



**Anthony C. Kaye**  
*Partner*

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**SALT LAKE CITY**

#### **- PRACTICE AREAS**

Litigation, Appellate, Bankruptcy, Reorganization and Capital Recovery, Commercial Real Estate Recovery, Communications, Complex Commercial Litigation, Construction Dispute Resolution, Consumer Class Action Litigation, Consumer Financial Services, Intellectual Property Litigation, Mortgage Banking, Product Liability and Mass Tort

#### **- BACKGROUND & EXPERIENCE**

Anthony C. Kaye is a partner in the Litigation Department. He focuses his practice on business litigation and complex civil litigation at both the trial and appellate levels in federal and state courts throughout the United States. He is a member of the Appellate, Commercial Real Estate Recovery, Complex Commercial Litigation, Construction Dispute Resolution, Consumer Class Action Litigation, Consumer Financial Services, Mortgage Banking, Communications, Intellectual Property Litigation, Product Liability and Mass Tort, and Bankruptcy, Reorganization and Capital Recovery Groups.

Mr. Kaye 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. Mr. Kaye has represented clients before the U.S. Courts of Appeals for the District of Columbia and the Tenth Circuits, and the U.S. Supreme Court. He also has represented clients in matters before the Utah Public Service Commission and the Federal Communications Commission. In addition to judicial and administrative proceedings, Mr. Kaye has substantial experience resolving disputes through mediation and arbitration.

### **Representative Matters**

- 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**

Mr. Kaye 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 Mr. Kaye 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**

Division 1 of the ABA Forum on the Construction Industry (Dispute Avoidance and Resolution),

Member, and Editor of the Division's membership newsletter, *The Dispute Resolver*

### **Recognition & Accomplishments**

Named a leading Lawyer in Utah ("Utah Legal Elite") by *Utah Business Magazine*, for business litigation, 2006-2011

Received the 2011 Distinguished Pro Bono 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**

"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

"A Broader Scope for American Pipe Tolling Doctrine," *Law 360*, November 2008

### **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**

Utah Democratic Lawyers Council, Member

Prevent Child Abuse Utah, 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 Tenth Circuit

U.S. Supreme Court