



# Robert K. Magovern

Co-Vice Chair, Transportation & Trade

Washington, D.C.

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## Practice Areas

- Antitrust & Competition
- Government Contracts
- International
- Maritime Antitrust & Competition

## Industry Sectors

- Maritime

## Education

- Catholic University of America, Columbus School of Law, J.D., 2004
- Boston University, B.S., 2001

## Bar Admissions

- District of Columbia
- New York

## Court Admissions

- District of Columbia Court of Appeals
- New York Court of Appeals
- Supreme Judicial Court of Massachusetts
- U.S. Court of Appeals for the District of Columbia Circuit
- U.S. Court of Appeals for the Fourth Circuit
- U.S. Court of Appeals for the Third Circuit
- U.S. District Court -- District of Columbia

## Awards & Honors

- Washington D.C. Super Lawyers Rising Star Top Rated Transportation & Maritime Attorney 2013 - 2019
- *The Legal 500 United States* "Next Generation Lawyers" for Transport: Shipping in 2017 - 2024

Robert's practice focuses on counseling U.S. and foreign companies on a variety of domestic and international antitrust, foreign investment, national security, and trade regulation issues. He also counsels clients on government contracts and general procurement issues across all industries. Across these practice areas, Robert regularly represents clients before federal agencies in Washington, D.C., as well as foreign governments and international organizations.

In his antitrust practice, Robert advises clients on a wide range of competition matters, with an emphasis on companies involved in joint ventures, teaming arrangements, and other cooperative activities. His counseling work includes providing advice to enterprises in multiple industries on issues relating to competitor communications, information sharing agreements, benchmarking activities, competitive pricing and distribution, bid rigging, refusals to deal, trade association compliance, and U.S. and international pre-merger clearance. Robert has developed corporate and association antitrust compliance programs, and has represented businesses involved in civil and criminal government antitrust investigations. Robert has particular experience dealing with the unique intersection of global antitrust laws and shipping regulations. He regularly represents ocean common carriers, marine terminals, and their cooperative arrangements before the Federal Maritime Commission, the Department of Justice, and governments around the world.

In his international trade practice, Robert has extensive experience advising and representing both U.S. and international clients in matters before the Committee on Foreign Investment in the United States (CFIUS), a multi-agency group with the statutory authority to review and block proposed transactions and investments for national security reasons. Robert works with clients to conduct pre-CFIUS filing analysis and due diligence to determine potential national security issues; preparing for CFIUS reviews and investigations, including assessing whether specific transaction or investment structures create CFIUS jurisdiction; and negotiating deal terms with the government and preparing filings before CFIUS. He assists clients with other security-related issues, including mitigation of foreign ownership, control or influence (FOCI), and compliance with industrial security rules administered by the Defense Counterintelligence Security Agency (DCSA). He also has experience in matters involving the U.S. economic sanctions regulations administered by the Office of Foreign Asset Controls (OFAC), U.S. export control laws, including the International Traffic in Arms Regulations (ITAR) administered by the State Department and the Export Control Regulations (EAR) administered by the Department of Commerce.

As part of his government contracts practice, Robert represents clients in a range of industries, including maritime, aviation, defense, engineering, health care, information technology, and security services. He has successfully prosecuted and defended bid protests before defense and civilian agencies and the U.S. Government Accountability Office (GAO). He routinely counsels businesses on compliance with the Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), executive orders, Small Business Administration (SBA), statutory, and regulatory provisions incorporated into each federal contract. He also guides buyers and sellers through the M&A process by conducting due diligence to assess risk associated with the acquisition or sale of government contractors.

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As part of his regulatory compliance practice, Robert serves as counsel to Cozen O'Connor Public Strategies and its clients, where he advises commercial and political entities on federal regulatory, administrative, and public procurement issues.

Robert earned his undergraduate degree from Boston University in 2001 and his law degree from The Catholic University of America, Columbus School of Law in 2004.

## Experience

Represented nanoGriptech, Inc., a Pittsburgh-based startup that manufactures micro-structured dry adhesives and surfaces for various applications, in its \$6 million Series A financing provided by overseas and domestic sources.

Represented a marine terminal operator in an action against the Port of Oakland in the U.S. Court of Appeals for the District of Columbia Circuit, whose decision against the immunity of the Port of Oakland permits marine terminal operators to pursue civil complaints at the Federal Maritime Commission.

Represented Pilot Air Freight Corp., a private air freight logistics, package forwarding, and delivery company, in connection with the sale of a controlling interest in the company to ATL Partners and British Columbia Investment Management Corp. The transaction required a complex reorganization of Pilot and its subsidiaries and drew on the experience of the firm's corporate, employee benefits, real estate, intellectual property, tax, and aviation regulatory attorneys.

The Government Accountability Office ("GAO") sustained a protest brought by Cozen O'Connor challenging technical restrictions in a U.S. Forest Service solicitation for aerial firefighting services. The procurement, structured as a "call when needed" basic ordering agreement, restricted offers to aircraft with a maximum tank size of 5,000 gallons. The restriction would have disqualified Global SuperTanker's converted 747 aircraft, which has a tank capacity of 19,200 gallons. In sustaining the protest, GAO adopted the arguments advanced by Cozen O'Connor that the tank size restriction was unduly restrictive, detrimental to competition, and was not reasonably necessary to meet the Forest Service's needs to fight wildfires. In addition to awarding costs incurred in pursuit of the protest, GAO's decision establishes a clear limit on agency discretion to impose technical restrictions in solicitations. *Global SuperTanker Services, LLC*, B-414987 *et al.*, 2017 CPD ¶ 345 (Comp. Gen. Nov. 6, 2017).

Assisted government contractor clients in numerous state-level contract audits.

Advised numerous small, minority-owned and women-owned businesses about programs offered by the U.S. Small Business Administration, including successfully obtaining small business certifications.

Successfully represented a data provider before numerous federal agencies in protesting federal procurements for the provision of import and export data.

Represented an international ocean carrier in connection with contract claims made by the U.S. Government pertaining to the transportation of military cargo from the United States to Afghanistan. Assisted the client in reaching a favorable settlement of claims, including claims made under the False Claims Act.

Represented a client in the security services business in connection with a protest before the Army and Air Force Exchange Service involving errors made in the successful bidder's pricing proposals that resulted in termination of the award and re-bidding of the contract.

Represented the owners of HEYDUDE®, a privately-owned casual footwear brand founded in Italy, in connection with its sale to Crocs, Inc. for \$2.5 billion. The acquisition was funded by \$2.05 billion in

cash and 2,852,280 shares issued to HEYDUDE's founder. The complexity and cross-border nature of the transaction required extensive collaboration with foreign counsel in Hong Kong, Italy, and other jurisdictions. It also drew on the experience of the firm's corporate; international; antitrust; intellectual property; labor and employment; employee benefits and executive compensation; and technology, privacy, and data security attorneys.

Represented Agiliti Health, Inc., a medical equipment management and services company, in its \$230 million acquisition of Sizewise Rentals, L.L.C., a manufacturer and distributor of specialty patient handling equipment. This transaction drew on the experience of the firm's corporate; employee benefits and executive compensation; labor and employment; tax; intellectual property; technology, privacy, and data security; real estate; litigation; environmental; antitrust, and health care attorneys.

Represented Lincotek Surface Solutions, a global leader in contract manufacturing services for the aerospace and medical businesses, in its acquisition of Hitemco, LLC, a provider of diffusion and thermal sprayed enhanced surfaces. This transaction drew on the experience of the firm's corporate, tax, antitrust, environmental, real estate, employee benefits and executive compensation, labor and employment, and intellectual property attorneys.

Represented MineHub Technologies Inc., and its wholly-owned subsidiary MineHub (USA), Inc. in the acquisition of the assets of Waybridge Technologies Inc., which provides a suite of digital tools that targets fundamental inefficiencies in the raw materials supply chain, and the equity of its U.K. subsidiary, CMDTY UK LTD. This transaction drew on the experience of the firm's corporate, tax, intellectual property, labor and employment, employee benefits and executive compensation, and transportation and trade attorneys.

Represented Abington Reldan Metals, LLC, a company that reprocesses industrial and electronic waste to extract precious metals for resale, and its affiliated entities in their sale to Sibanye-Stillwater Limited (NYSE: SBSW) (JSE: SSW), a South African company and one of the world's largest gold producers, for \$211.5 million. The sale transaction, which was structured as a locked box transaction, required Hart-Scott-Rodino and CFIUS clearances as well as ITAR filings and drew on the experience of the firm's corporate, tax, transportation and trade, antitrust, employee benefits and executive compensation, and labor and employment attorneys.

Represented Wayve Technologies Ltd., a pioneering company in autonomous vehicle technology principally based in the United Kingdom, in connection with clearing a review with the Committee on Foreign Investment in the United States (CFIUS). CFIUS clearance represented the final hurdle for the company to close on more than \$1 billion in investment from a Japan-based investor. CFIUS granted full national security clearance with no conditions after an intense 45-day review period during which we responded to a multitude of question sets.

Secured a unanimous victory from the U.S. Court of Appeals for the D.C. Circuit on behalf of an ocean carrier, vacating a decision by the Federal Maritime Commission ("FMC") that the carrier had improperly charged detention and demurrage fees to a trucker under the U.S. Shipping Act. Our team forcefully argued that the FMC's decision was arbitrary and capricious in contravention of the FMC's own regulations, ignored important facts, and misapplied the so-called "incentive principle" created by the FMC. The D.C. Circuit agreed, finding the FMC's reasoning "illogical" and with a "myopic focus" on the incentive principle rather than the reasonableness of the charges in question.

Represented AeroVel, an unmanned aircraft system developer, in its sale to Airbus, a multinational aerospace corporation. This transaction drew on the experience of the firm's corporate; antitrust; transportation and trade; tax; technology, privacy, and data security; and intellectual property attorneys.

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