



MICHELLE MEROLA

Partner, Associate General Counsel, Financial
Institution Subpoena Compliance Practice Leader,
Cybersecurity & Privacy Practice Leader

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Michelle relies on her litigation experience to counsel clients on regulatory and compliance matters, including the development and implementation of compliance programs, the oversight of internal investigations and audits, and the analysis and preparation of self-disclosures to a variety of state and federal agencies.

She has extensive experience litigating civil and criminal matters in a variety of federal jurisdictions as well as New York State. A significant portion of her practice is dedicated to defending corporations and individuals in government investigations, audits, and administrative proceedings related to tax, environmental, fraud, and health care matters. Michelle also regularly challenges agency determinations in New York State courts through Article 78 proceedings.

In recent years, her practice has also included cybersecurity and data privacy counseling under an array of international, federal, and state laws, including HIPAA, the New York State Department of Financial Services' Cybersecurity Regulation, the New York Shield Act, the California Consumer Privacy Act, and the EU's General Data Protection Regulation. Michelle regularly collaborates with management teams, IT staff, and forensic experts to analyze the scope of a data breach and provide notification to affected individuals and required government agencies. She also works with clients and consultants to develop robust data security programs, policies, and compliance practices. Michelle is a Certified Information Privacy Professional/Europe (CIPP/E).

Michelle serves as one of the firm's assistant general counsel/loss prevention partners. She also chairs the Firm's Technology Strategy Committee and sits on the Security Committee.

Prior to joining the firm, Michelle served as an Assistant United States Attorney for the District of Columbia, where she oversaw and directed fraud investigations involving a variety of government agencies, including the Federal Bureau of Investigation, the Department of Treasury, the Secret Service, the Department of Transportation, and the District of Columbia Tax and Revenue Office. She also

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Practices & Industries

Business Crimes & Criminal
Investigations
Tax Investigations & Defense
Cybersecurity & Privacy
Healthcare
Home Care
Business Litigation
Accountant Professional
Financial Institution Subpoena
Compliance
Food & Beverage

MICHELLE MEROLA

successfully litigated numerous criminal jury trials in the local courts. Prior to that, Michelle was an associate at a D.C. law firm, where she gained experience in complex commercial and technology disputes.

Honors

- Listed, *Best Lawyers in America* (Litigation and Controversy - Tax) 2023 - 2024
- Mussey Prize for student with highest scholastic average in final year of law school
- Department of Justice Special Achievement Award

Experience

A team of Hodgson Russ attorneys achieved a speedy and successful resolution for a clinical laboratory with an Article 78 proceeding against DOH and OMIG, which had denied the laboratory's application to enroll as a Medicaid provider on the basis of an unpublished DOH laboratory density policy. Our client brought suit, and OMIG and DOH offered to settle the matter, on the strength of the submissions and without filing a response, by approving our client's application for enrollment in the Medicaid program. Due to the team's successful efforts, the client may now offer its important laboratory services to practitioners serving Medicaid recipients in New York.

In a joint defense effort with six national law firms, our attorneys brought to successful conclusion the criminal trial of five senior managers of an international logistics provider who faced federal criminal charges of conspiring to employ illegal aliens at plants nationwide and impeding the lawful functions of the IRS and Social Security Administration. Five of the defendants, including our client, received only minimal fines of \$1,000 to \$5,000 each and avoided incarceration.

The New York State Supreme Court, Albany County, upheld the award of an eight-year contract to produce state-of-the-art driver's licenses and identification cards for the New York State Department of Motor Vehicles to Canadian Bank Note Ltd. subsidiary and Hodgson Russ client, CBN Secure Technologies, Inc. CBN STI was awarded the contract to produce the driver's licenses and identification cards on a laser-engraved polycarbonate card. Under its proposal, photos will be laser-engraved onto the document in grayscale, with a second grayscale photo engraved into a ghost window embedded in the card. The DMV found that CBN STI's bid was the most secure solution and warranted the extra cost necessary to produce the highly secure documents. The DMV's determination prompted the two unsuccessful bidders, De La Rue North America and Morpho Trust USA, to challenge the award before the Office of the State Comptroller (OSC). The OSC confirmed the award, finding no

Admissions

New York

District of Columbia

U.S. Court of Appeals, District of Columbia

U.S. District Court, District of Columbia

U.S. District Court, Northern District of New York

U.S. District Court, Western District of New York

Clerkships

Judge Truman Morrison III, Superior Court of the District of Columbia, 1997-1998

Education

Pennsylvania State University, B.A.

American University, Washington College of Law, J.D., magna cum laude

MICHELLE MEROLA

indication of an unfair advantage. Following the decision of the OSC, De La Rue and Morpho Trust filed an Article 78 proceeding, which Hodgson Russ attorneys opposed on CBN STI's behalf. Hodgson Russ represented CBN STI at oral argument. In a written decision, the court denied petitioners' requests and dismissed their petitions. The court's decision vindicates the DMV's procurement process and represents a significant victory for CBN STI, which expects to begin producing New York State's driver's licenses within the next few months.

Hodgson Russ represented a client that was certified as an New York State Empire Zone business in its challenge to the state's retroactive denial of tax benefits. The New York Court of Appeals ruled that it was unconstitutional to take away the previous year's Empire Zone tax credits from businesses that were kicked out of the program when the state changed the rules of participation midstream.

Hodgson Russ assisted a national financial institution with the development and implementation of a customized compliance program to address the institution's response to subpoenas, summons, and information requests. The compliance program was designed to ensure adherence to the institution's obligations under the Gramm Leach Bliley Act, the Right to Financial Privacy Act, the Internal Revenue Code, and various state laws and regulations, while also protecting customers' privacy and their ability to challenge the release of their information in certain circumstances.

Hodgson Russ oversaw the Department of Justice-mandated self-audits of inpatient claims under specific diagnosis related groups (DRGs) and negotiated with the government to favorably resolve the alleged overpayments. The overpayment analyses were governed by complicated reimbursement rules as well as government policies and practices related to settling false claims.

Hodgson Russ expeditiously analyzed the scope of a data breach for a regional financial institution and prepared breach notification notices to the required parties. As a result of the client's immediate response, the client was able to avoid any adverse consequences.

A Hodgson Russ team led by Jane Bello Burke and Michelle Merola obtained an important victory for a major New York health care system, after the PHHPC (the Public Health and Health Planning Council) proposed to disapprove a CON (certificate of need) to operate an ASC (ambulatory surgery center). A competing health care system vigorously opposed the application, arguing that there was no "public need" for the ASC - one of the statutory prerequisites for the issuance of a CON. Following a six-day hearing, the administrative law judge issued a strongly worded opinion rejecting the competing health care system's opposition, which he concluded was driven by self-interest, was exaggerated, and did not form a sound basis for decision, and recommending approval of the ASC. As a result of the successful challenge, the ambulatory center is up and running, providing needed services to the community.

The government claimed a Hodgson Russ client defrauded New York State regarding an environmental remediation contract. The claim included charges of mail fraud and money laundering. Hodgson Russ lawyers, led by Joseph V. Sedita, Michelle Merola and Reena Dutta, defended the client at trial, demonstrating that the government failed to satisfy the elements of the charges. The judge ultimately agreed, granting Hodgson Russ's motion for judgment of acquittal, acquitting the client of all charges.

MICHELLE MEROLA

Hodgson Russ represented a national financial institution in developing a subpoena compliance plan and in day-to-day subpoena compliance. Compliance typically involved negotiations with various federal and state agencies and required careful adherence to the Gramm Leach Bliley Act, the Right to Financial Privacy Act, the Internal Revenue Code and numerous other statutory and regulatory rules.

Hodgson Russ lawyers Michelle Merola and Reena Dutta convinced federal prosecutors for the Southern District of New York to dismiss a pending indictment against a client for conspiracy to commit securities fraud and wire fraud. The prosecutors were ultimately persuaded to dismiss the indictment based on Michelle and Reena's strong advocacy, showing that there was a Speedy Trial Act violation that could result in pretrial dismissal by the court. The client is now able to move forward with his life and business activities without the threat of criminal sanctions.

After a protracted litigation and multiple unfavorable rulings for the state, the New York State Department of Taxation and Finance capitulated in its attempt to impose approximately \$85,000 in sales tax on the services of a Hodgson Russ client. Moreover, after reviewing the merits of the case, the New York State Supreme Court judge ordered the Tax Department to pay our client approximately \$159,000 in attorneys' fees under the Equal Access to Justice Act, which permits the award of fees in cases where government action is not substantially justified.

In the News

Area law practice helps revitalize buildings and grounds at Yaddo
The Saratogian, October 13, 2020

Law firm volunteers to spiff up Yaddo
Times-Union, October 9, 2020

The End of the Internal Investigation and the Risk of the Internal Whistleblower: Self-Disclosure in the FCPA Context
The New York Law Journal, March 30, 2018

Hodgson Russ Opens Law Office in Saratoga Springs, NY
May 16, 2013

Hodgson Russ Formalizes Tax Defense Capabilities by Forming Practice Group
April 7, 2010

Press Releases

83 Hodgson Russ LLP Attorneys Ranked in 2024 Edition of *Best Lawyers in America*
August 17, 2023

71 Hodgson Russ Attorneys Ranked in 2023 Edition of *Best Lawyers in America*
Hodgson Russ Press Release, August 19, 2022

MICHELLE MEROLA

Publications

The Final New York State Budget is Approved: Here are the Major Impacts for Hospitals, Nursing Facilities, and other Health Care Providers

Hodgson Russ Healthcare Alert, May 14, 2024

The Final New York State Budget is Approved and Imposes Significant Disruptions for New York Home Care Providers

Hodgson Russ Home Care Alert, May 6, 2024

New York State Department of Health Adopts Health Equity Impact Assessment Regulation Applicable To Facilities Including Clinics, Hospitals, and Skilled Nursing Facilities Submitting Applications through the State's Certificate of Need (CON) Process

Hodgson Russ Healthcare Alert, September 7, 2023

Final New York State Budget Imposes New Requirements for New York Home Care Providers and Significant Financial Investments for the Health Care Industry

Hodgson Russ Home Care and Healthcare Alert, May 16, 2023

What's in Your "Secret Sauce?" The FTC's Proposed Rule to Ban Noncompetes and Considerations for Food and Beverage Businesses

Hodgson Russ Food & Beverage Alert, May 3, 2023

Chick-fil-A Confirms Data Breach

Hodgson Russ Food & Beverage Alert, March 20, 2023

McDonald's Faces Class Action Lawsuit Over Sexual Harassment, Hostile Work Environment Accusations

Hodgson Russ Food & Beverage Alert, January 4, 2023

New Year, New Home Care Laws: Medicaid-Funded Home Health Care Services Must Implement EVV by January 1, 2023

Hodgson Russ Home Care Alert, December 20, 2022

Are Your Labels Allergy-Friendly? Major Change Looming for Food and Drink Labels in the United States

Hodgson Russ Food and Beverage Alert, September 12, 2022

The Wait is Over: New York State Department of Health Releases the Licensed Home Care Services Agency Licensure Application

Hodgson Russ Home Care Alert, August 19, 2022

Presentations & Events

Public Company Update 2024

Hodgson Russ LLP, January 31, 2024

MICHELLE MEROLA

Cybersecurity Conference - NYC

Hodgson Russ LLP, 605 Third Avenue, Suite 2300, New York, NY, January 24, 2024

Key Threats and Cyber Risks Facing Financial Institutions

M&T Legal Division - Knowledge at Noon Series, September 21, 2023

Cybersecurity Conference

Hodgson Russ LLP, The Guaranty Building, 140 Pearl Street, Buffalo NY 14202, June 6, 2023

California's Privacy & Data Security Law: A Harbinger of Things to Come?

February 8, 2023

37th Annual School Client Conference

Buffalo Niagara Marriott, 1340 Millersport Hwy, Amherst, NY 14221, May 6, 2022

Panel of Experts: Cyber Security 2021

Buffalo Business First, September 30, 2021

Advanced *Kovel* Issues for Accountants

December 8, 2020

Update on IRS Foreign Information Reporting and Tax Prosecutions

The Harvard Club NYC 35 W. 44th Street, New York, NY, October 30, 2019

Minimizing Exposure to Lawsuits in U.S. Courts: An Introduction for European Companies

October 16, 2019

Blog Posts

- Medicaid Fraud Control Unit and Other Prosecutors Hard At Work Replenishing State Coffers Depleted By State's COVID Response

The Whistleblower Blog, November 17, 2020

- Florida Nursing Facility Pays \$17 Million False Claims

The Whistleblower Blog, June 23, 2015

- Whistleblowers Recover \$2 Million in Worthless Services Case

The Whistleblower Blog, December 1, 2014

- The New York State False Claims Act Reaches Tax Violations Prior to 2010

The Whistleblower Blog, October 24, 2013

- Whistleblower Teams Up With the State of New York in Groundbreaking Suit Against Sprint-Nextel Corporation

The Whistleblower Blog, May 14, 2012

- Shareholder Derivative Suits Premised on False Claims Act Violations

MICHELLE MEROLA

The Whistleblower Blog, December 19, 2011

- SEC Rules Implement Dodd-Frank Whistleblower Program

The Whistleblower Blog, June 23, 2011

- Proposed Expansion of the IRS Whistleblower Program

The Whistleblower Blog, March 11, 2011

- Dodd-Frank Act Impacts Whistleblowers | Hodgson Russ

The Whistleblower Blog, January 24, 2011

- Major Changes to New York State False Claims Act

The Whistleblower Blog, August 23, 2010

Professional Affiliations

- District of Columbia Bar Association
- New York State Bar Association
- Bar Association of Erie County

Community & Pro Bono

- Secretary, Board of Directors: The Melanie Foundation
- Secretary, Board of Directors: The Saratoga Lake Association
- Commissioner: The Saratoga Recreation Commission