

### Daniel C. Bitting

Dan's practice focuses on complex business litigation, including fiduciary duty litigation, securities violations, professional malpractice claims, intellectual property disputes, shareholder claims, property disputes, and oil, gas and energy litigation. He handles cases with millions of dollars at stake yet also represents businesses and individuals in smaller disputes. He has decades of trial and appellate experience in both state and federal courts, including serving as lead counsel in jury trials and appellate arguments. Dan understands that the best resolution of many disputes is a satisfactory settlement but he believes that the best settlements come from being fully prepared and able to try the case if necessary.

### Recognitions & Awards

Order of the Coif

Chancellor

West Publishing Award for highest average in class, 1988

Phi Kappa Phi Fellowship, 1985-86

Texas Law Review, 1986-88

### Representative Matters

#### Business Disputes

Negotiated settlement of multi-million dollar fraud and breach of contract claims arising out of supply contract dispute.

Defeated claims for lost profits and other consequential damages in arbitration over allegedly defective software and hardware, leading to favorable settlement.



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#### RELATED PRACTICE AREAS:

- Alternative Dispute Resolution: Negotiation, Mediation and Arbitration
- Appellate
- Business Torts
- Commercial Litigation
- Fiduciary Litigation
- Oil & Gas Litigation
- Oil & Gas Natural Resources and Energy Litigation
- Professional Malpractice Defense

Obtained temporary injunction and negotiated settlement of dispute over ownership of intellectual property in technology company.

- Professional Malpractice, Licensing and Regulation
- Technology Litigation

Negotiated resolutions of numerous “business divorces.”

Negotiated settlements of numerous contract disputes, both before and after litigation.

#### Employment Litigation

Won jury trial in defense of sex discrimination claims.

Won defense judgment in employee’s slander case against employer.

Negotiated severance package for manager accrual of sexual harassment.

Defended sexual harassment suits.

#### Fiduciary Duty Litigation

Won judgment against breach of fiduciary duty claims against executor.

Won judgment that trustee breached its fiduciary duties as a matter of law.

Obtained defense judgment for attorney against securities fraud and legal malpractice claims.

Successfully defended fiduciary duty, conspiracy, deceptive trade practices and fraud claims arising from survival and wrongful death settlements.

Defended and negotiated settlement of securities fraud class action.

#### Intellectual Property Litigation



Obtained favorable settlement of patent infringement and Lanham Act claims through pre-suit mediation.

Negotiated settlement of trade secret dispute.

Obtained temporary injunction and negotiated settlement of dispute over ownership of intellectual property in technology company.

Tried trademark ownership claim to jury.

### Oil and Gas Litigation

Prevailed in jury trial on property remediation claims against oil and gas lessee.

Obtained dismissal of claims for violation of Safe Drinking Water Act and claims under orphan well regulations against oil and gas company.

Represented lessor in suit for underpayment of royalties, including royalties on carbon dioxide.

Represented lessee in defending lease termination claims brought by top lease holder.

Represented various operators in defending illegal drainage suits.

Represented operator in suit for well damage.

Represented lessee in suit for royalty underpayment and lease termination.

Represented lessee in suit for failure to protect against drainage and failure to develop.

Represented non-operating working interest owner in suit under gas balancing agreement.

Represented various lessees in suits for underpayment of

royalties.

Represented plaintiff in successful suit for theft of oil production.

Represented pipeline in litigation with other pipeline over gas sales contract.

Represented operator/seller in suits against pipeline/buyer for breaches of “take or pay” gas purchase contracts.

Assisted in representation of plaintiff-operator in winning jury trial on illegal drainage and damages claims.

#### Professional Malpractice Litigation

Obtained defense judgment for attorney against securities fraud and legal malpractice claims.

Successfully defended fiduciary duty, conspiracy, deceptive trade practices and fraud claims arising from survival and wrongful death settlements.

Won defense judgment on legal malpractice claims arising out of divorce.

Won jury trial in defense of legal malpractice claims.

Won bench trial in defense of medical malpractice claims against county doctor.

Won multiple summary judgments against medical malpractice claims against county doctor.

#### Real Estate Litigation

Won jury trial in property rights dispute, including award of all attorneys’ fees requested for client.

Negotiated settlement of land use dispute involving Lake Travis Marina.

Won lawsuit over land use restrictions, allowing development of marina on Lake Travis and won subsequent appeal.

### **Bar Admissions & Activities**

Admitted to the State Bar of Texas, United States Supreme Court, U.S. District Court for the Eastern, Northern, Southern, and Western Districts of Texas, and the U.S. Court of Appeals, Fifth Circuit.

Member, Litigation Section, State Bar of Texas

Member, Austin Bar Association

Member, Senior Aggie Leadership Council

### **Education**

Texas A & M University, B.A., summa cum laude, 1985

University of Texas School of Law, J.D. with high honors, 1988

### **Articles & Presentations**

“Ethics in Contracting: Intentional Drafting & Unintentional Creation,” 17th Annual Course - Advanced In-House Counsel, Business Law and Corporate Counsel Sections of the State Bar of Texas, August 2018.

“Recovery of Attorney’s Fees in Probate Litigation,” 32nd Annual Estate Planning & Probate Section CLE, Austin Bar Association, May 2018.

“Navigating the World of Probate and Fiduciary Litigation,” Civil Litigation Section of the Austin Bar Association, May 2018.

“The Texas Oil and Gas Industry: Its Present Shape and Future Outlook” - Panel Moderator, Texas Aggie Bar

Association Annual Conference, March 2018.

"Drafting Wills and Trusts for Efficient Administration" - Panel Moderator, Estate Planning, Guardianship and Elder Law Conference, August 2017.

"Liability Risks in Trust and Estate Planning and Administration" - Presented at Annual Estate Planning and Probate Section CLE, Austin Bar Association, May 2017.

"Litigation Strategies for In-House Counsel," Corporate Counsel Review—volume XXXVI – May 2017, Number 1.

"Litigation 101: You've Been Sued. Now What?" - Presented at In-House Counsel 101, August 10, 2016 San Antonio, TX

"Ethical Issues That Can Get Lawyers Sued" – Presented at 2016 Hays County Bench Bar Conference

"Common Ethical Problems That Can Get lawyers Sued" – Presented at the 11th Annual Conference of the Texas Aggie Bar Association, March 2010

"So You've Been Sued: What Now?" – Presented at 38th Annual Corporate Counsel Institute, Houston, April 7-8, 2016 and Dallas, May 5, 2016

Ethical Issues for the Non-Litigator in Litigation, Presentation at the 16th Annual Conference of the Texas Aggie Bar Association, March 7, 2015.

Guest Lecturer on Computer Evidence in Litigation, for the Elements of Computing in Society class at the University of Texas at Austin, 2014 – 2015.

"Ethical Traps for the Intellectual Property Lawyer", presented to the Austin Intellectual Property Law Association on October 21, 2014.

"Disqualification and Recusal Motions: What to Do When

Seeking the Removal of a Judge or Opposing Counsel From a Case” Presented at the Ultimate Motions Practice 2013, September 20, 2013

“Tribal Wars: Shareholder Oppression” Presented at the South Texas College of Law 27th Annual Wills and Probate Institute, September 20-21, 2012

“Shareholder Oppression Actions” Presented at the Austin Bar Association Estate Planning & Probate Section, May 18, 2012

"Shareholder Oppression Actions" Presented at the State Bar of Texas Fiduciary Litigation Seminar, December 1-2, 2011

"Emerging Trends in Estate Litigation" Presented at The Texas Bankers Association's Estate Administration Seminar, September 30, 2011.

“Common Ethical Problems that Can Get Lawyers Sued,” Presentation at the 11th Annual Conference of the Texas Aggie Bar Association, February 6, 2010.

“Multi-Party Issues after House Bill 4,” State Bar Litigation Section Report, McConnico and Bitting, The Best of Litigation Update 2004, The Advocate, Volume 26, Spring 2004.

“Railroad Commission Rules As They Relate to Lease Provisions,” paper presented at Oil and Gas Regulation in Texas seminar, April 17, 2003.

“Life After Death: Using Revivor, Ratification and Estoppel to Save Expired Leases,” Miller and Bitting, 17 State Bar Section Report, Oil, Gas and Mineral Section No. 1 (Sept. 1992).