

**James E. Smith** *Shareholder*

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## Overview

James (Jim) Smith principally focuses on environmental matters including counseling, supporting transactions, and trying cases. He also has experience in intellectual property matters and is registered before the U.S. Patent and Trademark Office as a patent attorney. His degree in chemical engineering combined with his legal experience enable him to bring a unique perspective as he represents refining, petrochemical and other resource related industry clients.

## Education

The University of Texas School of Law -  
J.D., with honors, 1982

University of Kansas - B.S. Chemical  
Engineering; Tau Beta Pi, Phi Lambda  
Upsilon, 1978

## Practice Areas

Environmental, Health, and Safety

Appellate

Intellectual Property

Commercial Litigation

### *Environmental*

He counsels corporate as well as individual clients on a variety of environmental issues, in addition to trying and arguing appeals in both civil and criminal matters and in both state and federal courts. Jim has appeared before the U.S. Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), the Railroad Commission of Texas, and other administrative agencies in permitting and enforcement matters.

Jim's practice concerns all major environmental media. His trial and transaction work has involved air quality, water quality, hazardous and solid waste, wetlands, and other permitting and enforcement matters, as well as state and federal Superfund cases. He has facilitated closures under the Texas Voluntary Cleanup Program and has assisted with plume management zones and Municipal Settings Designations.

### *Construction and other Litigation*

Jim has handled construction disputes and other litigation, including arbitration, primarily for clients in the petroleum refining, chemical, electric generation, and extraction industries. He has handled direct and cross

## Admissions

State Bar of Texas  
 United States District Court, Northern  
 District of Texas  
 United States District Court, Southern  
 District of Texas  
 United States District Court, Western  
 District of Texas  
 United States District Court, Eastern  
 District of Texas  
 United States Court of Appeals, Fifth  
 Circuit  
 United States Court of Appeals, Federal  
 Circuit  
 United States Patent and Trademark Office

examination at trial of engineers, forensic accountants, physicians, toxicologists and other experts, and has successfully prosecuted and defended motions relating to admissibility of expert testimony.

### *Appeals*

Jim has handled many appellate cases, and has been the lead oral advocate before the U.S. Court of Appeals for the 5<sup>th</sup> Circuit, the Supreme Court of Texas, and several Texas Courts of Appeals. His appellate practice has included both civil and criminal environmental cases, as well as non-environmental matters.

### *Intellectual Property*

With Jim's technical skills and litigation experience, he can represent clients with claims of infringement resulting from patents, trademarks, copyrights or trade secrets. Jim is familiar with the patent process; he has assisted in contract negotiations regarding intellectual property and has represented inventors and other intellectual property owners in court. Jim has assisted clients in classifying, evaluating and assigning a value to a company's patent portfolio and other intellectual property for subsequent sale or purchase.

Jim has been listed in Chambers USA in Environmental Litigation since 2005. He has been selected for inclusion in Texas Super Lawyers since 2003 and Best Lawyers in America in Environmental Law since 1995.

## Experience

### *Environmental*

#### *Transactional/Compliance*

- Provided compliance counseling on air quality matters, including Title V Deviation Reports.
- Represented both large and small companies in transactions involving ongoing environmental permits, and often where ongoing remediation of affected soil and/or groundwater would continue after transfer of ownership, and assisted in drafting contract documents to manage the remedial efforts and allocate risks.

- Counseled clients regarding compliance with water and solid waste permits.
- Assisted in conducting internal investigations, and presented the results of the investigation in order to persuade agencies not to pursue criminal and/or civil enforcement.

### *Litigation*

- Successfully defended clients in environmental criminal trials, and has arranged pre-trial diversions and plea agreements for corporations in environmental cases.
- Obtained dismissals on behalf of clients in criminal actions against corporations in environmental matters, on constitutional grounds and upheld appeal.
- Negotiated supplemental environmental projects in order to facilitate the diversion and the dismissal of charges against a corporation in pre-trial diversion program.
- Tried civil cases to verdict based on nuisance, trespass, and/or the applicability of state or federal environmental regulations in civil disputes.
- Successfully brought and successfully defended cost recovery claims under the state and federal solid waste disposal or CERCLA statutes.
- Successfully handled arbitrations of private disputes relating to environmental cleanup and contractual issues.
- Argued several environmental cases before appellate courts.
- Defended companies and individuals in both civil and criminal environmental enforcement matters.
- Represented a major chemical manufacturing company in a Clean Water Act citizen's suit, brought by a national environmental interest group.
- Represented a major chemical manufacturing company regarding a disposal site before the state regulatory agency and defended that company in several related toxic tort suits.

### *Intellectual Property*

- Represented an upstream energy service company in a suit alleging that former employees stole trade secrets and devised systems that infringed on client's patents.
- Advised a chemical manufacturer regarding the quality of a potential acquisition targets' patent and trade secrets.
- Conducted a prosecution history review and advised a major refiner in response to claimed patent infringement, regarding fuel and lubricant additive patents.

- Represented clients in patent infringement cases involving computer software, computer hardware, drilling equipment, propping agents, and other oil and gas production technologies.

### *Litigation*

- Handled a construction dispute relating to a billion dollar refinery expansion; lead trial lawyer at trial, settled favorably after two week jury trial.
- Represented clients in multiple construction disputes involving petrochemical facilities; cases have settled or are pending.
- Advised a refinery on alleged improper design of multi-million dollar process unit; case settled.
- Represented refinery related to sub-contractor's alleged failure to receive payment in multi-million dollar project; case settled and lien released.
- Represented a large electric cooperative in contract dispute involving a gas fired power plant.

### **Articles/ Publications**

- "District Court Assesses \$8.3 Million for Tribes' Past Costs for UCR Site; Teck Raises Procedural Issue on Appeal," ABA Superfund and Natural Resource Damages Litigation Committee (01/17)
- "Texas Energy Regulator Taking Nimble Approach To Quakes," Law360 (05/11/15)
- "Texas Legislation To Watch In 2015," Law360 (01/02/15)
- "Texas Looks To Bridge Divide Over Urban Fracking," Law360 (12/15/14)
- "Texas Justices Ax \$400K Award for Environmental 'Stigma,'" Law360 (08/22/14)
- "Texas Supreme Court weighs polluter's toll on ranch's value," Austin American-Statesman (01/02/14)
- "Plant Asks Texas Justices To Nix Damages In Light Of Cleanup," Law360 (12/05/13)
- "Texas High Court Takes Fight Of Pollution 'Stigma' Damages," Law360 (10/18/13)
- "Trying to Clear the Air," Houston Business Journal (02/08/13)
- "Schneiderman Grabs Reins In Run-Up To Methane Battle," Law360 (12/14/12)

- "Coal gets the squeeze from natural gas-fired power," Houston Business Journal (10/12/12)
- "9th Circ. Leaves Climate Change Suits Up To State Law," Law360 (09/21/12)
- "EPA, Texas dispute over Clean Air Act not over," Houston Business Journal (08/17/12)
- "Analysis: Insurers find it tough to price fracking risk," Reuters (05/11/12)
- "Fracking Regulations Could Bite Houston Natural Gas Producers," Houston Business Journal (04/27/12)
- "Texas unlikely to add impact fee on shale plays, experts say," Houston Business Journal (02/22/12)
- "Steffy: Other countries learning Macondo's lessons," Houston Chronicle (01/10/12)
- "Chinese Court Accepts \$78M Oil Spill-Related Lawsuit against ConocoPhillips," International Business Times (01/03/12)
- "SEC Bears Down on Fracking," The Wall Street Journal (08/25/11)
- "Judge Trims Asarco Suit Over \$150M Superfund Payout," Law360 (08/09/11)

## Affiliations

- State Bar of Texas, Member of Litigation, Environmental, and Intellectual Property Sections
- American Bar Association, Member of Litigation, Natural Resources and Environmental, and Intellectual Property Sections
- Houston Bar Association, Member of Litigation, Environmental, and Intellectual Property Sections
- Texas Bar Foundation, Fellow
- University of Texas School of Law, Keeton Fellow
- Mercury Baroque, Member of Board of Directors

## Awards/ Honors

- *Chambers USA* for Environmental Litigation since 2005
- *Texas Super Lawyers* since 2003

- *The Best Lawyers in America* since 1995
- Past recipient of the Houston Bar Association's President's Award