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BIOGRAPHY

Spencer Smith is a trial lawyer whose practice covers a wide range of commercial litigation matters including securities fraud claims, intellectual property disputes, business torts, contract matters and insurance disputes in both state and federal courts, as well as various arbitration forums. He also has experience defending companies against product liability claims and litigating construction disputes. During the course of his career, Spencer has represented individuals and leading corporations in a variety of industries, including technology, insurance, pharmaceuticals, telecommunications and energy.

Spencer's achievements have earned him recognition as a "local litigation star" by *Benchmark Litigation* as well as inclusion in *Oklahoma Super Lawyers'* list of "Oklahoma Rising Stars" (business litigation, securities litigation, intellectual property litigation), which recognizes the state's top up-and-coming attorneys.

Prior to joining McAfee & Taft in 2004, Spencer was a commercial litigation associate with Vinson & Elkins in Austin, Texas.

REPRESENTATIVE EXPERIENCE

Securities Fraud:

- Prosecuting an aiding and abetting securities fraud claim under the Oklahoma Securities Act claims against a commodities commissions merchant on behalf of a group of investors who lost more than \$14 million in a hedge fund scam.
- Represented an institutional investor in connection with its securities fraud claims against a broker-dealer which made misrepresentations and omissions related to the sale of leveraged non-recourse securities. The case settled on favorable terms for the client.
- Represented a broker in a FINRA arbitration proceeding in defense of Oklahoma Securities Act and other tort claims related to allegations by the broker's clients, which were comprised of three trusts and an individual, that the broker diverted more than \$1 million of securities from the clients' brokerage accounts to cover margin calls in the broker's individual account. The claimants sought more than \$1 million in actual damages as well as attorneys' fees and punitive damages. Following three days of trial, the three-member panel only found the broker liable for less than \$25,000 in actual damages.
- Represented three groups of investors in a securities fraud action against AXA Advisors. An NASD panel of three arbitrators returned a verdict after a two-week trial of approximately \$1 million, including \$350,000 in punitive damages. A subsequent arbitration proceeding related to the same conduct was pursued on behalf another group of three investors. That arbitration settled favorably after three days of a scheduled 10-day hearing.

- Represented a major airline in defense of securities fraud class action. Obtained the dismissal of the securities fraud claims brought in federal court seeking millions of dollars of damages.
- Defended a public accounting firm in a class action shareholder litigation alleging that the accounting firm failed to discover revenue recognition fraud. Obtained dismissal of the securities fraud claims.
- Obtained dismissal of 1933 and 1934 Securities Act claims filed in federal court in San Diego against a former outside director and largest shareholder of a software company after the company restated revenue by more than \$500 million.

Intellectual Property:

- Represented the inventor of a heart catheter in a patent infringement action against a large pharmaceutical manufacturer. The jury returned a verdict for the client after a two-week trial in excess of \$14 million, which included exemplary damages. Currently representing the inventor against another manufacturer for patent infringement.
- Representing an aerial camera company in pursuit of claims for misappropriation of trade secrets, copyright infringement, and other business torts against the client's former chief engineer and the aerial camera company that he formed.
- Defended the manufacturer of mobile communication towers against patent infringement and misappropriation of trade secret claims. The parties reached a settlement in order to pursue a joint venture.
- Represented the state's largest newspaper in pursuing claims for, among other things, trademark, trade dress and copyright infringement. Obtained a favorable settlement.

Construction Litigation:

- Represented the claimant in an American Arbitration Association hearing against the prime contractor in a complex multi-million dollar construction dispute involving the extensive remodel of a luxury hotel in Houston, Texas. The panel awarded the claimant almost \$300,000 in delay damages, a \$160,000 reduction in certain invoices and the dissolution of a pending mechanic's lien in excess of \$4 million filed by the prime contractor, an international construction company.
- Represented the owner of a wastewater treatment plant in connection with its claims against the general contractor and its surety for the faulty installation of water and wastewater lines. Following a multi-day trial, AAA panel entered an order awarding the owner the majority of its damages. Obtained a favorable settlement in connection with the remaining damages from the surety on the eve of a jury trial.

Commercial Disputes:

- Representing one of the world's largest computer manufacturers in a class action brought by consumers who allege violations of the Oklahoma Consumer Protection Act in connection with the company's tax collection practices.
- Representing a surgical center and its members against claims brought by former partners for breach of the partnership agreement as well as various business torts.
- Defending the manufacturer of desktop monitors and LCD TV's against breach of contract and warranty claims.
- Representing the manufacturer of specialized telephones in a breach of contract action.

- Represented a food broker and its majority owner against breach of contract and various tort claims brought by former competitors who sought to recover more than \$1 million in actual damages in addition to attorneys' fees and punitive damages. Following a five-day trial, the jury returned a verdict in favor of the defendants on several of their counterclaims and found the defendants liable for only a fraction of the amount plaintiffs were seeking. Defendants' abandoned their appeal following a favorable post-trial settlement.
- Represented a limited liability company and its members against breach of contract and business tort claims related to the purchase of real estate. The court granted the clients' motion for summary judgment, and the decision was upheld on appeal.
- After liability had been established against a real estate developer in an arbitration proceeding, stepped in to defend the developer in the damages phase of the trial. Obtained a judgment for substantially less than the millions being sought by the claimant.
- Represented a municipal authority in connection with claims by landowners whose property was condemned for urban renewal. Following a multi-day bench trial, the court found in favor of the municipal authority.
- Defended a leading copy machine manufacturer against breach of contract and tort claims. The court granted the defendant's motion for summary judgment, which resulted in the dismissal of plaintiff's claims.

Crop Insurance:

- Represented over 90 Texas corn farmers in arbitration and administrative appeals before the National Appeals Division of the USDA involving federally reinsured crop insurance. The NAD determined that the Risk Management Agency (a department within the USDA) acted arbitrarily and capriciously, which led to the payment of over \$3 million plus attorneys' fees and costs to the client group.
- Represented a group of Texas wheat farmers in an administrative appeal before the National Appeals Division of the USDA in which the Risk Management Agency attempted to recalculate indemnity payments. Following an evidentiary hearing, the NAD determined that the RMA's demands were without merit and awarded the attorneys' fees incurred by the group.

Challenges to Statutes and Administrative Rules:

- Represented a major pharmaceutical manufacturer in a successful challenge to Texas State Board of Pharmacy rules regarding generic drugs.
- Represented the Texas Governmental Risk Pool in successfully challenging the constitutionality of various provisions of the Texas Workers Compensation Act.

ADMISSIONS

- Texas, 1998
- Oklahoma, 2005
- U.S. District Courts for the Western and Northern Districts of Oklahoma
- U.S. District Courts for the Western, Eastern and Southern Districts of Texas
- U.S. Courts of Appeals for the Fifth, Ninth and Tenth Circuits

EDUCATION

- J.D., with honors, University of Texas, 1998
- B.A, *cum laude*, University of Oklahoma, 1994

PROFESSIONAL ORGANIZATIONS AND MEMBERSHIPS

- Oklahoma County Bar Association
- Oklahoma Bar Association
- American Bar Association
- State Bar of Texas
- William J. Holloway, Jr American Inn of Court