



Dwayne J. Hermes

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“My goal is to be competitive and win without being rude or unprofessional. I give the client’s representation everything I have, while working to maintain a ‘big picture’ life perspective. Doing so helps me be more responsive, positive and successful over the long term.”

Practice Areas

Products Liability • Construction • Commercial Litigation • Professional Liability • Environmental/Toxic Tort Litigation • Securities Litigation • General Casualty

Dwayne J. Hermes is a founding partner in the law firm of Hermes Sargent Bates, LLP. He has extensive experience as a trial attorney.

Representative Experience

- Represented local affiliate of a national nonprofit in connection with numerous negligent hiring and supervision claims made by numerous victims’ families from a total of more than forty alleged victims. Claims settled after a two month trial process that concluded with a verdict substantially less than amount sought by prominent plaintiffs’ attorney on behalf of the victims.
- Favorably resolved a half-billion-dollar products liability suit arising from a pipeline rupture after developing a causation defense with an extraordinary “dream team” of defense experts and filing a dispositive motion that likely would have disposed of some or all of the plaintiff’s claims as a matter of law.
- Counseled and defended numerous construction clients in cases alleging construction defects, often with water infiltration and resulting mold growth.
- Obtained numerous court dismissals with prejudice of malpractice claims against architects for alleged defective design under the “Certificate of Merit” statute.
- Tried a products liability case, which had allegedly caused property and personal injury damages, to a directed verdict for the product defendant based on the court’s determination of no evidence of a product defect while the plaintiff proceeded to obtain a judgment against the co-defendants.
- Enforced covenants not to compete in employment contracts against former employees who went to work for competitors.
- Favorably resolved a multimillion-dollar default judgment against a third party administrator’s insureds and the subsequent bad faith suit for the cost of defense.
- On a large commercial claim of business interruption and financial loss, won summary judgment on a client’s statute of limitations defense and successfully defended the appeal despite the claimant’s assertion of equitable estoppel bar.
- Won a special appearance and obtained a complete dismissal of the product wholesaler and distributor in a severe personal injury case, based upon lack of personal jurisdiction over client.

- Won a no evidence summary judgment for the insurance agent client on the claimant's allegation of wrongful disclosure of potential insured's HIV-positive status.
- Successfully defended a former officer and director of a defunct technology company against claims of state statutory and common law fraud, negligence, negligent misrepresentation and breach of fiduciary duty in separate suits brought by the bankruptcy Trustee and approximately 100 former shareholders.
- Concluded a claim against a prominent law firm with a confidential mediated settlement agreement involving allegations of errors and omissions stemming from a merger of a privately held company with a publicly traded company where stock was exchanged for the private company. While there were many facets to this very complex litigation, aspects of the case focused upon financial institutions, 10Ks, 5Qs, initial public offerings, possible SEC violations, SEC reporting and restrictions on stock trading.
- Represented a purchaser, both in his individual and corporate capacity, in a suit brought by the investment banking firm which was seeking its fee for its assistance in completing the multimillion-dollar acquisition of a manufacturing company with extensive assets and numerous locations throughout the United States. While defending the purchaser against the claim for fees by the investment banking firm, also represented the individual and company on their counterclaim for negligence due to inadequate due diligence and negligent investment advice.
- Tried two week long jury trial involving insurance bad faith, child sex abuse and legal malpractice to a complete defense verdict on behalf of one lawyer defendant, while also obtaining a favorable opinion from the Texas Supreme Court finding no personal jurisdiction over another lawyer defendant.
- Acted as trial court counsel on the following published legal opinions: *Byrd v. Woodruff*, 891 S.W.2d 689 (Tex. App.--Dallas 1994, writ dismissed by agr.); *Besing v. Vanden Eykel*, 878 S.W.2d 182 (Tex. App.--Dallas 1994); *Mackie v. McKenzie*, 900 S.W.2d 445 (Tex. App. --Texarkana 1995); *Haussecker v. Childs*, 935 S.W.2d 930 (Tex. App.--El Paso 1996); *Nikolai v. Strate*, 922 S.W.2d 229 (Tex. App.--Fort Worth 1996); *Jatoi v. Decker, Jones, McMacklin, Hall & Bates*, 955 S.W.2d 430 (Tex. App.--Fort Worth 1997); *Delp v. Douglas*, 948 S.W.2d 483 (Tex. App.--Fort Worth 1997); *General Motors Acceptance Corp. v. Crenshaw, Dupree & Milam, L.L.P.*, 986 S.W.2d 632 (Tex. App.--El Paso 1998, pet. denied); *Childs v. Haussecker*, 974 S.W.2d 31 (Tex. 1998); *Douglas v. Delp*, 987 S.W.2d 879 (Tex. 1999); *Lowe v. Teater*, 1 S.W.3d 819 (Tex. App. --Dallas 1999) *Transit Mix Concrete & Materials Company v. Johnson*, 205 S.W.3d 92 (Tex. App. --Eastland 2006).

Bar Admissions

- State Bar of Texas, 1985
- United States District Courts for the Northern, Southern, Eastern and Western Districts of Texas

Education

- Bachelor of Arts Degree, *with honors*, from University of Texas, 1981
- Juris Doctor Degree from the University of Houston, 1985

Awards & Recognitions

- Rated AV by *Martindale-Hubbell*
- Selected for inclusion in the 2012 edition of *The Best Lawyers in America®*
- "Texas Super Lawyer" - *Texas Monthly* and *Law & Politics Magazine*, 2004 - 2011
- Recognized as a Barrister of the William Mac Taylor 112th Inn of Court

Publications & Presentations

- Speaker, "Legal & Medical Malpractice," CE, Torus Specialty, New Jersey, April 2012
- Speaker, "Analysis of Venue Favorability and Practical Tips on Venue Selection and Options to Limit Liability in Unfavorable Venues," McLaughlin Brunson Insurance Agency's 2012 Loss Prevention/Risk Management Seminar, April 2012
- Speaker, "Recent Legislative Changes," July 2011
- Co-author, "An Update on ESI Preservation and 'Litigation Holds' Guidelines," July 2010
- Speaker, "Expert Witness Best Practices," EFI Global Annual Managers Meeting, March 2009
- Speaker, "ADR: The Mediation Expert," NAMIC 2009 Claims Conference, February 2009
- Co-author and speaker, "Economics of Litigation Management," Council on Litigation Management, December 2008
- Co-author, "Leveling the Legal Malpractice Playing Field: Reverse Bifurcation of Trials," *St. Mary's Law Journal*, Vol 36, No 4. 2005; Co-presenter at the Professional Liability Symposium in spring 2005
- Author and co-author of papers and manuals on legal malpractice, e-discovery, products liability, construction issues and litigation skills. These include the *Texas Products Liability Manual* and the *Texas Construction Manual*
- Lecturer on various areas of the law including trends in legal malpractice defense, products liability, the Deceptive Trade Practices Act, personal injury defense, mold claims, construction liability, professional liability, alternative dispute resolution, expert selection and more
- Has taught at legal ethics and malpractice prevention seminars and has been a faculty member for the Texas Association of Defense Counsel's Annual Trial Academy

Memberships

- State Bar of Texas, Member
- The Harmonie Group, Member; Chair of the Litigation Practice Issues Committee; Past President and current Board Member
- Texas Collaborative Law Council, Inc., Member
- American Bar Association, Member, Business Law Section; Member, Litigation and Construction Industry Section
- Dallas Bar Association, Member, Construction Section
- Texas Association of Defense Counsel
- Dallas Association of Defense Counsel
- Council on Litigation Management, Member
- International Association of Defense Counsel, Member, Legal Malpractice and Products Liability Committees and Chairman of the Membership Committee for Northeast Texas
- Defense Research Institute, Associate Member
- Texas Bar Foundation, Life Member, the premier charitable organization for attorneys in Texas
- The Aidmatrix Foundation, Governor's Advisory Board
- Volunteer Center of North Texas, Member Board of Trustees, Chair of the Advancement Committee

- Honduran Catholic Foundation, Member
- University of Texas at Austin, Library Advisory Council member

Personal

Dwayne was born in Gainesville, Texas. He enjoys spending time with his family, mountain biking and charity work.