

## **Marc S. Tabolsky**

### **Partner**

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+1 713 255 4111

+1 713 357 5160

### **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 the Honorable Edith H. Jones of the United States Court of Appeals for the Fifth Circuit.

### **NOTABLE EXPERIENCE**

- Successfully represented one of the largest oil and gas producers in West Virginia in a recent appeal to the U.S. Court of Appeals for the Fourth Circuit that addressed the application of the *Tawney* (*Estate of Tawney v. Columbia Natural Resources LLC*) rule, which remains a contentious issue in the state's oil and gas law. Ultimately, the court's decision awarded drillers the right to claim post-production deductions when calculating gas royalties "at the wellhead" under West Virginia law. (Read media coverage [here](#).)
- Representing a large mineral owner in a lawsuit (and resulting appeal) against a mining company involving the mining company's burying of millions of tons of iron resource under stockpiled mining waste from a nearby iron mine in Minnesota. Marc and his team recently secured a dismissal in Minnesota Supreme Court in this ongoing \$10 million-plus case, which is now proceeding back in trial court.
- With more than \$60 million in controversy, won an appeal on behalf of underwriters in connection with a case that arose after a well blowout in the Gulf of Mexico. The U.S. Court

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of Appeals for the Fifth Circuit vacated the district court's dismissal of the affirmative claims of Marc's client and its co-plaintiffs and also reversed a judgment awarding the defendant and third-party defendant approximately \$11 million based on their claims for indemnity. (Read media coverage [here](#).)

- Successfully represented a litigation-finance fund that loaned more than \$3 million to a prominent law firm in northeast Texas, which was personally guaranteed by the firm's principal. After the firm defaulted on the note, the fund filed suit to recover all principal and interest owed under the promissory note. Marc and his team were retained to defend the district court's ruling once it had entered judgment against the firm and its principal.
- 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 a 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 a major airline in trial and appellate courts in \$1 billion antitrust lawsuit in Tarrant County District Court against the two largest global distribution systems (GDS) 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 the 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 the eve of a 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 the insured in an insurance-coverage dispute in U.S. 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. The case settled prior to oral argument in the Fifth Circuit.
- Represented a hospital in a two-week trial in Harris County District Court in case brought by an 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. The jury returned verdict in favor of hospital.
- Obtained reversal of a \$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 the insurer in an appeal by the city of Austin from a case asserting subrogation claims on behalf of insured property owners related to Steiner Ranch fire of 2011. The court of appeals rejected city's attempt to have common law tort claims dismissed on jurisdictional grounds.
- Obtained reversal of a \$5 million judgment against a private equity firm and one of its portfolio companies in case where plaintiff asserted breach of contract and fraudulent transfer claims.

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- 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 a major oil and gas company in an indemnity dispute regarding cases alleging underpayment of royalties. The case ended in confidential settlement.
- Represented an oil and gas company in a lawsuit alleging that the company failed to lease minerals in the Haynesville Shale.
- Advised an independent oil and gas exploration and production company regarding a multimillion-dollar dispute regarding alleged underpayment of royalties.
- Represented a Fortune 10 company in a trade secret misappropriation case in Delaware Chancery Court. After a two-week bench trial, the case settled.

### **RECOGNITIONS**

- 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)

### **AFFILIATIONS**

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