



## Robert T. Smith

Partner

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### Practices

FOCUS: Litigation

White Collar,  
Investigations and  
Compliance

Appellate and Supreme  
Court Litigation

Insurance and Health  
Care Fraud Litigation

Monitorships

### Recognition

Katten Muchin  
Rosenman LLP Pro  
Bono Service Award,  
2014

### Education

JD, Georgetown  
University Law Center  
*magna cum laude*,  
Order of the Coif,  
West Outstanding  
Scholastic  
Achievement Award

BA, University of  
Richmond  
*cum laude*

### Bar Admissions

District of Columbia  
New York

A leader of the firm's Appellate and Supreme Court Litigation practice, Robert T. Smith works with clients across a variety of industries and practices—from health care to financial services—tackling some of their most difficult and important legal problems, including complex civil and criminal appeals, dispositive motions and trial practice, and governmental investigations and enforcement actions.

Drawing on his time as a federal appellate clerk, Rob has served as the principal author of dozens of filings in federal and state appellate courts, including the US Supreme Court, and he has likewise assisted clients with critical motions practice in federal and state trial courts throughout the country. Rob's written advocacy has covered a wide range of substantive areas, including complex civil litigation, criminal cases, environmental matters, health care fraud and claims under the False Claims Act, and patent and trademark disputes. A generalist in some of these areas, Rob excels at drafting creative and concise arguments that resonate with judges, who are likewise generalists.

In addition, Rob has substantial experience as an oral advocate. He has argued high-stakes appeals before the US Courts of Appeals for the First, Second, Fourth, Fifth, Sixth and Federal Circuits. Rob also has appeared numerous times in federal and state trial courts, where he has successfully argued dispositive motions, in support of bail, and at federal sentencing hearings. In one such case, for example, Rob successfully argued for the dismissal of alleged felony charges against a corporate defendant under the Outer Continental Shelf Lands Act.

Rob also has assisted corporate and individual clients during trial—whether serving on the front lines or behind the scenes as a legal counselor and motions writer. During one such jury trial, a federal criminal case, Rob served as co-chair, delivering the opening statement, cross-examining the government's expert witness and arguing the vast majority of legal motions before the district court judge. As another example, Rob served as a legal consultant to the defense team during a federal criminal trial, during which he wrote the pre-trial motions, developed jury instructions and drafted a motion for judgment of acquittal in real time—as the trial progressed. In both cases, Rob helped lay the foundation for a favorable set of jury instructions and, ultimately, verdicts of acquittal for his clients on all charges.

Beyond his appellate and trial work, Rob regularly assists corporate and individual clients in navigating the difficult and often trying circumstances that surround criminal and civil



### Court Admissions

US Supreme Court  
US Court of Appeals,  
District of Columbia  
Circuit  
US Court of Appeals,  
Federal Circuit  
US Court of Appeals,  
First Circuit  
US Court of Appeals,  
Second Circuit  
US Court of Appeals,  
Fourth Circuit  
US Court of Appeals,  
Fifth Circuit  
US Court of Appeals,  
Sixth Circuit  
US Court of Appeals,  
Seventh Circuit  
US Court of Appeals,  
Eighth Circuit  
US Court of Appeals,  
Ninth Circuit  
US Court of Appeals,  
Eleventh Circuit  
US District Court,  
District of Columbia  
US District Court,  
District of Maryland  
US District Court,  
District of North  
Dakota  
US District Court,  
Southern District of  
New York  
US District Court,  
Eastern District of  
New York

governmental enforcement actions and investigations, including proceedings under the False Claims Act. Rob has conducted internal investigations, advised clients on potential criminal and civil exposure, managed responses to subpoenas, assisted in making presentations and disclosures to prosecutors about alleged client conduct, and negotiated with prosecutors and enforcement lawyers at the Department of Justice, various US Attorney's Offices, and regulatory agencies.

Rob is a steadfast proponent of pro bono legal representation and a recipient of the firm's Pro Bono Service Award. Through this work, Rob has successfully argued an appeal to the Second Circuit on behalf of a transgender client asserting claims of discrimination; secured a verdict of acquittal on behalf of an elderly, indigent client indicted on federal wire fraud charges; and persuaded the Sixth Circuit to allow an inmate a second chance to challenge his state-court conviction based on claims of actual innocence.

Before joining Katten, Rob served as a law clerk to Chief Judge John M. Walker Jr. on the US Court of Appeals for the Second Circuit and, prior to and during law school, worked as a legislative assistant and legislative correspondent for Representative Rush D. Holt of the US House of Representatives.

### Selected Experience

- Successful representation and argument on behalf of a major health care system and university before the US Court of Appeals for the Fourth Circuit in multiple lawsuits alleging fraud and retaliation under the False Claims Act and discrimination and retaliation under Title VII of the Civil Rights Act of 1964; secured the dismissal of all claims from the District Court after proving that the plaintiff had engaged in litigation-related misconduct; and obtained a unanimous, precedential opinion from the Fourth Circuit affirming the sanction of dismissal. *Rangarajan v. Johns Hopkins Univ.*, --- F.3d ---, 2019 WL 847804 (4th Cir. 2019), *aff'g*, 262 F. Supp. 3d 259 (D. Md. 2017).
- Successful representation of medical company sued by a competitor for tortious interference with contract and other common-law claims. Secured the dismissal of the complaint by the US District Court for the District of Maryland.
- Representation of large financial institution in a dispute over the scope of insurance coverage for third-party claims brought against the institution. The case is pending before the US Court of Appeals for the First Circuit.
- Successful representation of a publicly traded company in an appeal before the US Court of Appeals for the Third Circuit. The company had been pursuing FDA approval to market its signature drug for a new indication. A group of plaintiffs filed a putative class action under the Securities Exchange Act of 1934, alleging that the company misled investors about the prospects of FDA approval. The Third Circuit affirmed the dismissal of the plaintiffs' complaint.
- Successful representation of a corporate client charged with felony violations of the Outer Continental Shelf Lands Act. Successfully argued a motion to dismiss the felony counts of the indictment on the basis that the federal government had failed to promulgate regulations that imposed liability on contractors for failing to comply with



substantive regulations enacted under the Outer Continental Shelf Lands Act. *United States v. Wood Group Prod. Servs. Network, Inc.*, No. 15-cr-197 (E.D. La.), appeal dismissed, No. 16-30561 (5th Cir.).

- Representation of two major energy companies subject to separate investigations for alleged felony violations of the Clean Air Act. In response to both investigations, worked with colleagues in the Environmental and Workplace Safety practice to develop legal arguments that helped convince the Department of Justice to decline to file criminal charges.
- Successful representation of two securities professionals in a petition for review before the US Court of Appeals for the District of Columbia Circuit challenging an administrative finding of securities fraud by the Securities and Exchange Commission.
- Successful representation of a transgender ironworker in an appeal before the US Court of Appeals for the Second Circuit alleging discrimination and retaliation against his union and two of its officials. In a precedential opinion reinstating the client's lawsuit, the Second Circuit recognized for the first time that allegations of transgender discrimination are sufficient to state a claim for breach of a labor union's duty of fair representation, an implied cause of action under the National Labor Relations Act. The Second Circuit also ordered the US District Court for the Southern District of New York to reconsider the client's claims of discrimination under Title VII of the Civil Rights Act of 1964, holding that the failure to exhaust administrative remedies with the Equal Employment Opportunity Commission did not mandate dismissal, and recognizing that the client's failure to exhaust might be excused on one or more equitable grounds. The Second Circuit lauded Katten's work during the argument and noted in its opinion that the client was "ably represented" on appeal. *Fowlkes v. Ironworkers Local 40*, 790 F.3d 378 (2d Cir. 2015).
- Successful representation of The Retail Property Trust, a wholly owned subsidiary of Simon Property Group, Inc., in the US Court of Appeals for the Ninth Circuit, arguing that the Labor Management Relations Act (LMRA) does not preempt traditional state-law property claims for trespass and private nuisance asserted against a labor union that was arguably engaged in a secondary boycott at the time. The Ninth Circuit agreed in an important, precedential opinion that overturned an adverse decision by the district court. *Retail Property Trust v. United Bhd. of Carpenters & Joiners of Am.*, 768 F.3d 938 (9th Cir. 2014).
- Successful argument before the US Court of Appeals for the Sixth Circuit, obtaining authorization for client to file a second challenge to a state court conviction through the actual innocence gateway of the Antiterrorism and Effective Death Penalty Act (AEDPA). *In re McDonald*, 514 F.3d 539 (6th Cir. 2008).
- Coauthor of opening and reply briefs on behalf of a publicly traded company in an appeal before the US Court of Appeals for the Ninth Circuit raising the question whether the Securities Litigation Uniform Standards Act divested State courts of



concurrent jurisdiction to adjudicated covered class actions arising under the Securities Act of 1933.

- Primary author of an amicus curiae brief on behalf of the Texas Oil & Gas Association, the Texas Association of Business and the Texas Association of Manufacturers in litigation before the US Supreme Court over the Environmental Protection Agency's decision to regulate greenhouse gas emissions by stationary sources under Title I of the Clean Air Act. The Supreme Court's decision largely tracked the arguments that were raised in the amicus curiae brief; it held that the EPA lacked the authority to rewrite clear statutory provisions of the Clean Air Act. *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427 (2014).
- Chief author of a successful petition for a writ of certiorari and a reply brief, securing from the US Supreme Court vacatur of an adverse judgment that had been entered against the firm's clients in a tax case. *Grapevine Imports, Ltd. v. United States*, 636 F.3d 1368 (Fed. Cir. 2011), vacated and remanded by 132 S. Ct. 2099 (2012). Also chief author of an amicus curiae brief on behalf of Grapevine Imports in a related case before the Court, challenging the executive's authority to overrule by regulation a prior decision of a court. *United States v. Home Concrete & Supply, LLC*, 132 S. Ct. 1836 (2012).
- Assistance to a financing company in obtaining the dismissal of tort claims seeking to establish a precedent that would preclude such companies from extending second lines of credit to small businesses. The case was discussed in an article by *The Wall Street Journal* covering small business financing. *Small Bus. Fin. Solutions, LLC v. EBF Holdings, LLC*, C.A. No. N15C-05-088 (Del. Super. Ct.).
- Representation of a high-profile foreign national in an OFAC sanctions matter and successful petition for removal from the Special Designated Nationals and Blocked Persons List by OFAC.
- Assistance to a publicly held company in negotiating a non-prosecution agreement resolving alleged violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030. *United States v. Coventry Health Care Inc.* (D. Md.).
- Successful defense of a client, as co-chair of a federal criminal trial in the US District for the Eastern District of Virginia, against 10 counts of wire fraud. Representation included delivering the opening statement to the jury, cross-examining the government's expert witness and making an argument that led the district court to adopt a key jury instruction that helped to secure a judgment of acquittal. *United States v. Thomas*, No. 1:12-cr-386 (E.D. Va.).
- Successful defense of a corporate client, as member of a trial team, against charges of conspiracy and tampering in violation of the Clean Water Act; assisted with the formulation of a winning legal strategy and served as the primary draftsman for a number of key motions and memoranda, which led to favorable jury instructions and a judgment of acquittal. *United States v. United Water Env'tl. Servs., Inc.*, No. 10-cr-217 (N.D. Ind.).



- Assistance to a pro bono client in negotiating a misdemeanor plea agreement with the US Attorney's Office. Representation included serving as principal author of sentencing memorandum and arguing on behalf of client at sentencing hearing in the US District Court for the Eastern District of Virginia. The judge accepted the plea and imposed no period of incarceration. *United States v. Griese*, No. 1:11-mj-196 (E.D. Va.).

#### **Advisories**

- The Fifth Circuit Restricts BSEE's Enforcement Authority Over Offshore Contractors in the Gulf of Mexico (September 29, 2017)
- Fifth Circuit To Decide Whether BSEE Can Regulate Contractors Under the Outer Continental Shelf Lands Act (May 9, 2017)
- Fifth Circuit Decision in *Citgo* Case May Place Limits on Criminal Liability Under Migratory Bird Treaty Act (September 15, 2015)
- US Supreme Court Briefing of Greenhouse Gas Cases Completed — Oral Argument Scheduled for February 24, 2014 (February 17, 2014)
- CMS Issues Proposed 60-Day Rule for Reporting and Returning of Overpayments (February 21, 2012)
- CMS Issues Final ACO Regulations (November 10, 2011)
- Government Issues Eagerly Awaited Proposed ACO Regulations (April 12, 2011)

#### **Articles**

- Co-author, The Fifth Circuit Limits BSEE's Regulatory Authority Over Offshore Contractors (October 2017)

#### **Newsletters**

- *Health Care Update* (October 2010)
- *Health Care Credentialing Update* (October 2010)