

Anthony C. Kaye
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Background & Experience

Anthony C. Kaye focuses on business litigation and complex civil litigation at both the trial and appellate levels in federal and state courts throughout the United States. Tony has defended high-stakes, complex matters in a wide variety of areas, including consumer financial and mortgage banking services, intellectual property, business governance disputes, communications, product liability and mass torts, and real estate and construction.

Areas of Focus

Litigation, Appellate, Bankruptcy, Reorganization and Capital Recovery, Distressed Real Estate, Commercial Litigation, Class Action Litigation, Consumer Financial Services, Fair Lending, Intellectual Property Litigation, Mortgage Banking, Municipal Securities Regulation and Enforcement, Product Liability and Mass Tort, Real Estate and Construction Litigation, Privacy and Data Security, Military Lending, Media and Entertainment Law, Banking and Financial Services

Tony is a member of the Consumer Financial Services Litigation Group and is the Team Leader of the group's Military Lending Team. His consumer financial services litigation practice focuses on defending banks, servicers, and other financial institutions throughout the United States in complex litigation matters. He counsels clients in connection with examinations by state and federal regulators and more generally on compliance with state and federal statutes and regulations.

Tony has represented clients before the U.S. Courts of Appeals for the District of Columbia, Ninth and the Tenth Circuits, and the U.S. Supreme Court. In addition to judicial and administrative proceedings, Tony has substantial experience resolving disputes through mediation and arbitration.

Representative Matters

- Obtained a defense verdict in Nevada State Court for a bank by proving the foreclosure of property was the product of a scheme hatched by the real estate owner, whose lawyer participated in a scheme to defraud creditors by attempting to wipe out the trust's security interest through a rigged foreclosure sale. *Zaisan v. U.S. Bank, as Trustee* (Case No. A-13-691690-C, 8th Jud. Dist. Ct., Clark County, Nevada, Mar. 6, 2018).
- Represented a Deer Valley resort developer at a JAMS arbitration proceeding in which the plaintiff alleged breach of contract to purchase a luxury resort condominium at and violations of the Utah Land Sales Practices Act. Following an evidentiary hearing, the arbitrator ruled for Mr. Kaye's client on all counts and awarded legal fees to Mr. Kaye's client totaling nearly \$250,000. *Deer Crest Janna, LLC v. Davide*, 2016 WL 3190206 (D. Utah 2016) (confirming award).
- Successfully represented a bank in obtaining dismissal of a federal case brought by a former U.S. Congressman alleging violations of the Fair Debt Collections Practice Act, civil conspiracy, fraud, and tortious interference with contract. *Cannon v. PNC Bank, N.A.*, 2016 WL 9779290 (D. Utah 2016)
- Successfully represented a California-based publisher in persuading the United States District Court for the District of Utah to apply California's Anti-SLAPP statute to the publisher's special motion to strike the Plaintiff's complaint. *Diamond Ranch Academy, Inc. v. Filer*, 117 F. Supp.3d 1313 (D. Utah 2015)
- Successfully represented a client challenging the constitutionality of Utah's Grandparent Visitation Statute, as applied, from trial through appeal to the Utah Court of Appeals, *Jones v. Jones*, 2013 UT App 174, and on a writ of certiorari to the Utah Supreme Court, *Jones v. Jones*, 2015 UT 84

- Successfully represented PNC Bank, N.A. in an appeal of a bankruptcy decision to the District of Utah in which the district court held that as a servicer, PNC had standing to move to dismiss a Chapter 13 proceeding and that the obligations of the debtor were sufficiently determinable to constitute liquidated debt in excess of the debt ceiling for Chapter 13 relief. *In re Cannon*, 521 B.R. 686 (D. Utah 2014)
- Successfully represented defendant CitiMortgage, Inc., in a 10th Circuit appeal affirming that RESPA duties are not triggered by a qualified written request unless the borrower sends it to the exclusive address designated by the servicer pursuant to RESPA's implementing regulations and that communication failing to meet this requirement "amounts to nothing more than general correspondence between a borrower and a servicer" (*Berneike v. CitiMortgage, Inc.*, 2013 WL 657032 (10th Cir. Feb. 25, 2013))
- Successfully represented CitiMortgage, Inc. and Mortgage Electronic Registration Systems, Inc., in a series of state and federal cases challenging the legal consequences of pooling and securitizing promissory notes (e.g., *Commonwealth Property Advocates, LLC v. Mortgage Electronic Registration Systems, Inc. and CitiMortgage, Inc., et al*, 2011 UT App 232, *Taylor v. CitiMortgage, Inc.*, 2010 WL 4683881, D. Utah 2010)
- Successfully represented appellant Morinda in *Lamkin v. Morinda Properties Weight Parcel, LLC*, Case No. 11-4022 (10th Cir. Sept. 19, 2011), a case of first impression, in which the U.S. Court of Appeals for the Tenth Circuit held that a defendant may file a motion to compel arbitration in lieu of an answer and that the defendant's failure to first answer the plaintiff's complaint before filing the motion is not a proper ground for denying it

- Successfully represented appellee Granite Credit Union in *Spafford v. Granite Credit Union*, 2011 UT App 401, in which the Utah Court of Appeals ruled that expert testimony from a civil engineer is required to establish breach of duty and causation in a negligence case alleging injuries caused by a defect in design or construction
- Represented appellants Loeb Investors XL and Joe Lesser, in *Sachs v. Lesser*, 207 P.3d 1215 (Utah 2008), in which the Utah Supreme Court overruled the Utah Court of Appeals and affirmed the trial court's dismissal of the plaintiff's claim for a finder's fee in connection with the acquisition of United Park City Mines Company via a stock merger, holding that a transaction in which the transfer of real estate is the dominant feature of the exchange, and not merely incidental to the sale of a business, is a sale of real estate governed by the provisions of the Utah Real Estate Brokers Act
- Successfully represented a global leader in power technologies in defending stray current litigation brought by 18 dairy farms arising out of the clients' design and construction of HVDC converter stations operated by the Intermountain Power Project in Utah
- Successfully represented a government franchisee in defending a competitor's claims concerning the exclusivity of the clients' rights to broker boats in the Glenn Canyon National Recreation Area (*Executive Boat & Yacht Brokerage v. Aramark Sports and Entertainment*, 2008 WL 4279646, D.Utah 2008)
- Successfully represented Deer Valley and Park City resort developers in post-construction disputes and arbitrations involving efforts by numerous purchasers to avoid contracts to purchase multimillion-dollar condominium units based on claims ranging from breach of contract to violations of the Interstate Land Sales Full

Disclosure Act (e.g., *Clark v. Morinda Properties Escala Lodges, Inc.*, 2010 WL 2024707, D. Utah 2010)

- Successfully defended product liability cases involving allegations of exposure to asbestos-containing overhead crane brake systems used at the Geneva Steel Facility in Provo, Utah; obtained dismissals based on plaintiffs' failure to establish causation
- Counseled a Utah venture capital company and its majority shareholder in a high-profile corporate governance dispute; obtained a favorable settlement following the defeat of prior management's attempt to obtain injunctive relief, restoring them to control of the company
- Successfully prosecuted numerous Lanham Act cases on behalf of clients with nationally recognized products and marks
- Successfully defended a national cable service provider in a purported nationwide class action alleging false advertising; obtained dismissal based on arbitration provisions contained in consumer agreements
- Successfully represented a consumer financial services company in defense of a class action lawsuit alleging Internet pop-up advertisements for financial services violated Utah's statute regulating unsolicited commercial e-mail; obtained summary judgment on the grounds that Internet pop-up advertisements do not fall within the statutory definition of electronic mail
- Successfully represented Park City and Summit County real estate developers in disputes concerning construction of multimillion-dollar projects, ownership and control of companies holding real property assets, and ownership and use of density
- Participated in representation of a major insurance carrier in successful appeal to the U.S.

Supreme Court in seminal ERISA preemption case (*New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Company*, 514 U.S. 645 (1995)); obtained unanimous decision reversing the U.S. Court of Appeals for the Second Circuit and establishing that ERISA did not preempt portions of New York's comprehensive hospital rate-setting and insurance regulatory scheme

Pro Bono Experience

Tony is a member of Ballard Spahr's Pro Bono Committee and supervisor of the firm's pro bono program in Utah.

The Legal Services Corporation presented Tony with a Certificate of Appreciation for "extraordinary commitment to providing equal access to justice through Private Attorney Involvement with Utah Legal Services" in 2008.

Professional Highlights

Professional Activities

American Bar Association, Forum on the Construction Industry (Dispute Avoidance and Resolution), member; Business Law Section, Consumer Financial Services Committee, member
Fellow, Litigation Counsel of America

Recognition & Accomplishments

Named a Mountain States Super Lawyer 2007-2009, 2014-2018

The Best Lawyers in America, real estate litigation, 2015-2019

AV Peer Review Rating for Litigation and Products Liability, Martindale-Hubbell

Received the 2011 Distinguished Pro Bono Attorney award from Utah Legal Services, the Utah

Attorney award from Utah Legal Services, the Utah State Bar, the Pro Bono Initiative, and the S.J. Quinney College of Law for exceptional pro bono work

Publications

"CFPB Suspending Routine Supervisory Examinations for MLA Compliance," *The National Law Review*, August 14, 2018

"Military Lending Improvement Act of 2018 Introduced in the U.S. Senate," *The National Law Review*, August 9, 2018

"Washington State Legislature Passes Bill to Expand Coverage of Service Member Protections and Provide Additional Protections," *The National Law Review*, March 5, 2018

"CFPB October 2017 "Special Edition" Complaint Report Highlights Service Member Complaints," *The National Law Review*, November 1, 2017

"FTC Launches Military Task Force Webpage," *The National Law Review*, September 26, 2017

"A Drastic Expansion Of DOD's Military Lending Act Rule," *Law360*, October 3, 2014

Editor of the membership newsletter of Division 1 of the ABA Forum on the Construction Industry, *The Dispute Resolver* (2011-2012)

Co-author, "Troubleshooting Credit Card Data Policies," *Law360*, February 8, 2012

"Multijurisdictional Practice and ABA Model Rule 5.5," American Bar Association Forum on the Construction Industry, October 15-16, 2009

"Who's Your Client – Dual Representation of an Organization and its Shareholders/Directors/Officers/Employees," American Bar Association Forum on the Construction Industry, October 15-16, 2009

Construction Industry, October 15-16, 2009

"A Broader Scope for American Pipe Tolling Doctrine," *Law360*, November 2008

Speaking Engagements

Speaker, "Update on Federal and State Military Finance Developments," Ballard Spahr webinar, March 28, 2018

Speaker, "The Military Lending Act – Basic Training", Utah Bankers Association 2017 Fall Compliance Conference, Park City, Utah, October 24-26, 2017

Panelist, Ancillary Products in the "All-In" APR Minefield, 19th Annual NACCA/AFSA State Government Affairs & Legal Issues Forum, Seattle, May 24, 2017

Speaker, "Incentive-Based Compensation," Utah Bankers Association Compliance Committee Meeting, Salt Lake City, March 9, 2017

Speaker, "Developments in Military Lending Law," Utah Bankers Association Compliance Conference, Deer Valley, Utah, October 25, 2016

Speaker, "Must Know Details of the Military Lending Act," UAFS & NAIB Annual Convention, Park City, Utah, August 11, 2016

Moderator, "From Face-to-Face to Screen-to-Screen: The Shifting Nature of Customer Transactions with Financial Institutions," Utah State Bar 2016 Summer Convention, San Diego, July 9, 2016

"Military Lending Act: What Lenders Need To Know about the Defense Department's Final Rule," Ballard Spahr webinar, August 24, 2015

"Regulatory Darwinism – The Evolution of Consumer Fairness in Federal Law," Utah Bar

Summer Convention, July 30, 2015

Panelist, "Front and Center: Developments in Military Lending Law," Consumer Data Industry Association, June 23, 2015

Panelist, "Be Careful Out There: Ethics Crash Course for In-House Lawyers," Association of Corporate Counsel (ACC) 9th Annual CLO Roundtable, Salt Lake City, June 2, 2015

"CFPB: In Focus — Mortgage Rules," Ballard Spahr program, September 16, 2014

"Conflating Best Practices and the Law: Implications of the DOJ SCRA Settlement," Ballard Spahr webinar, June 19, 2014

"Understanding the CFPB's Defense Strategy on Military Lending," Ballard Spahr webinar, February 6, 2014

"Military Lending Law," Consumer Financial Services Committee of the ABA Business Law Section, Winter Meeting in Park City, Utah, January 2014

"Call of Duty: SCRA – Protecting Those Who Protect Us," Ballard Spahr webinar, September 19, 2012

"The Top 10 Ways To Get in Trouble with the CFPB," Ballard Spahr webinar, August 14, 2012

"The Explosion in Residential Mortgage Litigation: What Explains the Recent Trends and Spike in Filings?" a *Mortgage Daily* and Ballard Spahr webinar, May 30, 2012

Community Activities

United Way of Salt Lake, Young Leaders Group; Member, UWSL Grant Review Committee for Protecting and Meeting Basic Needs, 2008

And Justice for All Leadership Committee

Board Memberships

Prevent Child Abuse Utah, past Executive Committee Member and past Chair

Governor's Child Abuse Prevention Task Force, past Member

Bernheim Arboretum and Research Forest, past Member

Education

Case Western Reserve University School of Law (J.D. 1993, *magna cum laude*)

Articles Editor, *Case Western Reserve Law Review*; Member, Order of the Coif

Hamilton College (B.A. 1986)

Admissions

New York

Utah

U.S. District Court for the Western District of Michigan

U.S. District Courts for the Southern and Eastern Districts of New York

U.S. District Court for the District of Utah

U.S. Court of Appeals for the District of Columbia

U.S. Court of Appeals for the Ninth Circuit

U.S. Court of Appeals for the 10th Circuit

U.S. Supreme Court