

Marc S. Tabolsky

Partner

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P: 713.255.4111

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Practice Areas

Appellate
Energy
Trial

Education

University of Texas School of Law, J.D.,
2002, high honors

Rice University, B.A., 1997

Admissions

State Bar of Texas

U.S. Supreme Court

Texas Supreme Court

U.S. Court of Appeals for the Second, Third,
Fifth, Sixth, Eighth, Tenth, Eleventh, and
Federal Circuits

U.S. District Court for the Eastern, Northern,
Southern, and Western Districts of Texas

U.S. District Court for the Eastern and
Western Districts of Arkansas



OVERVIEW

Marc represents plaintiffs and defendants in cases involving a wide array of civil claims in both trial and appellate courts. His meticulous attention to detail, knowledge of relevant changes in the law, and ability to craft highly persuasive briefs have led to a particularly strong record of success on appeal.

For example, Marc recently represented a steel distributor at trial and during appeal in a Sherman Act antitrust case against several large steel distributors and manufacturers arising from defendants' efforts to prevent a new distributor from entering the market. The jury returned a verdict in favor of his client, who received a judgment of more than \$160 million after the imposition of treble damages, costs, and attorneys' fees.

In addition to his antitrust work, Marc has achieved successful outcomes in disputes relating to oil and gas issues, securities fraud, product liability, trade secret misappropriation, construction law, breach of contract, fraudulent transfer, breach of fiduciary duty, defamation, negligence, and wrongful death, among others.

Before joining Schiffer Hicks Johnson, Marc was a partner at Yetter Coleman and, previously, an appellate lawyer at Weil, Gotshal & Manges. Prior to entering private practice, he served as a law clerk to Judge Edith H. Jones of the United States Court of Appeals for the Fifth Circuit.

NOTABLE EXPERIENCE

- Representing one of the nation's largest natural gas producers in multiple lawsuits alleging underpayment of royalties. In 2017, represented client at trial brought on behalf of more than 12,000 class members. After a two-week trial in federal court, client achieved a complete defense victory, with the jury rejecting the plaintiff's claim for more than \$300 million in actual and punitive damages and penalties.
- Represented steel distributor at trial and during appeal in Sherman Act antitrust case against several large steel distributors and manufacturers arising from defendants' efforts to prevent a new distributor from entering the market. The jury returned a verdict in favor of client and awarded \$52 million in damages. After the imposition of treble damages, attorneys' fees, and costs, the court awarded the distributor over \$160 million. The Fifth Circuit affirmed orders and judgments in favor of client.
- Represented major airline in trial and appellate courts in \$1 billion antitrust lawsuit in

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Tarrant County District Court against the two largest global distribution systems in the United States arising from the GDS' efforts to stop the airline from using a competitive ticket distribution technology. Case settled in the middle of trial.

- Represented receiver of failed bank in suit against major investment bank for violations of state and federal securities laws in offering documents for residential mortgage-backed securities purchased by the bank for \$102 million. Reached a \$24 million settlement on the eve of trial that was among the highest pro rata recoveries in government suits over the residential mortgage-backed securities scandal.
- Hired on eve of three-week trial in Harris County District Court to represent investors in a fraud case against a bank and two other defendants in Harris County District Court. The investors alleged the defendants' fraud resulted in the defendants wrongfully taking from the investors their ownership interests in a company that owned three hospitals. The jury returned a unanimous verdict in favor of investors and awarded over \$19.1 million in actual damages and \$57 million in punitive damages, leading to the entry of a judgment for over \$65 million against the bank and its affiliate. Also, successfully prosecuted appeal against one defendant that received JNOV from trial court, with court of appeals reversing the grant of JNOV and remanding for entry of judgment in favor of investors.
- Represented insured in insurance-coverage dispute in United States District Court for the Southern District of Texas regarding property damage to a hospital in Hurricane Ike. After a three-week trial, the jury returned a verdict in favor of client and awarded over \$35 million in damages. Case settled prior to oral argument in the Fifth Circuit.
- Represented hospital in two-week trial in Harris County District Court in case brought by anesthesiologist and medical director for retaliatory discharge for alleged reporting of instances of patient safety violations; they had sought over \$7 million in compensatory damages. Jury returned verdict in favor of hospital.
- Obtained reversal of \$136.8 million judgment on breach of fiduciary duty, constructive fraud, civil conspiracy, and unfair competition claims in a dispute regarding a power plant and gas storage development project.
- Represented insurer in appeal by City of Austin from case asserting subrogation claims on behalf of insured property owners related to Steiner Ranch fire of 2011. Court of appeals rejected city's attempt to have common law tort claims dismissed on jurisdictional grounds.
- Obtained reversal of \$5 million judgment against private equity firm and one of its portfolio companies in case where plaintiff asserted breach of contract and fraudulent transfer claims.
- Obtained reversal of judgment entered by Harris County District Court after a bench trial against borrower and guarantor for over \$1 million for damages and attorneys' fees in a deficiency case.
- Obtained reversal of adverse judgment that precluded regional water authority from condemning easements necessary to complete \$50 million expansion project.
- Represented major oil and gas company in an indemnity dispute regarding cases alleging underpayment of royalties. Case ended in confidential settlement.
- Represented oil and gas company in lawsuit alleging that company failed to lease minerals in the Haynesville Shale.

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- Advised independent oil and gas exploration and production company regarding multimillion-dollar dispute regarding alleged underpayment of royalties.
- Represented Fortune 10 company in trade secret misappropriation case in Delaware Chancery Court. After a two-week bench trial, the case settled.

HONORS AND AWARDS

- America's Leading Business Lawyers in Texas Appellate Litigation, Chambers USA
- Ranked in Appellate Law, Best Lawyers in America® (2013-2018)
- Texas Super Lawyer in Appellate Law, Thomson Reuters' Super Lawyers® (2013-2018)

PROFESSIONAL AFFILIATIONS

- Life Fellow, Texas Bar Foundation
- Texas Supreme Court Historical Society