

David Shank

David Shank is a commercial trial lawyer who represents plaintiffs and defendants in high-stakes disputes before federal courts, state courts, and arbitration panels around the country. David has represented clients in a wide range of disputes, including those involving trade-secret misappropriation, securities fraud, class actions, and even rare and valuable art. He has extensive experience examining and cross-examining key witnesses at trial, and successfully arguing dispositive and many other motions in court. In addition to work at the trial level, David also has experience handling appeals for his clients.

Prior to joining Scott Douglass & McConnico in August 2015, David practiced with Susman Godfrey L.L.P. Before entering private practice, David served as a law clerk to Judge Barbara M.G. Lynn of the United States District Court for the Northern District of Texas.

Recognitions & Awards

Texas Rising Star, a Thompson Reuters business, Business Litigation, 2016 - 2018

Associate, Patrick E. Higginbotham American Inn of Court, 2011-2012

Order of the Coif

Teaching Quizmaster, University of Texas School of Law

National Champion, 18th Annual Duberstein Moot Court Competition

Representative Experience

Trade Secret and Technology Disputes



✉ dshank@scottdoug.com

Main Line: (512) 495-6300

Direct Line: (512) 495-6356

Fax: (512) 495-6399

RELATED PRACTICE AREAS:

- Appellate
- Class Action Litigation
- Commercial Litigation
- Intellectual Property Litigation
- Securities and Complex Financial Litigation

Represents environmental instrumentation and consulting company and two of its employees against derivative claims for trade-secret misappropriation and breach of fiduciary duty. David wrote and argued the company's successful motion to dismiss all claims based on lack of derivative standing.

Represented an owner of a closely held business in a suit against the business's co-owner and several related parties for misappropriating trade secrets and usurping a business opportunity related to a potential rail-spur project. The case resulted in a confidential settlement before trial.

Represented RFID software company GlobeRanger Corporation in its suit against Software AG for trade secret misappropriation. At the end of a two-week jury trial, during which David handled several key witness examinations and legal arguments, the jury entered a verdict in favor of GlobeRanger. Texas Lawyer named the verdict to its list of Top 25 Texas Verdicts in 2014 and placed it in the top five intellectual property verdicts for that year.* As noted below, the Fifth Circuit later affirmed the district court's judgment in a unanimous opinion.

Represented online retail company in a business-breakup dispute against its former co-owner and manager for breach of a non-competition agreement and breach of fiduciary duty. On the day the company filed suit, David obtained a temporary restraining order ex parte securing control of the company's domain name. Shortly thereafter, and without having to conduct any discovery, David helped negotiate and obtain a favorable settlement for the company.*

Class Actions

Represents a global Internet vacation-rental marketplace defending against multiple class actions involving claims for fraud, breach of contract, and violations of several states' consumer protection statutes.

Represented the plaintiffs in an antitrust and

commodities-fraud class action alleging manipulation in the futures and physical markets for WTI crude oil.*

Securities and Financial Disputes

Represented a hedge fund against allegations of fraud and breach of fiduciary duty brought by a large institutional investor seeking more than \$100 million in damages. The case resulted in a confidential settlement before trial.

Represented several mutual funds in opt-out securities-fraud actions against AIG arising out of AIG's misstatements and omissions to investors leading up to its 2008 bailout.*

Represented two wealth managers in arbitration brought by their former employer, Morgan Stanley, before FINRA in New York. David conducted the primary direct examination in the wealth managers' case-in-chief and cross-examined the opposition's key witness. The arbitration panel denied Morgan Stanley's claims in their entirety and awarded the wealth managers a significant amount on their counterclaims.*

Represented defendants in a securities-fraud case involving hundreds of millions of dollars. David prepared the defendants' successful bench brief on an insider trading claim tried to the bench (which was separated from the other claims tried to the jury), on which the judge found no liability, eliminating \$60 million in potential disgorgement liability. David also examined multiple key witnesses at trial on other claims.*

Oil & Gas, and Energy Related Disputes

Represents a major oil and gas producer in an arbitration with a working-interest owner seeking hundreds of millions of dollars.

Represents the City of Austin in a lawsuit involving its municipally owned electric utility, Austin Energy, and a large commercial user, in which the plaintiff seeks to invalidate a

\$200+ million component of Austin Energy's revenue base. David wrote and argued the City's successful motion to dismiss the case on standing grounds.

Art and Valuable Objects

Represented an individual in a dispute over the ownership of a rare, highly valuable violin. Not long after filing suit, and without having to engage in any significant discovery or motion practice, David negotiated a confidential settlement for his client.

Represented New York art gallery L&M Arts in a dispute involving the sale of a Mark Rothko painting, in which the plaintiff sought over \$20 million in damages. David wrote the successful summary judgment motion that resulted in dismissal of the plaintiff's fraud claim, and handled all pretrial evidentiary arguments and the cross-examination of L&M's co-defendant during the trial on the remaining breach of contract claim. At the end of the six-day trial, the jury rejected the plaintiff's request for a \$20-plus million judgment, instead awarding only \$500,000 in damages.* As noted below, the Fifth Circuit reversed the judgment on appeal, holding that L&M was entitled to a take-nothing judgment as a matter of law.

Appeals

Represented art gallery L&M Arts in its appeal of a breach of contract verdict entered against it, leading L&M's appellate briefing efforts. The Fifth Circuit reversed the judgment in a unanimous opinion resulting in a take-nothing judgment for L&M.

Represented software company GlobeRanger Corporation in the appeal of a verdict in its favor on a claim of trade-secret misappropriation, taking the lead in briefing GlobeRanger's appeal. The Fifth Circuit affirmed the judgment in an unanimous opinion.

(*denotes experience prior to joining Scott, Douglass &

McConnico L.L.P.)

Bar Admissions & Activities

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

Member, Austin Bar Association, Civil Litigation Section

Member, Austin Young Lawyers Association

Education

University of Texas School of Law, J.D., with honors, 2010

Trinity University, B.A., Economics, Political Science, and Middle Eastern Studies (triple major), 2006

Articles & Presentations

Common Interest Doctrine – Including Multi-State Privilege Issues, Texas Bar CLE Advanced Business Law Course, November 2017 (co-author and co-presenter with Mary Byars)

The Common Interest Doctrine (or Lack Thereof) in Texas, Texas Bar CLE Webcast, December 2016 (co-author and co-presenter with Mary Byars)

What General Litigators Need to Know About Copyright Preemption, Litigation Section, Austin Bar Association, October 2016

Ethical Challenges in Preparing and Presenting Witnesses, 40th Annual Page Keeton Civil Litigation Conference, October 2016 (co-author with Steve McConnico)

Forget What You Might “Know” About the Texas Attorney Fee Statute, Headnotes, September 2015 (co-author with Omar Ochoa)

Wish List from Chambers: Easy Ways to Improve Written and Oral Advocacy, Texas Lawbook, 2013 (co-author with The Honorable Barbara M.G. Lynn)

Selected Reported Cases

Seim v. HomeAway, Inc., No. 1:16-cv-479-LY, 2017 WL 3478488 (W.D. Tex. Jan. 18, 2017) (granting motion to compel arbitration and dismiss putative class action)

Hoffman v. L&M Arts, 838 F.3d 568 (5th Cir. 2016) (unanimously reversing trial court's judgment)

GlobeRanger Corp. v. Software AG USA, Inc., 836 F.3d 477 (5th Cir. 2016) (unanimously affirming trial court's judgment)

GlobeRanger Corp. v. Software AG, No. 3:11-cv-403-B, 2015 WL 3648577 (N.D. Tex. June 11, 2015) (denying post-judgment motions)

Hoffman v. L&M Arts, No. 3:10-cv-953-D, 2015 WL 1000838 (N.D. Tex. Mar. 6, 2015) (denying request for attorneys' fees)

SEC v. Wyly, 33 F. Supp. 3d 290 (S.D.N.Y. 2014) (rejecting insider trading claim)

GlobeRanger Corp. v. Software AG, 27 F. Supp. 3d 723 (N.D. Tex. 2014) (denying summary judgment)