



## James P. Smith III

Partner  
Chair, Securities Litigation Practice

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Jim chairs Winston’s Securities Litigation Practice, leading what *The Legal 500 US* describes as a “fabulous, ... first-rate” “cadre of lawyers in New York who continue to impress in the M&A litigation space—they are as good as anyone in the industry.” He is ranked in the area of New York Litigation: Securities by *Chambers USA* in 2017–2019 and 2021–2023, where “impressed interviewees” praise him as “an exceptionally good trial lawyer and excellent strategic thinker.” He is recommended by *The Legal 500 US* in the areas of M&A Litigation and Securities Litigation—Defense as a “great lawyer with excellent judgment.”

Jim is ranked in the area of New York Litigation: Securities by *Chambers USA* in 2017–2019 and 2021–2023, which notes that he is “increasingly recognized for his securities litigation practice, which includes a strong focus on M&A cases,” that “[c]lients praise his ‘*extraordinary knowledge*’ of Delaware law, as well as highlighting his ability to ‘*provide practical and nuanced advice while being sensitive to the specifics of our situation,*’” and that “[h]e is ‘*an exceptionally good trial lawyer and excellent strategic thinker,*’ according to impressed interviewees.” Jim is recommended by *The Legal 500 US* in the areas of M&A Litigation and Securities Litigation—Defense as a “great lawyer with excellent judgment” who is always in tune “with what will—and will not—impress a judge” and, according to one interviewee, “remains one of the most eloquent lawyers I have ever encountered.” Jim is also a *Benchmark*

*Litigation US* “National Practice Area Star” in Securities Litigation and is one of the 2022 *Lawdragon* “500 Leading Litigators in America.”

His practice areas comprise a broad range of complex commercial litigation, with a focus on M&A-related litigation and contests for corporate control, federal securities fraud class action defense, corporate governance litigation and advice, the defense of shareholder derivative suits and shareholder derivative demand response, and state deceptive sales practices/consumer fraud class action defense.

Jim is a first-chair trial lawyer and has tried numerous cases (including in the Delaware Court of Chancery) and argued notable appeals before various state and federal appellate courts. He has represented clients in a variety of industries, including: technology/e-commerce; commercial and investment banking; private equity; hedge funds; derivatives and securitization; insurance; energy; oil and gas; health care; biotech; semiconductors; and telecommunications.

Among other things, Jim successfully represented Omnicare, Inc. in the hostile takeover litigation leading the landmark Delaware Supreme Court “lock-up” decision in *Omnicare, Inc. v. NCS Healthcare, Inc., et al.* and was also part of the team that successfully represented Omnicare in the federal securities class action resulting in the U.S. Supreme Court’s groundbreaking 2015 ’33 Act decision in *Omnicare v. Laborers District Council Constr. Indus. Pension Fund*. He is currently heading up the defense of Becton Dickinson, a leading medical device company, in a federal securities fraud class action alleging more than US\$9 billion in lost market capitalization in which, after the case was initially dismissed in its entirety and re-pled, he recently obtained a partial dismissal, and the defense of Teva Pharmaceuticals in a federal securities fraud class action (parallel to a DOJ enforcement action) in which he recently obtained a partial dismissal.

In Delaware Court of Chancery M&A and corporate governance litigation, Jim is currently leading two cases scheduled for trial and recently won back-to-back cases—one as plaintiff and one as defendant—at the motion to expedite stage.

He is also leading a first-of-its-kind lawsuit filed by a post-de-SPAC issuer in the New York Commercial Division against a PIPE subscriber that failed to fund.

## Key Matters

### Representative Matters

#### **Securities Fraud, Shareholder Derivative & Related Actions**

- Represented Omnicare, Inc. in federal securities fraud class action litigation arising out of a series of government investigations in which claims alleging violations of the Securities Exchange Act of 1934 and Rule 10b-5 were dismissed for failure to plead loss causation under *Dura*, and/or *scienter* under *Tellabs* (affirmed by the Sixth Circuit), and in a related derivative litigation that was dismissed for failure to plead demand futility. In one of the most significant decisions under the Securities Act of 1933 in decades, the United States Supreme Court unanimously reversed and vacated a decision by the U.S. Court of Appeals for the Sixth Circuit holding that the plaintiffs had adequately alleged a claim against Omnicare under Section 11 of the ’33 Act based on certain expressions of opinion contained in a registration statement.
- Defending Teva Pharmaceuticals Industries Limited and certain of its former officers in a federal securities class action in the District of Pennsylvania alleging violations of Sections 10(b) and 20(a) of the ’34 Act.
- Leading the defense of medical device company Becton, Dickinson and Company and certain of its current and former officers in a federal securities fraud class action in the District of New Jersey alleging claims under Sections 10 and 20 of the ’34 Act and SEC Rule 10b-5 based on allegations that that the company misrepresented the status of discussions with FDA regarding modifications to and its ability to continue to ship its Alaris infusion pump product, resulting in more than US\$9 billion loss of market capitalization, and follow-on derivative litigation.

The securities class action was initially dismissed in its entirety on defendants' motion to dismiss, re-pled and dismissed in part on defendants' renewed motion.

- Led the defense of TreeHouse Foods in federal securities class action litigation in the Northern District of Illinois arising out of allegations that TreeHouse made overly optimistic public statements regarding its success in integrating certain major corporate acquisitions that was resolved after mediation, as well as follow-on state court derivative litigation dismissed for failure to plead "wrongful refusal." Currently leading the defense of follow-on federal derivative litigation.
- Led the defense of OneSpan in federal securities fraud class action and "piggyback" derivative litigation in which lead plaintiff voluntarily dismissed the securities class action rather than file an amended complaint, with the derivative plaintiffs following suit.
- Led the defense of chip card producer CPI Card in federal securities class action litigation and a follow-on derivative suit arising out of allegations that CPI made overly optimistic predictions regarding its future prospects relating to the conversion from magnetic stripe to chip-based credit cards.
- Led the defense of RCS Capital and certain of its officers and directors in federal securities class action litigation in the Southern District of New York arising out of the public announcement of accounting issues at American Realty Capital Partners (ARCP) and the subsequent termination of RCS's agreement to purchase certain Cole Capital entities from ARCP.
- Led the defense of an underwriting syndicate including Goldman, Sachs, Merrill Lynch, Credit Suisse and Morgan Stanley in a federal securities class action in the Southern District of New York arising out of the IPO of Party City. The court dismissed the case, including all claims against the underwriters, on defendants' motion to dismiss.
- Led the defense of the former CFO of Corporate Resource Services in a federal securities class action in the Southern District of New York arising out of tax issues at TSE Employment, Inc.
- Successfully defended Tesoro Petroleum Corporation in federal securities class action litigation in the Southern District of New York in which claims alleging violations of the 1934 Act and Rule 10b-5, based on oil refining margin information posted on Tesoro's website, were dismissed under the Private Securities Litigation Reform Act of 1995.
- Defended Wachovia Capital Markets, LLC in a federal civil Racketeer Influenced and Corrupt Organizations Act (RICO) action in the Southern District of New York, which was dismissed for failure to allege RICO injury, and follow-on litigation in the NY State Supreme Court, Commercial Division, brought by a consortium of distressed investors led by hedge fund Harbinger Capital Partners seeking US\$165 million in damages and alleging that Wachovia aided and abetted now-bankrupt health drink company Le-Nature's, Inc. in a fraudulent accounting scheme in connection with a note issuance in which Wachovia acted as lead bookrunner. Mr. Smith successfully argued for the dismissal of claims of negligent misrepresentation and civil conspiracy.
- Defended Emergis Inc. in a post-closing dispute in the Southern District of New York arising out of the sale of an Emergis subsidiary to MultiPlan, Inc., alleging federal securities fraud and seeking indemnification for purported breaches of representations and warranties in the share purchase agreement.
- Led the defense of the board of directors of Lender Processing Services in shareholder derivative litigation before the then Chancellor of the Delaware Court of Chancery alleging Caremark claims arising out of the so-called "robo-signing" scandal, which was voluntarily dismissed by plaintiffs after oral argument on defendants' motion to dismiss on demand futility grounds.
- Conducted numerous internal board/committee and other investigations in response to shareholder demands, in relation to potential insider trading and on other matters.

#### ***M&A and Corporate Governance Litigation***

- Successfully represented Omnicare, Inc. in Delaware Court of Chancery hostile takeover litigation leading to Omnicare's successful acquisition of NCS Healthcare, Inc., including the landmark Delaware Supreme Court decision in *Omnicare, Inc. v. NCS Healthcare, Inc., et al.*

- Defended The MONY Group Inc. in litigation in the Delaware Court of Chancery and federal court in New York arising out of its merger with AXA Financial Corp. Led the federal court litigation and successfully argued the appeal in *The MONY Group Inc. v. Highfields Capital Management, et al.*, a case of first impression in which the U.S. Court of Appeals for the Second Circuit unanimously reversed the district court, as well as the long-standing informal position of the Securities and Exchange Commission (SEC) Office of Corporation Finance Staff, by holding that dissident shareholders soliciting against approval of a Delaware merger are prohibited under the federal proxy rules from sending shareholders a duplicate copy of management’s proxy card during a purportedly exempt solicitation. The case also generated the seminal Delaware “post agreement market check” decision *In re MONY*.
- Defended LifePoint Hospitals, Inc. and its board of directors in litigation brought in the Delaware Court of Chancery by dissident hedge fund Accipiter seeking to nominate a slate of directors to LifePoint’s board notwithstanding the plaintiff’s failure to comply with the company’s advance notice bylaw. The Court denied the plaintiff’s motion for a preliminary injunction to delay LifePoint’s annual shareholder meeting and dismissed the case on the company’s motion for summary judgment.
- Represented numerous bulge bracket and other investment banks, hedge funds, target company boards and others in various capacities in connection with deals including, among others: Oracle/PeopleSoft; CVS/Caremark; Clear Channel/Bain Capital-Thomas H. Lee; MedImmune/AstraZeneca; Hilton Hotels/Blackstone; SLGreen/Reckson; Mirant Corp./RRI Energy; OSI/Astellas; CommScope Inc./The Carlyle Group; and Hertz/Dollar Thrifty.
- Currently leading the defense of R1 RCM and certain of its officers and directors in Delaware Court of Chancery class action and derivative litigation challenging a recapitalization by the company’s controlling stockholders and its recent acquisition of Cloudmed.

#### **Additional Hostile Takeover Representations**

- Led the defense of the board of directors of Illumina in shareholder class action litigation arising out of Roche Holding’s failed US\$6.2 billion hostile takeover attempt, in which plaintiffs’ motion to expedite in the Delaware Court of Chancery and motions to expedite and for a temporary restraining order requiring the board to pull a “poison pill” in California state court in San Diego were denied, and the cases subsequently dismissed.

#### **Poison Pill Litigation**

- Represented AAR Corp. and its board of directors in expedited “bellwether” shareholder litigation in the Delaware Court of Chancery challenging the board’s decision to take its shareholder rights plan (aka “poison pill”)—which included so-called “wolfpack” provisions —“off the shelf” in response to the extreme market disruption of the COVID-19 pandemic. Similar shareholder lawsuits were filed against Tribune Publishing and The Williams Companies by the same plaintiffs’ firm and assigned to Chancellor McCormick. With all three cases headed toward expedited trial, after evaluating then-current market conditions the AAR board terminated the pill, causing plaintiff to voluntarily dismiss its lawsuit. After limited “causation” discovery, the parties agreed to a “mootness fee” resolution. Subsequently, Chancellor McCormick issued her post-trial ruling in the *Williams* case in favor of the plaintiffs.

#### **Financial Advisor/Investment Bank Aiding & Abetting and Related Cases**

- Leading the defense of a leading financial advisor in New York State Court shareholder derivative litigation challenging an alleged controlling stockholder spin transaction by a Cayman Island-chartered, Chinese headquartered, U.S.-listed company, in which the advisor that rendered a fairness opinion to a special committee was named on an aiding and abetting/“dishonest assistance” theory. Plaintiff sought relief approaching US\$1 billion.
- Led the defense of Citigroup Global Markets Inc. in California state court shareholder class action litigation challenging the US\$1.4 billion acquisition of Conor Medsystems by Johnson & Johnson, in which claims that Citi, as financial advisor, owed a fiduciary duty to Conor shareholders and/or aided and abetted a breach of fiduciary duty by the Conor board were dismissed on Citi’s successful demurrer.

- Represented the investment bank of a leading diversified financial institution, as non-party witness, in its capacity as financial advisor to Amerigroup Corporation and its board of directors, in connection with shareholder class action litigation in the Delaware Court of Chancery challenging the US\$4.9 billion acquisition of Amerigroup by WellPoint. Our client's co-financial advisor, a top bulge bracket investment bank, was named as a defendant on an aiding and abetting theory, on the purported grounds that its trading desk's status as counterparty to a complex derivative transaction with the target rendered it "hopelessly conflicted" and gave it an incentive to rush the deal through and exclude certain potential buyers from the sale process.
- Represented the investment bank of a leading diversified financial institution, as non-party witness, in its capacity as financial advisor to defendant Applica Inc. in *NACCO v. Applica*, a post-closing dispute in the Delaware Court of Chancery alleging that Applica and affiliates of Harbinger Capital Partners conspired to position Harbinger to top NACCO's initially successful bid and prevail in the ensuing bidding war.

### **Additional Public Company Buy-Side Representations**

#### *"Busted Deal"/MAE*

- Led the defense of RCS Capital in "busted deal" litigation in the Delaware Court of Chancery challenging RCS's termination of an approximately US\$700 million agreement to acquire certain Cole Capital entities from plaintiff American Realty Capital Partners based on, among other things, the occurrence of a "material adverse effect."

#### *Shareholder Class Actions*

- Led the defense of eBay in connection with shareholder class action litigation challenging its US\$2.4 billion acquisition of GSI.
- Led the defense of AGL in shareholder class action litigation in Illinois state court in Chicago challenging its US\$2.4 billion acquisition of Nicor, Inc.
- Led the defense of Sycamore Partners in shareholder class action litigation challenging its US\$2.2 billion acquisition of The Jones Group in the Commercial Division of the NY Supreme Court in Manhattan.
- Led the defense of Sycamore Partners and its affiliates in multi-forum shareholder class action litigation challenging Sycamore's US\$600 million acquisition of Hot Topic, Inc., in which plaintiffs' pre-vote California state court motion for expedited discovery was denied and all claims against the Sycamore defendants, including claims for violation of Rule 14a-9 of the federal proxy rules and aiding and abetting breach of fiduciary duty, were dismissed with prejudice by the U.S. District Court for the Central District of California on defendants' post-closing motion.
- Led the defense of Applied Materials in shareholder class action litigation challenging its acquisition of Semitool, in which plaintiffs' motion for expedited discovery was denied.
- Led the defense of Merz Pharmaceuticals in connection with California state court shareholder class action litigation challenging its acquisition of BioForm, in which plaintiffs' motion for a temporary restraining order enjoining Merz's tender offer was denied.

### **Additional Public Company Sell-Side Representations**

#### *"Busted Deal"/MAE*

- In one of the most closely watched "busted deal" cases in the Delaware Court of Chancery since *Akorn*, Winston client Rent-A-Center, Inc. prevailed against Vintage Capital, which had sued to undo RAC's termination of the parties' US\$1.37 billion merger agreement. After a trial featuring testimony from Vintage's antitrust counsel, the court strictly enforced the merger agreement, finding that RAC validly terminated. Winston represented RAC in the deal and the FTC approval process and Mr. Smith defended the lead Winston antitrust partner at deposition and in connection with her potential trial testimony.

#### *Shareholder Class Actions*

- Led the defense of Echo Global Logistics in shareholder class action litigation challenging its US\$1.3 billion acquisition by funds managed by The Jordan Company.
- Led the defense of Edo Corp. and its board of directors in shareholder class action litigation challenging its US\$1.7 billion acquisition by ITT.
- Successfully defended senior executives of Federal-Mogul in multi-forum merger objection class action litigation in the Delaware Court of Chancery and Michigan state court challenging Carl Icahn's controlling stockholder take-private of F-M, valuing the Company at over US\$1.6 billion. The plaintiffs voluntarily dismissed their claims with prejudice on the eve of argument on defendants' *MFW* and *Corwin* based post-closing motions to dismiss.
- Led the defense of Blackboard Inc. and its board of directors in shareholder class action litigation challenging its US\$1.6 billion acquisition by Providence Equity, in which expedited discovery was denied and the actions subsequently dismissed on defendants' motion.
- Led the defense of Taylor Capital Group and its board of directors in shareholder class action litigation in the Illinois Chancery Division in Chicago challenging its US\$680 million merger with MB Financial, in which plaintiffs' request for expedited discovery was denied in significant part.
- Led the defense of Pacer International and its board of directors in shareholder class action litigation in Tennessee Chancery Court challenging Pacer's merger with XPO Logistics. The Tennessee Court of Appeals, considering an objection to a disclosure-based settlement, chose not to follow the Delaware Court of Chancery's *Trulia* analysis and instead approved the settlement after oral argument by Mr. Smith.
- Successfully represented True Value Company and its officers and directors in shareholder litigation in the Delaware Court of Chancery seeking to block the closing of the company's proposed transaction with private equity firm Acon Investments, in which the Court denied plaintiff's motion for a preliminary injunction notwithstanding, among other things, the absence of a sell-side fairness opinion.
- Led the defense of Command Security and its board of directors in shareholder class action litigation in the New York State Supreme Court challenging its acquisition by Prosegur SIS (USA), in which defendants mooted plaintiff's disclosure claims with an 8-K issued prior to the shareholder vote and the Court found the 8-K itself to be sufficient notice to the class to permit voluntary discontinuance of the action pre-certification.
- Led the defense of NYMagic and its board of directors in shareholder class action litigation in the New York State Supreme Court, Commercial Division, challenging NYMagic's merger with ProSight Specialty Insurance, an operating company backed by Goldman Sachs Capital Partners and private equity firm TPG.
- Defended USI Holdings in a New York state court shareholder class action challenging the US\$1.4 billion buyout of USI by Goldman Sachs, in which plaintiffs' motion for a preliminary injunction was denied in one of the few New York decisions construing and applying Delaware merger law in this context.

### **Post-Closing Disputes**

- Currently representing Albertsons in a post-closing earnout dispute in the Delaware Court of Chancery arising out of its acquisition of online meal-kit provider DinelineFresh, dba Plated, seeking US\$125 million.
- Successfully represented a large U.S.-based multinational conglomerate in its capacity as the 20% minority shareholder of a Latin American commercial bank in a post-closing ICC arbitration trial in New York arising out of our client's US\$1 billion cross-border sale of control of the bank and the follow-on cross-border acquisition of the publicly-traded acquirer, in violation of our client's "tag-along" rights under its shareholder agreement. After a two-week trial, a three-arbitrator panel awarded our client approximately US\$300 million, as well as attorneys' fees and pre- and post-award interest.
- Successfully represented plaintiff BAE Holdings, LLC in a Delaware Court of Chancery action seeking an injunction and a declaration that defendants' attempt to amend an LLC agreement to deprive BAE of its contractual minority governance and liquidity rights in connection with a planned IPO breached the agreement and their fiduciary duties. The case resolved within days of the initial scheduling conference.

- Successfully defended CM Top Co. in Delaware Court of Chancery litigation arising out of a then-ongoing process being run by our client via a strategic committee, in which plaintiff sued seeking expedited proceedings and a TRO to halt and modify the strategic committee process on the unprecedented theory that *Revlon* precluded the committee from taking steps to keep plaintiff, an interested bidder holding approximately 40% of the company and several board seats, at arm's length. Within 10 days, the Vice Chancellor denied both motions on the grounds that the plaintiff had failed to state a colorable claim or establish either irreparable harm or a balance of the equities in its favor and the process was permitted to proceed.
- Successfully defended Lear Corporation in a post-closing action in the United States District Court for the District of Delaware brought by ESG Holding arising out of the US\$850 million acquisition of Everett Smith Group. The case was dismissed and leave to plead denied after oral argument by Mr. Smith.
- Successfully defended Synaptics in a Delaware Court of Chancery post-closing "earn-out" dispute, seeking dismissal of certain claims on the grounds they were subject to mandatory arbitration under the merger agreement, and others on the grounds that they failed to adequately plead Synaptics' alleged non-compliance with a "commercially reasonable efforts" obligation to attempt to bring certain products to market. The Court dismissed the earn-out claims from the bench following argument by Mr. Smith and significantly narrowed the scope of the remaining "commercially reasonable efforts" claim. In the ensuing arbitration, the Neutral Accountant found that no earn-out was due and plaintiffs voluntarily dismissed all claims remaining in the Court of Chancery.
- Represented numerous private equity firms and operating companies on both the buy-side and sell-side in post-closing disputes relating to indemnification for breaches of representations and warranties and earn-out provisions in stock and asset purchase agreements, and advice in connection with the drafting of same.

#### **Additional Proxy Cases**

- Led the defense of La-Z-Boy Inc. and its board of directors in shareholder class action litigation seeking to enjoin the company's annual shareholder meeting based on allegedly inadequate proxy disclosure regarding a shareholder proposal to amend the company's stock incentive plan to increase the number of shares available for issuance. Plaintiff's motion to enjoin the vote was denied and the case subsequently dismissed with prejudice on defendants' post-vote motion.
- Represented CNET Networks in its proxy contest with JANA Partners and subsequent successful merger with CBS.

#### **Additional Delaware Court of Chancery Experience**

- Successfully represented PricewaterhouseCoopers in a post-closing "poaching" case involving breach of non-compete provisions executed in exchange for merger consideration in PwC's US\$200 million acquisition of management advisory firm Booz & Company Inc. ("Booz"). Mr. Smith successfully argued for and obtained a preliminary injunction prohibiting a former partner and equity holder of Booz from joining a competing advisory firm in violation of the merger-related non-compete provisions.

#### **Other Class Action & Financial Institution Litigation**

- Represented MONY Life Insurance Company in a class action litigation involving the marketing of so-called "vanishing premium" life insurance policies, including the New York Court of Appeals decisions in *Gaidon v. Guardian Life Insurance Company*, affirming the dismissal of eight of nine causes of action asserted against MONY in a nationwide "vanishing premium" class action; *Goshen v. The Mutual Life Insurance Company of New York, et al.*, affirming the dismissal of the remaining claims of all non-New York purchasers in that action under New York's consumer protection act; and the New York Appellate Division decision in *DeFilippo v. MONY Life Insurance Company*, decertifying the remaining New York-only class.
- Represented Panasonic Corporation of America in putative nationwide class actions alleging violations of the New Jersey Consumer Fraud Act in connection with the marketing and sale of cordless telephones and DVD players in which class certification was denied.

- Represented Crèdit Agricole and its subsidiaries in emerging markets/Russian debt crisis litigation in New York state court and abroad, including a US\$119 million judgment against National Reserve Bank of Russia as a result of its default on a series of foreign currency exchange forward transactions in the wake of the Russian Federation’s August 1998 moratorium on the repayment of foreign debt.
- Represented and counseled foreign banks in connection with bank-secrecy issues and the application of international mutual legal assistance treaties in the context of a U.S. criminal investigation.

## Recent Experience

Terold Acquisition of Majority Stake in WX Brands

United American Healthcare Corp. Sale of Pulse Systems LLC to Heraeus Holding GmbH

Weitz Group Ltd.’s Sale of its Shares in FZG Holdings Ltd. to Filorga

Prevailed before Supreme Court for Omnicare in Landmark Securities Act Case

## Recognitions

Jim has been ranked by *Chambers USA* in the area of New York Litigation: Securities in 2017–2019 and 2021–2023 and is recognized by *The Legal 500 US* in the areas of M&A Litigation and Securities Litigation—Defense, which observes in its 2019 edition that “Practice head Smith is described by clients as ‘an exceptionally good lawyer—highly attentive to both the details and the big picture strategy’ while another client notes that he ‘remains one of the most eloquent lawyers I have ever encountered and has an excellent sense of what will—and will not—impress a judge.’” He was recognized in the *Lawdragon* “500 Leading Litigators in America” for securities litigation in 2022 and 2023. Recently, he was selected as both a “National Practice Area Star” in Securities Litigation and a “New York Litigation Star” by *Benchmark Litigation US*. He is perennially listed in *Law & Politics Magazine* as a “New York Super Lawyer” in Securities Litigation and has been listed as a “Super Lawyer” in the National “Corporate Counsel Edition.”

“ He is just an incredible advocate. He’s quick on his feet and has perfect temperament. Inside and outside the courtroom, he is a delight to work with. ”

*Chambers USA* client testimonial

## Credentials

### EDUCATION

Jim received an A.B., *cum laude*, from Georgetown University, Washington, D.C., in 1990, and a J.D., *cum laude*, from Georgetown University Law Center, Washington, D.C., in 1993, where he was the articles editor for the *Georgetown International Environmental Law Review*.

### ADMISSIONS

- New York



# Related Insights & News

## **Media:**

Jim has appeared on “InsideTrack,” Bloomberg Television’s morning market coverage, providing insight on securities fraud, fiduciary duty, and corporate governance issues, and has been interviewed on related matters by Dow Jones and other financial media outlets.

## **Speeches, Programs, & Other Appearances:**

- Northwestern Law 36<sup>th</sup> Annual Ray Garrett Jr. Corporate and Securities Law Institute, “Mock Trial—Valuation Issues Under Delaware Law” (Hon. Leo E. Strine, Jr., Chief Justice, Delaware Supreme Court, *presiding*; Mr. Smith and Kevin Shannon of Potter Anderson & Corroon LLP, *argued*; Patricia Vella of Morris, Nichols, Arsht & Tunnell LLP, *commentator*), April 29, 2016.
- 2015 Houlihan Lokey Corporate Governance Forum -- Winning with the Hand You’re Dealt: Conflicts, Plaintiffs, and Short-Termism in the Boardroom (Panel, “When the Stakes are High—Defending the Board in Litigation,” with former Chief Justice Myron Steele of the Delaware Supreme Court), March 12, 2015.
- FTI Consulting, “Emerging Trends in Mergers and Acquisitions Disputes” (panel with Jeff Litvack and Jeremy McGannon), Nov. 7, 2014.
- PLI M&A Litigation 2014, “Aiding and Abetting Claims in M&A Litigation,” June 26, 2014.
- 41<sup>st</sup> Annual Northwestern Law Securities Regulation Institute, “Civil Litigation” (panel with former Chief Justice Myron Steele of the Delaware Supreme Court and Mark Lebovitch of Bernstein Litowitz), Coronado, Calif., Jan. 29, 2014.
- Boston Bar Association First Annual Mergers & Acquisitions Conference, “The Evolving Standards of Judicial Review for M&A Transactions and Recent Developments in M&A Litigation,” Nov. 13, 2013.
- ABA Business Law Section 2013 Spring Meeting, Mergers & Acquisitions Committee, “What Deal Lawyers Need to Know About M&A Litigation” (panel with Hon. Myron Steele, then-Chief Justice, Delaware Supreme Court), April 2013.
- ABA Business Law Section 2013 Spring Meeting, Financial Advisor Task Force, “Mock Investment Banker Engagement Letter Negotiation,” April 2013.
- 40<sup>th</sup> Annual Northwestern Law Securities Regulation Institute, “Federal and State Judicial Developments and Private Securities Litigation” (panel with Hon. Myron Steele, then-Chief Justice of the Delaware Supreme Court and Stuart Grant of Grant & Eisenhofer), Coronado, Calif., Jan. 2013.
- “Securities Litigation in 2012 and Beyond: New Targets, New Solutions,” panel presentation for the Association of Corporate Counsel – Southern California Chapter, Nov. 13, 2012.
- Financial Sector in Distress: “Workout Strategies, Bankruptcy, Receiverships and Acquisitions,” Feb. 18, 2009.
- PLI Securities Litigation and Enforcement Institute 2009, “Corporate Governance Litigation,” Sept. 29, 2009.
- Numerous in-house and client CLE-certified programs on topics ranging from the latest developments in Delaware M&A and corporate governance jurisprudence to developments in class action and multidistrict litigation to the attorney-client privilege and work product doctrine to ethics in the conduct of corporate internal investigations to deposition skills training.

## **Publications:**

Since 2006, Mr. Smith has co-authored and edited the “Delaware Quarterly: Recent Developments in Delaware Business and Securities Law,” a quarterly roundup of major decisions in the Delaware Court of Chancery and Supreme Court.

Additional publications include:

- “The Looming Specter: Post-Closing Fraud Claims in Private Company M&A Litigation,” *Harvard Law School Forum on Corporate Governance and Financial Regulation*, July 2017.
- “CSX—A Case of First Impression: Hedge Funds Violated Securities Laws’ Disclosure Requirements,” *Derivatives Financial Products Reports*, October 2008.
- “CSX’: Second Circuit Upholds Denial of Injunctive Relief,” *New York Law Journal*, Sept. 26, 2008.
- “Changing Face of Class Actions,” *New York Law Journal*, special pullout section, “Securities Litigation & Regulation,” July 9, 2007.
- “1998-99 Merits Decisions in ‘Vanishing Premium’ Sales Practices Litigation: A Vintage Year for Insurance Company Defendants,” ALI-ABA Conference on Life Insurance Litigation: Course of Study Materials, American Law Institute May 13-14, 1999.
- “A Reversible Shield: Model Rule 4.2 in Competing Class Actions,” *Litigation Ethics*, American Bar Association, Section of Litigation, Committee on Ethics and Professional Responsibility, Fall/Winter 1997.

**Acknowledgements:**

Hon. Leo E. Strine, Jr., Lawrence A. Hamermesh and Matthew C. Jennejohn, “Putting Stockholders First, Not the First-Filed Complaint,” Harvard Law School, John M. Olin Center for Law, Economics and Business, Discussion Paper No. 740 (January 2013), n. 1 (acknowledged for “thoughtful comments”).

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**RECOGNITIONS**

Winston Team Led by James P. Smith and Jeffrey L. Steinfeld Featured in Litigator of the Week Column  
APRIL 12, 2024

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**SPEAKING ENGAGEMENT**

Bill O’Neil Speaks at the 36th Annual Tulane Corporate Law Institute  
MARCH 7, 2024

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**SPONSORSHIP**

Winston Supports the 51st Annual Securities Regulation Institute  
JANUARY 22, 2024

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**RECOGNITIONS**

Winston & Strawn Recognized in 2024 *Benchmark Litigation*  
OCTOBER 6, 2023

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**RECOGNITIONS**

Winston & Strawn Partners Recognized in 2024 *Lawdragon* 500 Leading Litigators in America  
SEPTEMBER 8, 2023

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**RECOGNITIONS**

Winston & Strawn Recognized in *The Legal 500 U.S.* 2023

JUNE 7, 2023

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**RECOGNITIONS**

Winston & Strawn Recognized in *Chambers USA* 2023

JUNE 6, 2023

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**RECOGNITIONS**

Winston & Strawn Recognized in 2023 *Benchmark Litigation*

OCTOBER 14, 2022

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**RECOGNITIONS**

Winston & Strawn Partners Recognized in 2023 *Lawdragon* 500 Leading Litigators in America

OCTOBER 5, 2022

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**RECOGNITIONS**

Winston & Strawn Recognized in *The Legal 500 U.S.* 2022

JUNE 8, 2022

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**RECOGNITIONS**

Winston & Strawn Recognized in *Chambers USA* 2022

JUNE 3, 2022

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**BLOG**

Delaware Court of Chancery Applies Entire Fairness to De-SPAC Transaction in First Major Decision Involving SPAC Litigation

FEBRUARY 4, 2022

# Capabilities

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- Securities, M&A & Corporate Governance Litigation
- Mergers & Acquisitions
- Transactions
- Corporate Governance
- Commercial Litigation & Disputes
- Class Actions & Group Litigation
- Government Program Fraud, False Claims Act & Qui Tam Litigation
- Public Companies
- Financial Services
- Health Care
- Medical Devices
- Technology, Media & Telecommunications
- Cryptocurrencies, Digital Assets & Blockchain Technology