

DAVID A. KIRBY

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David Kirby is an Of Counsel to the firm and represents businesses and individuals in arbitration, litigation, and appellate matters, including insurance, commercial, energy, pipeline, contract, personal injury, products liability, and premises liability disputes. He handles matters from inception, including investigation and work-up, through trial and appeal.

Licensed in Texas and California, Mr. Kirby is able to put his skills and experience to work for California businesses relocating to the Lone Star State, or those with operational footprints in both states.

Primary Practice Areas

- Insurance Coverage Litigation:
 - Review and assess coverage under a variety of insurance policies, including commercial liability, commercial property, commercial auto, business owners package, pollution liability, professional liability, directors and officers, employee practices, cyber liability, umbrella/excess liability, and others
 - Assist clients in establishing claim programs in mass tort settings and in identifying historical coverage for “long tail” liability
 - Pursue coverage under insurance policies through negotiation, mediation, arbitration, and/or litigation
- Commercial Litigation:
 - Represent business clients in breach of contract, tortious interference, breach of fiduciary duty, restrictive covenant, and fraud lawsuits and injunctions
 - Advise businesses and individuals with respect to covenants not to compete, non-solicitation covenants, confidentiality/non-disclosure agreements, and trade secrets
 - Represent energy companies with respect to pipeline-related acquisition and construction controversies and prosecute condemnation actions for common carrier entities
 - Handle state and federal appeals
- Business Law:
 - Oversee small business formation, organization, transfer, and sale and draft related legal documents
 - Review and analyze insurance policies and advise clients on appropriate insurance coverage and risk management programs
 - Draft policies & procedures, contracts, risk shifting provisions, indemnity provisions, employment agreements, non-compete agreements, and others
 - Counsel clients on general business matters
- Environmental Law:
 - Represent clients with respect to CERCLA, CWA, CAA, and OPA liability
 - Advise oil and gas businesses in disputes related to claims brought by landowners and governmental entities for property damage arising from historic exploration and drilling activities, including Louisiana legacy liability claims
 - Counsel businesses on environmental remediation

- Products & Premises Liability:
 - Lead clients through catastrophic injury and commercial litigation based on claims of defective vehicles, tires, underground storage tanks, resins, asbestos-containing materials, and other products
 - Handle premises litigation for pipeline, refinery, manufacturing, construction, and other businesses
 - Assist with claims arising from allegations of negligence, defective design, defective manufacture, defective marketing, strict liability, breach of warranty, and deceptive trade practices as well as defenses to liability based on independent contractor status and Chapter 95

Representative Experience

- Represented international flooring manufacturer in successful resolution of insurance dispute related to coverage under a series of umbrella policies for asbestos-related liability
- Guided renewable energy client to a very favorable settlement of a property damage claim under an “all risks” insurance policy
- Obtained arbitration award on behalf of major energy partnership in a breach of contract action involving a novel issue under the Louisiana Oilfield Anti-Indemnity Act
- Tried a trade secret, civil theft, and conversion case to verdict on behalf of a small business providing insulation services to refineries
- Represented an individual in an investigation conducted by the U.S. Securities and Exchange Commission’s Office of International Affairs
- Obtained summary judgment in favor of client in relation to multi-million dollar insurance dispute regarding offshore drilling rigs damaged by Hurricane Ike
- Represented client in appeal to the Fifth Circuit concerning issues arising from the retrofit of a super-yacht
- Represented a drilling interest group as amicus curiae with respect to appeals to the Fifth Circuit stemming from the *Deepwater Horizon* litigation
- Obtained dismissal of arbitration proceeding concerning denial of insurance coverage for sunken yacht
- Successfully represented City of Gonzales in electrocution lawsuit
- Represented multi-national resin manufacturer in lawsuit regarding alleged chemical contamination that resulted in non-suit of client
- Represented refinery service company in multi-fatality refinery explosion lawsuit
- Defended individual in All-Terrain Vehicle accident lawsuit
- Successfully represented individual in lawsuit against condominium association related to water intrusion into bedroom and living room
- Prosecuted action on behalf of an individual whose property was damaged due to the improper installation of an air conditioning unit

Education

- South Texas College of Law, Doctor of Jurisprudence, 2010
 - Managing Editor, *South Texas Law Review*
 - Dean’s Scholar
- Sewanee: The University of the South, Bachelor of Science, 2006

Admissions

- State Bar of Texas
- State Bar of California
- United States District Courts for the Northern, Southern, Eastern, and Western Districts of Texas
- United States Court of Appeals for the Fifth Circuit

Honors and Awards

- *Best Lawyers*® (by Levine Leichtman Capital Partners)
 - *The Best Lawyers in America*©
 - Insurance Law (2022)
- “Texas Super Lawyers” (a Thomson Reuters® service) Rising Star, *Texas Monthly Magazine* (2014-2022)
- “Top Lawyer,” *Houstonia Magazine* (2017-2019)
- AVVO “Superb” Rating – 10/10
- Texas Bar Foundation, Fellow
- Texas Bar College, Member

Memberships/Affiliations

- State Bar of Texas
 - Insurance Section
 - Litigation Section
- State Bar of California
- Golfers Against Cancer, Director 2020-2022

Speaking Engagements

- *Permissive Appeals in Texas*, Texas Association of Defense Counsel, 2018 Spring Seminar
- *A Review of the Tripartite Relationship and Considerations in Protecting the Coverage Interests of the Client-Insured*, Texas Association of Defense Counsel 2016 Summer Seminar

Publications

- *Prosecuting and Defending Attorneys' Fees in Texas*, May 2019
- *Recovering Attorney's Fees in Federal Court*, FOR THE DEFENSE, March 2019
- *Prosecuting and Defending Attorneys' Fees in Texas: A Primer*, Texas Association of Defense Counsel, 2017 Annual Meeting
- *Issues of Coverage in the Tripartite Relationship: Must Counsel Protect the Client-Insured's Coverage Interests?*, TADC MAGAZINE (Fall/Winter 2016)
- *The Independent Injury Rule: A View from Both Sides of the Aisle*, in State Bar of Texas 21st Annual Insurance Law Institute, Chapter 5 (2016)
- *A Practitioner's Guide to Long-Tail Liability Claims in Texas*, JOURNAL OF TEXAS INSURANCE LAW, Winter 2015-2016, at 7
- *Overview of Long Tail Claims for the Texas Practitioner*, in State Bar of Texas 12th Annual Advanced Insurance Law Course, Chapter 7 (2015)
- *Benefits of a Grief Counselor's Testimony*, TRIAL, Oct. 2011, at 41