

DAVID K. BISSINGER

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Commercial trials, arbitrations, and investigations in matters related to contracts, fraud, fiduciary duties, securities, corporate governance, banking, energy, executive compensation, and intellectual property.

EDUCATION

J.D., Vanderbilt Law School, 1993. Editor-in-Chief, Vanderbilt Journal of Transnational Law (1992-93); Moot Court Board (1992-93).

B.A., with high distinction, University of Iowa, 1990. Phi Beta Kappa, Omicron Delta Theta; Collegiate Scholar in Philosophy (highest departmental award); grant recipient, Younger Scholars Program, National Endowment for the Humanities.

RATINGS AND HONORS

Selected to “Texas Super Lawyers®” (2009-2016) and “Texas Rising Stars” (2007), as published in *Texas Monthly* and other publications.

Rated as “AV®” by Martindale-Hubbell (2003-present).

EMPLOYMENT

Bissinger, Oshman & Williams LLP and predecessor firms. Partner, May 2006 to present.

Clements, O’Neill, Pierce, Wilson & Fulkerson, L.L.P./Wilson Fulkerson LLP, Jan. 2003-May 2006 (partner); Oct. 2000-Dec. 2002 (associate).

Weil, Gotshal & Manges LLP (Houston), Associate, Sept. 1994-Oct. 2000

Law Clerk – Iowa Supreme Court, Chief Justice Arthur A. McGiverin, July 1993-July 1994 (substantial responsibility for preparation of 25 reported decisions).

REPRESENTATIVE EXPERIENCE

SECURITIES AND CORPORATE FIDUCIARY LITIGATION

Take-nothing arbitration award for defendant accused of breach of corporate fiduciary duty. Successful defense of a \$19 million claim alleging usurpation of corporate opportunity relating to angel investments in a biotechnology company. An arbitration panel, voting 2-1, denied, in their entirety, the claimants' liability and damages claims against our client. (Lead counsel.)

Presuit settlement for nonprofit. Represented large private-equity controlled company that had management rights over nonprofit subsidiary; nonprofit made presuit demand alleging breach of fiduciary duty by former directors of nonprofit. Matter settled confidentially without litigation. (Lead counsel.)

Defense of selling-away securities arbitration. Defended registered representative of major broker-dealer against FINRA customer claim; customer accused representative of selling real-estate limited partnerships without broker-dealer's authorization; customer sought more than \$15,000,000 in damages, including \$4,400,000 in out-of-pocket losses; after eight-day hearing, FINRA panel awarded \$1.3 million. (Lead counsel.)

Andrew Reid municipal bond case. Represented claimant in NASD customer claim of securities fraud; broker used forged account transfers in taking portfolio of millions of dollars in investment-grade municipal bonds and degrading it into portfolio consisting of obscure and speculative "junk." After eight-day hearing, NASD arbitration panel awarded claimant \$375,000, more than 100% of claimant's out-of-pocket losses against respondent Corporate Securities Group, Inc. (n/k/a Wachovia Securities Financial Network). Three other firms settled for confidential amounts. (Lead counsel.)

Auction-rate securities cases. Prosecuted numerous FINRA customer claims seeking losses arising out of systemic failure of auction-rate securities market in February 2008; obtained recoveries and buy-backs of more than \$10,000,000. (Lead counsel.)

Claus v. ICM, Inc. Defended ICM in eight-day NASD hearing filed by another firm's broker. ICM had initially indicated that it would buy \$2.4 million of "inverse floater" bonds from claimant, but then ICM instructed claimant to sell bonds to another broker-dealer. New firm refused to buy. Claimant alleged fraud and breach of contract; respondents alleged claimant bought bonds before finalizing trade, contrary to securities industry rules. Claimant alleged more than \$400,000 because no one would buy claimant's bonds as price plummeted. ICM demonstrated in cross-examination that claimant "parked" the bonds with other

broker-dealers, again in violation of industry rules. Panel awarded \$60,000 to claimant, far less than the \$400,000 claimant demanded. (Lead counsel.)

FINRA commingling investigation. Defended registered representative of major brokerage firm in matter in which representative admitted to having commingled customer's funds in representative's personal bank account. After extensive written discovery and on-the-record interviews, FINRA issued "no action" letter. (Lead counsel.)

Real estate co. v. finance director. Obtained no-evidence summary judgment in case in which client admitted to misleading his former employer about company finances; plaintiff-employer failed to come forward with competent evidence of damages or loss causation. (Lead counsel.)

SEC municipal bond investigation. Representation of local issuer in connection with SEC's investigation into various aspects of municipal-bond industry. (Lead counsel.)

Representation of former energy merchant CFO. Defended former chief financial officer of major energy merchant in formal SEC investigation, large shareholder class action, three federal ERISA class actions, state court derivative case, federal court derivative case, and other matters.

Representation of former mutual fund officer. Defended former mutual fund chief investment officer in connection with SEC/Eliot Spitzer investigation regarding alleged market timing.

Enrique Perusquia/PaineWebber Cases. Representation of claimants in then-largest reported securities arbitration claim in history of NYSE arbitration. Dispute involved broker's falsified account statements to portray customers as holding blue-chip stocks and bonds; in reality, broker had put vast majority of customers' funds in one gold-mining company that paid broker large kickbacks.

ENERGY AND TECHNOLOGY LITIGATION

\$2,679,185.00 arbitration award for plaintiffs' intellectual property law firm seeking recovery for attorneys' fees. Recovered substantially all relief sought for law firm cheated out of contingent fee from settlement of patent-infringement litigation. Arbitrator's award included recovery of vast majority of attorneys' fees, noting that "Mr. Bissinger did an excellent job for his client (as did all counsel herein) in a complex matter involving valuation of patent infringement claims and several legal theories." (Lead counsel.)

Petro-Raider/Golden Gate Petroleum Litigation. Represented Petro-Raider and related entities in multidistrict litigation in Reagan County,

Midland County, and the Texas Railroad Commission. (Co-lead counsel with Harold Hensley of Kelly, Hart & Hallman.)

Desert Power, L.P. v. Teleflex, Inc., et al. Represented plaintiff, independent power producer Desert Power, in case involving gas-fired power plant. Desert Power alleged fraudulent inducement and breach of contract in connection with defendants' emissions reduction combustion system. After obtaining "fast track" scheduling order and conducting focused pretrial discovery in Judge Davidson's court, case settled confidentially. (Lead counsel.)

Icoworks Holdings, Inc. v. Network International, Inc., et al. Defended De Bie Midland, Inc. in complex tortious interference and fraudulent transfer case over control of oil-and-gas equipment company. Hired six weeks before trial. After four-day trial, jury returned verdict denying all claims against De Bie Midland. Judge Coselli entered take-nothing judgment for De Bie Midland. (Lead counsel.)

Pipeline technology patent infringement judgment enforcement litigation. Defended two inventors against whose former startup company a major energy company had secured a \$10 million patent infringement judgment. Inventors were subject to a motion for contempt, allegations of fraudulent transfer and conspiracy, and other claims for relief in multiple federal court proceedings. Inventors' new company had filed new claims of patent infringement against same major energy company relating to new patents over different technology. Case settled confidentially under a mutual settlement agreement. (Lead counsel.)

Diamond J Equip. Int'l, LLC v. Microbial Enhanced Oil Recovery, LLC. Defended \$6 million lost-profits claim filed in Judge Werlein's court. Filed motion for summary judgment on plaintiff's lost-profits claim before the initial scheduling conference. Plaintiff dismissed claim shortly thereafter. (Lead counsel.)

EXECUTIVE COMPENSATION

Arbitration award of severance for executive terminated without cause. Obtained award for contractual severance plus all attorney's fees and arbitration costs for oil-and-gas executive terminated without cause. Employer had terminated executive without cause in oral conversation, but denied that conversation and argued in the final arbitration hearing that any termination without cause had to be in writing; employer argued that employee made up the oral termination and abandoned his job. However, executive had turned in his keys, swipe card, and access cards; collected personal items; and said goodbye to coworkers. After two days of final hearing, the arbitrator rejected employer's contentions, granting full relief on executive's contractual claims. (Lead counsel.)

Insurance commission trial. Obtained jury verdict of \$625,000 in fraud, contract, and fiduciary damages arising out of breach of oral contract to pay brokerage general agent 5% of commissions in large syndicated structure of life insurance policies; jury also found “clear and convincing” evidence of fraud as predicate for punitive damages; case settled confidentially prior to punitive damages phase. (Lead counsel.)

Flynn v. 3D/I. Filed, prosecuted, and obtained confidential settlement for senior executive arising out of Parsons Corporation’s acquisition of 3D International, Inc. Executive alleged 3D/I forced him to sell his shares at pre-merger “book value” price despite 3D/I’s concealed knowledge of pending merger at rumored premium of two or three times “book value.” (Actual merger price remains confidential.) Case settled confidentially within nine months of service of process. (Lead counsel.)

BANKING, REAL ESTATE, AND LENDER LIABILITY

Successful verdict in defense of “as is”/real-estate fraud claim. In week-long jury trial, defended large regional bank against accusations of fraud relating to bank’s sale of foreclosed office building to wealthy and sophisticated investor. Plaintiff investor demanded \$33 million from jury; jury’s verdict awarded \$330,000 before apportionment for plaintiff’s proportionate responsibility, which jury found to be 50%. Case settled favorably before final judgment. (Lead counsel.)

Las Vegas \$19 million deficiency judgment. Obtained \$19 million judgment on behalf of lender in contested deficiency judgment case over valuation of Las Vegas-area properties in which lender contended value had dropped from \$30 million (at time of initial \$13.5 million loan in 2006) to less than \$4.23 million (at time of foreclosure in 2010). Court awarded full deficiency, plus interest, of \$19.8 million. (Lead counsel.)

Prosecution of defective appraisal. Represented large regional bank in claim against major appraisal firm for loan losses arising out of appraisals that exaggerated value of commercial real estate securing bank’s loans. Case settled favorably under confidentiality agreement. (Lead counsel.)

Dismissal of fraud and wrongful foreclosure claim. After junior lienholder sued large regional bank over wrongful foreclosure of 348 acres of subdivision property, successfully removed claim to federal court, before Judge Lee Rosenthal; defeated motion to remand and motion for leave to add nondiverse defendant; and prevailed on motion to dismiss for failure to state cause of action. (Lead counsel.)

International Metal Sales, Inc. v. Prosperity Bank. Defended bank against customer suing for wrongful honor of sight drafts made against

letter of credit. Obtained partial summary judgment dismissing all of customer's claims of wrongful honor. Bank's counterclaims and third-party claims against guarantor, as well as guarantor's counterclaim to third-party claim, remained. (Lead counsel.)

Superior Refinishing v. Prosperity Bank. Defended bank against borrower suing for defamation and business disparagement after borrower defaulted on factoring agreement. Obtained partial summary judgment dismissing borrower's lost-profits claim, the economic heart of the borrower's case. (Lead counsel.)

Estate of Warren Altman. Defended Altman family against claim of fraud, negligence, and DTPA seeking nearly \$700,000 in damages over allegedly undisclosed termite damage. Hired five weeks before trial after two other law firms failed to settle case. After week-long trial, jury awarded plaintiffs \$39,200; Altman family obtained recovery of \$61,000 against Orkin, third party defendant. Altman family settled with plaintiffs for \$61,000 to avoid appeals. (Lead counsel.)

Settlement of mutual mistake and fraudulent inducement claims regarding large office building. In successive litigation against same purchaser of foreclosed property, obtained favorable settlements for large regional bank on claims of mutual mistake and fraudulent inducement. (Lead counsel.)

REFERENCES

Clients		
David Arrington, Chairman/CEO	Arrington Oil & Gas	432-682-7797
Robert Cowin, Board of Directors	Mincron SBC Corp.	410-476-5017
Mark Janik, Director	Crédit Agricole	832-752-1896
Mary Kenney, SVP/Dep. GC (ret.)	East West Bank	818-726-3989
Doug Krause, CRO/GC/Secretary	East West Bank	626-768-6896
Chad Kuriger, President	Advantage Life	713-384-8707
Scott Martin	Martin Commercial Interests	713-444-1146
Trent McKenna, GC	Comfort Systems, Inc.	713-830-9614
Gary Sexton	Sexton Interests, Inc.	281-678-5160

Co-counsel		
R. Jim George	George Brothers et al.	512-495-1410
Harold Hensley	Kelly Hart & Hallman	432-683-4691
Sam Johnson	Scott, Douglass & McConnico	512-495-6300
John Kinchen	Hughes Arrell Kinchen	713-403-2064
John O'Neill	Winston & Strawn	713-651-2604
Inge Selden	Bressler Amery Ross	205-719-0400
Pat Zummo	Law Office of Patrick Zummo	713-651-0590

Opposing Counsel		
Yasmin Atasi	Winstead	713-650-8400
Jack Ballard	Ballard & Littlefield	713-403-6400
Linda Brooks/Janiece Longoria	Ogden Gibson et al.	713-844-3000
Jeff Joyce/John McFarland	Joyce McFarland	713-222-1112
Joe Mastrogiovanni	Mastrogiovanni Mersky et al.	214-922-8800
Andrew Meade	Hawash Meade et al.	832-409-3067
Charles Schwartz/Wallis Hampton	Skadden	713-655-5100
Craig Smyser/Justin Waggoner	Smyser Kaplan & Veselka	713-221-2300

ARTICLES – HIGHLIGHTS

The Age of the Vanishing Jury Trial Leaves Some Litigators Unprepared for Closing Arguments, Texas Lawyer, August 27, 2015 (explaining rules of engagement for closing argument and remedies of mistrial, new trial, and contempt).

Three Compelling Reasons for Storyboarding Exhibits, Texas Lawyer, March 16, 2015 (co-authored with John O’Neill of Winston & Strawn) (recommending that lawyers to use storyboard exhibit lists to outline the story of the case).

Working on the Clock: The Advantage of Timed Trials, Texas Lawyer, April 2, 2012 (co-authored with Erica Harris of Susman Godfrey LLP) (discussing “the need to speed and how to use it to the client’s advantage”).

Steve Jobs’ Challenge for Trial Lawyers, Texas Lawyer, January 13, 2012 (applying Jobs’ approach to public speaking to trial advocacy).

Story Time: Embrace Multimedia Advocacy in Trial, Texas Lawyer, June 21, 2010 (arguing that using multimedia tools increases jurors’ ability to reach fair results), reprinted in the *New York Law Journal* and Law.com’s *Law Technology News*.

Seize the Day When It Comes to Creative Trial Advocacy, September 28, 2009 (explaining how advocates can benefit from understanding recent innovations in neuroscience, digital evidence, and trial science).

Winning on the Papers, Texas Lawyer, June 22, 2009 (co-authored with Martin Siegel of the Law Offices of Martin J. Siegel) (explaining how a trial-lawyer’s mindset can streamline discovery and motion practice to minimize client expense and maximize likelihood of victory).

First, Do No Harm: Trial Myths That Threaten Good Advocacy, Texas Lawyer, April 13, 2009 (co-authored with Paul Yetter of Yetter, Warden & Coleman LLP) (discussing how some trial lawyer aphorisms do more harm than good in age of vanishing jury trial).

Voir Dire: Let Go for Maximum Control, Texas Lawyer, January 19, 2009 (co-authored with Hon. Grant Dorfman, now of Nabors Industries, Inc.) (discussing need for trial lawyers to ask panelists the “hard questions” that create the biggest concerns for the trial lawyer’s case).

Save the Zeals: Balance Advocacy and Candor with Care, Texas Lawyer, August 25, 2008 (discussing how lawyers and judges distinguish between “warm zeal” and sanctionable argument in complex and technical litigation).

Agency Investigations Require Shift in Approach, Texas Lawyer, November 18, 2008 (discussing advocacy tactics in governmental investigations).

Preparation, Not Spontaneity, Leads to Victory, Texas Lawyer, March 17, 2008 (discussing preparation of effective opening and closing arguments).

Salvation by Summary, Texas Lawyer, September 18, 2007, reprinted at law.com’s Large Law Firm “Litigators” page (discussing use of summary evidence in complex trials and arbitrations).

The Smoking Email, Texas Lawyer, July 2, 2007 (first in series on trial advocacy in the 21st century), reprinted at law.com’s Large Law Firm “Litigators” page.

Injunctive and Monetary Relief in Class Actions in the Fifth Circuit, State Bar of Texas Bar Antitrust and Business Litigation Section Report, 2002 (co-authored with Jack O’Neill, now of DLA Piper).

Depositions of Attorneys in Texas, 64 Texas Bar Journal 245, March 2001.

SPEECHES – HIGHLIGHTS

Proper and Improper Argument, HBA Litigation Section, February 3, 2016; also presented to Michelle F. Mehaffy American Inn of Court in Beaumont.

Short-Selling Conspiracies: Myth or Reality? HBA Securities Litigation and Arbitration Section, November 12, 2013.

A New World of Insider Trading, HBA Securities Litigation and Arbitration Section, January 11, 2011 (co-presented with Scott Fletcher of Jones Day).

Meltdown: Litigating the Credit Crisis, HBA Securities Litigation and Arbitration Section, October 14, 2008 (also presented as in-house CLE to Gardere LLP's Houston and Dallas offices; Manatt Phelps & Phillips's San Francisco office; and Yetter, Warden & Coleman's Houston office).

The Tech Wreck, State Bar of Texas Annual Meeting, Summer 2003 (discussing various lawsuits, arbitrations, and investigations arising out of collapse of dot-com and technology bubble).

PROFESSIONAL ACTIVITIES AND AFFILIATIONS – HIGHLIGHTS

Chair – HBA Securities Litigation and Arbitration Chair, 2005-2007; council, 2002-2014.

Admitted to State Bar of Texas (1994); State Bar of Iowa (1993); and all Texas and federal courts.

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