

Timothy S. McConn



Partner

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Tim is a litigation partner in the firm's Houston office and represents firm clients in a wide variety of civil litigation and white collar criminal defense matters in federal and state courts. Tim has successfully represented firm clients (both as plaintiffs and defendants) in large-scale commercial disputes that have included claims of breach of contract, fraud, tortious interference and breach of fiduciary duty. Tim has also represented clients in matters ranging from oil and gas disputes to wrongful death/product liability matters to investigations related to white-collar criminal activity. Tim's representation of these clients includes handling all aspects of trial and, if necessary, appeal.

REPRESENTATIVE EXPERIENCE

Recent General Commercial Litigation

- Represented international engineering company in breach of warranty lawsuit brought by Oklahoma customer in Oklahoma federal court. Plaintiff alleged that the firm's client performed substandard work in the repair and remanufacture of industrial compressors to be used in plaintiff's chemical manufacturing facility, and that such failures caused plaintiff to suffer millions of dollars in business interruption, lost profit, and out of pocket expense damages. After depositions that Tim took of plaintiff's executives and experts, plaintiff agreed at mediation to settle for a small fraction of its claimed damages.
- Represented two affiliated hedge funds that were prevented by a Fortune 500 publicly-traded corporation from participating in an exchange offer involving securities that were owned by the funds. Firm's client asserted breach of contract and fraud claims against the issuer of the securities and breach of fiduciary duty and fraud claims against the issuer's controlling shareholders and many of the issuer's officers and directors. Days before trial, case settled favorably for confidential amount.

Oil and Gas

- Represented oil and gas industry consultant who was sued for breach of contract and breach of warranty by plaintiff, and for breach of fiduciary duty by co-defendant, in connection with a seismic acquisition project in Lavaca County, Texas. Prior to trial, obtained summary judgment on plaintiff's breach of contract claim against client. After a week-long trial which Tim tried by himself, client won a unanimous defense verdict on all remaining claims, while jury found co-defendant liable for in excess of \$1 million.

INDUSTRIES

Aviation
Biotechnology, Life Sciences and Medical Devices
Construction
Energy
Finance
Health Care
Manufacturing and Sales
Software/Electrical Technology

PRACTICES

Antitrust Litigation
Appellate
Arbitration/Mediation
Aviation Litigation
Banking/Finance Litigation
Commercial Litigation
Construction Litigation
Corporate Compliance, Investigations and Defense
Energy Disputes and Litigation
Litigation
Oil and Gas Disputes
Products Liability
Real Estate Litigation

EDUCATION

JD, 2001, *with honors*,
The University of Texas
School of Law
BA, 1998, *magna cum laude*,
University of Notre Dame

ADMISSIONS

Texas 2001

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- Currently representing Fortune 500 oil and gas exploration and production company in related state court lawsuits involving claims that client and co-defendants have underpaid overriding royalty interest obligations to plaintiffs for nearly two decades. Cases are set for jury trial later this year.
- Represented privately-owned oil and gas company in multiple disputes arising out of operations in the Barnett Shale. In one case, client was operator in multiple prospects with nonoperators who had agreed to participate via a participation agreement. As gas prices plummeted and nonoperators realized that their investment would not be profitable, nonoperators discontinued paying invoices from operator and claimed breach of contract and fraud. Client sued nonoperators for breach of contract for nonpayment under the parties' Participation Agreement and Joint Operating Agreement. Case settled favorably on confidential terms.
- Represented Fortune 500 oil and gas exploration and production company in breach of contract and fraud dispute with distressed debt trading company. Plaintiff contended that parties had formed a multi-million dollar contract via an exchange of emails in connection with the purchase and sale of the firm's client's claims in a well-publicized bankruptcy proceeding. After multiple depositions, including those that Tim took of plaintiff's executives and damages expert, the parties settled on terms that the firm's client considered extremely favorable.
- Represented Houston-based natural gas company as plaintiff in defamation, business disparagement, and tortious interference lawsuit with hedge funds. Soon after defendants made disparaging comments to various third parties regarding client's financial statements, client suffered significant harm. Firm moved quickly to file defamation, business disparagement, and tortious interference lawsuit against defendants to recover for damages and to seek cessation of further defamatory statements. Client nonsuited litigation after defamatory statements ceased.
- Represented Houston-based natural gas company in arbitration representing publicly-traded oil and gas company that was sued by partner for breach of contract, fraud, and tortious interference in connection with a lease acquisition and development agreement that included an AMI provision. Case settled favorably on confidential terms.
- Currently representing Houston-based natural gas company in lawsuit involving declaratory judgment and breach of contract claims related to parties' obligations to pay a royalty to one of the parties. Case is set for a bench trial later this year.
- Advised Fortune 500 oil and gas exploration and production company in connection with cost overrun dispute with operator in major international oil and gas prospect. After significant efforts to advise the client regarding its rights and obligations, client settled without the need for a lawsuit on terms that it considered extremely favorable.

US District Court for the Eastern District of Texas

US District Court for the Southern District of Texas

US District Court for the Western District of Texas

US Court of Appeals for the Fifth Circuit

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Antitrust

- Represented medical device manufacturer in multiple cases involving allegations of federal and state antitrust violations, tortious interference, and defamation. After obtaining transfer of venue from Jefferson County, Texas to Fort Bend County, Texas, plaintiffs filed related federal court litigation in Eastern District of Louisiana. Obtained full dismissal of all federal court claims, and then convinced state court judge to realign parties so that firm's client was named a plaintiff. Then, after initial round of discovery and depositions of third-party witnesses, persuaded plaintiffs-turned-defendants in state court litigation to agree to a permanent injunction enjoining them from buying or selling client's equipment without client's written consent.

Labor and Employment

- Represented Raytheon Co. and various of its subsidiaries in a series of four labor and employment cases involving claims of *Sabine Pilot* wrongful discharge, breach of contract, fraudulent inducement, and common law fraud. Trial court for the first of the four cases dismissed all claims on summary judgment, based in part on preemption argument of first impression in Texas. After extensive briefing and oral argument (which Tim handled), the First Court of Appeals published a fifty page opinion affirming the summary judgment in all respects. *See Miller v. Raytheon*, 229 S.W.3d 358 (Tex. App. - Houston [1st Dist.] 2007, no pet.). The appellate court opinion set new precedent in Texas on various labor and employment issues, including the preemption argument, and the remaining three cases were subsequently dismissed on summary judgment (including one by Judge Melinda Harmon of the Southern District of Texas) based in large part on the *Miller* decision.
- Represented local subsidiary of Fortune 500 corporation in dispute over noncompetition and nondisclosure provisions in employment agreement of employee hired away from client's competitor. After depositions of plaintiff's main witnesses, plaintiff agreed to abate case for the duration of employee's noncompete provision. After year of abatement, plaintiff agreed to dismiss case in its entirety.

Bankruptcy

- Trial counsel for trustee of subsidiary in multimillion dollar adversary proceeding involving intercompany and breach of fiduciary duty claims between estates of parent and subsidiary. Multi-week trial in Southern District of New York Bankruptcy Court. Case settled extremely favorably on eve of Court's issuance of final order.
- Trial counsel for creditors' committee in proceeding related to debtor's attempt to obtain settlement with largest creditor. Creditors' committee sought an order voiding the settlement agreement. Dispute was resolved favorably for client after several weeks of depositions and settlement negotiations.

Aviation

- Represented helicopter manufacturer that was sued for wrongful death in connection with a fatal helicopter crash in Mexico. After client filed motion to dismiss for lack of personal jurisdiction, plaintiffs agreed that Texas courts could not exercise jurisdiction over client and agreed to transfer of case to client's home venue.
- Currently representing component part manufacturer in multiple state court proceedings related to deaths and injuries suffered by plaintiffs in plane crash in Mexico City in 2008.

Other

- Represented hospital and nurses in wrongful death/medical malpractice case in which plaintiffs claimed that defendants were negligent and grossly negligent in their care and treatment of the decedent, who developed a decubitus ulcer while in defendants' care. After a week-long trial, jury returned a unanimous defense verdict.
- Represented hospital and nurses in wrongful death/medical malpractice case in which plaintiffs claimed that defendants' negligence caused the decedent to die after a tonsillectomy/adenoidectomy. After a week-long trial, the jury returned a 10-2 defense verdict.

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PROFESSIONAL RECOGNITION

- Texas Rising Star, *Texas Monthly* (2009-2012)

AFFILIATIONS

- State Bar of Texas
- Houston Bar Association
- Texas Bar Foundation, Fellow
- Houston Bar Association Habitat for Humanity Committee, former Co-Chair
- St. Thomas High School Alumni Association Board, Board Member
- Trees for Houston, Member of Board of Directors
- United Way, Young Professional

PRESS RELEASES

- Andrews Kurth Lawyers Recognized as 2012 Texas Rising Stars (March 9, 2012)
- Andrews Kurth Lawyers Recognized as 2011 Texas Rising Stars (March 17, 2011)
- Andrews Kurth Lawyers Recognized as Texas Rising Stars (March 17, 2010)
- Andrews Kurth Elects Four New Partners for 2010 (December 4, 2009)
- Andrews Kurth Lawyers Recognized as Texas Rising Stars (April 14, 2009)
- Andrews Kurth Lawyers Named Fellows of the Texas Bar Foundation (February 6, 2008)
- Andrews & Kurth Adds New Associates (December 18, 2001)