

DAVID A. KIRBY

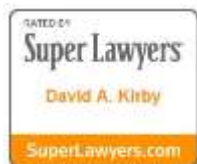
713-210-4384

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David Kirby represents businesses and individuals in arbitration, litigation, and appellate matters, including insurance, commercial, oil & gas, contract, personal injury, products liability, and premises liability disputes.

His practice also focuses on commercial risk management, where he advises clients on insurance coverage, contractual risk shifting, internal policies & procedures, and service contracts.

Outside of work Mr. Kirby enjoys spending time with his lovely wife, Leslie, and their son. On occasion, he is able to slip away for a round of golf.

**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
- 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
- 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
- Commercial Litigation:
 - Represent business clients in breach of contract, tortious interference, breach of fiduciary duty, and fraud lawsuits
 - Advise businesses and individuals with respect to covenants not to compete, confidentiality/non-disclosure agreements, and trade secrets
 - Represent clients in arbitration proceedings
 - Handle state and federal appeals
- Environmental Law:
 - Represent clients with respect to CERCLA, OSHA, 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

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
- Represented an individual in an investigation conducted by the U.S. Securities and Exchange Commission's Office of International Affairs
- 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
- Successfully represented City of Gonzales in electrocution lawsuit
- Represented refinery service company in multi-fatality refinery explosion lawsuit
- Successfully represented individual in lawsuit against condominium association related to water intrusion into bedroom and living room
- 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
- Obtained summary judgment in favor of client in relation to multi-million dollar insurance dispute regarding offshore drilling rigs damaged by Hurricane Ike
- Obtained dismissal of arbitration proceeding concerning denial of insurance coverage for sunken yacht
- Represented multi-national resin manufacturer in lawsuit regarding alleged chemical contamination that resulted in non-suit of client
- Defended individual in All-Terrain Vehicle accident lawsuit
- 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

Memberships/Affiliations

- State Bar of Texas
 - Insurance Section
 - Litigation Section
- American Bar Association
 - Litigation Section
- Houston Bar Association
 - Litigation Section
- Texas Association of Defense Counsel
 - Director, 2018-2019
 - Young Lawyer Chair, 2016-2017
- Defense Research Institute
 - Insurance Law Section
 - Tort Trial & Insurance Practice Section
- Bar Association of the Fifth Federal Circuit

Speaking Engagements

- *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

Admissions

- All Texas Courts
- United States District Courts for the Southern, Eastern, and Western Districts of Texas
- United States Court of Appeals for the Fifth Circuit

Honors and Awards

- "Texas Super Lawyer" Rising Star, *Texas Monthly Magazine* (2014–2018)
- "Top Lawyer," *Houstonia Magazine* (2017)
- AVVO "Superb" Rating – 10/10
- Texas Bar Foundation, Fellow
- Texas Bar College, Member

Publications

- *Prosecuting and Defending Attorneys' Fees in Texas: A Primer*, in TADC Annual Meeting Materials (2017)
- *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