

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

IN RE BLUE CROSS BLUE SHIELD	:	
ANTITRUST LITIGATION	:	Master File 2:13-cv-20000-RDP
MDL 2406	:	
	:	
	:	
	:	This document relates to
	:	Subscriber Track cases

**SELF-FUNDED SUB-CLASS SETTLEMENT COUNSEL DECLARATION IN
SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF
PROPOSED SUBSCRIBER CLASS SETTLEMENT**

I, Warren T. Burns, declare as follows:

1. I am the managing partner of Burns Charest LLP, a trial boutique with offices in Dallas, Texas, New Orleans, Louisiana, and the District of Columbia. I make this declaration based upon my personal knowledge of the facts stated herein.

2. I have served and continue to serve as lead or co-lead counsel in a number of multidistrict antitrust class actions. I have attached a copy of my resume as Exhibit A detailing additional, relevant experience.

**RETENTION AND INVOLVEMENT
IN THE SETTLEMENT PROCEEDINGS**

3. In July 2019, as mediation in this case was ongoing, Settlement Class Counsel Michael D. Hausfeld and David Boies approached me to inquire whether I would be willing to serve as counsel for a sub-class of Self-Funded Accounts and their employees (together, the "Self-Funded Settlement Sub-Class"). I agreed and was retained by Hibbett Sports, Inc., an Alabama-based, publicly traded retailer of sporting goods that is a Self-Funded Account. Following my retention, I participated in subsequent mediation proceedings as settlement counsel to the putative Self-Funded Sub-Class, with Hibbett as the Self-Funded Sub-Class Representative.

4. At the time of my retention, the amount of any split of the Net Settlement Fund between fully insured and self-funded claimants had not been determined, was not a condition of my retention, nor was any such split discussed before my engagement.

5. Following my retention, I requested and received access to the discovery record in the litigation, along with access to all relevant briefing in the case. Working with the Self-Funded Sub-Class Representative, my firm quickly immersed itself in the factual background of the dispute and developed an understanding of relevant discovery taken to date. I also immediately

engaged independent experts to assist in the assessment of settlement terms and to conduct analysis of possible damages for the Self-Funded Sub-Class.

6. In September 2019, I began attending mediation sessions along with an officer of the Self-Funded Sub-Class Representative. Since that time, I or members of my firm and the Self-Funded Sub-Class Representative have participated in all mediation sessions.

7. As the mediation proceeded, I asked for and was provided additional discovery materials and data by defendants. The provision of this material and data permitted me and the Self-Funded Sub-Class Representative to negotiate favorable terms for the Sub-Class and to assess the impact of the settlement on the Self-Funded Sub-Class. This material and data further permitted us to work with retained experts to estimate the portion of the Net Settlement Fund that should be allocated to the Self-Funded Sub-Class.

8. In November 2019, the parties agreed on a term sheet. Over the next several months, the parties worked closely with Special Master Ed Gentle to reduce the term sheet to a settlement agreement, involving many additional conferences between the parties and with Mr. Gentle. I was personally involved in all substantive settlement discussions culminating in the final agreement.

ALLOCATION DETERMINATIONS

9. In November 2019, I approached Kenneth Feinberg to serve as Allocation Mediator to facilitate the determination of an appropriate allocation of the Net Settlement Fund between fully insured Class Members and the Self-Funded Sub-Class. After presentation of the evidence and an in-person mediation, I along with Settlement Class Counsel agreed that an equitable allocation would distribute 93.5% of the Net Settlement Fund among fully insured Class Members and 6.5% of the Net Settlement Fund among the Self-Funded Sub-Class. We and Settlement Class

Counsel presented this proposal to Mr. Feinberg, who reviewed it and determined it to be reasonable.

10. Throughout negotiations with the fully insured Class Members, I worked closely with the Self-Funded Sub-Class's independent experts to identify an appropriate allocation range. Fully insured premiums inclusive of administrative fees exceed by more than an order of magnitude Administrative Service Only (ASO) fees paid by Self-Funded Sub-Class Members. Recognizing this difference, the Self-Funded Sub-Class's experts used multiple methodologies to estimate how an overcharge would be passed to the Self-Funded Sub-Class and the quantum of that overcharge. The experts provided me estimates of potential overcharges derived by assessing and comparing net revenue, operating gains, and revenue proportions over time among the fully insured Settlement Class and the Self-Funded Sub-Class. I used these estimates as the basis for my negotiations with the fully insured Settlement Class. The agreed allocation between fully insured Class Members and the Self-Funded Sub-Class in my view is fair and reasonable based on the analysis provided to me by Self-Funded Sub-Class's experts.

11. In October 2020, in conjunction with the development of a Plan of Distribution, I along with Settlement Class Counsel again engaged Mr. Feinberg to review the proposed Plan of Distribution for reasonableness. Mr. Feinberg concluded that the proposed Plan of Distribution was reasonable, and that the recommended Default and Alternative options for determining the value of claims submitted by employees, developed and recommended by myself and Settlement Class Counsel based on numerous factors, were appropriate.

CONCLUSION

12. In my view and based on my extensive participation in the negotiations described above, both the Settlement Agreement and the allocation of the Net Settlement Fund (between

class and sub-class, as well as between employer and employee) represent fair and reasonable compromises. Both were the product of extensive, arms-length negotiations between sophisticated parties and counsel.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 30, 2020

/s/ Warren T. Burns

Warren T. Burns
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Dallas, Texas 75202
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EXHIBIT

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About Burns Charest LLP

Burns Charest is a young firm with a dynamic and impressive pedigree. Our founders were partners and attorneys at some of the finest commercial litigation boutiques in the nation. In 2015, we came together to build a new, aggressive platform to pursue our clients' interests.

We know that experience matters to clients and judges. And we have it. Our lawyers have actually tried a complex class action to verdict, served as co-lead counsel in multi-district litigation, secured a \$106 million judgment in the first of the 2008 mortgage meltdown cases to go to trial, obtained significant settlements in royalty-owner disputes, and regularly represented individuals and businesses in complex, bet-the-company cases.

We currently serve as lead counsel in national antitrust and other complex class actions. We represent numerous royalty owners in disputes against oil and gas giants. We serve hundreds of individuals whose lives have been threatened by exposure to asbestos and other harmful products.

We have a strong team. Our lawyers are some of the most experienced and talented of their generation, and we are happy to match our credentials against others.

Our focus is on the future. We believe firmly that our nation's legal system was designed to protect individuals and businesses from the wrongdoing of others and to assure a level playing field. As lawyers, we have an incredibly important role to play in making that system work for our clients. And we will not shy away from a fight to protect their interests.

Why We Win

We are *trial lawyers*. We are not litigators.

What is the difference? From day one, we focus on how we are going to win your case at trial. We know from experience that success in the courtroom begins with a well-planned and efficient case strategy that focuses on what truly matters.

Our focus is not on the billable hour. We prefer to work under fee agreements that reward success and efficiency. By fully aligning our clients' interests with our own, we are able to focus on success.

We work smartly. In each case we conduct discovery and motion practice in a way that advances our client's goals. We identify key witnesses and documents, and then focus our efforts on how to tell our client's story through targeted depositions and discovery.

Many firms preach efficiency; we practice it. Our clients' interests are not best served by assigning multiple lawyers to perform the same task. That is not our style. We adhere to our Texas roots: One Riot, One Ranger.

The best lawyers are not those who scream loudest. We do not advance our clients' cases by engaging in meaningless disputes with our adversaries. That wastes time and money. But be assured, we know what's important and we will not shy away from zealously advancing our clients' interests.

We engage our clients each step of the way as members of the team. They help shape strategy. They participate in every significant decision.

We know how to communicate complex ideas to judges and juries. We use innovative techniques and technologies to advocate for our clients at trial, employing creative means to impart their story and serve their interests.

Practice Areas

Antitrust

Antitrust laws are essential to our nation's economy. Without them, businesses would be free to conspire to charge American consumers higher prices. And monopolists would be able to squeeze competitors out of the market.

Antitrust laws are so important that state and federal governments have empowered American consumers and businesses to bring legal claims to enforce these laws, and in some cases they may obtain three times their damages if successful. We gladly represent those who have been harmed and are seeking to enforce their rights.

We have deep experience in representing classes and individuals in antitrust suits against some of the world's largest corporations. We currently serve as co-lead counsel on behalf of a class of American car purchasers in the *Vehicle Carrier Services Antitrust Litigation* case that is pending in federal court in New Jersey. We are also co-lead counsel in the *Crude Oil Commodity Futures Litigation*, where we brought antitrust and Commodity Exchange Act claims against individual traders and companies on behalf of a nationwide class. Our lawyers have served as co-lead counsel in other national class action cases before forming Burns Charest. And we have obtained hundreds of millions of dollars for the classes we have represented.

Business Disputes

When you want a lawyer, usually something has gone wrong and you need a solution; ideally a cost-effective result that achieves your business goals. Burns Charest can help.

Our trial lawyers have represented all types of businesses in all kinds of lawsuits. We've been on both sides—with good effect. Our lawyers have recovered millions for businesses and we've obtained complete defense wins for business clients. Whether your matter sits before a judge, a jury or an arbitration panel, our vast experience can often make a positive difference..

Big cases don't require big hours. They require skill. Burns Charest attorneys are stand-up trial lawyers. Not discovery litigators. We focus on winning at trial, not picking needless skirmishes along the way.

When appropriate, we welcome the opportunity to work on a contingency-fee basis, so our reward comes only when you win. We will work with you to establish the right fee structure for your case, whether that means blended rates, flat fees or hourly rates. Ultimately, we want to establish a relationship that works for the client, the lawyers and the case.

We also work with referring lawyers. If you want to joint venture a case, we are willing to split work, expenses and fees on equitable terms. If you need to refer a case due to a conflict, we can take the case forward and support your recommendation. And, if you need trial counsel as the case matures, Burns Charest attorneys can step into the later phases of cases for trial. Above all, we respect the client relationships of our referring counsel.

By way of example, our lawyers have handled litigation involving:

- Breach of contract
- Tortious interference with contracts
- Interference with prospective contracts or business advantages
- Uniform Commercial Code (UCC) disputes
- Unfair competition claims
- Non-competition agreement violations
- Defamation and business disparagement
- Fraud
- Fraudulent inducement
- Accounting malpractice

Class Action

Federal and state governments have also enacted laws to safeguard Americans' privacy rights and to protect consumers and businesses from unfair practices. These laws often provide individuals and businesses a means to bring claims against defendants for unlawful actions.

We have brought claims on behalf of American consumers and businesses in cases throughout the United States. Our consumer cases have involved federal and state privacy and consumer protection laws, as well as state statutes regulating trade practices.

Energy

Big Oil is big business, and the business of Big Oil often leads to high-stakes litigation. People and companies from across the nation and around the world put a lot at risk in these deals. When things go wrong in this sector, they tend to go very wrong. That's where we come in.

Our combination of trial savvy, industry experience and technical know-how puts us in an excellent position to help you. We bring effective and efficient representation to understand the issues and technology and explain them to judges and juries for your benefit. We are oil and gas trial lawyers.

It's complicated, but not too complex. The oil and gas industry brings its own technology, accounting procedures and lexicon. The lawyers at Burns Charest have deciphered and explained any number of these issues. Some examples include the costs and prices in revenue accounting for royalty calculations; the cause—at a molecular level—of production impairments in a deepwater,

foreign, offshore drilling program; every aspect of seismic data collection—from shot to processor; and the prospectivity of wells in an undeveloped field. Each case brings another aspect of oil and gas technology. And our lawyers have mastered each one.

Big or small, we can help. The Burns Charest team has represented an array of clients from industry leaders to individual landowners. From individual landowners against industry-leading operators to a publicly-traded, multi-billion dollar E&P company against a class of investors, to one mid-major against other mid-major. Whether you are a landowner, royalty owner, working interest owner, an operator, a non-operator, a service company, or any other of the many interests in the oil field, we have the ability to focus on your issues and apply our experience.

Litigation has followed oil and gas development across the United States and beyond. With locations in Texas, Louisiana and Colorado, our firm sits in the epicenter of the oil and gas litigation world. Our lawyers have handled oil and gas cases in their home states and beyond. The Burns Charest team has been involved in new shale plays — such as the Barnett, the Eagle Ford, the Bakken, the Haynesville, the Marcellus and the Utica as well as traditional plays that include the Anadarko Basin and Central Louisiana, and locations in Ghana, Mauritania and Western Sahara.

The scope of disputes our attorneys have handled include:

- Surface damage and other property damage
- JOAs
- COPAS accounting
- Investor fraud
- Environmental claims, such as water table contamination, drainage issues, pollution and hydraulic fracturing
- Lease claims
- Lease trespass claims
- Mineral rights and royalties
- IPO securities claims
- Service provider billing fraud
- Seismic data secrecy
- Development agreement breaches
- Unitization disputes

Mass Tort

When companies fail to provide a safe working environment for their employees, or sell unsafe products to consumers, the injured need a voice to fight for them. Burns Charest is that voice.

Our attorneys are skilled and experienced in coordinating and prosecuting such claims on a mass scale. Burns Charest lawyers have successfully represented clients against pharmaceutical companies and asbestos manufacturers. Currently we are representing hundreds of clients exposed to asbestos in one of the largest oil refineries in the Western Hemisphere. Additionally, we are part of a consortium of plaintiffs firms representing over four hundred public and private hospitals in opioid lawsuits across the nation.

Big business may have big resources, but so do we. More importantly, we also have the know-how and experience to bring those resources to bear where and when it counts: in the courtroom.

Burns Charest also knows how to effectively manage and coordinate mass tort cases and, just as importantly, efficiently move these cases forward to a resolution. Because we work on a contingency fee basis, our interests are aligned with our clients to move cases along as quickly as possible. Instead of getting bogged down in needless and pointless delay-causing skirmishes, we focus on resolving these cases as expeditiously as possible for the benefit of our clients. We know that delays don't hurt the large companies, they hurt the injured waiting for their day in court.

We are here to give each person a voice in the courtroom and to level the playing field between the injured and Big Business.

Attorneys



Warren Burns | Founding Partner

Selecting a lawyer for your case is a very important decision. You want a lawyer who understands your concerns and will fight to achieve your goals. You want a lawyer who believes in our system and knows how to succeed in it. And most importantly you want a lawyer who is going to give you candid and meaningful advice. I am that lawyer.

I focus my practice on high-stakes, multidistrict antitrust litigation, along with other complex class action and commercial cases. I have handled numerous cases involving price fixing, monopolization, breach of contract, intellectual property, business torts, consumer protection statutes, and accounting malpractice.

I achieve results. In 2012, I helped lead a trial team that took the first mortgage-backed-securities related case to trial. In a landmark and game-changing trial, we secured a \$106 million judgment on behalf of our client and obtained key pre-trial determinations that had a domino effect in related cases.

I want to know more about your case and to see if there is a way I can help you. I look forward to talking with you.

Education & Background

Where a man comes from is important. I believe it can tell you a lot about his character and approach to litigation and trials.

I am from a small town in Mississippi called Kosciusko. My extended family on both sides has lived there for six generations. My upbringing had a profound impact on me. I learned the value of community, the importance of not only joining in the lives of those around you, but making a difference in them as well.

I spent my college years at Ole Miss. I played four years of rugby for the Ole Miss Rugby Football Club, starting each season as a second-row forward. I use the skills I learned on the rugby pitch everyday in litigation. In a fast moving match, you have to be prepared to play offense and defense intelligently. You have to capitalize quickly on your opponents' mistakes. And you have to bring maximum pressure at the right moment to win. The same is true in litigation.

After college, I moved to the District of Columbia to work in public relations and fundraising. I took a job as a junior fundraising staffer at the Basilica of the National Shrine of the Immaculate Conception, the largest Catholic church in the Americas. Within a year, I was promoted to serve as the Communications Director at the Basilica.

I next moved to the Lt. Joseph P. Kennedy, Jr. Institute, a non-profit organization dedicated to assisting people with developmental disabilities in their efforts to live full and complete lives. There, I served as the Director of Development and Public Relations.

Later, I moved to Asheville, North Carolina to assume the role of Development Director at Riverlink, a regional non-profit organization. At Riverlink, our focus was on restoration of the French Broad River and developing the economy along its banks.

I left Riverlink to attend Tulane Law School. There, I graduated summa cum laude and Order of the Coif, and received the John Minor Wisdom Award, Tulane's highest prize for graduating law students. I also served as Editor in Chief of the Tulane Law Review.

After law school, I clerked for the Hon. Paul J. Kelly, Jr. on the U.S. Court of Appeals for the Tenth Circuit.

My background continuously helps me relate to witnesses and juries in ways that benefit my clients.

Admissions & Honors

Since 2011, I have been named a Texas Rising Star in Business Litigation.

Every year since 2014, I have been named to the International Who's Who of Competition Lawyers.

In 2015 and 2016, I was included in the Top 100 National Trial Lawyers.

In 2016, I was elected to the American Law Institute. The American Law Institute is the leading independent organization in the United States producing scholarly work to clarify, modernize, and improve the law.

I am a Fellow of the American Bar Foundation. The Fellows is an honorary organization of attorneys, judges, law faculty, and legal scholars whose public and private careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession. Membership in The Fellows is limited to one percent of lawyers licensed to practice in each jurisdiction.

I am an active member of the Dallas Bar Association and the American Bar Association. In the ABA, I sit on the steering committee for the international litigation committee.

I am also a member of the American Association for Justice and the Texas Trial Lawyers Association. And I am a Fellow in the Southern Trial Lawyers Association.

I sit on the Board of Advisory Editors of the Tulane Law Review, a national board comprised of distinguished alumni.

Representative Cases & Decisions

ANTITRUST CLASS ACTION / CONFIDENTIAL SETTLEMENTS: I serve as co-lead counsel in *In re Vehicle Carrier Services Antitrust Litigation (2013-present)* now pending in the District of New Jersey. On the eve of arguing against defendants' consolidated motion to dismiss, I negotiated a confidential settlement with one of the principal defendants. I negotiated a second confidential settlement with another major defendant just weeks later.

ANTITRUST CLASS ACTION / LEADERSHIP: I serve on the executive committee in *In re Domestic Airlines Antitrust Litigation (2015-present)* now pending in the District of Columbia. Our clients have alleged that the nation's four major airlines conspired to restrict capacity in order to fuel record-high profits.

ANTITRUST CLASS ACTION / CONFIDENTIAL SETTLEMENTS: I previously served as co-lead counsel in *In re Automotive Parts Antitrust Litigation (2011-2015)* in the Eastern District of Michigan. I personally negotiated settlements exceeding \$100 million with foreign defendants while successfully organizing and managing this complex case.

COMMERCIAL CASES / CONFIDENTIAL SETTLEMENTS: Lead trial counsel in three cases against the gas giant Chesapeake for breach of contract and underpayment of royalties relating to the oil and gas lease on the Dallas/Fort Worth International Airport. I have represented minority and women-owned business enterprises in their efforts to enforce contractual provisions against Chesapeake. I have settled all three cases successfully over the past three years, including one case that settled two days before trial.

COMMERCIAL CASE / CONFIDENTIAL SETTLEMENT: Lead trial counsel in a confidential arbitration representing a telecommunications company in its suit against its former billing aggregator. My client hired me with less than three months to go before trial.

SECURITIES CLASS ACTION / DEFENSE COUNSEL: Counsel in *Brady v. Kosmos Energy, Ltd. (N.D. Tex.) (2012-present)* defending a start-up oil and gas company against allegations centering on its initial public offering. The court recently denied plaintiffs' motion for class certification.

COMMERCIAL CASE / JUDGMENT EXCEEDING \$100 MILLION: Counsel in *Assured Guaranty v. Flagstar Bank (S.D.N.Y.) (2011-2012)*, the first case to go to trial related to the residential mortgage backed securities market meltdown. I represented a bond insurer in a suit against the securities issuer, resulting in a judgment of over \$100 million. In this expert-driven case, I managed plaintiff's principal liability expert, on whose opinion

Judge Jed Rakoff relied in reaching his judgment. At trial, I cross-examined defendant's principal liability expert, whose opinion Judge Rakoff ultimately discredited.

CLASS ACTION / JUDGMENT EXCEEDING \$16 MILLION: Counsel in *In re Universal Service Fund Litigation (D. Kan.) (2005-2013)*. We prevailed at trial on a breach of contract claim for AT&T's California landline telecommunications customers.

ANTITRUST CLASS ACTION / SETTLEMENTS EXCEEDING \$50 MILLION: Counsel in *In re Ready-Mixed Concrete Antitrust Litigation (S.D. Ind. 2005-2010)*. We resolved the case before trial with class members receiving more than 100 percent of their actual damages after deduction of attorneys' fees.

PATENT CASE / CONFIDENTIAL SETTLEMENT: Counsel in *Individual Network v. Apple (E.D. Tex.) (2007-2009)* representing an inventor in its patent infringement case against Apple. This case involved Apple's Genius recommendation engine. I managed all aspects of discovery and motion practice, including taking the depositions of all defense experts and managing plaintiffs infringement and validity expert. The case was resolved before trial.

ANTITRUST CASE / CONFIDENTIAL SETTLEMENT: Counsel in *Morris & Dickson Co. v. Abbot Labs. (M.D. La.) (2006-2008)*, representing a regional pharmaceutical wholesaler in its suit against Abbott Laboratories for violation of the Robinson-Patman Act by unfairly favoring my client's competitors. I managed all aspects of the litigation, including settlement negotiations. The case was resolved before trial.

Speaking Engagements

- *Litigation Trends in the \$50 Era*, 2015 Energy and Environmental Law Summit (October 2, 2015)
- *King Cake or Po-Boy? Do Class Actions Offer Meaningful Compensation to Class Members, or do They Simply Rip Off Consumers Twice?*, 19th Annual National Institute on Class Actions, American Bar Association (October 22, 2015)



Daniel Charest | Founding Partner

Daniel developed elite trial skills on the front lines of high-stakes litigation. After his federal appellate clerkship, Daniel joined a nationally-recognized litigation boutique firm, where he became a partner as a result of successfully running and trying complex cases. He co-founded Burns Charest to build a unique set of skilled trial-oriented lawyers.

Daniel's experience in complex actions has honed his approach into effective, efficient lawyering. There is no playbook. He combines work ethic, smarts, and strategic thinking to achieve the client's goals. Daniel

is equally comfortable in a courtroom talking to a judge or jury, in a boardroom talking to executives, or on a gravel road talking to witnesses. In each case, Daniel brings his real-world experience developed from working in leadership roles in industry at a young age that involved travel all over the globe and required cooperation with all forms of culture and character.

Daniel's body of work reaches beyond any particular practice area. He has handled matters involving antitrust, breach of contract, oil and gas, business torts, like trade secret misappropriation and unfair competition, consumer protection issues, class actions, fraud, insurance bad faith, and wrongful death. His work has taken place across the United States, federal and state courts from coast to coast with plenty of places in between, and beyond to international arbitrations reaching across the globe. Daniel's docket has involved procedural and jurisdictional challenges such as removal and remand, class certification, transfers, temporary restraining orders, temporary injunctions, arbitrations, and appeals.

Education & Background

Tulane University Law School, J.D., summa cum laude (2004)

U.S. Merchant Marine Academy, B.S. Marine Transportation, cum laude (1994)

Cheverus High School, Portland, Maine (1990)

The Honorable Edith Brown Clement, U.S. Court of Appeals for the Fifth Circuit (clerkship 2005-2006)

The Honorable Martin L.C. Feldman, U.S. District Court for the Eastern District of Louisiana (externship 2003-2004)

Admissions & Honors

Admitted to practice in Texas, Virginia (inactive), the District of Columbia, the U.S. Virgin Islands, and several federal district courts and courts of appeal, including all Texas federal courts

Best Lawyers in America, 2017-2019

Named “Rising Star” in Texas by Law & Politics Magazine (Thomson Reuters) (2012, 2013, and 2014)

Named “Future Star” in Texas by Benchmark Litigation: The Definitive Guide to America’s Leading Litigation Firms & Attorneys (2012, 2013, 2014, 2017)

Managing Editor of the Tulane Law Review (2003-2004)

Order of the Coif (2004)

Chief Mate, unlimited tonnage, U.S. Coast Guard

Lieutenant Commander, U.S. Navy (Reserve), with an honorable discharge

Authored the published comment, A Fresh Look at the Treatment of Vessel Managers Under COGSA, 78 Tul. L. Rev. 885 (2003)

Representative Cases & Decisions

Daniel works on “the largest Fifth Amendment takings cases in history,” *In Re Upstream Addicks and Barker (Texas) Flood-Control Reservoirs*, Sub-Master Docket No. 17-cv-9001L (Fed. Cl.), in which Daniel serves as the Court-appointed co-lead counsel for discovery and trial of Hurricane Harvey upstream flood victims.

Daniel quarterbacks both an international arbitration and a Texas State Court action in a fight over rights to a deep-water offshore drilling block off the coast of Africa (though we can’t tell you where—yet!), in which Daniel’s efforts resulted in obtaining both a temporary injunction in Texas State Court and similar emergency relief from the ICC arbitrator in London to preserve the asset for the client.

Daniel handles *Antero Resources Corp. v. C&R Downhole Drilling Inc.*, No. 3:15-cv-03885-L (N.D. Tex.), on behalf of a major oil and gas operator in the Marcellus Shale and Utica Shale asserting multi-million-dollar claims of fraudulent billing against an oilfield service provider.

Daniel successfully handled a multi-million-dollar claim in the Cobalt International Energy bankruptcy proceeding, *Whitton Petroleum Services Ltd. v. Tavakoli, Plan Administrator (In re: Cobalt Int’l Energy, Inc.)*, Case No. 17-36709(MI), Adv. No. 18-03172, while overseeing not only an international arbitration to validate the claim amount but also an adversary

proceeding to challenge the characterization of six billion dollars as intercompany payables and over two billion dollars as intercompany receivables.

Daniel applies his extensive oil and gas royalty experience while acting as co-liaison counsel for *In re: Chesapeake Barnett Royalty Litigation #2*, MDL No. 48-000000-15 (48th District Court, Tarrant County, Texas), in which he represents royalty plaintiffs, including the largest royalty buyers in the Barnett Shale and mineral owners, including the largest mineral owner in the United States.

Daniel's oil and gas practice extends from the Eagle Ford Shale, to the Permian Basin, to the Anadarko Basin, and beyond. His practice focuses on the business-facing issues of the oil and gas industry. Examples include *Dodge Resource Partners, LLC v. Zahav Land Group, LLC*, No. DC-CV54372 (142nd District Court, Midland County, Texas), which seeks to enforce a purchase and sale agreement relating to minerals located in Howard County, Texas, *RRIG EP Holdings, LLC vs Rover Operating LLC*, No. 52775 (118th District Court, Howard County, Texas), which seeks to invalidate oil and gas leases for failure to produce in paying quantities and cessation of production, *Expedition Royalty Co, LLC v. Nomad Land and Energy Resources, LLC*, No. DC-18-17113 (191st District Court, Dallas County, Texas), which seeks to confirm the proper termination of a purchase and sale agreement), and *Turtle Creek Exploration, LLC v. Stack Energy Partners, LLC*, No. CJ-2019-9 (District Court of Grady County, Oklahoma), which seeks to resolve a title issue following a mineral acquisition.

Speaking Engagements

- “Disputes over Production in Paying Quantities,” Oil and Gas Disputes 2019; State Bar of Texas, Oil, Gas & Energy Resources Section (January 11, 2019)
- “Royalty Disputes & Litigation,” 35th Annual Course, Advanced Oil, Gas & Energy Resources; State Bar of Texas, Oil, Gas & Energy Resources Section (September 29, 2017)
- *Litigation Trends in the \$50 Era*, 2015 Energy and Environmental Law Summit (October 2, 2015)



Darren Nicholson | Partner

For almost 20 years, Darren has represented plaintiffs and defendants in complex commercial litigation, intellectual property disputes and white-collar criminal cases in courts across the country.

With every client, Darren invests the time and effort to identify objectives and tailor a strategy to achieve those goals – whether trying a case, negotiating a settlement, avoiding litigation, or pursuing another option entirely.

Among his most notable cases are the successful representation of plaintiffs in a multi-million dollar lawsuit involving business fraud, breach of fiduciary duty and commercial bribery; a jury verdict awarding 100 percent of requested damages, interest, and attorneys' fees in a breach of a patent licensing agreement against Forgent Networks; a favorable summary judgment for plaintiff in a breach of contract case stemming from the Texas Ranger Baseball Partners bankruptcy; and a take-nothing judgment and order sealing the case for a client wrongfully accused of fraud and tortious interference with a contract.

Darren began his legal career at the international Washington D.C. based Arnold & Porter LLP in 2001, joined the boutique litigation firm of Sayles Werbner PC in Dallas in 2008, and moved to Burns Charest in 2019.

Education & Background

Georgetown University Law Center, J.D. with honors (2001)

The University of Texas, B.S., mathematics (1997)

The University of Texas, B.A., psychology (1997)

Admissions & Honors

Best Lawyers in America, 2018-2019

Best Lawyers in Dallas, D Magazine, 2017-2018

Texas Super Lawyers, 2017-2018

Texas Super Lawyers Rising Stars, 2010-2015

Fellow, Texas Bar Foundation

Barrister, Patrick E. Higginbotham Inn of Court, 2009-2012

Admitted to practice in Texas, the District of Columbia, the U.S. Supreme Court, and numerous U.S. Court of Appeals and U.S. District Courts, including all Texas federal courts.

Representative Cases & Decisions

Complex Business Cases:

Andrew Silver v. Tabletop Media, LLC d/b/a Ziosk – favorable settlement on the eve of trial for defendant and counter-plaintiff in a breach of contract case involving a patent purchase agreement

AerReach, et al., v. Stanford, et al. – Successfully represented plaintiffs in a multi-million dollar business fraud, breach of fiduciary duty, and commercial bribery case against multiple defendants

Paradigm Air v. Texas Rangers Baseball Partners– successful summary judgment recovery for client in a hotly contested breach-of-contract case stemming from the Texas Rangers Baseball Partners’ bankruptcy

Obtained a take-nothing judgment and an order sealing the case for client who was wrongfully accused of fraud and tortious interference of a contract

False Claims Act Cases:

Fisher, et al. v. Ocwen Loan Servicing– achieved a favorable settlement of a major False Claims Act qui tam case against non-bank mortgage servicer where plaintiffs sought over \$100 million in damages

Intellectual Property Cases:

Commil USA, LLC v. Cisco Systems, Inc., 135 S.Ct. 1920 (2015) – favorable U.S. Supreme Court eliminating the defense of good-faith belief in invalidity to induced infringement claims

Jenkins & Gilchrist P.C. v. Forgent Networks, et al.– obtained substantial jury verdict for plaintiff who was awarded 100 percent of requested damages, interest, and attorneys’ fees, in a case involving the breach of a patent licensing agreement

e-Lynxx Corporation v. Ariba- obtained significant patent licensing agreements in patent infringement lawsuit and development of licensing program

Wrongful Death, Products Liability, Mass Tort:

Powell, et al. v. Thornton Drilling, et al. - substantial confidential settlement on the eve of trial for two minor children in a wrongful death case involving a West Texas oil rig

Artinger, et al. v. i3 Plastic Cards, et al. - substantial confidential settlement for a widow and minor child in a wrongful death case involving a workplace electrocution

In re Diet Drugs(Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig., No. MDL 1203 - representation of Fortune 500 pharmaceutical company in hundreds of product liability cases in courts across the country

Criminal Cases:

S. v. Mahoney— obtained acquittal on a seven-count indictment for a court-appointed client in Washington, D.C. Superior Court

S. v. Barry, et al. - favorable plea bargain and no jail time for a real estate agent indicted in a federal case involving mortgage fraud

Speaking Engagements

“Closing Arguments,” Dallas Bar Association Trial Academy, Oct. 2012

“Exclude the Opposing Expert Witness on Qualifications and Reliability,” Dallas Bar Association, July 2010

“The Ethics of Lawyer-Judge Interactions,” presented to the Higginbotham Inn of Court, March 2010



LeElle Slifer | Partner

Ms. Slifer has litigated in federal and state courts across the country, before both judges and juries, and participated in numerous arbitrations, including before the International Chamber of Commerce in London. One of her trials – *DDR Holdings v. Hotels.com*, where her team won a jury verdict of patent infringement in the Eastern District of Texas – was the first case to survive a § 101 challenge at the Federal Circuit after the Supreme Court issued *Alice Corp. v. CLS Bank Int'l*, and was the only case to do so for almost two years.

She has experience in a wide range of matters, including contract disputes, oil and gas royalty underpayments, breach of fiduciary duty, antitrust claims, patent and copyright infringement, theft of trade secrets, and even the seizure of multi-million dollar cargo barges. She has also handled appeals to several federal and state courts of appeal, including the United States Supreme Court in *Comcast Corp. v. Behrend*.

Ms. Slifer is a native Texan who graduated from Duke University and Harvard Law School, then clerked in Houston on the Fifth Circuit. She started her practice at Susman Godfrey, first in Dallas and then in New York City, where she lived for several years. Although she moved back to Dallas after joining Burns Charest, she retains an active bar membership in both states and still practices in New York frequently. She is married to David Slifer, an advertising brand manager at The Richards Group.

Education & Background

Harvard Law School, J.D., *cum laude* (2010)

Duke University, B.A., *magna cum laude* (2007): Developmental Neuropsychology; Political Science

Law Clerk to the Honorable Jerry E. Smith, U.S. Court of Appeals for the Fifth Circuit

Honors

Editor-in-Chief, Harvard Journal of Law & Public Policy (Vol. 33)

Graduation with Distinction (Duke University)



Will Thompson | Partner

Will was born and raised in the mountains of Western Montana. After graduating from a high school class of 55, Will was drafted by the Philadelphia Phillies, but he accepted a college baseball scholarship. While at Santa Clara University, the San Francisco Giants drafted Will in the seventh round of the 2004 MLB draft. In his professional baseball career, Will won a batting title after hitting .384 for the Salem-Keizer Volcanoes, was named to multiple All-Star teams, was a member of multiple league championships, and reached the AAA level before his career was cut short due to an injury.

Will then graduated from Stanford Law School and subsequently clerked for Judge Mary M. Schroeder of the Ninth Circuit Court of Appeals and Judge Lee H. Rosenthal of the U.S. District Court for the Southern District of Texas. He then entered private practice—first at Susman Godfrey in Dallas, and later as the first associate at Burns Charest. In July 2018, Will became the first homegrown partner at Burns Charest, joining founding partners Warren Burns, Daniel Charest, and Korey Nelson.

In his private practice, Will has successfully managed a wide variety of complex matters for clients across the country. His work has taken him from investigations in the “hollers” of West Virginia to arguing dispositive motions in federal court on behalf of a nationwide class. Some of Will’s recent cases include the following:

Bhatia v. 3M (D. Minn): Will and Burns Charest currently serve as lead counsel on behalf of dentists across the country who purchased 3M’s allegedly defective “Lava Ultimate” dental crowns. Will authored the brief the dentists filed in opposition to 3M’s motion to dismiss and argued the motion before the district court. Following briefing and oral argument, the court denied 3M’s motion to dismiss.

In re German Autos (N.D. Cal.): Will and Burns Charest serve as lead counsel in multidistrict litigation accusing Audi, BMW, Volkswagen and other German automakers of a decades long antitrust conspiracy covering car technology, costs, suppliers and emissions equipment.

Skipper v. ACE Property and Casualty Insurance Company (S.C.): Will was the principal author on a brief to the South Carolina Supreme Court on an issue of first impression before the court—whether legal malpractice claims are assignable. The Supreme Court adopted the reasoning in Will’s brief and unanimously ruled in his client’s favor on all points.

Will also maintains an active docket of cases in the oil and gas industry, with a particular emphasis on oilfield fraud.

Education & Clerkships

University of Montana, 2008 (B.A.)

Stanford Law School, 2012 (Juris Doctor)

Law Clerk to the Honorable Mary M. Schroeder, United States Court of Appeals for the Ninth Circuit, 2012-13

Law Clerk to the Honorable Lee. H. Rosenthal, United States District Court for the Southern District of Texas, 2013-2014.



Korey Nelson | Partner

Korey represents plaintiffs in complex litigation throughout the United States. He has successfully litigated environmental pollution cases, Jones Act cases, pharmaceutical injury cases, mass tort cases, consumer class cases, and other matters in state and federal courts. Many of his cases come from other lawyers and the first day he takes your case, he focuses on making it trial-ready. Korey understands that although most cases end in settlement, making your case trial-ready is a key component of any successful settlement.

Just two examples of his past representation include his role as lead counsel representing plaintiff landowners in *Bunch v. Brighton Energy*, a state court lawsuit involving environmental pollution resulting from eighty years of oil and gas operations on 170 acres of property. Defendants were well-heeled oil companies that settled several weeks before trial for a favorable cash settlement and regulatory cleanup of the property. He was also court-appointed Class Counsel in *Chehalem Physical Therapy v. Coventry*, a federal court case involving the underpayment of insurance benefits to healthcare providers throughout the United States. After the Court certified a nationwide injunctive class, the parties reached an agreement settling not only the injunctive portion of the case, but also settling class-wide claims for retrospective damages. Previously the Court denied certification of a retrospective damages class.

After graduation from law school, Korey clerked for the Honorable Billie Colombaro Woodard, (ret.) at the Louisiana Third Circuit Court of Appeal and then went on to clerk for the Honorable Karen Wells Roby in the Eastern District of Louisiana. After clerking, he worked at a boutique litigation firm in New Orleans before co-founding the New Orleans office of Burns Charest LLP.

Education & Background

Tulane University Law School, J.D., 2004

College of Charleston, B.A., *magna cum laude*, 2000

Judicial Law Clerk, 2005-2007, Hon. Karen Wells Roby, Eastern District of Louisiana

Judicial Law Clerk, 2004, Hon. Billie Woodard (ret.), Third Circuit Court of Appeal

Honors & Publications

Senior Managing Editor, Tulane Environmental Law Journal (2003-2004)

Comment: Judicial Review of Agency Decisionmaking, 17 Tul. Env'tl L. J. 177 (2003)



Christopher Cormier | Partner

The founding partner of the firm's Denver office, Chris is an accomplished plaintiffs' lawyer who has substantial experience litigating high-stakes antitrust and commercial cases. He has obtained more than \$1.5 billion in verdicts and settlements in federal courts from Kansas City to New York City. He has been recognized by Benchmark Plaintiff as an Antitrust Litigation Star (2013 –2015), and he was one of only two lawyers in Colorado to be named a "Rising Star" in the field of Antitrust Litigation by Super Lawyers (2016 and 2017).

Chris is actively litigating numerous contingency cases on the plaintiffs' side in federal and state courts throughout the country, from large-scale breach of contract cases in the oil and gas industry to nationwide antitrust cases affecting various products and services.

From deposing the president or CEO of a Fortune 500 Company and drafting case-dispositive briefs to rolling up his sleeves and learning the documents of a case inside and out, Chris takes pride in effectively and efficiently representing his clients' interests in all phases of litigation, from complaint filing to trial and appeal, and all points in between.

Chris honed his legal skills at a large prominent plaintiffs-side litigation firm for more than 15 years before moving his practice to Burns Charest in 2018. He is eager to put that experience and drive to work for you, whether you are a big company or an individual who has been wronged by misconduct.

Education & Background

American University Washington College of Law, J.D., *magna cum laude* (Top 10%), 2002

University of Virginia, B.A., 1999

Intern, Hon. Deborah K. Chasanow, U.S. District Court for the District of Maryland, 2000

Intern, National Criminal Enforcement Section, Antitrust Division, U.S. Department of Justice, 2001

Honors

Named an "Antitrust Litigation Star" by *Benchmark Plaintiff: The Definitive Guide to America's Leading Plaintiff Litigation Firms and Attorneys* (2013-2015)

Named a “Rising Star” in Antitrust Litigation by *Super Lawyers* (Thompson Reuters) (2016-2017)

Admitted to practice in the U.S. Supreme Court, Colorado state and federal courts, Washington, DC state and federal courts, and other federal courts throughout the country

Representative Cases & Decisions

Urethane Antitrust Litigation (D. Kan.)

Chris was part of the co-lead counsel team for direct purchaser plaintiffs in an antitrust class action alleging a nationwide conspiracy to fix the prices of chemicals used to make polyurethane foam, a basic component of ubiquitous everyday products such as bed mattresses, car seat cushioning and furniture cushioning. Four defendants — Bayer, BASF, Huntsman, and Lyondell — settled for a total of \$139.5 million, while the case against the fifth manufacturer, Dow Chemical, went to trial. After a four-week jury trial, in which Chris was a member of the trial team, the jury returned a \$400 million verdict for the plaintiffs, which the district court trebled under federal antitrust law to more than \$1 billion. This was the largest verdict in the country in 2013, as reported by the *National Law Journal*. The U.S. Court of Appeals for the Tenth Circuit affirmed the judgment. In early 2016, Dow ultimately settled for \$835 million while the case was on appeal to the Supreme Court, bringing the total recovery to \$974 million – nearly 250% of the damages found by the jury.

Anadarko Basin Oil and Gas Lease Antitrust Litigation (W.D. Okla.)

Chris was personally appointed co-lead counsel for plaintiffs in a class action alleging that Chesapeake Energy, SandRidge Energy and a former executive of both companies conspired to rig bids for leases of land held by private landowners in parts of Oklahoma and Kansas. This litigation follows the U.S. Department of Justice’s early 2016 indictment of a co-founder and former CEO of Chesapeake Energy for allegedly participating in this bid-rigging conspiracy. Plaintiffs allege that Defendants illegally conspired to stabilize and depress the price of royalty and bonus payments paid to landowners in the Anadarko Basin oil and gas province — a massive geological formation holding natural gas and oil deposits that includes large parts of Oklahoma and Kansas. Pursuant to this conspiracy, Plaintiffs allege that Defendants communicated about and agreed on prices, allocated particular geographic areas between themselves, and rigged bids for leases of land, lowering acquisition prices across the region and thereby harming the proposed class of landowners. In September 2018, the parties signed a settlement agreement resolving the case for \$7 million; the settlement is currently awaiting court approval.

Dental Supplies Antitrust Litigation (E.D.N.Y.)

Chris was part of the leadership team representing a proposed class of dental practices and dental laboratories. The case alleges that Defendants Henry Schein, Inc., Patterson Companies, Inc., and Benco Dental Supply Company — the three largest dental supply

and dental equipment distributors in the United States — fixed price margins on dental equipment, jointly pressured manufacturers to squeeze out competitors, and agreed not to “poach” each other’s employees, in violation of federal antitrust law. As a result of the alleged conspiracy, dental practices and dental laboratories may have paid artificially inflated prices for many kinds of dental supplies and dental equipment, from consumables like gauze and cement to big-ticket equipment like chairs and x-rays. In September 2018, the parties signed a settlement agreement resolving the case for \$80 million; the settlement is currently awaiting court approval.

Plasma-Derivative Protein Therapies Antitrust Litigation (N.D. Ill.)

Chris was part of the co-lead counsel group for direct purchaser plaintiffs alleging a conspiracy to reduce the supply and increase prices of IVIG and Albumin — life-saving therapies derived from blood plasma. He and his colleagues represented named plaintiff The University of Utah Health System as well as the remaining class members in this matter. The defendants were CSL Ltd., CSL Behring, Baxter Healthcare and the Plasma Protein Therapeutics Association (the trade association the manufacturer defendants controlled). Chris played an integral role in the investigation and filing of the first complaint in the country in this matter. Following numerous depositions across the globe and the filing of plaintiffs’ opening class certification motion and expert report, Chris and his team obtained settlements with all defendants totaling \$128 million.

Cast Iron Soil Pipe & Fittings Antitrust Litigation (E.D. Tenn.)

As a key member of the co-lead counsel team, Chris represented a plumbing distributor and a putative class of direct purchaser plaintiffs against the two largest soil pipe and fittings manufacturers in the country (McWane Inc. and Charlotte Pipe & Foundry) and the trade association they controlled (Cast Iron Soil Pipe Institute) in a lawsuit alleging that the defendants engaged in a nationwide price-fixing conspiracy. Following the completion of extensive fact discovery, he helped obtain a \$30 million settlement from all defendants for the direct purchaser class, which the court approved in 2017.

Publications

Private Enforcement in the U.S.: An Overview of Leading Cases, Concurrences Journal, Institute of Competition Law (April 2014)

Private Recovery Actions in the United States (Antitrust Review of the Americas, 2010)

Perspectives on the Future Direction of Antitrust (Antitrust, ABA 2008)



Larry Vincent | Of Counsel

For almost thirty years now, I have litigated cases at trial and on appeal, on behalf of both plaintiffs and defendants, in both state and federal courts. My experience ranges from complex commercial litigation to securities and antitrust class actions to mass tort to eminent domain matters.

In November 2017, the Chief Judge of the Federal Court of Claims appointed me Co-Lead Counsel for jurisdictional, pretrial, and motions practice in the consolidated federal eminent domain cases filed after the flooding from Hurricane Harvey in Houston, Texas. Along with the other Co-Leads, we will represent the 10,000 to 16,000 anticipated claimants whose property was inundated upstream of the Addicks and Barker reservoir dams. Needless to say, I am honored by the appointment and will do my best to see that those property owners who were injured by the actions of the U.S. Army Corps of Engineers receive their just compensation.

In 2017, I also became a committee member working to retain and develop expert witnesses and testimony in the *In re: Johnson & Johnson Talcum Powder Products Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2738, in the United States District Court for the District of New Jersey. The litigation seeks to hold several defendants responsible for their failure to warn women of the risk associated with certain uses of talcum powder products, including the potential for developing ovarian cancer, even though those risks were known to the defendant companies.

In addition to those recent endeavors, my experience since becoming a lawyer in 1987 has included a wide range of trial and appellate work, such as:

- The trial of multiple actions, both solo as well as part of a larger team, including breach of contract claims between domestic and international entities involving everything from the failure to deliver drilling rigs for use in the Gulf of Mexico to the funding of business ventures;
- Several patent infringement actions resulting in permanent injunctions, awards of trebled damages, and attorneys' fees to the inventor;
- Multiple business "divorce" actions between partners, often involving fraud and breach of fiduciary duty claims over asset allocation and theft of corporate opportunities;
- Various fast-track injunction and restraining order based on employment agreements, theft of trade secrets, and covenants not to compete;
- The representation and settlement of cases on behalf of both plaintiffs and defendants in nationwide class actions for antitrust violations and federal securities fraud claims;

- Numerous eminent domain matters on behalf of property owners against state, county, city, and corporate condemnors both at trial and on appeal.

I was born and raised in Port Neches, Texas and received a B.B.A. in Economics from Baylor University in 1984. After Baylor, I attended the University of Texas School of Law in Austin, where I served as the Managing Editor of the Texas Law Review, was elected to the Order of the Coif, and was a member of the Legal Eagles.

After receiving my law degree with honors in 1987, I had the privilege of clerking for the Honorable Anthony M. Kennedy, both on the United States Court of Appeals for the Ninth Circuit and the United States Supreme Court.

Education & Background

University of Texas School of Law (J.D. with honors, 1987)

Baylor University (B.B.A. in Economics, 1984)

Port Neches-Groves High School, Port Neches, Texas (1980)

Clerkship: The Hon. Anthony M. Kennedy

United States Court of Appeals for the Ninth Circuit

United States Supreme Court

Adjunct Professor, South Texas College of Law, 1993

Admissions & Honors

University of Texas School of Law (J.D. with honors, 1987)

President, Alpha Kappa Psi, 1984

Beta Gamma Sigma, 1984

Baylor's Outstanding Senior Men for 1984

Managing Editor, Volume 65, Texas Law Review

Author, Outstanding Federal Practice and Procedure Note, *Defining "Doing Business" to Determine Corporate Venue*, 65 Texas L. Rev. 153 (1986)

Order of the Coif

Keeton Fellow, University of Texas School of Law

Life Fellow, Dallas Bar Foundation

Representative Cases & Decisions

The ongoing representation of class of investors to recover damages in a private securities fraud action based on alleged misrepresentations by company. Case is currently on appeal for the third time to the Fifth Circuit Court of Appeals after two prior written opinions by the United States Supreme Court regarding burdens and proof applicable to securities class actions at the certification stage. Reported opinions include:

- *Archdiocese of Milwaukee Supporting Fund, Inc. v. Halliburton Co.*, 2008 WL 4791492 (N.D. Tex. Nov. 4, 2008) (original denial of class certification for failure to prove loss causation), *aff'd*, 597 F.3d 330 (5th Cir. 2010), *vacated and remanded sub nom, Erica P. John Fund, Inc. v. Halliburton Co.*, 131 S. Ct. 2011 (reversing prior requirement that plaintiffs in federal securities class actions must demonstrate loss causation at class certification stage);
- *Erica P. John Fund, Inc. v. Halliburton Co.*, 3:02-cv-01152-M (Jan. 27, 2012) (granting certification and denying motion to supplement the record to provide evidence challenging fraud on the market presumption based on alleged lack of “price impact” to stock); *aff'd*, 718 F.3d 423 (5th Cir. 2013); *vacated and remanded*, 134 S. Ct. 2398 (2014) (permitting challenge to proof of “price impact” to rebut fraud on the market presumption at class certification stage);
- *Erica P. John Fund, Inc. v. Halliburton Co.*, 309 F.R.D. 251 (N.D. Tex. 2015) (granting class certification again); 2015 U.S. App. LEXIS 19519 (5th Cir.) (granting Fe. R. Civ. P. 23(f) leave to appeal).

Representation at trial and on appeal of landowner in eminent domain action involving challenges to expert testimony regarding city’s partial taking of residential property to widen street. *Babaria v. City of Southlake*, 2016 Tex. App. LEXIS 454 (Fort Worth, pet. for writ pending).

Representation of landowner against San Antonio Board of Adjustment concerning right to demolish building under city code. *City of San Antonio Bd. of Adjustment v. Reilly*, 429 S.W.3d 707 (Tex. App. – San Antonio 2014, no pet.).

Representation of landowner in eminent domain action involving challenges to expert testimony and standard for damages awarded for county’s partial taking of commercial property to widen street. *Dallas County v. Crestview Corners Car Wash*, 370 S.W.3d 25 (Tex. App. – Dallas 2012, pet denied).

Representation of landowner in eminent domain action against public transit authority regarding vested right to rail service accorded by federal statutory and state property law. *Wilbert Family Ltd. P’ship v. DART*, 371 S.W.3d 506 (Tex. App. – Dallas 2012, pet. dism’d).

Representation of defendant corporation against derivative action alleging securities violations, breach of fiduciary duties, and other causes of action arising from alleged improperly backdated stock option grants. *In re Fossil, Inc.*, 713 F. Supp. 2d 644 (N.D. Tex. 2010).

Representation of landowner in seminal eminent domain action involving valuation standards applicable to signboard leaseholds. *State v. Cent. Expressway Sign Assocs.*, 302 S.W.3d 866 (Tex. 2009).

Representation of executor regarding special appearance filed by investor defendant in action seeking damages from investor. *Barker v. Lescroart*, 2007 Tex. App. LEXIS 1062 (Houston [14th Dist]).

Representation of insurer against claims by hotel chain seeking damages for business income loss alleged to be the result of the September 11, 2001, airline hijackings and terrorist attacks. *Wyndham Int'l, Inc. v. Ace Am. Ins. Co.*, 186 S.W.3d 682 (Tex. App. – Dallas 2006, no pet.)

Representation of patent holder in multiple actions, including one in which motion for summary judgment finding patent was valid was granted, summary judgment defense of laches was denied, and after bench trial patent holder was granted a permanent injunction, compensatory damages, treble damages, and attorneys' fees. *Fresnel Techs., Inc. v. Rokonet Indus. USA, Inc.*, 2003 U.S. Dist. LEXIS 17872 (N.D. Tex.).

Representation of fast food chain in action by partnership to collect remodeling costs to franchise. *U.S. Rest. Props. Operating L.P. v. Burger King Corp.*, 2003 U.S. Dist. LEXIS 10179 (N.D. Tex.).

Representation of Continental Airlines in multi-case, multi-venue litigation over validity of the “Shelby Amendment” passed by Congress to open Dallas Love Field airport to flights other than to neighboring states. Cases involved both state and federal suits seeking a variety of administrative and injunctive relief. Ultimately, Amendment was vindicated and Love Field opened to through and direct flights from all states. Reported opinions include *American Airlines, Inc. v. DOT*, 202 F.3d 788 (5th Cir. 2000) (upholding challenge based on federal agency powers); *Legend Airlines, Inc. v. City of Fort Worth*, 23 S.W.3d 83 (Tex. App. – Fort Worth 2000, pet. Denied) (reversing district court opinion in favor of keeping Love Field closed); *In re City of Dallas*, 977 S.W.2d 798 (Tex. App. – Fort Worth 1998, orig. proceeding) (mandamus venue challenge).

Representation of city access cable channel in First Amendment challenge to content-neutral fee requirement. *Horton v. City of Houston*, 179 F.3d 188 (5th Cir. 1999), *aff'd after remand* 89 Fed. Appx. 903.

Representation of plaintiff in common law fraud action on successful motion to remand from removal by defendant. *Duncan v. Equitable Life Assur. Soc'y*, 1996 U.S. Dist. LEXIS 19145 (E.D. La.).

Representation of plaintiff in antitrust class action based on illegal boosting of prices under cost plus contracts to supply specialty steel. *Transamerican Refining Corp., et al. v. Dravo Corp., et al.* 1992-1 Trade Cases (CCH) P 69,718.

Representation at trial and on appeal of attorney convicted of contempt of court; conviction reversed because district court's order was vague and overbroad. *United States v. O'Quinn*, 913 F.2d 221 (5th Cir. 1990).



Martin Barrie | Of Counsel

Martin began his career as an industrial hygienist. Working for oil, gas, and support companies, he made recommendations that helped limit the exposure of employees to hazardous, disease-causing materials. Over the years, he saw that there was limited accountability for companies that failed to do this, thereby putting the health of their employees at risk. As an attorney, Martin knew he would be in a position to help. For over 30 years, he's used his background in industrial hygiene, epidemiology, toxicology, and the environmental sciences to do just that.

Throughout his practice, Martin has handled a number of cases involving chemicals and other dangerous substances, including asbestos, silica, benzene, pesticides, metals, rare earths, catalysts, and drug compounds. These cases include multi-party litigation in both State and Federal Courts.

Education & Background

University of Texas Health Science Center, School of Public Health, Ph.D. (2003)

South Texas College of Law, J.D. (1987)

University of Texas, Health Science Center, School of Public Health, M.S. (1982)

University of Rhode Island, B.S. (1978)

Admissions & Honors

State Bar of Texas, 1987

State Bar of Tennessee, 2011

United States Court of Appeals for the Fifth Circuit, 1993

Attorney-Mediator Institute, 1995

Adjunct Assistant Professor, University of Texas Health Science Center, School of Public Health, Houston, Texas, 2003 - present

Adjunct Professor, Department of Public Health, College of Education, Health, and Human Sciences, the University of Tennessee, 2012-present

Adjunct Clinical Assistant Professor, University of Tennessee, College of Nursing, 2015-present

Representative Cases & Decisions

Royal T. Siploe v. Union Carbide, et al., No. 1:87-CV-907 (E.D. Tex.) (served as lead counsel in occupational toxic exposures of movie projectionist to rare earth cerium compounds from carbon rods resulting in pneumoconiosis against domestic and international manufactures of carbon rods; worked case from inception)

Erinn West, Individually And As Personal Representative Of The Estate of William G. West v. Texaco, Inc. et al., No. B-0149921 (60th District Court, Jefferson County, Texas) (served as lead counsel in occupational toxic exposure to refinery catalyst dust resulting in nasopharyngeal cancer and wrongful death against domestic and international manufacturers of catalyst and premises owner; worked case from inception; confidential settlement)

Nanette Marie Baugh et al., v. Phillips Petroleum Company and Phillips 66 Company, No. 1027*JG97 (239th Judicial District, Brazoria County, Texas) (served as lead counsel in action to recover for community exposures of minor children to refinery emissions that resulted in respiratory damages/exacerbation; worked case from inception and modeled air refinery emissions to quantify exposure)

Floyd L. Chambers et ux. v. Monsanto Chemical Company, et al., No. G-89-306 (S.D. Tex., Galveston Division) (served as lead counsel in action to recover for occupational benzene exposure and alleged leukemia; worked case from inception)

Carol Culp, Individually and as Independent Executrix of the Estate of Floyd Allen Culp, Deceased, et al., v. Curtin Matheson Scientific, Inc, et al., No. B-127,338 (60th District Court, Jefferson County, Texas) (served as lead counsel in action to recover for occupational benzene exposure of refinery laboratory worker and alleged leukemia against manufactures of benzene; worked case from inception)

Speaking Engagements & Presentations

Tsai, C, Dunn, K, Barrie, MD, Collier, W. Nanotechnology: Updates and Challenges for the future: Part 2: Exposure assessment and control strategy advances; and future challenges and opportunities. The American Industrial Hygiene Conference & Exposition (AIHce), May 21, 2018, Philadelphia, Pennsylvania

Barrie, MD. The Use of Surveillance and Biomonitoring for Nanomaterial Workers. East Tennessee State University, Environmental Health Seminar Series, July 30, 2016, Johnson City, Tennessee

Roberts, J., Barrie, MD, Goldman, R., and Hoover, M. Roundtable “Progress and Current Issues in Nanotechnology – Occupational Risk Assessment and Management” - Medical Surveillance and Biomonitoring in Nanomaterial Worker Risk Assessment and Management,

The American Industrial Hygiene Conference & Exposition (AIHce), May 21-26, 2016, Baltimore, Maryland

Rogers, W., Sano, J, Barrie, MD, Lippy, B. Roundtable “Big Legal and Business Issues in the Small World of Nanotechnology”, The American Industrial Hygiene Conference & Exposition (AIHce), May 21-26, 2016, Baltimore, Maryland

Schneider, K, Barrie, MD, Plunkett, L., Hoyte, C. and Kennedy, R.T. Cannabis in the Courtroom: Epidemiological Evidence Considerations with THC in Court. The Society of Toxicology 55th Annual Meeting and ToxExpo, March 13–17, 2016, New Orleans, Louisiana

Barrie, MD and Hutson S. Cancer Cluster Investigation in Eastern Kentucky: An Interim Glance. University of Tennessee Medical Center Research Seminars, Knoxville, Tennessee, April, 28, 2015

Barrie, MD and Miller, J. Health Effects of Select Metals – Mercury, Arsenic, and Nickel. Beryllium Support Group Oak Ridge (BSGOR), Oak Ridge, TN, November 13, 2014

Dahlstrom, D., Barrie, MD, Heidel, D. Nanomaterial Workplace Risk Management, Third Sustainable Nanotechnology Organization Conference. Boston, MA, November 2-4, 2014

Barrie, MD. What Do You Really Need To Know and What Do We Do With It? The Real World: Industrial Hygiene. AIHce2014, San Antonio, Texas, May 31-June 5, 2014

Barrie, MD. Select Research-Oak Ridge Associated Universities (ORAU) Occupational and Worker Health Group. University of Tennessee, Department of Public Health, Research Day, February 7, 2014

Barrie, MD and Nichols G. Pilot Fatigue: Current Control Limitations and Research Needs. Aerospace Medical Association Annual Conference. San Diego, CA, May 11-14, 2014

Barrie, MD and Nichols G. Catastrophic Radiological Events and Compensation: Constructs and Conflicts of Science and Policy. Twenty-Sixth Conference of the International Society for Environmental Epidemiology, From Local to Global: Advancing Science for Policy in Environmental Health, Seattle, Washington, USA - August 24-28, 2014

Barrie, MD and Nichols G. Cytogenetic Testing of Nanomaterial Workers: Concepts, Methodology, and Limitations. AIHA Asia Pacific OH Conference and Exhibition, Singapore. October, 2013

Barrie, MD. Particulate Matter (PM_{2.5}): Health and Legal Issues. New Industrial Toxins Litigation Conference. HarrisMartin, Marina del Rey, California, December 3-4, 2012

Barrie, MD. The Use of Exposure and Health Surveillance Registries for Risk Identification, Characterization, and Management. The National Forum for Environmental and Toxic Tort Issues, Annual Conference, Chicago, Illinois, 2012

Strader C, Cragle D, Ellis E, Barrie, MD, Tankersley W, Wallace P and Nichols G. Analysis of a US Department of Energy Emergent Technologies Cohort. American Public Health Association, 140th Annual Meeting & Exposition, San Francisco, CA October 27-31, 2012

Barrie, MD. Community Health and Litigation-Disciplines, Integration, and Policy, The University of Tennessee at Knoxville, Department of Public Health, February, 24, 2010

Barrie, MD. Experts in Toxic and Environmental Claims: Why do we need all those experts? Knowing the Fundamentals. The National Forum for Environmental and Toxic Tort Issues, Annual Conference, Chicago, Illinois, 2010

Barrie, MD. Chronic Myelogenous Leukemia: Law and Science. Harris Martin's Benzene Causation Conference: A Look at Recent Admissibility Challenges On a Disease-by-Disease Basis, Las Vegas, Nevada, May 24-25, 2010

Barrie, MD. Pesticides and Health. Ministry of Agriculture, Dammam, Saudi Arabia, 2009

Sheehan P, Goswami E, Hicks J, Barrie, MD. An Assessment of Historical Benzene Exposures of Printing Press Operators. American Industrial Hygiene Conference and Expo, Minneapolis, MN, May 31–June 5, 2008.

Barrie, MD. Low-Level Benzene Exposure and Leukemia Risk: Recent Epidemiological Assessments, the Future & Science of Benzene Litigation, Roundtable on the Future & Science of Benzene Litigation, 2006

Publications

Barrie, MD and Nichols G. Use of Epidemiology in Risk Assessment. Toxicological Risk Assessment for Beginners, Chapter 7. José A. Torres and Sol Bobst (eds.), Springer, 2014

Barrie, MD, Dahlstrom DL, Goswami E, Kaetzel R. The Halogens, Chapter 26. Patty's Toxicology, Sixth Edition, Bingham E, Cohns B (eds.), John Wiley & Sons Publishers, 2012

Barrie, MD, Baker, J, Hoover, M.D., Geraci, C.L. Nanobiomonitoring and Surveillance: Opportunities to Confirm the Protection of Nanomaterial Workers. Synergist, February, 2017

Baker J, Barrie, MD, Geraci CL, Hoover MD. Soft Law and Nanotechnology, Sources of Guidance for Risk Management. Synergist, April, 2016

Connor TH, Barrie, MD, Theiss JC, Matney TS, Ward JB Jr. Mutagenicity of Formalin in the Ames Assay. Mut. Res. 1983 Feb; 119(2):145-149



Mallory Biblo | Associate

Mallory Biblo joined Burns Charest after practicing at another litigation boutique, where she represented businesses and individuals in all types of commercial matters. Prior to that, Mallory clerked for the Honorable Diana Saldaña of the United States District Court for the Southern District of Texas and worked on complex civil and criminal matters.

Mallory attended The George Washington University Law School, where she graduated with honors and was recognized as a Thurgood Marshall Scholar. Mallory served as a Notes Editor for The George Washington Law

Review and a Research and Writing Dean's Fellow. George Washington University honored her with the Lawrence E. Seibel Memorial Award in Labor and Employment Law. During law school, Mallory interned with the Honorable James E. Boasberg of the United States District Court for the District of Columbia.

Mallory earned her Bachelor of Science degree in Industrial and Labor Relations from Cornell University. At Cornell, she competed for the Women's Track and Field Team.

Education & Background

The George Washington University Law School, J.D., *with honors*, 2012

Cornell University, B.S., 2009

Law Clerk to the Honorable Diana Saldaña of the United States District Court for the Southern District of Texas

Intern for the Honorable James E. Boasberg of the United States District Court for the District of Columbia

Admissions & Honors

State of Texas

State of New York

United States District Court for the Northern, Southern, Eastern and Western Districts of Texas

United States Court of Appeals for the Fifth Circuit



Kyle Oxford | Associate

Since graduating law school in 2015, Kyle has helped to protect landowners' interests in northern Texas and Jefferson Davis Parish, Louisiana, by preventing the underpayment of royalties and securing cleanup of environmental pollution. During law school, Kyle was a law clerk at a boutique plaintiff-oriented law firm in New Orleans, Louisiana, and a summer associate at a commercial and intellectual property litigation firm in Dallas, Texas.

Kyle received his J.D. with honors from Tulane Law School. Kyle was a Managing Editor of the *Tulane Law Review*, a student attorney in the Tulane Civil Litigation Clinic, and a volunteer with the Entertainment Law Legal Assistance Project. He graduated from Trinity University in San Antonio, Texas, with a B.A. in Political Science.

Education & Background

Tulane Law School, J.D., cum laude, 2015

Trinity University, B.A., Political Science, 2010

Admissions & Honors

State of Louisiana, 2015

State of Texas, 2017

Eastern, Middle, and Western Districts of Louisiana, 2015

Court of Appeals for the Fifth Circuit, 2015

Managing Editor, *Tulane Law Review*



Spencer Cox | Associate

Spencer Cox represents individuals and businesses in complex litigation in both state and federal courts. Mr. Cox graduated *magna cum laude* from Harvard Law School before clerking for the Honorable F. Dennis Saylor, IV, of the U.S. District Court for the District of Massachusetts.

Mr. Cox provides world-class representation to his clients through smarts, hard work, and a commitment to excellence. Before becoming a lawyer, he served in the U.S. Navy as a Naval Aviator and flight instructor in the F/A-18 Super Hornet, and recorded more than 400 arrested carrier landings. As a fighter pilot, Mr. Cox learned the importance of attention to detail and demonstrated a knack for performing best when the stakes are highest. As an attorney, he understands the importance of focusing the strengths of your case against an opposing party's weaknesses in order to win.

Education & Background

University of Virginia, B.A., Physics

Harvard Law School, J.D., *magna cum laude*

Law Clerk to the Honorable F. Dennis Saylor, IV, of the United States District Court for the District of Massachusetts

Admissions & Honors

State of Texas



Amanda Klevorn | Associate

Amanda represents plaintiffs in consumer-oriented complex litigation in both federal and state courts. Her clients have included homeowners, landowners, patients harmed by defective products and drugs, and victims of federal civil rights violations. Amanda began her career at a boutique plaintiff-side litigation firm in New Orleans where she gained invaluable experience in a variety of practice areas, with a particular emphasis on environmental and mass tort litigation. More recently, she practiced at a civil rights law firm and represented plaintiffs in federal courts throughout the United States.

Born and raised in St. Louis, Missouri, Amanda moved to New Orleans in 2010 to attend Tulane University Law School. At Tulane, she developed her litigation skills and her passion for client advocacy as a student attorney with Tulane's Civil Litigation Clinic. While involved with the competitive Tulane moot court program, Amanda's team won the 2012 Louisiana State Bar Association trial competition, and she was elected to the Order of the Barristers by her peers. She also served as a managing editor for the Tulane Journal of International and Comparative Law.

Education & Background

Tulane University Law School, J.D., 2013

St. Louis University, B.A., *summa cum laude*, 2008

Honors

Order of the Barristers, 2013

Trial Advocacy Honors, 2012

Louisiana State Bar Association Trial Competition State Champion, 2012

Managing Editor, Tulane Journal of International & Comparative Law, 2012-2013

CALI Excellence for the Future Award, 2011



Jacob Gower | Associate

Jacob represents individuals and companies in complex litigation in state and federal courts throughout the country. He has extensive experience representing individuals exposed to asbestos-containing products and other toxic materials and substances. Jacob also represents clients in antitrust and other commercial disputes.

Prior to joining Burns Charest, Jacob spent several years with a noted boutique oil and gas law firm based in New Orleans.

Education & Background

Associate, Slattery, Marino & Roberts, 2013–2016

Judicial Clerk, 2012-2013, Hon. Kathleen Kay, Western District of Louisiana, Lake Charles, LA

Louisiana State University, D./G.D.C.L., 2012, Order of the Coif & *Magna Cum Laude*

Louisiana State University, B.A., Political Science, 2009

Admissions & Honors

Louisiana Super Lawyers, Rising Stars, Thompson Reuters, 2018 (Class Action/Mass Torts)

State Bar of Texas, 2014

State Bar of Louisiana, 2012

Member, Louisiana Law Review, 2010–2012

Member, Judge John R. Brown Admiralty Moot Court Team, 2010–2012

Speaking Engagements

- Co-Author, *Oil and Gas Mineral Leasing and Development on the Outer Continental Shelf of the United States*, 4 LSU J. of Energy L. & Resources 1 (Fall 2015)
- Presentation, *Determining the Ownership of Water Bottoms in Louisiana*, American Association of Petroleum Landmen, Gulf Coast Land Institute (Oct. 2015)



Lydia Wright | Associate

Lydia joined Burns Charest in 2017 after representing indigent clients as a Law Fellow at Southern Poverty Law Center in Jackson, Mississippi. Her practice focuses on multidistrict litigation and prosecuting class actions in state and federal courts nationwide.

During law school at the UC Berkeley Law School, Lydia was a member of the *California Law Review* and received a top orator award from the Jessup International Law Moot Court competition. She then clerked for the Honorable Nannette Jolivet Brown of the U.S. District Court for the Eastern District of Louisiana.

Prior to law school, Lydia worked with refugee communities in Amman, Jordan on a Fulbright fellowship. She also taught sixth graders on the Navajo reservation in New Mexico with Teach for America. Lydia graduated Phi Beta Kappa from the University of Washington, where she studied international relations and several dialects of Arabic.

Lydia serves on the board of the Music and Culture Coalition of New Orleans (MaCCNO), a coalition working to empower, assist, and organize New Orleans' cultural community.

Education & Background

University of California, Berkeley School of Law, J.D.

University of Washington, B.A., *magna cum laude*

Law Clerk to the Honorable Nannette Jolivet Brown, U.S. District Court for the Eastern District of Louisiana

Law Fellow, Southern Poverty Law Center, Jackson, Mississippi

Judicial Extern to the Honorable Bruce McGiverin, U.S. District Court for Puerto Rico

Memberships

National Police Accountability Project



Rick Yelton | Associate

Rick regularly represents clients in an array of complex matters in courts throughout the country. Prior to joining Burns Charest, Rick served as a judicial law clerk for the Honorable Carl J. Barbier of the United States District Court for the Eastern District of Louisiana. Rick subsequently worked at a regional law firm in the area of insurance and reinsurance, where he advised clients on third-party liability coverage issues.

Rick received his law degree magna cum laude from Loyola University New Orleans College of Law in 2016. During law school, Rick served as the Editor in Chief of the Loyola Law Review, and was honored with the Editorial Board Award for Outstanding Achievement by a Law Review Candidate. Rick also graduated as a William L. Crowe Scholar.

Rick is on the Board of Directors of unCommon Construction, a New Orleans non-profit that uses the build process to prepare high school students for professional and collegiate success.

Education & Background

Law Clerk to the Honorable Carl J. Barbier of the United States District Court for the Eastern District of Louisiana

Loyola University New Orleans College of Law, J.D., *magna cum laude*, 2016

University of New Orleans, M.S., urban studies, 2008

Loyola University New Orleans, B.A., music therapy, 2005

Honors

Loyola Law Review, Editor in Chief

William L. Crowe, Sr. Scholar

Memberships

New Orleans Bar Association

Loyola Inn of Court