.
- Initiated state investigations with various Maryland agencies against competitor highway construction company for alleged federal and state contracting compliance issues.
- Advised manufacturer of state-of-the-art military communications equipment on data and patent rights arising under FAR and DFARS clauses.
- Advised U.S. subsidiary of foreign electronics and software company on Buy American Act and Trade Agreements Act compliance related to government contracting for transportation rolling stock and equipment.
- Represented Job Corps Center operators in pre-award bid protests in Federal Circuit and Court of Federal Claims challenging U.S. Department of Labor's decision to preclude large businesses from solicitations for operator contracts.
- Defended regional construction subcontractor in Davis-Bacon Act administrative litigation initiated by U.S. Department of Labor.
- Won dismissal of Davis-Bacon Act and other related federal contracting and employment claims on behalf of two national construction companies and regional subcontractor in Fourth Circuit and Maryland federal court on grounds that such statutes do not create private cause of action for employees.

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Experience

LABOR & EMPLOYMENT

- Obtained preliminary injunction against former employees and their new employers in trade secret misappropriation and non-competition litigation in U.S. District Court for the District of Maryland and U.S. District Court for the Eastern District of Virginia.
- Obtained summary judgment and dismissal for national cemetery company in federal race and gender discrimination and retaliation case.
- Obtained dismissal of Equal Employment Opportunity Commission (EEOC) and related state charges of employment discrimination brought by terminated employees against federal services contractor.
- Obtained dismissal of National Labor Relations Board (NLRB) unfair labor practice charges for federal contractor brought by government service center employees' union.
- Defended nursing home in delinquent contribution claims arising under Employee Retirement Income Security Act (ERISA).
- Favorably resolved Occupational Safety and Health Administration (OSHA) citations related to alleged office safety violations by federal contractor information technology (IT)/services company.
- Litigated three-week Uniform Trade Secrets Act (UTSA) trade secret misappropriation trial in Western District of Texas federal court involving former executives of medical management company setting up rival company to obtain large government contracts.
- Defended national electrical subcontractor in trade secret misappropriation, breach of noncompetition agreement and related employment tort claims brought by employee's former employer in Fourth Circuit and Eastern District of Virginia federal court.
- Represented coal mining companies and their insurance carriers in defense of Black Lung Act administrative claims.

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Experience

- Prosecuted federal government employees for Hatch Act violations before Merit Systems Protection Board.
- Won *en banc* appeal to U.S. Court of Appeals for Federal Circuit establishing that in-house counsel for prevailing party against federal government in employment cases may obtain market rate fees under Back Pay Act.

COMMERCIAL LITIGATION

- Represented professional investors in Fourth Circuit and Maryland federal court and obtained dismissal of federal and state securities fraud claims filed by former CEO of company.
- Obtained offer of judgment from federal contractor with listing on GSA Schedule in breach of contract matter on behalf of supplier software company.
- Represented university in North District of West Virginia federal court trademark infringement and tarnishment case against local t-shirt shop making products using university's registered marks.

ADMINISTRATIVE PROCEDURE ACT

- Represented global analytics provider and its employee in Federal Court Administrative Procedure Act challenge to U.S. Citizenship and Immigration Services' (USCIS) denial of H-1B visa for employee to work as data analyst, on grounds that this is not "specialty occupation" under applicable law. Established that USCIS's decision was "arbitrary and capricious," court's jurisdiction was not divested by government's attempt to reopen, and won injunctive relief requiring USCIS to grant visa.
- Obtained injunction for national association in the Eastern District of Pennsylvania federal court against EEOC preventing it from implementing and enforcing new exemption regulations.
- Obtained federal appellate court ruling finding federal arsenal employees had legal standing to challenge A-76 decision to outsource and privatize production of tank gun mounts.

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Experience

- Represented regional natural resources association as amicus curiae in APA litigation in DC Circuit and DC federal court in support of Department of Interior's decision not to list certain lands on National Register of Historic Places.

CONSTRUCTION

- Obtained dismissal of mold-related toxic tort claims brought against mechanical subcontractor in Virginia state court arising from renovation of public school building.
- Represented surety in fraud, mechanics lien and False Claims Act (FCA) claims against general contractors related to default termination on Department of Housing and Urban Development (HUD)-financed project.
- Successfully resolved trade secret misappropriation, computer fraud, duty of loyalty, and related federal and state employment claims in federal court for national construction company against former employees who started a rival business.
- Represented national general contractor in state and federal government contracts compliance matters related to large National Guard construction project.
- Represented general contractor in Fourth Circuit and Eastern District of Virginia federal court in trademark infringement and related employment and business torts claims against contractor's former top employee.
- Defended federal construction company from Fair Labor Standards Act (FLSA)/wage and hour claims for allegedly unpaid overtime.
- Defended security company in state court from subrogation-related contract and tort claims related to apartment fire at apartment complex under construction.

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Recognition

- *The Best Lawyers in America®*
  - Litigation - Labor and Employment, 2027
- *The Legal 500 United States*
  - Government contracts, Recommended lawyer, 2023-2025

Education

- J.D., The George Washington University Law School
- B.A., Cornell University
  - Economics and Political Science majors, International Relations concentration

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Admissions

- District of Columbia
- Maryland
- Pennsylvania
- Virginia
- U.S. District Court, District of Columbia
- U.S. District Court, Central District of Illinois
- U.S. District Court, District of Maryland
- U.S. District Court, Western District of New York
- U.S. District Court, Western District of Texas
- U.S. District Court, Eastern District of Virginia
- U.S. District Court, Western District of Virginia
- U.S. Court of Appeals, District of Columbia Circuit
- U.S. Court of Appeals, Federal Circuit
- U.S. Court of Appeals, Third Circuit
- U.S. Court of Appeals, Fourth Circuit
- U.S. Court of Appeals, Fifth Circuit
- U.S. Court of Appeals, Seventh Circuit
- U.S. Court of Appeals, Eighth Circuit
- U.S. Court of Federal Claims
- U.S. Court of Appeals for Veterans Claims

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Community Leadership

- Washington Men’s Camerata, Board Member

American Bar Foundation
Fellow - Michael Schrier

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