

Eric T. Werlinger

Partner

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Practices

FOCUS: Litigation
Appeals and Critical Motions
Class Action/Consumer Finance Litigation
Financial Markets Litigation and Enforcement
Patent Litigation and Patents
Pharmaceutical and Life Sciences Litigation
Securities Litigation
White Collar and Internal Investigations

Industries

Energy
Finance and Financial Markets
Health Care
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
US Court of Appeals, Ninth Circuit

Eric Werlinger is a veteran litigator who is just as comfortable defending a consumer class action as he is litigating a pharmaceutical patent. With his many years of appellate experience, clients trust Eric to solve their toughest legal problems with efficient legal research and compelling written advocacy. But Eric's talents go far beyond research and writing. He excels at front-line trial litigation, with a knack for setting cost-effective strategies, and conducts internal investigations in advance of potential lawsuits, government proffers or as a part of due diligence.

Broad experience handling challenging issues at every level of litigation

Eric's forte is appeals and critical motions. He has litigated in the vast majority of the US Courts of Appeals and has authored multiple briefs in the US Supreme Court. His substantive experience runs the gamut and includes patent litigation, False Claims Act suits, administrative law and contractual disputes. Eric also teams with other litigators at the trial level to help them handle their hardest motions on the tightest deadlines. The breadth of his substantive knowledge allows Eric to plug into almost any case on a moment's notice.

Additionally, Eric has deep experience with class-action litigation. He regularly defends financial institutions against consumer lawsuits arising from retail banking services. Eric has successfully resolved dozens of class-action suits challenging overdraft-fee policies, notching several precedent-setting victories in court along the way. Further, he helps banks and credit union avoid litigation entirely by revising their account agreements and practices to stay head of emerging litigation and regulatory risks.

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US Court of Appeals, Tenth 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

Eric also 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.

If a client finds itself in bankruptcy — whether as a debtor or a creditor — Eric can help there too. He has litigated multiple adversary proceedings on behalf of debtors and creditors in bankruptcy court, and he has successfully represented clients in bankruptcy appeals before federal district courts. Through his experience, Eric has become well versed in the unique laws and procedures that govern bankruptcy litigation, which allows him to work nimbly in circumstances when time is of the essence.

Eric began his legal career as a law clerk to 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

- 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.

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- 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).
- Defended a complete victory in a class action suit before the Fifth Circuit on behalf of federal credit union. Despite facing challenging issues related to federal preemption and contractual interpretation, our compelling advocacy resulted in a one-word summary affirmance by the court.
- 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 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.

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- 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.

Recognitions

Recognized or listed in the following:

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

News

- Katten Attorneys Distinguished by *Best Lawyers*® (August 17, 2023)
- Insolvency and Restructuring Team Recognized With Multiple International M&A Awards (August 7, 2023)

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- 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)
- 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

- 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)