

N. Tobias Smith

Member

Tobias Smith represents clients in environmental matters, with an emphasis on compliance counseling and litigation in state and federal courts. Tobias routinely handles complex litigation matters alleging breach of contract, indemnity disputes, property damage claims, and toxic tort cases arising from exposure to various hazardous substances and petroleum constituents. Tobias frequently defends clients in civil enforcement actions brought by state and local environmental agencies and the US Environmental Protection Agency (EPA). In addition, Tobias regularly represents individual clients named as Potentially Responsible Parties (PRPs) at state and federal Superfund sites and has also served as common counsel for PRP groups.

Tobias also provides counseling to clients on a wide variety of environmental and real estate matters, including underground storage tank (UST) regulations, property remediation, negotiation of property access agreements and other environmental regulatory compliance issues. In addition, Tobias has conducted extensive environmental due diligence for clients in mergers, acquisitions, divestitures and real estate transactions.

EXPERIENCE

LITIGATION AND ENFORCEMENT DEFENSE

- Serves as national coordinating counsel for gasoline and environmental matters for a major gasoline retailer in the U.S. and Canada.
- Responds to and defends price gouging claims against gasoline retailers.
- Defends gasoline retailers against Predatory Pricing claims, such as below-cost sales.
- Represented many industrial clients named as Potentially Responsible Parties (PRPs) in multiple state and federal Superfund matters and served as common counsel to PRP groups in Superfund defense and cost recovery actions.
- Obtained successful disposition of claims involving personal injuries and property damage arising out of the release of gasoline from (USTs) on behalf of a major gasoline retailer.
- Successfully defended client on a gas supply breach of contract dispute, resulting in summary judgment in client's favor.
- Obtained no-liability settlement for national retailer in property damage suit arising from allegations of faulty store design and construction.
- Assisted in successful defense of a major gasoline retailer accused of contaminating soil and groundwater with MtBE and other gasoline constituents in multidistrict litigation (MDL).
- Obtained partial summary judgment in favor of business owner in litigation involving allegations of destruction of commercial property and interference with business activities.
- Assisted in the successful settlement of a multi-facility enforcement initiative brought by EPA against a major retailer, resulting in a single, multi-site administrative settlement and nominal penalty.
- Assisted national grocery retailer with obtaining favorable settlement with EPA for alleged construction-related stormwater violations.
- Obtained successful resolution of lease dispute, including removal of multiple commercial tenants in a retail shopping center complex.
- Successfully defended healthcare facility against claims alleging exposure to toxic mold.
- Extensive experience in coordinating and conducting electronic discovery (e-discovery) in many complex litigation matters.
- Defend agency enforcement actions for violations of UST regulations.
- Defend private party claims and governmental actions arising from fuel releases and contamination.
- Defend stormwater permit enforcement cases.

COUNSELING AND TRANSACTIONAL

- Draft and enforce access agreements, indemnity agreements and cost-sharing agreements to facilitate environmental investigations and remediations.
- Manage voluntary and mandatory environmental cleanups of releases by major retailers.
- Design and supervise environmental compliance audits and voluntary disclosures for major gasoline retailers.
- Serve as compliance counsel to national gasoline retailers on UST regulatory compliance.
- Develop and supervise petroleum release investigations and remediation projects.



Office

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Education

J.D., Georgetown University Law Center, Washington DC, 2001, Law & Policy in International Business, Director of Special Projects

B.A., Tulane University of Louisiana, New Orleans, Louisiana, 1998

State Bar Licenses

Texas

Court Admissions

U.S. District Ct., N.D. of Texas

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- Conduct environmental due diligence, risk assessment and indemnity negotiations for a major gasoline retailer's acquisitions and divestitures.
 - Negotiated multiple access agreements to address environmental remediation for various clients with neighboring property owners, municipalities, and utilities.
 - Managed procurement and transfer of multiple environmental and other federal, state and local regulatory permits on behalf of various clients.
 - Performed environmental due diligence activities in assisting one of the largest US dairy products distributors with the acquisition of assets across the US and renegotiation of credit agreements, with aggregate values of approximately \$1 billion, and in dispositions totaling more than \$400 million.
 - Performed environmental due diligence activities on behalf of a Dutch bank's US representative office in connection with the restructuring of a large loan to a Mexican manufacturing company with fixed assets in the US and other countries.
 - Coordinated environmental due diligence activities for major gasoline retailer's facility acquisitions in the Northeastern US.
 - Developed environmental audit for multi-facility healthcare company.
 - Drafted environmental agreements as part of a major gasoline retailer's \$3 Billion acquisition of 1,000 convenience stores located throughout the U.S.

Presentations

- *Case Law Update*, Texas Environmental Superconference (August 2018)
- *Best Practices for Governmental Agency Interactions, Implementing Litigation Holds and Preserving Attorney-Client Privilege*, Client CLE (April 2018)
- Co-Presenter, *Environmental Due Diligence & Transactional Risk Allocation*, Society of Independent Gasoline Marketers of America Legal Counsel Meeting (April 2018)
- *Retail Gasoline Pricing Law Survey*, Client CLE (March 2018)

Practices, Industries & Services

Energy & Utilities

Environment, Energy & Natural Resources

Litigation

Real Estate

Retail

Memberships

- State Bar of Texas, Environmental Law Section
- Texas Bar Foundation, Fellow (2012-present)
- North Texas Association of Environmental Professionals, Member

Honors

- Named among Best Lawyers in America - Environmental Law; Litigation - Environmental by Best Lawyers (2021)
- Serves as President of Tulane University Alumni Board of Directors (2018 - present).
- Graduate of Dallas Regional Chamber of Commerce's Leadership Dallas Program, 2018.
- Named Texas Super Lawyers' Rising Star by Thomson Reuters (2012-2015).
- Named a Best Lawyer in Dallas for Environmental Law by D Magazine.