

John A. Lee



Partner

600 Travis
Suite 4200
Houston TX 77002

P: 713.220.4260
F: 713.238.7117
jlee@andrewskurth.com

PRACTICE AREAS

Bankruptcy/Restructuring
Corporate Compliance,
Investigations and
Defense
Litigation

EDUCATION

JD, 1985, high honors,
The University of Texas
School of Law, Grand
Chancellor (highest
GPA in class),
second-highest grade
on Texas Bar
Examination
BA, 1982, highest
honors, Accounting, The
University of Texas at
Austin

ADMITTED

Texas 1985
All Texas state courts
US Court of Appeals for
the Third Circuit
US Court of Appeals for
the Fifth Circuit
US Court of Appeals for
the Eleventh Circuit
US District Court for the
Northern District of
Texas
US District Court for the
Southern District of
Texas
US District Court for the
Western District of
Texas
US Supreme Court

John's practice involves complex bankruptcy and civil litigation. He has represented clients as lead counsel in contested litigation, arbitration, and bankruptcy matters involving more than \$2 billion in controversy in the aggregate. Specific experience includes fraudulent conveyance, trust indenture, M&A contract, energy, patent, FDIC receivership, real estate, tax, software, Coal Act, and securities law issues.

"John Lee is a star litigator who has the ability to 'brilliantly lay before the court, in elegant simplicity, the complex issues and facts of a case ordered to tell a compelling story,' clients said. 'He knows exactly how long to hold and when to fold.'" Chambers USA America's Leading Lawyers for Business 2005. Based on actual client reviews, Chambers USA Americas Leading Lawyers for Business 2005 assigned John Lee first in the top tier of leading litigation/bankruptcy attorneys in Texas.

Trial recommendations and endorsements available upon request.

Highlights

- AV rating by Martindale-Hubbell (highest rating for ethics and ability)
- In a case of first impression, prevailed in avoiding \$900 million of debt by proving a federal government auction was a fraudulent conveyance
- Obtained what is believed to be the largest Plaintiff's judgment in Georgia history against Weyerhaeuser for breaches of warranties that resulted in the destruction of a public company from patent infringement claims. The judgment is on appeal.
- In 2004, tried a \$500 million fraudulent conveyance case against Campbell Soup Company over Campbell's failed 1998 Vlastic/Swanson spin-off. See www.vfbllc.com.
- Lead Counsel for MC Asset Recovery, successor to Mirant, in a pending action to recover more than \$2 billion from The Southern Company based on fraudulent conveyance and other claims.
- Tried and won three successive arbitrations over energy supply agreements involving the largest North American pulp and tissue mill, for total net recoveries of more than \$100 million
- Prevailed in establishing a defect in a Supplemental Trust Indenture and un-subordinating \$100 million worth of bonds five years after the bonds had been subordinated in a corporate restructuring

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- Obtained what is believed to have then been the largest litigation recovery in the history of New Mexico
- Grand Chancellor (highest GPA in class) of the University of Texas School of Law, and scored the second-highest grade on the Texas Bar Examination

REPRESENTATIVE EXPERIENCE

- *In re: GWI PCS1, Inc. et al. vs. Federal Communications Commissions*, No. 397-3492; In the United States Bankruptcy Court for the Northern District of Texas, Dallas Division

First-chair trial counsel in a case of first impression involving the federal government's "C-Block" cellular license auction, in which 97 percent of the original licensees ended up bankrupt. Obtained a judgment holding a federal government auction resulted in a constructively fraudulently conveyance. As a result, approximately \$900 million in debt due the federal government from GWI (n/k/a Metro PCS) was avoided, and Metro PCS is now selling cellular service in major markets in the United States. The trial court decision was affirmed on appeal in *In re GWI PCS 1, Inc.*, 230 F.3d 788, 810 (5th Cir. 2000), *cert. denied United States v. GWI PCS 1, Inc.*, 533 U.S. 964, 121 S.Ct. 2623 (2001).

- *Mirant Corporation, et al., vs. The Southern Company*, Civil Action No. 1:06-CV-0417-BBM; in the United States District Court for the Northern District of Georgia, Atlanta Division

First Chair Trial Counsel for MC Asset Recovery LLC in this pending action against The Southern Company to recover more than \$2 billion for its spun-off former subsidiary, Mirant Corp.'s, fraudulent conveyance and other claims.

- *In re: Flagstar Companies (a/k/a Denny's Restaurants), Inc.*, No. 97-05795-B; In the United States Bankruptcy Court, District of South Carolina

First-chair trial counsel for a Creditors Committee, which represented holders of \$100 million of subordinated debentures. The litigation involved trust indenture interpretation and the application of the Trust Indenture Act to a supplemental trust indenture. Obtained a court judgment declaring that the debentures at issue were not properly subordinated in a leveraged buy-out that had taken place five years earlier. As a result, the holders of what were originally believed to be subordinated debentures received recoveries comparable to recoveries by holders of senior debt securities.

- *VFB LLC, successor to Vlasic Foods International, Inc. vs. Campbell Soup Company, et al.*; CA No. 02-137; In the United States District Court, District of Delaware

Lead trial counsel in this dispute over Campbell's 1998 leveraged spin-off of Vlasic pickles, Swanson frozen foods, and eight other businesses. VFB, as the bankruptcy successor to Vlasic and other spin-off businesses, alleged that Campbell over-leveraged the spin and acted with actual intent to hinder, delay, or defraud Vlasic creditors.

- *In re: Paragon Trade Brands, Inc.*; Case No. 98-60390; In the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division

Lead counsel for the shareholders committee in what is believed to be the largest Chapter 11 bankruptcy case ever filed in Atlanta. Paragon, the third-largest maker of disposable diapers in the country, was bankrupted by a Delaware court's patent infringement judgment in favor of Procter & Gamble that was, at the time, the third largest patent award in the 220-year history of the U.S. patent system. Litigated first chair complex disputes over Paragon's nine-digit settlements of patent infringement claims against Paragon asserted by both Procter & Gamble and Kimberly-Clark. The bankruptcy proceeding was ultimately resolved by a consensual plan of reorganization by which the following two actions were prosecuted for the benefit of shareholders and creditors.

- *Randall Lambert, Litigation Claims Representative for Paragon Trade Brands, Inc. vs. Weyerhaeuser Company*, No. 99-6470; In the U.S. Bankruptcy Court for the Northern District of Georgia, Atlanta Division

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First-chair trial counsel for the litigation trustee for the Paragon estate in this action against Weyerhaeuser over breach of representations and warranties in the transaction agreements by which Paragon was originally formed from an operating division of Weyerhaeuser and sold to the public in a 1993 IPO. After extensive discovery and briefing, obtained a summary judgment holding that Weyerhaeuser was liable for breaches of warranties and the resulting destruction of Paragon, and holding that Weyerhaeuser's counterclaims and defenses were invalid. After a 14-day damage trial the Court entered a judgment holding Weyerhaeuser liable for damages, and what is believed to be the largest verdict in Georgia history. See Randall Lambert, the Litigation Claims Representative for the Chapter 11 Bankruptcy Estate of Paragon Trade Brands, Inc. v. Weyerhaeuser Company, 324 B.R. 829 (Bankr. N.D. Ga. 2005).

- *Randall Lambert, Litigation Claims Representative for Paragon Trade Brands, Inc., vs. Oracle Corp., and Andersen Consulting Co.*; No. 00-6013 In the U.S. Bankruptcy Court for the Northern District of Georgia, Atlanta Division

First-chair trial counsel for the Paragon estate in litigation over a failed enterprise resource planning (ERP) software installation. This case settled before trial, at mediation, for a payment of more than \$3 million to Paragon.

- *Mobile Energy Services Company, L.L.C., Claimant vs. Kimberly-Clark Corporation, Respondent*, Before the American Arbitration Association, AAA Case No. 71-198-00240-01

First-chair arbitration counsel for Mobile Energy Services Company (MESC), the owner of the energy complex at the Scott Paper Mill in Mobile, Alabama, which was at the time of the transaction the largest pulp, paper and tissue mill in North America. This dispute involved MESC's right to reinstate the pulp mill energy services agreement after Kimberly-Clark (KC) closed the pulp mill, and disputed demand charges due on reinstatement. Litigated complex issues of contract interpretation involving the interplay of disputed, and to some extent conflicting, contract provisions in light of industry custom, practice, and terminology. One-week arbitration. Obtained an arbitration award against KC resulting recovery to client exceeding \$25 million.

- *Mobile Energy Services Company, L.L.C., Claimant vs. Kimberly-Clark Corporation and S.D. Warren Alabama, L.L.C., Respondents*, Before the American Arbitration Association, AAA Case No. 71-198-00241-01

Lead counsel for MESC in this second arbitration against KC. This case involved a two-week arbitration over complex contractual provisions governing MESC's entitlement to disputed processing charges and recovery of capital costs incurred as a result of KC's closure of the Mobile pulp mill, and MESC's resulting need to reconfigure the energy complex. Recovered an award for 100 percent of the amount MESC sought, providing MESC a \$27 million recovery.

- *Mobile Energy Services Company, L.L.C., Claimant vs. Kimberly-Clark Corporation, Respondent*, Before the American Arbitration Association, AAA Case No. 30-Y-198-00387-02

Lead counsel in this third MESC arbitration against KC. After a one-week arbitration, the arbitrator ruled in favor of MESC, resulting in MESC recovering \$2 million in disputed energy processing charges, obtaining declaratory relief MESC valued at up to \$10 million per year for the 20-year life of the energy services contracts, and defeating a \$10 million counterclaim by KC for alleged overpayment of energy charges, and, importantly, preserving MESC's exclusive right to provide power and steam at the Mobile site for the remaining term of the contracts. This holding enabled MESC's bankruptcy plan to be confirmed, and MESC to emerge from bankruptcy in late 2003.

- *VFB L.L.C. vs. The Money's Trust, et al.*, No. 01-00285 (MFW); In the United States District Bankruptcy Court District of Delaware

Lead bankruptcy court counsel in disputes between bankruptcy trustee for one company (B1) against the trustee for a second bankrupt company (B2) involving a \$30 million fraudulent conveyance claim resulting from B2's allegedly overpaying for a business purchased from B1. Both B1 and B2 went bankrupt. The multi-court litigation involved fraudulent conveyance claims, actions to enjoin litigation, plan subordination and classification issues, and several interlocutory appeals. This case settled before trial, while on interlocutory appeal.

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- *In re: GasMark, Ltd., Debtor*, No. 93-41861-H1-11 (Chapter 11); *Brenda Herod, Trustee for the Gas Mark, Ltd. Liquidating Trust vs. Southwest Gas Corporation*; Adversary No. 95-4144

Lead counsel for the creditors committee in the first gas marketing company bankruptcy case. After the bankruptcy plan was confirmed, represented the liquidating trustee as lead counsel in more than 30 bankruptcy and district court actions involving preference, receivable, fraudulent conveyance, and other claims. Through these efforts, unsecured creditors of what was originally reported as a “no-asset” estate received recoveries of approximately 65% on their claims. Argued four cases, including the captioned proceeding against Southwest Gas, before the Fifth Circuit Court of Appeals; the trustee prevailed in every case on appeal.

- *In re: Westmoreland Coal Company*, Case No. 96-26092, In the United States Bankruptcy Court for the District of Colorado

Lead counsel for the shareholders committee in this bankruptcy of what was at the time the largest producer of coal West of the Mississippi. The bankruptcy involved complex issues of reorganization alternatives resulting from the Court’s litigated determination that Coal Act premiums are taxes, not subject to discharge. In the final resolution, holders of common and preferred stock received recoveries worth several times the value of their holdings at the time of the bankruptcy.

- *In re: Financial Corporation of Santa Barbara*; Case No. 90-23257 In the United States Bankruptcy Court, Central District of California

Lead special litigation counsel for the Creditors Committee of Financial Corporation of Santa Barbara (FinCorp), the bankrupt holding company of Santa Barbara Savings & Loan Association (SBSL), which was California’s fourth-largest savings and loan when it was taken into receivership by the RTC. Oversaw litigation that resulted in the confirmation of a plan of reorganization that paid holders of the bonds represented by the Committee more than 70% of their claims. The bonds had traded at less than 5% of par at the time the bankruptcy was filed.

- *Financial Corporation of Santa Barbara vs. Resolution Trust Corporation*, as Receiver for Santa Barbara Savings and Loan Association; No. 93-CV-2203 in the United States District Court for the Central District of California

After plan confirmation as first-chair litigation counsel for FinCorp in an action against the RTC for the accounting of, and seeking payment of residual value due FinCorp from, the SBSL receivership. Litigated FIRREA issues and obtained an order from the district court for an accounting of the SBSL receivership, and enjoining further distributions from the receivership assets to the FDIC/RTC pending the accounting. After this order was entered, a five-party settlement was reached and approved by the district court. The settlement resulted in a recovery of par on the FinCorp bonds and a substantial payout to FinCorp common and preferred shareholders. As a result of the litigation, SBSL was one of the few receiverships in history to be concluded at a substantial surplus.

- *Mirant Corporation, et al. v. Arthur Andersen LLP, et al.*; Case No. 1:05-cv-2093-MHS; in the United States District Court for the Northern District of Georgia, Atlanta Division

Co-counsel for Plaintiff in this accounting malpractice action. This case asserts claims for accounting malpractice, negligence, and breach of fiduciary duty arising from alleged errors and omissions in Andersen’s preparation of Mirant’s financial statements, which lead to losses by Mirant. Case pending.

- *Rubus Realty Company (Furr’s Supermarkets) vs. ASKO Deutsch Kaufhaus A.G. and Ibero-American Bank, et al.*; Case No. 11-93-10329-RA, Chapter 11, United States Bankruptcy Court for the District of New Mexico

First-chair litigation counsel in fraudulent conveyance litigation against an owner of Furr’s Supermarkets, which discovery revealed had pledged the company’s valuable land and supermarket assets as collateral for an insider loan, and then transferred the assets to itself through the device of foreclosure, leaving an insolvent shell company (Rubus) behind. Litigated and obtained an injunction freezing \$100 million of notes and stock issued by the transferee business to the insider

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lender/owner. After the injunction, the case settled for what was at the time the largest litigation recovery in the history of the State of New Mexico.

- *In re Rubus Realty Company vs. United States of America Internal Revenue Service*, Case No. 95-01118; United States Bankruptcy Court for the District of New Mexico

Served as first-chair trial counsel for Rubus in this dispute over \$9 million in asserted IRS priority tax claims. This case involved disputes over re-characterization of multi-national shareholder loans as dividends, and withholding obligations. Obtained trial verdict disallowing the IRS' claims, and awarding costs against the IRS.

- *Orion Refining Corp. vs. UOP, et al.*, No. 2002-16080; in the 129th Judicial District Court of Harris County, Texas

Co-lead trial counsel for Orion Refining (f/k/a TransAmerica Refining) against a vendor of allegedly defective "millisecond" catalytic cracking technology. This case seeks damages of more than \$300 million for breach of warranty, misrepresentation, and Illinois DTPA claims as a result of UOP allegedly selling technology that did not function as warranted, and which UOP allegedly knew did not work. This case is on appeal after an adverse trial court Order dismissing the case on summary judgment.

- *Red River Limited Partnership vs. Sage Plaza One, Ltd.*, Case No. 2002-02238; District Court of Harris County, Texas, 80th Judicial District

Lead trial counsel for a lender who financed a major Houston office building. This dispute involved the interpretation of documents securing a \$70 million loan, and investment, contribution, reimbursement, and foreclosure rights between the owner and the lender. This case settled after we brought an injunction and receivership proceeding, seeking to have the building owner removed. The disputed terms of the loan documentation were excised.

- *Aspen Capital Partners, L.P., et al. vs. TXU Corporation*; Supreme Court of the State of New York, County of New York; Index No. 03/603184

Lead trial counsel for clients holding more than \$400 million of TXU corporate units. This case involved declaratory relief over conversion rights and obligations under a trust indenture and equity purchase contract in light of the bankruptcy of TXU's European subsidiary. This case settled after an appeal of the trial court's adverse interpretation of the contracts on summary judgment.

- *W.P. Keith Company vs. Phelps Dodge Corporation, et al.*, Case No. CV - 05-1155 TJH (CWx) in the United States District Court for the Central District of California

Lead trial counsel for the manufacturer of a specialized molybdenum trioxide reduction furnace (Keith) in a dispute with the customer (Phelps) over alleged breach of warranty and other product design claims. This case was resolved by a settlement in favor of our client in which the customer agreed to drop all claims, at no payment or cost to the client.

- *J.H. Whitney Equity Partners III, L.L.C. vs. Symbion, Inc.*; AAA Case No. 30 Y 168 00502 03; Before the American Arbitration Association

Lead counsel for shareholder/sellers of Physicians Surgical Care, Inc., an out patient surgical facilities company, in a \$3 million post-closing dispute over alleged breach of representations and warranties in the merger agreement. Succeeded in obtaining a settlement during the discovery phase, by which clients recovered approximately 85% of their claims.

- *Sogevalor, S.A., et al. vs. Dibo Attar, et al.*, Case No. H-97-4101, in the United States District Court for the Southern District of Texas, Houston Division

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First-chair trial counsel for Swiss investors in this fraud and racketeering case brought against US custodians of their trust assets. Litigated and prevailed in obtaining a mandatory injunction ordering the turnover of wrongfully withheld investment assets. After the injunction was issued, this case settled for an eight-digit settlement amount.

- *Momentum Securities, Inc., et al., vs. Cornerstone Securities Corporation, et al.*, No. 98-05914 in the 234th Judicial District Court of Harris County, Texas and National Association of Securities Dealers, Inc., Nos. 98-01879 and 98-00848

Represented securities brokerage firm as first-chair counsel in raiding litigation. Obtained a pre-arbitration injunction from the district court enjoining further raiding or destruction of documents pending the completion of arbitration. This case ultimately settled for a confidential payment to the client and a permanent injunction after six weeks of arbitration trial.

- *IP Petroleum Company, Inc. vs. Exxon San Joaquin Production Company, Celeron Corporation, and Goodyear Tire & Rubber Co.*; Cause No. 90-05314; 164th Judicial District Court of Harris County, Texas

First-chair trial counsel for IP. This case involved post-sale indemnity and other disputes under an agreement by which IP purchased Celeron's oil and gas operations east of the Rocky Mountains for \$70 million. The specific disputes involved warranty claims relating to Celeron's failure to transfer title to certain seismic data and leasehold severance tax obligations, and disputed responsibility for paying gas balancing obligations in a re-unitized production field. This case settled for a seven-digit payment to IP post-judgment/pre-appeal.

- *MCorp Properties vs. 910 Travis Realty Associates Limited Partnership vs. Aetna Life Insurance Company*; 4:91-cv-00344; United States District Court for the Southern District of Texas.

First-chair counsel for Aetna, the owner of a downtown Houston office building by foreclosure, in a three-party dispute with the former building owner and tenant over ownership of a famous Tamayo Mural, valued at \$3 million. This case involved complex issues of real property and contract law.

BRIEFINGS, SEMINARS & SPEECHES

Speaker - "Tales from the Trenches—Bankruptcy and Litigation Issues involved in Drafting and Negotiating Business Agreements," an ongoing presentation given at client sites and conferences (2002 - 2005)

PROFESSIONAL/CIVIC AFFILIATIONS

Recognition

- Profiled as one of the top bankruptcy/litigators in Texas, Chambers USA, America's Leading Lawyers for Business (2004, 2005, 2006)
- Selected to The Best Lawyers in America (2006 Edition)
- Chaired or Co-Chaired Andrews Kurth Partner Evaluation / Compensation Committee (1999 - 2000, 2002 - 2003)
- Trustee, Star of Hope Mission, Houston (<http://www.sohmission.org>)

HEADLINE NEWS

- Thirty-Five Andrews Kurth Partners Named in Texas Super Lawyers 2008 (October 3, 2008)
- Andrews Kurth Receives High Rankings in Chambers USA Guide (June 25, 2007)
- United States Court Enters \$458 Million Damages Judgment Against Weyerhaeuser for the Destruction of Paragon (April 5, 2005)
- Weyerhaeuser Denied Reconsideration of Judgment on Liability; Trial to Fix Damages Set for October 2003 (June 20, 2003)

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- Andrews & Kurth Secures Third Straight Multi-Million Dollar Arbitration Award for Mobile Energy Services Company, L.L.C. Against Kimberly-Clark Corporation (November 5, 2002)
- Judge Renders Decision in Favor of Andrews & Kurth's Client in \$400 Million Indemnity Case (October 30, 2002)
- Vlastic Creditors File Amended Complaint, Claiming Campbell Lied About Spin-Off (August 30, 2002)
- Summary Judgment on Liability Granted Against Weyerhaeuser in \$400 Million Breach of Warranty Case (June 25, 2002)
- Andrews & Kurth Secures Second Multi-Million Dollar Arbitration Award for Mobile Energy Services Company, L.L.C. (February 4, 2002)
- Andrews & Kurth Secures \$26 Million Arbitration Award for Mobile Energy Services Company, L.L.C. (January 22, 2002)