

Eric T. Werlinger

Partner

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Practices

FOCUS: Litigation

Appeals and Critical Motions

Class Action Litigation

Consumer Finance Litigation and
Regulatory Compliance

Financial Markets Litigation and
Enforcement

Health Care

Patent Litigation and Patents

Pharmaceutical and Life Sciences Litigation

Securities Litigation

White Collar and Internal Investigations

Industries

Energy

Finance and Financial Markets

Pharmaceutical and Life Sciences

Technology

Education

JD, The University of Texas at Austin
School of Law, *with honors*

BA, Texas A&M University, *summa cum
laude, Phi Beta Kappa*

Bar Admissions

Texas

District of Columbia

Court Admissions

US Court of Appeals, Second Circuit

US Court of Appeals, Third Circuit

US Court of Appeals, Fifth Circuit

US Court of Appeals, Sixth Circuit

US Court of Appeals, Seventh Circuit

Eric Werlinger helps clients solve litigation problems big and small. Trained first as an appellate litigator, Eric brings intellectual curiosity, masterful strategy and top-flight written and oral advocacy to every engagement. But he's also practical. Eric learns his client's industry (he's particularly knowledgeable of the retail banking and pharmaceutical sectors), and he proposes solutions that fit the client's business needs. Sometimes that's bet-the-company litigation; other times it's a nuisance-value settlement. Eric is a big believer in prevention and compliance. He regularly advises clients on emerging trends in legal and regulatory risks, and he helps them craft proactive solutions to avoid exposure.

Deep consumer financial litigation and class action experience

For many years, Eric has defended banks and credit unions against consumer suits and putative class actions related to retail banking services. His substantive experience runs the gamut: overdraft-fee class actions, discriminatory lending allegations, Fair Credit Reporting Act claims, and Telephone Consumer Protection Act cases. Wielding his appellate experience, Eric has successfully resolved many cases through motions practice and has notched several precedent-setting victories along the way. He is highly experienced in enforcing arbitration agreements and class-action waivers. And if a plaintiffs' lawyer threatens mass arbitration, Eric knows how to deal with that too.

Further, Eric helps his retail banking clients stay out of the courtroom in the first place through preventative counseling. He sits down with legal and non-legal professionals and learns how the client delivers products to its customers. He then helps the client adopt best practices and revise consumer contracts to avoid legal risks. Eric and his team stay on top of the latest litigation and regulatory compliance trends, which he brings to bear when advising clients.

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US Court of Appeals, Ninth Circuit
US Court of Appeals, Tenth Circuit
US Court of Appeals, Eleventh Circuit
US Court of Appeals, Federal Circuit
US Court of Appeals, District of Columbia Circuit
US District Court, District of Columbia
US District Court, Eastern District of Texas
US District Court, Eastern District of Wisconsin

Additionally, Eric is a seasoned securities litigator. He has helped companies and individuals navigate government investigations by the Securities and Exchange Commission and the US Department of Justice. In private securities litigation, Eric has led trial-court litigation arising under federal securities laws, including dispositive briefing, discovery and mediation.

A broad appellate background — with a knack for Federal Circuit litigation

Eric started his career in appeals and critical motions, and it is still a big part of what he does today. He has litigated in the vast majority of the US Courts of Appeals and has authored multiple briefs in the US Supreme Court. Eric is a generalist at heart, but he is an especially experienced patent appellate litigator. He has briefed and argued numerous cases before the US Court of Appeals for the Federal Circuit. Eric also has a wealth of appellate experience in class-action litigation. He has defended favorable judgments on behalf of financial institutions and publicly traded companies against last-ditch efforts to revive consumer lawsuits threatening massive liability. Eric also successfully petitioned for review of class-certification rulings via Rule 23(f) — a rare feat.

Before entering private practice, Eric clerked for the Honorable Danny J. Boggs of the US Court of Appeals for the Sixth Circuit. While in law school, Eric served as a judicial intern for the Honorable Royce Lamberth of the US District Court for the District of Columbia and for the Honorable Sim Lake of the US District Court for the Southern District of Texas. He also served on the editorial board of the *Texas Law Review* and was a national champion of the 21st Annual Duberstein Bankruptcy Moot Court.

Representative Experience

Appellate

- Multiple successful appeals on behalf of retail financial institutions in overdraft-fee class actions. After prevailing on motions to dismiss in trial court, Eric convinced the Fifth Circuit, Seventh Circuit, and Washington

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Court of Appeals to affirm with-prejudice dismissals on behalf of his clients.

- Persuaded the Federal Circuit to reverse a case-ending claim construction regarding the application of general rounding principles to specific pH values recited in patent claims. Following remand, Eric's client prevailed on renewed claim-construction briefing and eventually at trial.
- Secured dismissal of a securities fraud suit against former officers of a merger target brought post-closing by a putative class of investors in the acquiring company. In a precedent-setting decision, the Second Circuit affirmed that investors in the acquiring company had no cause of action for pre-closing statements that the target company made about itself.
- Convinced the Federal Circuit to reverse the PTAB's invalidation of a telecommunication patent by successfully challenging the Board's construction of a crucial claim limitation.
- Obtained a rare defense-side petition for interlocutory review of a class-certification order in the Ninth Circuit in a securities fraud suit against a shipping-supply company and its executives.
- Represented a group of market makers as *amici curiae* challenging the SEC's Transaction Fee Pilot program. In vacating the rule, the US Court of Appeals for the District of Columbia Circuit quoted extensively from our brief—which explained the adverse impact of the Fee Pilot ignored by the Commission. *N.Y. Stock Exch. LLC v. SEC*, 962 F.3d 541 (DC Cir. 2020).
- Defeated multiple interlocutory appeals on behalf of a debtor in a mega-bankruptcy as part of a fiercely contested adversary action, navigating through a thicket of bankruptcy jurisdiction issues in the process.
- Successfully defended a medical device company in the Tenth Circuit against claims of securities fraud involving allegations of channel stuffing.
- Convinced the DC Circuit to vacate administrative findings and penalties assessed against two portfolio managers by the Securities and Exchange Commission related to the use of derivative hedging.
- Defended a complete dismissal of putative securities class action in the Third Circuit on behalf of leading bio-pharmaceutical company. Plaintiff

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argued that the company omitted information regarding regulatory proceedings before the Food and Drug Administration from its public filings.

- Successfully represented a major generic pharmaceutical company in the Federal Circuit, convincing the court to affirm the invalidation of several patents covering a multibillion-dollar drug.

Trial court

- Obtained dismissal of multiple consumer class actions against banks and credit unions, successfully arguing that the relevant account agreements foreclosed plaintiffs' challenges to overdraft and NSF fee policies.
- Convinced a district court to dismiss with prejudice allegations of false Medicare billing under the False Claims Act, despite prior suggestions by the court that it might allow an amended complaint to go forward.
- Represented a start-up company in a securities suit involving allegations of misstated inventory and goodwill valuations and allegedly inadequate internal controls. The case settled favorably after limited discovery and mediation.
- Defended a super-regional bank in a putative securities class action suit involving allegations regarding bank's internal controls over underwriting and reserving for loan loss. The case settled favorably after filing a motion to dismiss.
- Successfully enforced arbitration provisions on behalf of financial institutions and employers in various courts across the country.
- Represented a major hospitality company as plaintiff in contractual dispute in Fairfax Circuit Court, prevailing on demurrer to counter claims and navigating the case to favorable resolution.
- Prepared a successful motion to dismiss for a lender who was pled into third-party contract dispute on the eve of trial. Unable to respond to the motion, plaintiff voluntarily dismissed client in a matter of days.

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Recognitions

Recognized or listed in the following:

- *Best Lawyers in America*
 - Ones to Watch
 - Appellate Practice, 2023–2024

News

- Katten Scores Dismissal of Patent Docketing Contractor From Lawsuit Regarding Missed IP Deadline (April 16, 2024)
- Another Precedent-Setting Remand from the Federal Circuit Garners Media Attention (April 2, 2024)
- Precedent-Setting Patent Win in Federal Circuit Creates Media Buzz From *Bloomberg Law*, *Reuters*, and More (November 7, 2023)
- Katten Attorneys Distinguished by *Best Lawyers*® (August 17, 2023)
- Insolvency and Restructuring Team Recognized With Multiple International M&A Awards (August 7, 2023)
- Insolvency and Restructuring Team Honored With Multiple *M&A Advisor* Awards (March 16, 2023)
- Katten Securities Litigation Team Scores a Precedent-Setting Victory in the Second Circuit (October 7, 2022)
- Katten Attorneys Recognized by *Best Lawyers*® (August 18, 2022)
- Katten Insolvency and Restructuring Team's 2021 Achievements Recognized with *M&A Advisor* Awards (June 13, 2022)
- Katten Bankruptcy Team Wins Numerous Turnaround Awards From The *M&A Advisor* (September 20, 2021)

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- Generics Group, Intel Back Mylan's Fintiv Fight At High Court | *Law360* (September 14, 2021)
- Media Takes Note of Katten's Victory on Behalf of Windstream (April 20, 2021)
- Katten Wins Record \$19 Million+ Award for Client Windstream In False Advertising Case Arising Out Of Windstream's Chapter 11 (April 12, 2021)
- *Law360* Celebrates Katten's New Partner Class (February 8, 2021)
- Katten Announces New Partner Class (October 30, 2020)

Publications

- CFPB Overdraft Rule Could Mean Big Shift In Banking Biz (February 16, 2024)
- The Latest Chapter in the Government's War on Purported "Junk" Fees: The CFPB Moves to Define Overdraft Services as Credit and to Cap Fee Amounts (January 19, 2024)
- Ninth Circuit Affirms Validity of Cy Pres-Only Settlements, Setting Up a (Second) Potential SCOTUS Showdown | ABA Class Actions & Derivative Suits Committee (September 8, 2022)