



Kenneth R. Breitbeil

Partner

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Industries

Energy

Industrials

Manufacturing

Oil, Gas & Minerals

Practice Areas

Business & Commercial
Litigation

Litigation

Product, Tort & Insurance
Litigation

Trial Work

Bar Memberships

Texas

Ken has more than 30 years of litigation experience across the State of Texas and nationally. He has tried a large number of cases before juries, judges and arbitration panels on a wide variety of business disputes (e.g., breach of contract, covenants not to compete, professional negligence, business dissolutions, trade secret misappropriation, real estate, banking, business torts, employment discharge, insurance, and deceptive trade practices), as well as personal injury cases involving claims for premises and products liability, and general negligence. He also has handled and argued dozens of grievance claims for his lawyer-clients.

In addition to his Texas license, Ken is admitted to practice in all federal district courts in Texas, as well as the United States Court of Appeals for the Fifth Circuit and the United States Supreme Court. Ken also has handled and argued appeals successfully in both state and federal court. In fact, a number of years ago, he was one of the lawyers primarily involved in a successful appeal to the U.S. Supreme Court, which reversed a Fifth Circuit ruling.

Ken has extensive experience in handling select commercial cases on a contingency fee basis and has tried and settled cases involving dozens of millions of dollars in recoveries for clients. Ken has been recognized over multiple years as a "Texas Super Lawyer" in the Texas Monthly publication, and also has been honored as one of "Houston's Top Lawyers" by Houstonia Magazine.

Ken's Relevant Experience

Trial

Ken has tried over thirty cases from both the plaintiff's and defendant's side of the docket. Ken's trials have been in state courts, federal courts, bankruptcy court, and before arbitration panels when the parties' contract so required. Although he has also successfully defended and tried multiple personal injury claims, his specialty through the years has been commercial litigation involving breaches of fiduciary duty and fraud, breach of contract, corporate and partner breakups, oil and gas business disputes and industrial accidents, and legal malpractice. Examples of the types of cases Ken has tried to a verdict, judgment or in some instances that settled during trial include:

Oil and gas disputes;

Real estate fraud;

Partner breakups and associated claims;

Legal malpractice and other professional negligence claims;

Claims involving alleged deceptive trade practices and theft of trade secrets;

Claims involving alleged breaches of non-competition and non-solicitation agreements;

Product liability claims;

Fraud and breach of fiduciary duty claim involving power projects;

Downhole well accident damages claims;

Business fraud and corporate opportunity theft;

Business delay damages claims;

Construction defect claims;

Fraudulent transfer claims;

Intellectual property claims;

Insurance and broker disputes and E&O claims;

Personal injury and general negligence tort claims including claims against landowners.

Litigation also involves strategic thinking and developing a case for early disposition by summary judgment. Ken has succeeded in obtaining dozens of summary judgments on entire cases or on critical claims within a case, using creative arguments, and most all of them have been upheld on appeal.

Appellate

Because of the nature of his practice, many of Ken's cases have ended up on appeal. Ken has been involved as either the lawyer of record or co-counsel in approximately 40 appeals where he was also the primary lawyer at the trial court level. The vast majority of those appeals have ended up with outcomes in the client's favor – whether by affirmance or reversal. Ken has argued and/or been involved as a lawyer of record in appeals and appellate arguments before the Supreme Court of Texas, multiple Texas courts of appeals, the U.S. Court of Appeals for the Fifth Circuit, the U.S. Court of Appeals for the Second Circuit, and even one case with a successful reversal in the client's favor before the United States Supreme Court.

Contingency Fee Representation

Ken has developed extensive experience handling select commercial cases on a contingency fee basis, often where the case has high-risk/high-reward components to it. He has generated recoveries in excess of \$70 million including estimated future royalties. Examples of the types of cases that Ken has handled on a contingency fee or combination reduced hourly rate and contingency fee interest include:

Lender liability claim by corporate entity against bank;

Claims by financial professionals against New York hedge fund for theft of trade secrets, fraud, and breaches of fiduciary duties;

Claim for fraud and underpayment of overriding royalty interests against publicly traded oil and gas exploration company;

Claim for malpractice and breaches of fiduciary duty by oilfield equipment manufacturer against law firm;

Fraudulent transfer claim against multi-state printing company;

Third-party beneficiary claim against national transportation company;

Claim for misuse or misappropriation of patent rights;

Claim in U.S. District Court by joint venture partner against Fortune 100 company for breaches of fiduciary duty and fraud, which resulted in one of the largest actual damages judgments in the United States that year (\$136 million) but was reversed on appeal;

Claim by buyer of business and I.P. assets for fraud and negligent representations by and on behalf of seller.

Ken counsels his clients that settlement of these types of high-risk cases can be a virtue, but also that he and his partners will try them if a fair settlement cannot be achieved.

Other Info About Ken

Education

Duke University School of Law, J.D.

DePaul University, B.A. in Economics, with highest honors

Courts

U.S. Supreme Court

U.S. Court of Appeals for the Second Circuit

U.S. Court of Appeals for the Fifth Circuit

U.S. District Court for the Southern District of Texas

U.S. District Court for the Eastern District of Texas
U.S. District Court for the Northern District of Texas
U.S. District Court for the Western District of Texas

Recognition

The Best Lawyers in America®, Commercial Litigation, 2022–2027;
Ethics and Professional Responsibility, 2023–2027
Texas Super Lawyer, 2006–2009, 2020–2023
Houston’s Top Lawyers, Houstonia Magazine, multiple years
Former Texas Bar Foundation Fellow

Professional Affiliations

International Association of Defense Counsel
Texas Association of Defense Counsel
Houston Bar Association; former member, Administration of Justice
Committee; former member, Committee on Professionalism
Former Editor, TADC Commercial Litigation Newsletter
Former Treasurer, The Exchange Club of Houston

Firm Committees

Contingent Fee Committee, Chair

Major Publications

Current Standards of Responsibility (And Liability) For Financial
Professionals — Including the “Informal” Fiduciary Duty, multiple
presentations
Legal Malpractice Risks from Referral Arrangements, International
Association of Defense Counsel Newsletter
Recent Legislation Concerning Attorneys, Texas Lawyers’ Insurance
Exchange Newsletter

Panel Member on Legal Malpractice Issues, South Texas College of
Law

Ethical/Legal Issues in Litigation Technology, published through the
Corporate Counsel Section of the Houston Bar Association

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