

Michael F. Smith

Shareholder

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Overview

Michael F. Smith is a trial and appellate lawyer whose practice is concentrated on defending clients in complex litigation, focusing on manufacturers' products liability, including automotive, medical device, and pharmaceutical products liability, as well as consumer protection class actions and claims involving breach of contract, professional malpractice, and insurance bad faith.

Michael is admitted to practice in Oklahoma, Illinois, and New York and has represented clients in state and federal trial and appellate courts throughout the United States. He is particularly regarded for his expertise with appellate practice and procedure in the Oklahoma Supreme Court and the U.S. Court of Appeals for the Tenth Circuit and has had primary briefing responsibilities on a broad range of cases, including those involving products liability, medical products liability, consumer protection class actions, and environmental matters.

As part of his appellate practice, Michael has successfully defended judgments, based on both summary judgments and jury verdicts, in numerous appeals in state and federal courts throughout the United States, including appeals to the U.S. Supreme Court. Many of those appeals involved issues of first impression, and the reported opinions in those cases have established new precedent on a variety of legal issues.

His achievements as a trial and appellate lawyer have earned him inclusion in *Benchmark Litigation*, *The Best Lawyers in America* (commercial litigation) and *Oklahoma Super Lawyers*, as well as the honor of membership in the International Association of Defense Counsel, where he served two years as editor of the *Defense Counsel Journal* and in leadership for the Appellate Practice Committee. Michael previously chaired the Oklahoma Bar Association's appellate practice committee and is an active member in the Council Oak/Johnson-Sontag American Inn of Court.

Admissions

Oklahoma, 1991

Illinois, 1992

New York, 2002

U.S. District Court for the Western, Northern and Eastern Districts of Oklahoma

U.S. District Court for the Northern District of Illinois

U.S. District Court for the District of Colorado

U.S. Courts of Appeal for the Eighth and Tenth Circuits

U.S. Supreme Court

Education

J.D., with distinction, University of Tulsa, 1991; Notes and Comments Editor, *Tulsa Law Journal*; Robert C. Butler, Jr. Award for Excellence in Legal Scholarship and Writing

B.S., Oklahoma State University, 1987

Representative Experience

- Successfully defended national retail stores in class action alleging unsolicited marketing calls to wireless telephone numbers in violation of the Telephone Consumer Protection Act.
- Successfully defended national retail stores in breach of contract action against providers of database and customer marketing analytics and software.
- Successfully defended manufacturer in declaratory judgment action by nationwide class seeking indemnification for a judgment against a pre-bankruptcy entity.
- Provide legal advice to professional sports team regarding compliance with the Telephone Consumer Protection Act.
- Obtained defense verdict in favor of a forklift manufacturer in a seven-day jury trial in a products liability action brought by a young woman who had her leg amputated below the knee after her leg was crushed between the stand-up forklift she was operating and another forklift parked in a retail warehouse.
- Successfully defended commercial forklift distributor in nationwide putative class action involving allegedly unsolicited facsimile transmissions in violation of the Telephone Consumer Protection Act.
- Wrote successful motion for summary judgment in state court for national accounting firm in professional malpractice action brought by a large bank arising out of the failure of a startup airline. Successfully defended on appeal to the Oklahoma Supreme Court the trial court's order granting summary judgment.
- Wrote successful post-trial motion for new trial in federal court for an automobile manufacturer vacating a \$15 million verdict and judgment in favor of the plaintiff in a case where the plaintiffs alleged that their 18-year-old son died as a result of inadequate roof strength in a single vehicle rollover crash.
- Successfully defended on appeal in state court a verdict and judgment in favor of an automobile manufacturer in a case involving a head-on collision resulting in five deaths. The plaintiffs challenged the verdict and judgment alleging juror misconduct, improper non-uniform jury instructions, and a variety of evidentiary errors. Plaintiffs pursued the appeal to the U.S. Supreme Court.
- Wrote successful motion in federal court striking the plaintiff's expert's opinions based on the sham affidavit rule, and successfully defended the court's order striking those opinions on appeal to the U.S. Court of Appeals for the Tenth Circuit.

Professional Organizations and Memberships

Tulsa County Bar Association

Oklahoma Bar Association (Former Chair, Appellate Practice Committee)

International Association of Defense Counsel

Defense Research Institute

Council Oak/Johnson-Sontag American Inns of Court

- Wrote briefing in an interlocutory appeal successfully vacating a trial court's order sanctioning a manufacturer defendant in excess of \$100,000 based on the plaintiff's unfounded argument that counsel for the manufacturer violated the trial court's *in limine* order excluding evidence of alcohol.
- Wrote successful motion for summary judgment in federal court based on the plaintiff's experts' failure to establish that an alleged defect caused the plaintiff's injuries in an action where the plaintiff alleged an airbag failed to deploy. Also successfully defended the trial court's judgment in the plaintiff's appeal to the U.S. Court of Appeals for the Eighth Circuit.
- Obtained summary judgment in favor of a major automobile manufacturer after successfully excluding plaintiff's expert testimony in a case where a product defect was alleged to be responsible for a catastrophic brain injury of an 8-year-old. Judgment affirmed on appeal to the Tenth Circuit Court of Appeals.
- Provided legal advice to a national telematics service provider regarding potential liability exposure arising out of contracts to provide emergency medical services, including emergency medical dispatch, and pre-arrival instructions, through satellite and cellular technology installed in automobiles.
- Provided legal advice to a national telematics service provider regarding international expansion into Middle Eastern countries.
- Provided legal advice to a national telematics service provider regarding state and local emergency medical services statutes, regulations, and relevant case law in all 50 states.
- Provided legal advice to singer/songwriter/performer regarding trademark infringement issues involving early unauthorized releases of her first album.
- Wrote successful motion for summary judgment in state court based on plaintiffs' experts' failure to establish causation in a manufacturers' products liability action alleging that an airbag failed to deploy in a multiple vehicle crash. Successfully defended the trial court's order on appeal to the Oklahoma Supreme Court.
- Successfully defended local employer in wrongful termination litigation before the Oklahoma Employment and Security Commission.
- Successfully defended prepaid calling card provider in consumer's nationwide putative class action alleging fraud, deceit and negligent misrepresentation.
- Successfully defended on appeal in state court a defense verdict and judgment in favor of an automobile manufacturer in litigation where the plaintiff alleged his wife suffered fatal injuries due to inadequate seat-back strength.
- Written hundreds of motions *in limine* and motions for summary judgment in state and federal courts challenging engineering experts' opinion testimony for lack of scientific methodology pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and FED. R. EVID. 702.
- Wrote successful petition for permission for interlocutory appeal to the U.S. Tenth Circuit Court of Appeals in litigation involving question of whether a group of plaintiff's could utilize Title VII's pattern or practice procedure in litigation arising under the Age Discrimination in Employment Act.
- Briefed interlocutory appeal to the U.S. Tenth Circuit Court of Appeals regarding novel questions arising under the Age Discrimination in Employment Act (ADEA).
- Briefed interlocutory appeal to the Oklahoma Supreme Court on issues related to the common law tort of wrongful discharge in violation of Oklahoma public policy under *Burk v. K-Mart Corp.*
- Wrote successful trial and appellate court briefing involving novel issues of lender liability, and the applicable, and accrual of, statute of limitations under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

- Written hundreds of motions *in limine* on complex topics to exclude all types of evidence in hundreds of lawsuits against manufacturers of all types of products, including automobiles, cranes, tractors, forklifts, implanted medical devices, and pharmaceuticals.
- Written numerous successful motions to dismiss international defendants based on the plaintiffs' failure to comply with the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters.
- Litigated all types of discovery disputes in complex litigation.
- Provided legal research and writing in all phases of defending complex litigation including answers, motions to dismiss, motions to quash, motions to compel, motions for summary judgment, motions in limine, Daubert motions, bench briefs, jury instructions, verdict forms, post-trial trial motions for new trial and for judgment notwithstanding the verdict, and appellate briefing.
- Served as primary briefing counsel on numerous cases, including:
 - *Bank of Oklahoma, N.A. v. PricewaterhouseCoopers*, 2011 OK CIV APP 56, 251 P.3d 187
 - *BancFirst ex rel. Estate of M.J.H. v. Ford Motor Co.*, No. 10-6137, 2011 WL 1462279 (10th Cir. April 18, 2011)
 - *Bank of Oklahoma, N.A. v. PricewaterhouseCoopers*, No. CJ-2007-816, 2010 WL 749067 (Okla. Dist. Ct. Tulsa County Jan. 25, 2010)
 - *Teters v. Ford Motor Co.*, No. 104,801, slip op. (Okla. Civ. App. Feb. 2, 2009), cert. denied (Okla. May 18, 2009)
 - *Thompson v. Weyerhaeuser Co.*, 582 F.3d 1125 (10th Cir. 2009)
 - *Smith v. Ford Motor Co.*, No. DF-104134, slip op. (Okla. Civ. App. Nov. 7, 2008), cert. denied (Okla. Feb. 17, 2009), cert. denied ___ U.S. ___, 130 S. Ct. 93 (Oct. 5, 2009)
 - *Kruchowski v. The Weyerhaeuser Co.*, 202 P.3d 144 (Okla. 2008)
 - *Ruminer v. General Motors Corp.*, 483 F.3d 561 (8th Cir. 2007)
 - *Moody v. Ford Motor Co.*, 506 F. Supp. 2d 823 (N.D. Okla. 2007)
 - *Moody v. Ford Motor Co.*, No. 03-CV-784-GKF-PJC, 2007 WL 3046662 (N.D. Okla. Oct. 16, 2007)
 - *Moody v. Ford Motor Co.*, No. 03-CV-784-CVE-PJC, 2007 WL 1791114 (N.D. Okla. June 18, 2007)
 - *Nash v. General Motors Corp.*, 153 P.3d 73 (Okla. Civ. App. 2007)
 - *Alfaro v. General Motors Corp.*, No. 05CV00645 MSKBNB, 2006 WL 2982849 (D. Colo. Oct. 17, 2006)
 - *Travelers Indemnity Co. v. Hans Lingl Anlagenbau Und Verfahrenstechnik GMBH & Co. KG*, 189 Fed. Appx. 782, 2006 WL 2065069 (10th Cir. 2006)
 - *Kruchowski v. Weyerhaeuser Co.*, 446 F.3d 1090 (10th Cir. 2006)
 - *Ruminer v. General Motors Corp.*, No. 4:03-CV-349-GTE, 2006 WL 287945 (E.D. Ark. 2006)
 - *Kruchowski v. Weyerhaeuser Co.*, 423 F.3d 1139 (10th Cir. 2005)
 - *Sagona v. Sun Co., Inc.*, 57 P.3d 879 (Okla. Civ. App. 2002)
 - *Phillips v. New Hampshire Ins. Co.*, 263 F.3d 1215 (10th Cir. 2001)
 - *Griffin v. Steeltek, Inc.*, 261 F.3d 1026 (10th Cir. 2001)
 - *Hutchinson v. Carter*, 33 P.3d 958 (Okla. Civ. App. 2001)
 - *Deerinwater v. Circus Circus Enterprises*, 21 P.3d 646 (Okla. Civ. App. 2001)

- *State ex rel. Fisher v. South Atlantic Dredging Co., Inc.*, 15 P.3d 523, (Okla. Civ. App. 2000)
- *Johnston v. Volunteers of America Oklahoma, Inc.*, 213 F.3d 559 (10th Cir. 2000)
- *Sias v. Edge Communications, Inc.*, 8 P.3d 182 (Okla. Civ. App. 2000), cert. denied, May 9, 2000
- *Lawson v. National Steel Erectors Corp.*, 8 P.3d 171 (Okla. Civ. App. 2000)
- *Hoar v. Aetna Casualty & Ins. Co.*, 968 P.2d 1219 (Okla. 1998)
- *Hervey v. Dyer*, 972 P.2d 42 (Okla. Ct. App. 1998)
- *Sun Co. Inc., (R & M) v. Browning-Ferris, Inc.*, 124 F.3d 1187 (10th Cir. 1997), cert. denied, 522 U.S. 1113 (1998)
- *Bethesda Boys Ranch v. Atlantic Richfield Co.*, 208 B.R. 980 (N.D. Okla. 1997)
- *Dennis v. Harding Glass Co.*, 929 P.2d 301 (Okla. Ct. App. 1996)
- *May v. National Union Fire Ins. Co. of Pittsburgh, Pa.*, 84 F.3d 1342 (10th Cir. 1996)
- *May v. National Union Fire Ins. Co. of Pittsburgh, Pa.*, 918 P.2d 43 (Okla. 1996)
- *Board of Educ. of Tp. High School Dist. No. 205 v. Leininger*, 822 F. Supp. 516 (N.D. Ill. 1993)

Honors and Awards

- Named a “Local Litigation Star” by *Benchmark Litigation*
- Selected by peers for inclusion in *The Best Lawyers in America* (commercial litigation)
- Listed in *Oklahoma Super Lawyers*
- Named to *Oklahoma Super Lawyers’* list of “Top 50 Lawyers”