

Jay P. Lefkowitz, P.C.



Partner New York

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Practice Areas

- Litigation
- Commercial Litigation
- Appellate Litigation
- Securities & Shareholder Litigation
- Product Liability Litigation

Admissions

- 1988, New York
- 1996, District of Columbia

Education

- Columbia Law School, J.D. 1987
 Harlan Fiske Stone scholar (1985-86)
- Columbia College Chicago, A.B., History 1984
 James A. Beard Political Science Prize, 1984

Professional Profile

Mr. Lefkowitz is a litigation partner in the New York City office of Kirkland & Ellis LLP. He serves on Kirkland's Worldwide Management Committee (member); Administrative Committee (co-chair); Firmwide Development Committee (member); and the New York Operations Committee (member). With more than 20 years of experience, he has appeared in court in 30+ states. He has also appeared before several federal agencies and conducted a variety of internal investigations. In addition, he provides strategic counseling on regulatory and legislative matters.

Mr. Lefkowitz has successfully sued several federal agencies in both the U.S. District Court and U.S. Court of Appeals for the District of Columbia in cases involving questions of administrative law. He currently represents several individuals and public companies in various matters before the Securities Exchange Commission and the Department of Justice, and serves as lead counsel in several securities class action appeals and arbitrations.

Mr. Lefkowitz has had a distinguished career in public service. He currently serves as President Bush's Special Envoy on Human Rights in North Korea, a position to which he was appointed on August 19, 2005, pursuant to the North Korean Human Rights Act of 2004.

From 2001-2003, Mr. Lefkowitz left Kirkland to serve in the White House as Deputy Assistant to President Bush for Domestic Policy and as General Counsel in the Office of Management and Budget. In these roles, he was one of the President's senior advisors on domestic policy, legal and international development issues. Earlier in his career, he served in the White House as Director of Cabinet Affairs and Deputy Executive Secretary to the Domestic Policy Council for President George H. W. Bush.

Mr. Lefkowitz's work as a lawyer and diplomat has been featured in many newspapers and magazines throughout the world. He has also been profiled in *The Washington Post*, "A Hard-Nosed Litigator Becomes Bush's Policy Point Man," in connection with his role as an advisor to the President; in *Global Forensics*, "Subprime Crisis Stirring Up New Wave of Litigation, Says Kirkland's Lefkowitz," highlighting his expertise on the subprime crisis; in "What Ever Happened to Jay Lefkowitz?" highlighting his post-White House pursuits; in a cover story in *The American Lawyer*, "Blackboard Jungle," for his work successfully arguing in support of school voucher programs in Wisconsin and Florida; in *The National Law Journal*, "Republican Connected and Rising;" in *Columbia College Today*, "Shuttle Diplomat;" and in several *Wall Street Journal* editorials.

Mr. Lefkowitz has acted as lead counsel on litigation matters for the following clients:

General Electric	Escala Group Audit Committee	Fannie Mae (Federal National Mortgage Association)
State of Florida	General Motors Corporation	K12, Inc.
Loral Space & Communications	State of Wisconsin	Omicron Capital LP
Qwest Communications Corporation	Northwest Airlines	Teva Pharmaceuticals
Time Warner	Tenet Healthcare Corporation	Verizon Communications (GTE)
Verizon Wireless	UBS Warburg	Fox

Representative Matters

Representative Securities Matters

United States of America v. Jeffrey Stein, et al.

Mr. Lefkowitz is defending an individual investment manager in what has been described as the largest criminal tax fraud prosecution in United States history. The client was charged with 17 co-defendants in a wide ranging conspiracy to evade taxes and defraud the IRS through allegedly abusive tax shelters in the Southern District of New York. The indictment charges that the defendants — most of whom were employees of KPMG — developed sham tax shelter transactions and marketed them to hundreds of wealthy individuals, evading roughly \$11 billion in taxes. In written opinions, the district judge has noted the unusual size of the case, which involves over 70 prosecution witnesses and more than 24 million pages of documents, and the complexity of the allegedly fraudulent transactions.

Electronic Trading Group v. UBS Warburg

Mr. Lefkowitz is defending UBS in a putative class action alleging that the firm's prime brokerage unit violated antitrust laws by fixing prices for the interest charged on short sales, particularly naked short sales. The district court granted the motion to dismiss.

Brokerage Firm Class Action Litigation

Mr. Lefkowitz is representing a financial institution in a putative class action challenging the client's policies, procedures and agreements regarding the sweep of uninvested cash from brokerage accounts. Kirkland's motion to dismiss is pending, and Kirkland has won multiple stays of discovery pending decision on that motion, despite the fact that it is not a PSLRA case.

NASD Procedural Rule 9800 Et Seq. Litigation

Mr. Lefkowitz represented a broker-dealer that had been the subject of the first-ever application of NASD Procedural Rule 9800 et seq., which permits the NASD to seek "temporary cease and desist orders" under certain conditions. Invoking that rule, the NASD's Department of Enforcement ("Enforcement") had conducted proceedings against a broker-dealer which resulted in an order from the Hearing Panel that required the broker-dealer to cease various practices, but also to collect \$2 million from a non-member affiliate. When the broker-dealer failed to comply with that order, Enforcement instituted expedited suspension proceedings. Because the scope of the NASD's authority to impose affirmative obligations was a matter of "first impression," the National Adjudicatory Council ("NAC") agreed to review the Hearing Panel's decision. The NAC agreed with our argument that Enforcement had overstepped its authority to fashion relief under Rule 9840 when it ordered affirmative action (in this case the unwinding of a transaction and the collection of money from a non-member) that went well beyond the cessation of "ongoing violative conduct."

NASDAQ-Listed Company SEC Investigation

Mr. Lefkowitz successfully conducted an internal investigation of a NASDAQ-listed broker-dealer that was the subject of an SEC fraud investigation. Kirkland interviewed numerous witnesses here and throughout Europe, and made numerous findings and recommendations regarding the company's sales practices, accounting practices, public disclosures, financial controls, records retention practices and personnel decisions. Kirkland worked with and appeared before the SEC, the United States Department of Justice, the NASD and the NASDAQ Listing Qualifications Panel.

SEC Inquiry

Mr. Lefkowitz is representing a client in connection with an SEC inquiry into the propriety of a substantial convertible preferred transaction with an affiliate.

Tenet SEC Investigation

Mr. Lefkowitz represented Tenet Healthcare Corporation and certain current and former officers and directors in a formal SEC investigation concerning whether Tenet's public disclosures of Medicare outlier and stop-loss payments under managed care contracts were misleading or otherwise inadequate, as well as whether certain former and current Tenet officers and directors engaged in insider trading. The matter was settled for a small financial penalty.

Brokerage Practices California Litigation

Mr. Lefkowitz is representing a financial institution in two cases in California challenging the client's prime brokerage practices and interest charges on naked short sales under California law.

Fortune 100 Conglomerate Company SEC Investigation

Mr. Lefkowitz is representing a Fortune 100 conglomerate company in responding to an SEC investigation focused on issues of revenue recognition, earnings management, and senior executive leadership across the company's business units. Kirkland has been retained to investigate and synthesize the voluminous factual data involved, and develop the company's response.

Hedge Fund SEC Investigation

Mr. Lefkowitz is representing a hedge fund in an SEC investigation focused on short trading practices associated with PIPE investments.

Representative Pharmaceutical Matters

Ranbaxy Labs & Teva Pharmaceuticals USA, Inc. v. Leavitt, et al.

Mr. Lefkowitz represented Teva Pharmaceuticals USA, Inc. in a dispute with the U.S. Food and Drug Administration. Mr. Lefkowitz argued that the FDA acted arbitrarily and capriciously when it denied IVAX Pharmaceuticals (since acquired by Teva) 180 days of marketing exclusivity for its generic version of Merck's blockbuster drug Zocor. IVAX had been the first manufacturer to challenge the validity of Merck's Zocor patents with respect to several strengths of the drug, thereby securing eligibility for a 180-day period of marketing exclusivity during which no other generic manufacturer could enter the market for those strengths of the drug. Nonetheless, the FDA acceded to Merck's subsequent request to remove the challenged patents from the official list of patents claiming Zocor, and that action effectively deprived IVAX (and, post-acquisition, Teva) of its entitlement to marketing exclusivity. The D.C. Circuit held that the agency's conduct violated the plain language of the Hatch-Waxman Act and was fundamentally inconsistent with the Act's incentive scheme, because it would allow brand-name manufacturers to deprive potential generic entrants of their reward for undertaking the significant investments and risks inherent in challenging listed patents and bringing more affordable generic alternatives to market prior to patent expiration. As a result of the decision, Teva stands to earn hundreds of millions in additional revenues from sales of generic Zocor.

Apotex, Inc. v. Food and Drug Administration, et al.

Mr. Lefkowitz represented Teva Pharmaceuticals USA, Inc. in their fight against the U.S. Food and Drug Administration over the exclusive rights to sell a generic form of Bristol-Myers Squibb Co.'s Pravachol cholesterol drug. The patented version of the drug currently generates \$1.6 billion in U.S. sales annually. Under the Hatch-Waxman Act, the first generic company to challenge a patent claiming a branded drug is entitled to six months of exclusive generic marketing. That exclusivity runs from the earlier of (1) marketing the drug or (2) a court decision in any case holding the patent is invalid or not infringed. The FDA had ruled that a stipulated dismissal of a lawsuit between Bristol-Myers Squibb and Apotex had triggered Teva's six months of exclusivity. In a 26-page decision, the U.S. District Court for the District of Columbia reversed the FDA, instead ruling that a stipulated dismissal is not a "decision of a court" or a "holding" as required by the Act and granted judgment and injunctive relief to Teva.

Representative Commercial Matters

Boca Raton Community Hospital, Inc. v. Tenet Healthcare Corporation

Tenet Healthcare Corp.—the nation's second-largest for-profit healthcare provider—called upon Mr. Lefkowitz for representation amidst allegations that Tenet hospitals, through their charging practices, received "too many" outlier

payments from Medicare and thereby "stole" outlier payments from the plaintiff and other hospitals. The plaintiff moved for certification of a class consisting of over 3,500 acute care hospitals nationwide, and sought treble damages of \$1.98 billion on behalf of the proposed class. The U.S. district court denied plaintiff's motion to certify a nationwide class of acute care hospitals, holding that the plaintiff's proposed class definition was not workable, that there were conflicts among proposed class-members, and that the plaintiff was an inadequate representative of the proposed class. The plaintiff sought to appeal the district court's ruling to the U.S. Court of Appeals for the Eleventh Circuit, but the court denied the plaintiff's petition. In August 2007, the court granted a motion for complete summary judgment on behalf of Tenet and entered final judgment on the matter.

Washington Square Park Litigation

Mr. Lefkowitz was trial counsel for General Motors in a highly publicized case in state court arising out of one of the worst automobile accidents in New York City history. The 24 plaintiffs included six decedents and others with significant brain injuries, burns and loss of limbs. Defect allegation related to the lack of a brake-transmission shift interlock in all GM 1980s vehicles. Plaintiffs sought compensatory and punitive damages. Favorable settlement reached after six weeks of trial.

General Motors Crime-Fraud Proceedings

Mr. Lefkowitz was trial counsel for General Motors in evidentiary bench proceedings in which the plaintiffs sought exceptions to GM's attorney-client and/or work product privileges under the crime-fraud doctrine.

Baker v. General Motors Corporation

Mr. Lefkowitz was trial counsel for General Motors in a products-liability suit following the death of a passenger in an automobile accident caused by an alleged faulty fuel pump. In a pre-trial motion, the plaintiff moved for production of documents related to interviews of the manufacturer's employees — for which GM asserted attorney client privilege and work product immunity. Even though some of the materials at issue had already been publicly disseminated, GM petitioned the U.S. Court of Appeals for the Eighth Circuit for a writ of mandamus to protect its privileges. After briefing and argument, the petition was granted.

Representative Constitutional & Religious Liberty Matters

State of Wisconsin School Voucher Program Litigation

In 1999, Mr. Lefkowitz represented the State of Wisconsin at the Wisconsin Supreme Court in its successful litigation to become the first state in the country to implement a school voucher program.

Concerned Citizens of Carderock v. Hubbard

In 2000, Mr. Lefkowitz defended the Adat Shalom Reconstructionist Congregation against a private unincorporated association of residential owners in the town of Carderock, Maryland that challenged the constitutionality of a zoning ordinance that amounted to an impermissible endorsement of religion within areas zoned for single-family residential use. The U.S. District Court for the District of Maryland granted the defendant's motion to dismiss.

Memberships & Affiliations

American Bar Association

Other Distinctions

In 2004, Mr. Lefkowitz represented the U.S. at the International Conference on Anti-Semitism in Berlin, Germany, sponsored by the Organization for Security and Cooperation in Europe. In 1990, Mr. Lefkowitz served as a member of the U.S. delegation to the United Nations Human Rights Commission in Geneva, Switzerland.

Publications

Mr. Lefkowitz has authored the following articles on law, politics and religion:

"AIDS and the President - An Inside Account," *Commentary*, January 2009

"Kosher in the White House," AISH.com, December 28, 2008

"Let's Confront North Korea on Human Rights," *Wall Street Journal*, December 23, 2008

"Why North Koreans Need Us," *The New York Sun*, May 5, 2008

"Truth in Advertising," *The Wall Street Journal*, January 25, 2008

"Stem Cells and the President - An Inside Account," *Commentary*, January 2008

"Science Obviates Politics," *The New York Sun*, January 11, 2007

"For A Few Dollars More," *The Wall Street Journal*, January 10, 2007

"Homes Away from Home," *The Wall Street Journal*, March 17, 2005

"The Election and the Jewish Vote," *Commentary*, February 2005

"It's Time to Lengthen Strides in Tort Reform," *Investor's Business Daily* August 31, 2004

"Houses of Worship - Singled Out," *The Wall Street Journal*, July 30, 2004

"A Spectrum of Abuse at FCC?," *The Washington Times*, July 25, 2004

"Telecommons Turf Tango," *The Washington Times*, June 24, 2004

Testimony before the Commission on Security and Cooperation in Europe (the Helsinki Commission), "Government Actions to Combat Anti-Semitism in the OSCE Region," June 16, 2004

Testimony at the OSCE Conference on Anti-Semitism, "Workshop on Promoting Tolerance: Media, i.a., Internet, NGOs and Religious Leaders," April 28, 2004

"Three Strikes for the FCC - Government Regulation Stifles the Telecom Industry," *National Review*, March 18, 2004

- "Strike Up the Broadband," *The Weekly Standard*, January 26, 2004
- "Bookshelf - Ugly and Venomous," *The Wall Street Journal*, January 22, 2004
- "The 9/11 Deadline," *The Wall Street Journal*, December 16, 2003
- "Malarkey And Stem Cells," *The Washington Post*, November 8, 2003
- "The Facts on Stem Cells," *The Washington Post*, October 30, 2003
- "Does the Jewish Vote Count?," *Commentary*, March 2001
- "A Critique of the FCC's Decision to Retain Limits on National Television Station Ownership," *Telecommunications & Electronic Media News*, Fall 2000
- "Bookshelf: The Supreme Court and Its Most Famous Justice, Law Without Values," by Albert W. Alschuler, *The Wall Street Journal*, December 14, 2000
- "It's The Law, Stupid, How many lawyers does it take to win an election?," *The Weekly Standard*, November 20, 2000
- "Books in Review: Jew vs. Jew: The Struggle for the Soul of American Jewry," by Samuel G. Freedman, *Commentary*, October 2000
- "Clinton, Not the Courts, Is Condemning Elian," *The Wall Street Journal*, June 2, 2000
- "Bookshelf: The Warren Court and American Politics, by Lucas A. Powe, Jr., If the Legislature Won't Do It, We Will," *The Wall Street Journal*, March 20, 2000
- "A Modest Tort Proposal," *The Weekly Standard*, August 16, 1999
- "Bookshelf: The Lord Will Gather Me In, by David Klinghoffer, Torah and Truth," *The Wall Street Journal*, December 15, 1998
- "Supreme Court on School Choice: 50 Years of Precedents," *The Wall Street Journal*, November 23, 1998
- "Treason of a Clerk, On the Vast, Right-Wing Conspiracy at the Supreme Court," *The Weekly Standard*, April 27, 1998
- "The NPR Log Book, No: All Opinions Are Not Entitled To Equal Air Time," *ABA Journal*, June 1996
- "Decade of Greed?," *The Public Interest*, No. 124, Summer 1996
- "Books in Review: Ultimate Answers, Think A Second Time, by Dennis Prager," *Commentary*, Vol. 101, No. 5, May 1996
- "Overcoming Posner," *The Public Interest*, No. 120, Summer 1995
- "The Paradox of a Great Ethnic Success," *The Wall Street Journal*, May 10, 1995
- "Managed Competition Is Unhealthy – for Baseball," *The Washington Times*, August 2, 1994
- "Books in Review: Romancing the State, The Fatal Embrace,: Jews and The State," by Benjamin Ginsberg, *Commentary*, January 1994
- "Books in Review: The Baseball Business, Play Ball: The Life and Troubled

Times of Major League Baseball," by John Feinstein, *Commentary*, Vol. 96, No. 3, September 1993

"GOP Jujitsu Strategy," *The Washington Post*, June 23, 1993

"Where Dad Belongs," *The Wall Street Journal*, June 18, 1993

"Our Students, Still at Risk," *The New York Times*, May 3, 1993

"The Next Rebellion: Parents vs. The Liberals," *The Washington Times*, April 23, 1993

"Jewish Voters & the Democrats," *Commentary*, April 1993

"The Missing Linkage," *The Jerusalem Report*, March 14, 1991

"Law Review Errs With Affirmative-Action Plan," *Manhattan Lawyer*, May 23, 1989

"Affirmative Action Can Hurt Those It Is Intended to Help," *The Times Union*, February 7, 1989

"Shultz Had Legal Right to Bar Arafat," *The Jewish Week, Inc.*, December 9, 1988

Seminars

Columbia University's Kraft Lecture Series – Panelist, "Is Religion Political?" March 2006

American Bar Association's Annual National Conference – Presented "Preserving Exclusivity: Navigating What's at Stake Under the Hatch-Waxman Act," January 2006

American Bar Association's Aviation and Space Law Committee Conference – Panelist, "Aviation Security and Privacy and Discrimination," October 2005.

Manhattan Institute's Center for Legal Policy Conference "9/11 Victim Compensation Fund: Successes, Failures, and Lessons for Tort Reform" – Opening Remarks, January 2005.

Manhattan Institute's Center for a Digital Economy Conference "Avoiding a Tragedy of the Telecommons" – Panelist, "How are Regulatory Incentives Affecting Competition and Investment?" May 2004

U.S. Chamber of Commerce's Alternatives to Litigation Conference – Panelist, "Administrative Compensation Systems," April 2004

Prior Experience

Mr. Lefkowitz served as a consultant to the Bradley Foundation in 1993. From 1987 - 1991, he was a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison.

Courts

United States Supreme Court as well as numerous federal district and appellate courts.