



Mark A. Waite

Partner

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Mark has focused on complex litigation and counseling for more than 25 years, with extensive experience in the areas of energy, construction, refining, petrochemicals and industrial operations. His combination of substantial outside trial experience and in-house global litigation responsibility positions him to understand the needs and earn the trust of clients, both in contentious disputes and proactive risk avoidance.

Mark handles major and complex litigation matters in many areas, including engineering and construction projects, oil and gas and other energy disputes, joint venture relationships, commercial and contractual disputes, major personal injury claims, equipment failures and matters relating to plant operations.

Following years as outside counsel for various clients, Mark joined a leading global refining and chemical company, where he served as head of global litigation and oversaw high-value disputes, advised C-level executives and led the company's legal health, safety and environmental functions. His role included analyzing and advising on contentious matters that were early in their development to determine if they could be resolved without formal legal proceedings, proactive risk avoidance, and serving as the lead legal department advisor for the company's Crisis Management Team, which is responsible 24/7 for corporate emergency response in the event of any incidents worldwide. Mark joined DLA Piper in 2017, blending his knowledge of business client needs into his global practice.

Mark's trial experience allowed him to earn certification in Civil Trial Law by the Texas Board of Legal Specialization. He has held that distinction since 2004.

- Litigation, Arbitration and Investigations
- Energy and Natural Resources
- Industrials

REPRESENTATIVE EXPERIENCE

- Lead trial counsel for Illinois chemical facility pursuing claims against the supplier of two large industrial boilers which were part of a boiler upgrade project. The boilers supply steam to the facility and to the chemical process, and are critical to safe and reliable operation. The claims related to multiple defects in design and construction, including the forced draft fan system, excessive

vibration, fuel gas skid contamination, and the feedwater level measuring system, among others. Secured judgment for actual damages, attorneys' fees and interest in favor of the plant owner following a six day federal bench trial.

- Advising confidential clients surrounding rights and obligations in power and natural gas purchase, supply and related agreements in connection with Winter Storm Uri in 2021. Issues include price escalation, force majeure and related claims and defenses, and clients include end-use industrial purchasers, parties to financial transactions from energy trades, and supplying parties. Impacted sources include traditional power, renewable energy, and natural gas
- Represented refinery owner in claims for over US\$10 million in property damages, repair costs and other impacts against parties involved in the design and construction of catalyst reactor modifications arising from 2017 EPA environmental regulations
- Represented major petrochemical facility in Corpus Christi, Texas to secure water facilities agreement between local governmental authorities and large volume users, including creation of funding vehicle to explore alternative water sourcing initiatives
- Represented high-density polyethylene pipe manufacturer in multi-party litigation in New Jersey filed by plaintiffs alleging property damage and personal injury due to major gas line explosion; secured dismissal of all claims against client following intensive analysis of pipe components and associated gas line system
- Prosecuted damages and injunctive relief claim by real estate lifecycle software and services provider against competitor for tortious interference and business disparagement
- Trial counsel for pro bono client in one of the early completely "virtual" trials held in Harris County, Texas state court during 2020 COVID-19 pandemic court closures, and secured Final Judgment in favor of client
- Managed and oversaw the prosecution of a claim for contractual damages due to a cogeneration utilities provider's emergency power outage at a Texas chemical plant
- Oversaw the prosecution and resolution of a claim against an engineering firm involved in the design of a major Texas chemical plant expansion project
- Lead litigation counsel for a chemical company over a sales pricing index dispute, securing summary judgment on behalf of the company for recovery of past overcharges and for declaratory relief moving forward
- Co-chair of trial team representing an electrical and cabling subcontractor in a federal court bench trial involving a federal construction project
- Lead counsel for a large docket representing design-side clients (architectural and engineering firms) in a variety of construction projects, including bridge construction, hospital expansion, condominium development, airport renovations, high rise office buildings, medical complexes, residential developments and industrial settings
- Managed and oversaw an extensive early matter assessment, planning and budgeting process for contentious and serious matters that were not yet in formal legal proceedings, to determine whether they were appropriate for pre-suit resolution
- Trial counsel for a tank farm owner in a jury trial against a tank lessee for damages caused by a chemical release following product treatment by the lessee
- Managed and oversaw the defense of a London arbitration claim under a joint venture agreement involving price and cost allocation for products manufactured by the joint venture
- Managed and oversaw the defense of a claim by a Dutch pension insurer for alleged funding shortfalls
- Member of the US litigation team representing several major oil companies in a dispute over the cancellation of a contract for the use of an offshore rig in the North Sea
- Lead trial counsel for an industrial pipe service provider sued by an industrial plant owner in a jury trial regarding alleged defective services
- Member of the litigation team representing an oil E&P company over claims for plugging and abandonment obligations to another E&P company following the sale of its interest in the offshore field
- Managed and oversaw a dispute by a joint venture partner in a chemicals production partnership for the alleged fair market value of its interest
- Member of the litigation and trial team representing a dry cleaning chain company in perchloroethylene environmental cost recovery actions in federal and state courts in Harris County, Texas
- Managed and oversaw a tax claim seeking repayment due to an appraisal authority's over-valuation of a refinery in Houston based on statutorily required equal valuation methodology
- Lead trial counsel representing a heavy truck manufacturer in a jury trial involving claims for alleged defects in an air suspension and safety system

- Managed and oversaw a claim by a refinery against a vessel company for damage to a loading dock due to an improperly moored vessel
- Litigation counsel for a chemical company in a CERCLA action regarding Superfund site cleanup action brought by the federal government against multiple major oil, gas and chemical companies
- Managed and oversaw the prosecution of an equipment defect claim against the manufacturer of a turbine used for cogeneration of utilities at a Louisiana chemical plant, through litigation in federal court in Louisiana
- Lead counsel for a biofuels company in an overpayment claim against a contractor on an industrial facility

CREDENTIALS

Admissions

- Texas

Education

- J.D., University of Houston Law Center 1994
cum laude
- B.B.A, Texas A&M University 1991
cum laude

Courts

- All Texas state and federal district courts
- United States Court of Appeals for the Fifth Circuit

Memberships

- Houston Bar Association – Litigation, Construction, and Oil, Gas & Energy Law Sections
- Fellow – Texas Bar Foundation
- Fellow – Houston Bar Foundation
- Texas Bar Association – Litigation and Construction Law Sections
- Member – Texas Association of Certified Civil Trial and Appellate Specialists
- Houston Volunteer Lawyers – Equal Access to Justice Society

Certifications

Board Certified – Civil Trial Law, Texas Board of Legal Specialization (2004 - present)

INSIGHTS

Publications

Winter Storm Uri: Using the doctrine of impracticability or impossibility for breach of contract claims

14 April 2021

Because some potentially impacted contracts are governed by New York law, we examine these defenses in light of both New York and Texas law.

ERCOT v Panda: The Texas Supreme Court's non-decision on ERCOT immunity

29 March 2021

The outcome of *Panda* paves the way for the issue to return to the Court, likely next year.

Force majeure provisions and the ISDA Power Annex

22 February 2021

As climate change generates ever more severe weather events, market participants will likely need to assess the applicability of their force majeure claims under the Power Annex.

When is a deal *actually* a deal under Texas law? The Texas Supreme Court weighs in again

3 March 2020

For would-be buyers and sellers, the key takeaways are simple, but important.

Supreme Court of Texas affirms: no surprise or accidental partnerships under Texas law

31 January 2020

The opinion removes significant uncertainty for parties during the exploratory stages of joint ventures.

- Co-author, "Practical Ethics of Witness Preparation;" *The Advocate (State Bar of Texas Litigation Section Report)*; Volume 89, Winter 2019
- Co-author, "\$1.2B Order Entered Against Petróleos de Venezuela: Q&As for PDVSA and Citgo Commodity Commercial and Trading Counterparties," *Pratt's Journal of Bankruptcy Law*, January 2019
- Co-editor, Texas construction law section of 50-state review treatise, 2009
- Author, "Houston Lawyers Helping Local Veterans" *Houston Lawyer*, September/October 2008
- Co-author, "Protecting Reserve Estimates and Future Revenue Projections from Discovery," *Energy Law Advisor*, June 2008
- Co-author, "EDD Showcase: Ignore EDD at Your Peril," *Law Technology News*, January 2006

Events

Previous

The year is 2020 in finance, investments and transactions

19 November 2020 | 12:00 - 6:00 ET

Webinar

SPEECHES AND SEMINARS

- "Downstream 101", presented to Institute for Energy Law, Leadership Program, March 2021 (co-presenter)

- "Force Majeure Claims in a COVID-19 Environment," presented to Energy Bar Association, November 2020
- "Refining and Petrochemicals Contracts – Continuing Legal Education Panel," May 2019
- Co-presenter: "Texas Supreme Court Update: Contract Clauses Transactional lawyers Should Kill; Contract Clauses Transactional Lawyers Should Love", CLE, April 2019
- Moderator: Coffee and Conversation with Former Acting US Ambassador to China, April 2019
- Co-presented, Construction Law CLE, "Lump Sum Contracts–The Whole Pie and Some Avoidable Crumbles", Fall 2018 and Spring 2019
- "A Discussion of the Ethical and Liability Issues for In-House and Outside Counsel relating to Litigation," Texas Bar Association: Advanced Civil Trial Continuing Legal Education – series held throughout 2016 in major Texas cities
- "What Every Lawyer Needs to Know About Working With In-House Counsel," Texas Aggie Bar Association, 2016 Annual Conference
- Moderator, "Legal Department Obligations" surrounding repetitive product defect claims, Texas General Counsel Forum, June 2015
- "Legal Issues in Green Building," Basic Construction Law Course, State Bar of Texas, 2010
- "The Power of Collaboration in Sustainable Design," risk management portion, Texas Society of Architects, 2010
- "Challenges to Expert Testimony," Annual Conference for the Central Region, National Association of Corrosion Engineers, Houston, September 2008
- Moderator, "Evidence," University of Houston Continuing Legal Education, March 2008
- "A Day in the Life of an E-Discovery Case," T3: Trial Tactics & Technology, ALM Events, New York, December 2005 and 2006, London, and New York, November 2007
- "Engineering Risk and the Law – Case Histories and Lessons," Annual Conference for the Central Region, National Association of Corrosion Engineers, Houston, October 2006
- Frequent speaker at high schools and before community groups as part of the Houston Bar Association.

NEWS

DLA Piper announces new sector leadership

10 March 2021

DLA Piper is pleased to announce several recent changes to the firm's sector leadership.

DLA Piper announces new office managing partners

3 March 2021

DLA Piper is pleased to announce changes to its office leadership in Austin, Houston, Minneapolis, Phoenix and Seattle.

DLA Piper announces new US and global sector leadership

22 January 2020

DLA Piper is pleased to announce several recent changes to the firm's US and global sector leadership teams. They include:

MEDIA MENTIONS

- "DLA Piper Elevates 5 Attys To Office Managing Partner Roles," *Law360*, March 4, 2021
- "DLA Piper Picks Up Energy Litigator From LyondellBasell," *Law360*, November 3, 2017