

Robert T. Smith

Partner and Chair, Appeals and Critical Motions

Litigation

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Robert Smith leads the firm's Appeals and Critical Motions practice. Drawing on more than two decades of experience as an appellate litigator, Rob works with clients across a variety of industries — from healthcare to financial services — tackling their most important legal challenges, including civil and criminal appeals, dispositive motions at the trial-court level, enforcement actions and government investigations. Rob has served countless clients in this capacity, including pharmacy clients before the US Supreme Court and large insurers, healthcare providers and financial institutions before the US Courts of Appeals.

Effective advocacy in high-stakes appeals and trials

Rob excels at drafting creative and concise arguments that resonate with judges. Drawing on his experience as a federal appellate clerk, Rob has served as the principal author of countless briefs in federal and state appellate courts, including the US Supreme Court, and has assisted on critical motions in federal and state trial courts throughout the country. Rob's written advocacy has covered a wide range of substantive areas, including constitutional law and federal preemption, healthcare and insurance fraud and abuse, federal criminal law, and commercial, financial services and intellectual property disputes.

Rob also has substantial experience as an oral advocate. He has argued more than a dozen appeals in federal and state appellate courts, including the US Courts of Appeals for the First, Second, Fourth, Fifth, Sixth, Eighth, Eleventh and Federal Circuits. Rob has also argued numerous dispositive motions in trial court, earning, in one case, the dismissal of all felony charges against a corporate defendant. Rob is a Barrister in the Edward Coke Appellate Inn of Court, which is composed of members actively engaged in appellate practice, and he is a panelist at the Supreme Court Institute at the Georgetown University Law Center, where he helps moot advocates for upcoming arguments before the high court.

In addition, Rob has assisted corporate and individual clients at trial, where he has presented argument to the jury, examined witnesses, argued evidentiary issues, and helped shape legal strategy through

Practices

- Appeals and Critical Motions
- Healthcare Litigation, Reimbursement and Regulation
- Insurance and Healthcare Fraud Litigation
- Litigation
- White Collar and Internal Investigations

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
- Maryland
- New York

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, Third 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

motions practice and proposed jury instructions. In two such federal criminal trials, Rob helped lay the foundation for verdicts of acquittal for his clients on all charges. And Rob helps ensure that, if there is an adverse verdict, issues and arguments are adequately preserved for appeal.

Beyond his appellate and trial work, Rob assists corporate and individual clients handling internal and governmental investigations, and responding to governmental enforcement actions, including proceedings under the False Claims Act. Rob has conducted internal investigations on behalf of corporate clients and disinterested directors of debtors in bankruptcy proceedings, responded to investigations led by bankruptcy examiners, advised on criminal and civil exposure, managed responses to subpoenas and negotiated with lawyers at the Department of Justice, various US Attorney's Offices and regulatory agencies.

In his active pro bono practice, 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 for an 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.

Rob began his legal career as a law clerk to the Honorable John M. Walker Jr., Chief Judge of the US Court of Appeals for the Second Circuit. Prior to and during law school, Rob served as a legislative assistant and legislative correspondent to Representative Rush D. Holt of the US House of Representatives.

Representative Experience

- Successfully argued on behalf of a large insurance company, defending a preliminary injunction that enjoined various medical practices and owners from pursuing thousands of state-court lawsuits and arbitrations used to perpetuate an alleged fraud under New York's no-fault insurance system. In a precedential opinion, the U.S. Court of Appeals for the Second Circuit held that the Anti-Injunction Act was no impediment to enjoining hundreds of pending state-court lawsuits because the insurance company's claims under the Racketeer Influenced and Corrupt Organizations (RICO) Act satisfied an exception to the Anti-Injunction Act, and the Federal Arbitration Act was no barrier to enjoining thousands of arbitrations because the insurance company's RICO claims could be effectively vindicated only in federal court. *State Farm Mut. Auto. Ins. Co. v. Tri-Borough N.Y. Med. Practice, P.C.,* 120 F.4th 59 (2d Cir. 2024).

- US Court of Appeals, Tenth 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

- Principal author of successful appellate briefs that resulted in the vacatur of a judgment of conviction on charges of conspiracy to commit honest-services wire fraud in violation of 18 U.S.C. § 1349 and federal-program bribery in violation of 18 U.S.C. § 666. The U.S. Court of Appeals for the Fourth Circuit agreed that the district court erred in effectively directing a verdict for the government on the "official act" element of the first charge and that this error infected the jury's consideration of the second charge as well. *United States v. Lindberg,* 39 F.4th 151 (4th Cir. 2022).
- Successfully represented a State in defending two State laws regulating pharmacy benefit managers (PBMs), which, the PBMs claimed, were preempted by the Employee Retirement Income Security Act of 1974 (ERISA) and Part D of the Medicare program. Working with the State Attorney General's Office, successfully defended the State's laws in federal district court, convinced the US Supreme Court to set aside an adverse ruling by the US Court of Appeals for the Eighth Circuit, and then argued successfully on remand in the Eighth Circuit, convincing that court to rule in the State's favor under ERISA and to preserve all provisions of the State's laws under Medicare Part D except those affected by intervening changes to Part D standards. *Pharm. Care Mgmt. Ass'n v. Wehbi*, 18 F.4th 956 (8th Cir. 2021), *on remand sub nom. by Dirke v. Pharm. Care Mgmt. Ass'n*, 141 S. Ct. 1364 (2021).
- Argued on behalf of major healthcare 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 dismissal of all claims from the District Court after proving that plaintiff had engaged in litigation-related misconduct. Obtained unanimous, precedential opinion from the Fourth Circuit affirming the sanction of dismissal. *Rangarajan v. Johns Hopkins Univ.*, 917 F.3d 218 (4th Cir. 2019), *cert. denied*, 139 S. Ct. 2762 (2019).
- Successfully represented dozens of pharmacist organizations as *amici curiae* before the US Supreme Court in defending a State law that regulates pharmacy benefit managers (PBMs) from claims of preemption under the Employee Retirement Income Security Act of 1974. Previously represented community pharmacist organizations as *amici curiae* in two appeals before the US Court of Appeals for the Eighth Circuit. *Rutledge v. Pharm. Care Mgmt. Ass'n*, 141 S. Ct. 474 (2020).
- Successfully represented several financial institutions in a lawsuit asserting civil claims under the Racketeer Influenced and Corrupt

Organizations Act and common-law claims for fraud. The U.S. District Court for the Southern District of New York dismissed the action and the U.S. Court of Appeals for the Second Circuit affirmed.

- Author of *amici curiae* brief on behalf of organizations representing independent medical practices, defending a rule by the Centers for Medicare & Medicaid Services that brought parity to the reimbursements that Medicare provides to hospital off-campus departments and freestanding physician offices. In upholding this site-neutral payment rule, the US Court of Appeals for the District of Columbia Circuit adopted the logic set forth in our clients' *amici curiae* brief.
- Successfully represented 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.
- Successfully represented publicly traded company in 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 dismissal of the plaintiffs' complaint.
- Successfully represented transgender ironworker in 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. *Fowlkes v. Ironworkers Local 40*, 790 F.3d 378 (2d Cir. 2015).
- Successfully represented 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 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).

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- Represented publicly traded company in appeal before US Court of Appeals for Ninth Circuit raising question whether Securities Litigation Uniform Standards Act divested State courts of concurrent jurisdiction to adjudicated covered class actions arising under Securities Act of 1933.
- Successfully represented a corporate client charged with felony violations of the Outer Continental Shelf Lands Act. Briefed and argued a motion that secured the dismissal of all 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 Act. *United States v. Wood Group Prod. Servs. Network, Inc.*, No. 15-cr-197, 2016 WL 1458925 (E.D. La. Apr. 14, 2016), *appeal dismissed*, No. 16-30561 (5th Cir.).
- Successfully defended a corporate client, following a 2013 federal jury trial, against charges of conspiracy and tampering in violation of Clean Water Act. Assisted the trial team in developing critical legal defense, which translated into favorable jury instructions and, ultimately, verdicts of acquittal on all charges.
- Successful argument before US Court of Appeals for Sixth Circuit, obtaining authorization for client to file second challenge to state court conviction through actual innocence gateway of Antiterrorism and Effective Death Penalty Act.

Recognitions

Recognized or listed in the following:

- Katten Muchin Rosenman LLP Pro Bono Service Award
  - 2014, 2025

News

- Katten Restructuring Wins in Three Categories of the M&A Advisor's 17th Annual International M&A Awards (July 14, 2026)
- Katten Restructuring Wins in Three Categories of *Global M&A Network*'s 20th Annual Turnaround Awards (January 21, 2026)
- Katten Announces 2025 Pro Bono Service Award Recipients (October 22, 2025)
- Katten Restructuring Wins in Seven Categories of *The M&A Advisor*'s 19th Annual Turnaround Awards (January 30, 2025)

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- Katten Restructuring Awarded Multiple Turnaround Atlas Awards by the *Global M&A Network* (September 17, 2024)
- NC Insurance Mogul Chases Acquittal After Bribery Retrial | *Law360* (May 30, 2024)
- 2nd Circ. Won't Revive UBS Suit Over Disclosed Account Info | *Law360* (May 13, 2024)
- 5th Circ. Urged To Reject Retrial In DOJ's $140M Fraud Suit | *Law360* (December 21, 2023)
- UBS Escapes Couple's Suit Over Disclosed Bank Account Info | *Law360* (July 18, 2024)
- Full Fed. Circ. Won't Hear Monolithic's Patent Venue Fight | *Law360* (February 6, 2023)
- Pharmacy Groups Urge 10th Circ. To Uphold Okla. PBM Law | *Law360* (October 19, 2022)
- *Global M&A Network* Honors Katten's Insolvency and Restructuring Team With Turnaround Atlas Awards (August 11, 2022)
- 4th Circ. Vacates Insurance Exec's Bribery Conviction | *Law360* (June 30, 2022)
- Katten Insolvency and Restructuring Team's 2021 Achievements Recognized with *M&A Advisor* Awards (June 13, 2022)
- Retired Mass. Judge, Ex-US Attys Back 'Varsity Blues' Appeal | *Law360* (May 6, 2022)
- Tesla, Comcast, Dell, Mylan Join Tech Cos. In Fighting Fintiv | *Law360* (February 16, 2022)
- Katten Bankruptcy Team Wins Numerous Turnaround Awards From The M&A Advisor (September 20, 2021)
- Generics Group, Intel Back Mylan's Fintiv Fight At High Court | *Law360* (September 14, 2021)
- PBM Group Asks 8th Cir. To Revive ND Preemption Row | *Law360* (July 26, 2021)
- High Court Knocks Out PBM Group's 8th Circ. Preemption Win | *Law360* (February 22, 2021)
- 8th Circ. Asked To Rethink Negating North Dakota PBM Law | *Law360* (August 13, 2020)
- 4th Circ. OKs Nix Of Ex-Hopkins Nurse's Suits As Sanction | *Law360* (February 22, 2019)

- Katten's Pro Bono Victory for Transgender Ironworker Mentioned in Law360 and Bloomberg BNA's *Daily Labor Report* (June 22, 2015)
- 2nd Circ. Revives Transgender Ironworker's Bias Suit | *Law360* (June 19, 2015)
- 9th Circ. Revives Mall's Claims Over Urban Outfitters Protest | *Law360* (September 23, 2014)
- Katten Names Sixteen New Partners in Five Practice Areas (August 5, 2014)
- Katten Recognizes Twelve Attorneys With Pro Bono Service Awards (July 25, 2014)
- Katten Client United Water Cleared of All Charges in Indiana Federal Court (December 13, 2012)
- Jury Victory Secured for Pro Bono Client in Case with Federal Public Defender's Office (December 2012)

Presentations and Events

- National Community Pharmacists Association | *Presenter* | *PBM Legal Battles: A Look at the Scoreboard* (October 1, 2022)
- NCPA's Take on the CMS Final Rule (May 17, 2022) | *Panelist*
- 137th Annual NoDak Pharmacy Convention (March 10–13, 2022) | *Panelist* | *State PBM Regulation: The Legal Landspace After Rutledge v. PCMA and What It Means for Pharmacy*
- Specialty Networks National Urology Conference (December 9–11, 2021) | *Panelist* | *State PBM Regulation: The Legal Landscape After Rutledge v. PCMA and What It Means for Physician Practices*
- NCPA Annual Convention & Expo (October 9–12, 2021)
- False Claims Act: Strategies for Obtaining an Early Resolution (April 21, 2021) | *Panelist*
- *Rutledge v. PCMA* Webinar (September 29, 2020)
- What's Going on with *Rutledge v. PCMA*?: An Update on the Supreme Court's Foray into PBM Regulation (June 12, 2020)
- False Claims Act: Strategies for Obtaining an Early Resolution (May 30, 2019) | *Panelist*