

JOSEPH C. SMITH, JR.

PARTNER

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Joe Smith has been first-chairing trials for more than twenty-five years, in federal and state courts as well as confidential arbitrations. He typically represents commercial plaintiffs in complex, high-stakes cases involving claims such as breach of contract, fraud, securities violations, patent infringement, trade secrets or other business torts. He has tried billion-dollar cases and is a veteran of some of the nation's most notorious legal battles in recent decades, including those surrounding Enron's demise and the residential mortgage-backed securities scandals associated with the Great Recession. His clients have included global leaders in finance, private equity, institutional investing, heavy industry, consumer products, energy, and retail operations.

Joe was the youngest Kirkland & Ellis lawyer to join Bartlit Beck upon the firm's original spin-off from K&E in 1993. He has been with the firm ever since, with the exception of his serving for two years (1997-98) as Colorado's Deputy Attorney General for Natural Resources, leading the largest section of that office.

Joe is a member of the Colorado bar and has been admitted to practice in state and federal courts across the country, including the United States Supreme Court.

EDUCATION & HONORS

The University of Chicago Law School, 1991, J.D.

Bradley Fellow in Law and Government

President, The Federalist Society

Yale College, 1988, B.A., *cum laude*

Distinction in the Philosophy Major

Faculty prizes for oratory and debate

Yale Debate Team

ADMISSIONS

United States Supreme Court

Tenth Circuit Court of Appeals

Ninth Circuit Court of Appeals

Sixth Circuit Court of Appeals

Federal Circuit Court of Appeals

U.S. Court of Claims

Colorado

CASES TRIED OR OTHERWISE TAKEN TO JUDGMENT

Rauner v. Kirkpatrick (Confidential AAA Arbitration, Chicago) **and** ***Kirkpatrick v. Rauner*** (Cook County Circuit Court, Illinois)

Represented Bruce Rauner (former Illinois Governor and former managing partner of private equity firm GTCR) in arbitration related to his investment as a limited partner in a private equity fund. The dispute centered on whether the general partner (Kirkpatrick) breached his fiduciary duties by deviating from the partnership agreement's waterfall provision. The case was tried to a final arbitral award, but the results are confidential. Kirkpatrick attempted to litigate a portion of the dispute in the Cook County Circuit Court, but we successfully moved to compel arbitration.

Confidential CPR Arbitration (New York, New York)

Lead trial counsel for plaintiff in four-week arbitration of \$1 billion breach of contract claims and counterclaims in industrial construction dispute. The case was tried to a final arbitral award, but the results are confidential.

Jeff Benton and Zoo Fans v. Avedon Engineering and Airius (Federal District Court, District of Colorado)

Lead trial counsel for Avedon and Airius in action by plaintiffs seeking declaratory judgment of no wrongdoing in suit arising from their alleged misuse of Avedon's and Airius' business information. Jury verdict for Avedon and Airius on counterclaims of unfair competition and unjust enrichment.

Static Control Components, Inc. v. Lexmark International, Inc. (Federal District Court, Eastern District of Kentucky)

Lead trial counsel for Static Control in consolidated cases concerning aftermarket for repair of toner cartridges for Lexmark laser printers. Lexmark alleged patent infringement and active inducement of infringement. Static Control alleged patent misuse. Six-week jury trial. Jury verdict for Static Control.

Darkprint Imaging, Inc. v. Static Control Components, Inc. (Federal District Court, Colorado)

Lead trial counsel for Static Control in patent infringement action. Technology involved electroless nickel plating for laser printer parts. Tried *Markman* issues and then won summary judgment of patent invalidity based on obviousness.

Poly Trucking, Inc. v. Concentra Health Services, Inc. (Colorado Court of Appeals)

Lead appellate counsel for Poly Trucking in appeal of order reforming settlement agreement based on alleged unilateral mistake. Appeal concerned alleged duty to disclose information to adverse party during settlement negotiations. Appeal won; order reversed.

Static Control Components, Inc. v. Darkprint Imaging, Inc. (Federal District Court, Middle District of North Carolina)
Trial counsel for Static Control in case arising from Darkprint's misappropriation of trade secrets, unfair and deceptive business practices, and tortious interference with Static employee's non-compete agreement. Summary judgment for Static on Darkprint's counterclaim. Jury verdict and judgment for Static, awarding both compensatory and punitive damages.

Gore v. Bush, et al. (Leon County Circuit Court, Florida)
Represented President George W. Bush in election contest filed by former Vice President Al Gore in Leon County, Florida, contesting the results of the 2000 Presidential election in Florida.

Langley v. Pratt & Whitney (Jefferson County District Court, Colorado)
Second chair trial counsel representing Pratt & Whitney against claims of fraud, breach of contract, consumer-protection violations, and design defect, arising from manufacture, sale, and repair of jet engines. Directed verdict for Pratt on all claims arising from manufacture and sale of engines. Jury verdict for Pratt on all claims arising from repair of engines.

Sonoco Products Co. v. The Newark Group, Inc. et al. (Colorado Court of Appeals)
Lead appellate counsel for The Newark Group in appeal of judgment awarding damages and injunctive relief for misappropriation of trade secrets and other confidential or proprietary information. Appeal challenged only the award of damages. Judgment affirmed.

Chromalloy v. Pratt & Whitney (Texas State Court, Bexar County)
Defended Pratt & Whitney in \$2.4 billion antitrust action filed by jet-repair competitor. Led counterclaim team. Jury verdict for Pratt & Whitney.

Koch v. Koch Industries (Federal District Court, Kansas; 10th Circuit Court of Appeals)
Represented primary plaintiff and appellant, William Koch, in action for fraud, breach of contract, and breach of fiduciary duty, arising from sale of stock in nation's second largest privately held company. Worked primarily with experts to develop claims regarding company's accounting practices, value of real estate subsidiary, and actual damages exceeding \$1 billion. Jury verdict for Koch Industries; affirmed by Tenth Circuit; certiorari denied by United States Supreme Court.

Cvengros v. Cenco (Illinois State Court)
Defended Cenco against claims of fraud and breach of contract, arising from sale of suture manufacturing business. Bench trial. Judgment for Cenco on all claims.

Boulder Sausage Litigation (State, Federal District, and Bankruptcy Court, Colorado)
Defended former directors of liquidated Chapter 7 debtor against actions by former shareholders of the debtor, arising from directors' purchase of estate's assets. Claims included fraud, breach of fiduciary duty, RICO, and a motion to reopen the bankruptcy proceeding. Achieved dismissal of state-court actions. Federal magistrate judge recommended dismissal of federal action.

OTHER REPRESENTATIVE CASES

***Align Technology, Inc. v. 3Shape A/S and 3Shape Inc.* (Federal District Court, District of Delaware)**

Trial counsel for plaintiff Align Technology (maker of the popular Invisalign system) in action alleging 3Shape's infringement of certain Align patents that claim technology for monitoring patient progress and converting three-dimensional digital models of teeth into physical models. Case set for trial in November 2020.

***Massachusetts Mutual Life Ins. Co. Residential Mortgage-Backed Securities Litigation* (Federal District Court, District of Massachusetts)**

Represented MassMutual in its actions under the Massachusetts Uniform Securities Act, against underwriters Credit Suisse and Goldman Sachs, arising from their sales of residential mortgage-backed securities to MassMutual in 2005-2007. Credit Suisse settled after four weeks of trial, taking an additional \$79.5 million charge to earnings because of the settlement payment. Goldman Sachs settled shortly thereafter.

***Adams et al. v. Trinity Industries, Inc. et al.* (Circuit Court for the City of St. Louis, Missouri)**

Defending Trinity against several plaintiff's claims, joined in one action, alleging personal injuries from Trinity's ET-Plus guardrail end terminal system.

***Washington v. Trinity Industries, Inc. & Trinity Highway Products, LLC* (Middle District North Carolina)**

Defended Trinity in action alleging personal injuries from Trinity's ET-Plus guardrail end terminal system. Settled shortly before trial.

***Cole v. Asurion and T-Mobile* (Federal District Court, Central District of California; U.S. Court of Appeals for the Ninth Circuit)**

Represented Asurion and T-Mobile in class action brought by T-Mobile subscriber who purchased cell phone insurance and claimed, on behalf of 1.4 million consumers, that Asurion and T-Mobile did not sufficiently disclose the terms of the insurance. Won stay of case pending individual class member arbitrations; case settled after oral argument of plaintiff's appeal of stay to Ninth Circuit.

***Countrywide Home Loans, Inc. and BAC Home Loans Servicing, LP v. Mortgage Guaranty Insurance Corporation* (Federal District Court, Northern District of California)**

Represented MGIC in mortgage insurance dispute with Countrywide. Case settled.

***Walker Digital, LLC v. ADT, Tyco Safety Products, and Westec Intelligent Surveillance (among others)* (Federal District Court, Delaware)**

Represented ADT, TSP, and Westec in patent infringement actions. Patents were alleged to cover certain internet-based surveillance systems. Case settled.

***United States of America ex rel. Oberg v. Nelnet et al.* (Federal District Court, Eastern District of Virginia)**

Represented Nelnet in *qui tam* action under Federal False Claims Act. Relator alleged that Nelnet submitted false claims for hundreds of millions of dollars in student loan subsidies. Case settled immediately before jury selection.

GEA v. Bechtel Power (Federal District Court, District of Colorado)

Represented Bechtel in dispute with subcontractor over subcontractor's performance during construction of power plant in Athens, New York. Case settled.

Merrill Lynch Bank & Trust Co., FSB v. National City Bank (Supreme Court of the State of New York)

Represented National City Bank in case concerning its \$4.5 billion sale of mortgage origination and servicing businesses to Merrill Lynch. Case settled.

DK Acquisition Partners, L.P. et al. v. J.P. Morgan Chase & Co. et al. (Federal District Court, Southern District of Texas)

Represented holders of about \$1.6 billion in Enron bank debt in action against J.P. Morgan Chase & Co., Citigroup, and affiliates, alleging fraud and other wrongdoing based on defendants' knowledge of and participation in scheme to conceal Enron's true financial condition. Case settled after discovery.

Smith v. Arthur Andersen, et al. (Federal District Court, Arizona)

Defended Andersen in action by bankruptcy plan trustee for Boston Chicken, Inc., alleging malpractice, negligence, breach of contract, negligent misrepresentation, and aiding and abetting breach of fiduciary duty. Trustee sought \$1.5 billion in compensatory damages; case settled for \$40 million shortly before trial.

Pioneer Hi-Bred International, Inc. v. Syngenta Seeds, Inc. (Federal District Court, Southern District of Iowa)

Represented Pioneer in action for trade secret misappropriation, patent infringement, and reverse palming-off, arising from Syngenta's acquisition and use of Pioneer's proprietary hybrid corn and parent seed and germplasm.

Elm Technology Corp. v. Tachyon Semiconductor Corp. (Superior Court, Santa Clara County, California)

Defended Tachyon against breach of contract claim arising from licensing of semiconductor technology and parties' agreement to terminate licenses. Case settled after Tachyon counterclaimed for breach of contract and fraud.

Espinoza v. Wal-Mart Stores, Inc. (District Court, Pueblo County, Colorado)

Retained by Wal-Mart to challenge multi-million dollar default judgment entered in personal injury action. Motion to set aside granted.

Powell v. DuPont et al. (Federal District Court, Colorado)

Defended DuPont against claims of negligence and strict liability, arising from the plaintiff's alleged workplace exposure to a DuPont product. Achieved voluntary dismissal by plaintiff before trial.

Adams et al. v. AIMCO (Superior Court, San Francisco County, California)

Defended Denver-based Real Estate Investment Trust AIMCO in suit by nine families living in HUD-subsidized apartments owned by AIMCO. Plaintiffs asserted personal injury claims arising from allegedly toxigenic mold in apartments, among other habitability issues. Case settled.

Goodyear, et al. v. Beren, et al. (District Court, City and County of Denver)

Represented Robert M. Beren in action by personal representative of estate of deceased brother Sheldon K. Beren, alleging breaches of contract and fiduciary duty with respect to closely held Delaware corporation. Case

settled.

Unitech v. DuPont (Federal District Court, Idaho)

Defended DuPont against claims of breach of contract, theft of trade secrets, and tortious interference with economic relations, arising from failed joint venture. Achieved favorable settlement before trial.

Siemens, AG v. LG Semicon; Hyundai v. Infineon Technologies, et al. (Federal District Courts, Delaware and Northern District California)

Represented Siemens and Infineon in patent infringement litigation relating to semiconductor devices and processes. District of Delaware (Judge McKelvie) and Northern District of California (Judge Ware). Case settled.

Guardian Life Insurance v. El Dorado (Denver District Court; Colorado Court of Appeals)

Principal author of El Dorado's briefs on appeal and petition for certiorari on narrowed issues after Court of Appeals decision. Also defended El Dorado against Guardian's post-trial motion for attorneys' fees in two-day evidentiary hearing. Settled after El Dorado filed petition for certiorari.

Sound Solution v. Pratt & Whitney et al. (Federal District Court, Illinois)

Defended Pratt & Whitney in antitrust action based on joint venture arrangements among Pratt, The Boeing Company, and the maker of a noise-control device for the Pratt engines on Boeing's 737-200 airplane. Worked primarily on antitrust theories. Settled on eve of trial.

United Technologies Corporation v. Heico (Federal District Court, Florida)

Represented United Technologies in antitrust and patent infringement action arising from Heico's production and sale of jet engine replacement parts. Worked primarily on Heico's counterclaims against United Technologies.

Amazing Enterprises v. Dun & Bradstreet (Boulder County District Court, Colorado)

Defended Dun & Bradstreet against claims of negligent misrepresentation brought by Ponzi-scheme investors who alleged reliance on Dun & Bradstreet credit report. Worked primarily on developing counterclaim and motions for summary judgment. Settled favorably.

Hughes Aircraft Company v. Underwriters at Lloyds of London (California State Court)

Represented Hughes in third-party property damage insurance coverage litigation. Worked primarily on successful discovery of reinsurance treaties, for which there was no California precedent.

PROFESSIONAL ACTIVITIES AND COMMUNITY SERVICE

Co-Chairman, Professional Liability Litigation Committee, American Bar Association Section of Litigation (2003-2005)

Chairman, Board of Directors, ACE Scholarships

Former Chairman, Board of Directors, Boys & Girls Clubs of Metro Denver

Board of Trustees, The Independence Institute

Board of Directors, Visionbox Actors Studio

Board of Advisors, Texas Review of Law and Politics

BIG WINS

Bartlit Beck Wins Major Patent Defense Victory for Static Control in Printer Cartridge Dispute

NEWS

Bartlit Beck Profiled as "Litigation Powerhouse"

08.2011

Joe Smith Wins Major Victory for Toner Cartridge Recycling Industry

06.2007