



G. DOUGLAS KILDAY

Shareholder

**CIVIL LITIGATION, CONSTRUCTION
LAW, FIDUCIARY, PROBATE & TRUST
LITIGATION**

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ABOUT

Doug Kilday is a trial lawyer with more than twenty-five years of experience handling complex business-related cases in a wide variety of areas, including contracts, real estate, construction, wind energy, oil & gas, fiduciary duties, and professional liability. He has tried cases for both plaintiffs and defendants, and has represented clients in both state and federal court and in arbitration proceedings.

PROFESSIONAL QUALIFICATIONS

- Admitted to State Bar of Texas, 1993.

Admitted to practice before the following courts:

- U.S. District Courts for the Western, Northern, Southern, and Eastern Districts of Texas
- U.S. Court of Appeals, Fifth Circuit
- U.S. Supreme Court
- Education: Rhodes College (B.A., cum laude, 1990); Rhodes “Hall of Fame”; Intercollegiate Mock Trial, 1990 National Championship, Outstanding Attorney Award (Top Ten); Kepple Writing Prize (Best Academic Paper).
- Washington & Lee University (J.D., cum laude, 1993). John W. Davis Moot Court Competition, Best Oral Advocate, 1991. *Capital Defense Digest*, Editor, 1992-1993. Moot Court Board, 1992-1993.

- Law Clerk to the Honorable Jerome Turner, U.S. District Court, Western District of Tennessee, 1993-1994.

REPRESENTATIVE EXPERIENCE

PRO BONO

- Volunteer Legal Fellowship in Cambodia in 2017 with the world's largest anti-slavery organization, **International Justice Mission (IJM)**. Assisted with the prosecution of slave traffickers, resulting in a 100% success rate and eighteen convictions over the course of eight trials. You can read about the Kildays and their journey at www.kildayfamily.com, where they maintained **a blog** about their experience living and working in Southeast Asia.
- Worked with other lawyers in representation of death row inmate in post-conviction habeas corpus proceedings before Texas Court of Criminal Appeals, U.S. District Court, U.S. Court of Appeals for the Fifth Circuit, and U.S. Supreme Court;
- Represented church in citizen dispute over temporary use of vacant property within adjacent cemetery as a construction staging area for redevelopment of church property, resulting in denial of citizen group's request for injunction and dismissal of lawsuit.

CONSTRUCTION LITIGATION

- Represented general contractor for wind energy project in \$56 million lawsuit filed against the owner to recover additional costs incurred due to construction delays, acceleration, scope increases, unforeseen subsurface conditions, design changes, and events of force majeure;
- Represented owners' association for downtown high-rise condominium tower in arbitration proceeding against contractor, subcontractor, and developer regarding defects in construction of balconies, slab edges, and post-tensioning cables.
- Represented developer of 270-unit condominium project in arbitration proceeding against general contractor and architect, and in subsequent state court litigation against architect and its engineering subconsultants, over multi-million-dollar claims for construction delays, liquidated damages, and various design and construction defects;
- Defended national engineering firm in \$24 million dispute over collapse and vertical deflections in portions of large diameter raw water pipeline;
- Represented owner's association for 32-story condominium and hotel building in prosecution of construction and design defect claims involving failure to properly design and install waterproofing;
- Defended national engineering firm in \$7 million dispute over weld failures and leaks in large diameter raw water pipeline;

- Defended HVAC subcontractor in multi-party arbitration proceedings involving mold, negative pressurization, design defect claims, and construction defect claims involving \$5.6 million in alleged damages to a six-story, 140-unit hotel;
- Defended general contractor in jury trial over “quantum meruit” claims alleged by masonry subcontractor, resulting in favorable, take-nothing judgment;
- Defended general contractor of food processing plant in \$1.1 million claim alleged by electrical subcontractor;
- Represented homeowner in claims against general contractor for defective waterproofing and extensive water damages and wood rot;
- (*See also* “Wind and Solar Energy Litigation,” below);

BUSINESS AND COMMERCIAL LITIGATION

- Represented several companies and individuals from Texas and Mexico in successful challenge to personal jurisdiction of California state court in \$20 million lawsuit for alleged breach of joint venture agreement;
- Represented biotechnology company in prosecution of breach of contract claims against independent contractor for delays in completing clinical trials;
- Defended buyer of company’s stock in \$2.5 million lawsuit for alleged breach of stock purchase agreement;
- Defended equipment manufacturer in jury trial over claims for breach of warranty, deceptive trade practices, and fraud;
- Represented property owner in lawsuit filed against City, requiring City to honor commitments for water and wastewater services without payment of substantial amounts for “capital recovery fees”;

REAL ESTATE LITIGATION

- Defended owner of 12-story downtown office building in jury trial to resolve dispute with 51% occupant over interpretation of lease option in real estate document;
- Represented Lake Travis homeowner in jury trial, defeating claims of alleged implied easement by necessity across homeowner’s property;
- Represented developer and holder of real estate option in lawsuit filed by title company over settlement arising from option, resulting in favorable, take-nothing summary judgment in favor of our client;
- Represented owner and developer of golf course and residential community in litigation to construe deed restriction and to enforce right of first refusal for adjacent 63 acre tract;

- Represented co-developer of multi-use project in asserting breach of fiduciary duty claims against general partner following foreclosure and subsequent undisclosed purchase made by affiliate of general partner;
- Represented purchasers of foreign property bought at local auction in claims over seller's failure to deliver title;

WIND AND SOLAR ENERGY LITIGATION

- Represented developers and sellers of 278-megawatt wind energy project in prosecution of breach of contract claim against buyers of the project;
- Represented general contractor for wind energy project in \$4.5 million dispute with transmission system subcontractor;
- Represented general contractor and operator of solar energy facility in multi-party litigation over fires that destroyed two inverter houses at the facility;
- Defended developers and operators of wind energy facility in lawsuits filed by landowners for alleged breach of lease and easement agreements;
- Represented wind energy developer in defending claims filed by former employee who sought multi-million-dollar bonus under disputed provision in contract;
- Represent wind energy developers, and construction contractor for wind energy projects, in various disputes;

AUDITOR AND DIRECTOR/OFFICER LIABILITY

- Defended national accounting firm in \$270 million lawsuit for audit malpractice, resulting in favorable, take-nothing summary judgment that was affirmed on appeal, *Turoff v. McCaslin, et al.*, 222 S.W.3d 664 (Tex. App. – Waco 2007, no pet.);
- Defended national accounting firm in \$74 million lawsuit for audit malpractice, resulting in favorable, take-nothing summary judgment;
- Prosecuted breach of fiduciary duty claims against former corporate officer of home health agency in state court jury trial, and in subsequent bankruptcy proceedings resulting in summary judgment that state court judgment was non-dischargeable;

OIL & GAS

- Represented lessors in successful prosecution of claims for additional royalties owed under oil and gas leases, and successfully defended judgment in appeal to U.S. Court of Appeals for the Fifth Circuit, *Yturria v. Kerr-McGee Oil & Gas Onshore, LLC*, 291 Fed. Appx. 626, 2008 WL 4155830 (5th Cir. 2008). Total paid to clients: \$1.15 million (\$939,000 in royalties, \$120,000 in attorneys' fees, \$19,000 in expert witness fees, \$74,000 in interest);

- Represent lessors and royalty owners in prosecution of claims for underpaid royalties owed under oil and gas leases;

TRUST AND PROBATE LITIGATION

- Represented private institution for higher education in litigation over failure to pay bequest under will;
- Represented adopted relative in successful declaratory judgment lawsuit to determine that trust drafted in the 1930s included future adopted descendants;
- Represented co-executors of Estate in bench trial to determine apportionment of estate taxes among beneficiaries, and to determine whether bank accounts were assets of the Estate;
- Represented beneficiaries and executors in will contests, will construction proceedings, and fiduciary litigation;

PROFESSIONAL AFFILIATIONS

- Fellow, Texas Bar Foundation
- Austin Bar Association (Civil Litigation Section)
- American Bar Association (Litigation Section)
- State Bar of Texas (Litigation Section and Construction Law Section)

AWARDS AND HONORS

- *Texas Monthly*, Rising Star, published by Thomson Reuters, 2005-2007
- AV[®] Preeminent[™] Peer Review Rating, Martindale.com

COMMUNITY

- Leadership Austin, Class of 2012-2013
- Cub Scouts
 - Den Leader, 2014-2016
- Big Brothers Big Sisters of Central Texas
 - Board of Directors, 1999-2004
 - Board Chair, 2002-2003
 - Capital Campaign Committee, 2011-2016
- Covenant Presbyterian Church
 - Elder
 - Member of Session (Governing Body) 2007-2010
 - Co-Chair, Capital Campaign Committee, 2007-2010
 - Chair, Mission Committee, 2015-2016