

David P. Whittlesey



Partner

111 Congress Avenue
Suite 1700
Austin, TX 78701
P: 512.320.9330
F: 512.481.4930
davidwhittlesey@andrewskurth.com

David focuses his practice on complex commercial, business and technology litigation. His primary areas of practice have included antitrust, securities and intellectual property. He has litigated numerous cases involving mergers and acquisitions, license agreements, software and systems design, systems integration, telecommunications, professional malpractice, trade secrets, real estate, insurance, banking, construction, oil and gas, health care, unfair competition and trademark matters. He has represented clients in litigation and arbitration matters and in trial and appellate proceedings in several states and the District of Columbia. He also regularly counsels clients on compliance issues.

REPRESENTATIVE EXPERIENCE

- Lead counsel for Atlanta-based Fortune 500 company in “entire fairness” merger litigation arising from the \$134 million completed acquisition of an Austin-based Internet banking company.
- Trial counsel for major Texas city in successful public securities authorization validation lawsuit involving more than \$600 million in projected future bond issuances.
- Co-lead counsel for major satellite broadcaster in “baseball style” arbitration against Big 4 network owned and operated television stations.
- Lead counsel in more than 20 systems integration and software lawsuits and arbitrations for a major national telephone services provider.
- Lead counsel for alleged control person of defunct HMO in a \$180 million lawsuit brought by special deputy receiver. Claims included breach of fiduciary duty and related insurance code violations.
- Co-lead counsel for Big 4 accounting firm in an arbitration proceeding relating to a business valuation prepared by the firm.
- Lead counsel for Austin-based software company in merger litigation involving claims of securities fraud, as well as claims concerning ownership rights to certain software following the completed merger.
- Counsel for major Texas law firm in an \$80 million lawsuit involving claims of alleged securities fraud.
- Lead counsel for mortgage company in defense of a lawsuit involving alleged fraud and fraudulent inducement in an alleged “bait & switch” scheme relating to commercial mortgages.

INDUSTRIES

Banking/Financial Services
Biotechnology, Life Sciences and Medical Devices
Health Care
Insurance
Internet/E-Commerce
Real Estate
Software/Electrical Technology
Technology and Emerging Companies

PRACTICES

Antitrust Litigation
Appellate
Arbitration/Mediation
Banking/Finance Litigation
Class Action Litigation
Commercial Litigation
Construction Litigation
Health Care Litigation and Compliance
Intellectual Property Counseling and Litigation
Intellectual Property Litigation
Litigation
Oil and Gas Disputes
Professional Liability
Securities Litigation

EDUCATION

JD, 1994, *magna cum laude*, University of Houston Law Center, *Houston Journal of International Law*, Order of the Coif, Order of the Barons

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- Lead counsel for Chicago-based Fortune 500 company in an arbitration proceeding involving claims of fraud, breach of contract and securities law violations in connection with the acquisition of a Texas-based company.
- Lead counsel in multiple trade secret lawsuits involving allegations of inevitable disclosure and related claims.
- Trial counsel in *In re Schugg*, a dispute over access to, and zoning of, a landlocked parcel of fee-simple property located entirely within the outer boundaries of the Gila River Indian Reservation near Phoenix.
- Trial counsel in a two-week trial involving \$4 million breach of contract, fraud and negligent misrepresentation claims against our client, a major national telephone company, resulting in a take nothing judgment in favor of our client and a recovery on \$1 million counterclaim for attorneys' fees.
- Member of litigation team representing major semiconductor manufacturer in \$500 million breach of contract case in the Western District of Texas.
- Member of litigation team handling multibillion-dollar lawsuit relating to divestiture of multiple oil and gas properties owned by major international exploration and production company.
- Member of litigation team handling \$60 million lawsuit relating to the alleged breach of a petrochemical storage and transfer agreement involving a refinery in Puerto Rico.

BBA, 1991, The University of Texas

ADMISSIONS

Texas 1994

US District Courts for the Northern, Southern, Eastern and Western Districts of Texas

US Court of Appeals for the Fifth Circuit

Published Opinions

- *Hotze v. City of Houston*, 339 S.W.3d 809 (Tex. App. - Austin 2011, no pet.)
- *West v. Texas Com'n on Environmental Quality*, 260 S.W.3d 256 (Tex. App. - Austin 2008, pet. denied)
- *In re Schugg*, 384 B.R. 263 (D. Ariz. 2008)
- *Baxter v. Gardere Wynne Sewell LLP*, 182 S.W.3d 460 (Tex. App. - Dallas 2006, pet. denied)
- *In re Nitla S.A. de C.V.*, 92 S.W.3d 419 (Tex. 2002)
- *District of Columbia v. Greene*, 806 A.2d 216 (D.C. 2002)

PUBLICATIONS

- Recent Ruling Allows a Shareholder Lawsuit to Proceed After a Negative Say-on-Pay Vote: Quirk or Harbinger? (October 6, 2011)

PROFESSIONAL RECOGNITION

- Texas Super Lawyers, *Texas Monthly* (2008-2011)
- Texas Rising Star, *Texas Monthly* (2005-2007)

BRIEFINGS, SEMINARS & SPEECHES

- "Common Ethical Pitfalls for In-house Counsel - How to Avoid Them" (February 23, 2012)

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AFFILIATIONS

- State Bar of Texas, Board Member, District 9 (2011-2014)
- Austin Bar Association
 - President (2010-2011)
 - Secretary (2008-2009)
 - Treasurer (2007-2008)
- Austin Bar Foundation, Founding Life Fellow
- Austin Young Lawyers Association, Former President
- Texas Bar Foundation, Fellow
- Admissions and Disciplinary Committee, Western District of Texas
- Leadership Austin "Essential Class" Member 2010
- Treasurer, Lloyd Lochridge American Inn of Court (2009-2011)

PRESS RELEASES

- 35 Andrews Kurth Lawyers Named in Texas Super Lawyers 2011 (September 12, 2011)
- 33 Andrews Kurth Lawyers Named in Texas Super Lawyers 2010 (September 10, 2010)
- 35 Andrews Kurth Lawyers Named in Texas Super Lawyers 2009 (September 16, 2009)
- Trial Lawyer David P. Whittlesey joins Andrews Kurth as Partner in the Austin Office (May 15, 2009)