



# Matthew Nis Leerberg

Partner

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Matt is Co-Chair of the firm's Appellate Practice Group and leads a national team that serves clients before the U.S. Supreme Court, every federal circuit court and the state appellate courts.

Widely recognized for his work as a litigator and strategist, Matt is often hired to handle appeals in cases that met with unfavorable results in the lower courts. He centers his practice on helping businesses navigate complex state and federal litigation and appeals, including bet-the-company and other high-stakes litigation.

Matt co-authored a comprehensive legal treatise, *North Carolina Appellate Practice and Procedure*, that discusses in depth the constitutional provisions, statutes, rules, cases and customs governing North Carolina appellate law. He is a Board Certified Specialist in Appellate Practice by the North Carolina State Bar. In 2022, Matt was one of only four lawyers ranked in Band 1 by Chambers & Partners for Appellate Litigation in North Carolina. He was also inducted into *Business North Carolina* magazine's Legal Elite "Hall of Fame" for appellate practice.

Matt's clients range from large health systems and private equity firms to small businesses and individuals.

He regularly helps clients with:

- Federal and state appeals
- Class-action defense
- Bet-the-company litigation
- Trade secret and noncompete disputes
- Federal civil rights claims
- Contract litigation

Businesses facing litigation in North Carolina for the first time often look for a legal team with an established reputation and comprehensive knowledge of local customs and practices. Matt takes the time to listen to a client's overall business and litigation goals, and then builds the right team to advance a strategic plan to meet those goals. Cases and appeals are won or lost on those careful, strategic decisions, in conjunction with excellent persuasive writing and oral advocacy.

Clients value Matt's business sense and his ability to translate complex legal issues. In fact, Matt is often hired *by lawyers in other firms* to provide strategic guidance or to represent them in complex litigation where the firms themselves are parties.

Matt's experience includes:

- Successfully defending prominent law firms against class-action lawsuits seeking billions of dollars for alleged violations of federal privacy statutes
- Successfully defending prominent hospital systems in multimillion-dollar class action litigation challenging billing practices
- Obtaining reversal of a \$5.5 million jury verdict for pain and suffering in a medical-malpractice appeal
- Representing a member of a Board of Directors in the first N.C. Securities Act case to reach the North Carolina Supreme Court in 35 years
- Obtaining three North Carolina Court of Appeals opinions reversing and reinstating class-action and breach-of-fiduciary-duty claims arising out of alleged fraud of a company insider
- Securing reversal in the Fourth Circuit Court of Appeals of a dismissal in a software-licensing contract dispute
- Obtaining reversal in the North Carolina Court of Appeals of a dismissal in a multimillion-dollar health care contracting dispute
- Obtaining a defense decision and multimillion-dollar award on the client's counterclaims in an arbitration of a contract dispute

Matt regularly appears on behalf of clients in North Carolina's specialized Business Court and served on that court's inaugural Rules Advisory Committee.

Matt previously served as Managing Partner of the Raleigh Office and on Fox Rothschild's Executive Committee.

Matt is a founder and regular writer for the [North Carolina Appellate Practice Blog](#), which provides news, information, tips and resources for practicing law in North Carolina's state and federal appellate courts.

## Services

- Appellate Practice
- Class Actions
- Litigation

## Client Resources

### **North Carolina Appellate Practice Blog**

Matt is a founder and contributing author on this blog, which provides news, information and tips for practicing law in North Carolina's State and Federal Appellate Courts.

### **Beyond Fox Rothschild**

Matt is Chair of the North Carolina Bar Association's Appellate Rules Committee and a past Chair of the NCBA's Appellate Practice Section.

For several years Matt served as an Adjunct Professor at the Norman Adrian Wiggins School of Law at Campbell University, teaching a course on the Federal Courts.

In his pro bono work, Matt serves the needs of those without means to hire an attorney by representing the indigent through his membership on the Criminal Justice Act appellate panel for the Fourth Circuit. Matt has also represented pro bono clients in constitutional challenges to the Supreme Court of North Carolina and was named six times to the North Carolina Pro Bono Honor Society.

Matt also regularly volunteers his time in the community with a focus on assisting organizations that work to combat food insecurity.

### **Before Fox Rothschild**

Matt served on the Management Committee, was the Partner-in-Charge of the Raleigh office, and head of the Appellate practice group at Smith Moore Leatherwood LLP, which combined with Fox Rothschild in 2018.

Immediately after law school, Matt served as a law clerk for two years for Judge Allyson Kay Duncan on the U.S. Court of Appeals for the Fourth Circuit.

## Honors & Awards

- *Business North Carolina's* Legal Elite, Appellate Hall of Fame (2018-present)
- Selected to the Future Stars list for Litigation by *Benchmark Litigation USA* (2024-2026)
- North Carolina Pro Bono Honor Society (2017-2021, 2023)
- Recognized by the *Chambers USA* Guide for Litigation: Appellate in North Carolina (2022-2025)
- *North Carolina Lawyers Weekly* Leaders in the Law (2022)
- Selected to the "Best Lawyers in America" list for Appellate Practice and Commercial Litigation in Raleigh, NC by *Best Lawyers* (2018-2026)
- Selected to the "Super Lawyers" list for Appellate Law in North Carolina by *Super Lawyers* (2018-2026)

## Bar Admissions

- North Carolina

## Court Admissions

- U.S. Supreme Court
- U.S. Court of Appeals, Federal Circuit
- U.S. Court of Appeals, Third Circuit
- U.S. Court of Appeals, Fourth Circuit
- U.S. Court of Appeals, Fifth Circuit
- U.S. Court of Appeals, Ninth Circuit
- U.S. Court of Appeals, Eleventh Circuit
- U.S. District Court, Eastern District of North Carolina
- U.S. District Court, Middle District of North Carolina
- U.S. District Court, Western District of North Carolina

## Education

- Duke University School of Law (J.D., *with high honors*, 2006)
  - Order of the Coif
  - Mordecai Scholar
- Harvard University (B.A., *magna cum laude*, 2000)
  - Chemistry and Physics

## Memberships

- North Carolina Bar Association
  - Chair, Appellate Rules Committee
  - Chair Emeritus, Appellate Practice Section

## Languages

- Spanish

## Representative Matters

Matt focuses his trial level work on representing businesses in contract and other disputes, especially cases brought in the specialized North Carolina Business Court. Matt's litigation work includes:

- Representing a law firm in a multimillion-dollar arbitration dispute with a financier and another law firm
- Defending businesses, hospitals and law firms against purported class action lawsuits

- Representing businesses and executives in disputes over covenants not-to-compete
- Representing minority owners in shareholder derivative litigation
- Defending a life insurance company in federal court against an interstate fraud scheme perpetrated by one of its agents

Matt works with his appellate clients every day to strategize and protect their interests in the state and federal appellate courts, whether by protecting a favorable outcome in the trial court or seeking to have an unfavorable outcome overturned. Matt's appellate work includes:

- Representing a software company in a licensing dispute before the Fourth Circuit Court of Appeals
- Representing a state agency in a landmark constitutional case before the Supreme Court of North Carolina
- Defending a corporate director against securities violations before the Supreme Court of North Carolina
- Representing a private equity firm in a business defamation suit before the North Carolina Court of Appeals

Matt also works closely with health care clients across North Carolina to pursue their strategic goals in business litigation, including:

- Defending hospitals in patient billing purported class action lawsuits
- Representing health care providers and pharmacy benefit management companies in multi-million dollar contract disputes
- Defending health care providers in patient confidentiality litigation
- Representing health-care-related businesses in litigation arising from mergers and acquisitions

## Reported Cases

Matt has appeared countless times in the state and federal appellate and trial-level courts. A sampling of his reported appellate cases includes:

- *Estate of Savino v. Charlotte-Mecklenburg Hospital Authority*, --- S.E.2d ---, 2018 WL 6314302 (N.C. Ct. App. 2018) (obtained reversal of \$5.5 million jury verdict for pain and suffering in medical-malpractice appeal)
- *Town of Apex v. Rubin*, --- S.E.2d ---, 2018 WL 4996285 (N.C. Ct. App. 2018) (successfully defended landowner against municipality-backed private taking)
- *Little River, LLC v. Lee County*, 809 S.E.2d 42 (N.C. Ct. App. 2017), *review denied*, 818 S.E.2d 692 (N.C. 2018) (overturned governmental refusal to issue special-use permit)
- *Ehmann v. Medflow, Inc.*, 817 S.E.2d 206 (N.C. 2018) (obtained dismissal of appeal filed by company's former directors accused of self-dealing)
- *Awartani v. Moses H. Cone Mem. Hosp.*, 817 S.E.2d 503 (N.C. Ct. App.), *review denied and appeal dismissed*, --- S.E.2d ---, 2018 WL 6531665 (N.C. 2018) (successfully defended hospital against class-action constitutional challenge to collection practices)
- *AVR Davis Raleigh, LLC v. Triangle Construction Co.*, 818 S.E.2d 184 (N.C. Ct. App. 2018) (successfully overturned trial court's refusal to order arbitration in multi-million-dollar construction dispute)
- *In re Bate Land & Timber, LLC*, 877 F.3d 188 (4th Cir. 2017) (successfully overturned district court's dismissal of case)
- *Eli Global v. Heavner*, 794 S.E.2d 820 (N.C. Ct. App. 2016) (successfully overturned trial court's dismissal in business-defamation case)
- *E. Brooks Wilkins Family Medicine, P.A. v. WakeMed*, 784 S.E.2d 178 (N.C. Ct. App. 2016), *review denied*, 797 S.E.2d 18 (N.C. 2017) (obtained dismissal of appeal on jurisdictional grounds)
- *Dehart v. HomeEq Servicing Corporation*, 679 F. App'x 184 (3d Cir. 2017) (successfully defended bank against appeal by homeowner)
- *Newton v. Barth*, 788 S.E.2d 653 (N.C. Ct. App. 2016) (successfully overturned trial court's dismissal of class-action against corporate insiders accused of fraud)
- *Spoor v. Barth*, 781 S.E.2d 627 (N.C. Ct. App.), *review denied*, 789 S.E.2d 4 (N.C. 2016) (successfully overturned trial court's dismissal of class-action against corporate insiders accused of fraud)
- *American Mechanical, Inc. v. Bostic*, 782 S.E.2d 344 (N.C. Ct. App.), *review denied*, 784 S.E.2d 472 (N.C. 2016) (obtained dismissal of appeal on jurisdictional grounds)
- *N.C. Farm Bureau Mut. Ins. Co. v. Clear Technology, Inc.* 601 F. App'x 181 (4th Cir. 2015) (successfully overturned district court's award of summary judgment in software-licensing dispute)

- *WakeMed v. Surgical Care Affiliates, LLC*, 778 S.E.2d 308 (N.C. Ct. App. 2015) (successfully overturned trial court's dismissal in multi-million-dollar contract dispute)
- *Mussa v. Palmer-Mussa*, 731 S.E.2d 404 (N.C. 2012) (successfully overturned Court of Appeals decision in alleged bigamy case, pro bono)
- *Bogovich v. Embassy Club of Sedgefield, Inc.*, 712 S.E.2d 257 (N.C. Ct. App. 2011) (successfully defended judgment obtained by corporate shareholder against fellow shareholder)
- *Mugno v. Mugno*, 695 S.E.2d 495 (N.C. Ct. App. 2010) (successfully overturned trial court's order requiring payments from closely held corporation)

A sampling of Matt's reported trial-level cases includes:

- *Welton v. Durham County*, --- F. Supp. 3d ---, 2018 WL 4656242 (successfully defended County against federal civil rights and related claims)
- *Alston v. Privette*, --- F. Supp. 3d ---, 2018 WL 4604448 (successfully defended hospital against federal civil rights and related claims)
- *In re Branch*, 569 B.R. 657 (E.D.N.C. Bankr. 2017) (successfully defended hospital in data-security and privacy litigation)
- *Jenkins v. Moses H. Cone*, --- F. Supp. 3d --- (E.D.N.C. 2018) (successfully defended hospital against ERISA-based class action challenging its billing practices)
- *Southern v. WakeMed*, --- F. Supp. 3d --- (E.D.N.C. 2018) (successfully defended hospital against ERISA-based class action challenging its billing practices)

## Publications

September 30, 2019

**North Carolina Appellate Practice and Procedure**

*LexisNexis*

July 26, 2016

**Strategic Appeals in Litigation Involving Restrictive Covenants**

*DRI's For the Defense*