David Peterson

Partner

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Overview

High stakes trial lawyer, David Peterson, tries cases for both plaintiffs and defendants in state and federal courts across the country. Peterson has recovered billions of dollars on behalf of plaintiffs and has defended clients against billions of dollars in claims. Peterson's breadth of expertise is wide – he has scored litigation victories in the areas of contract and business disputes, oil and gas, securities, real estate, antitrust, bankruptcy, class actions, intellectual property, and technology disputes for some of the country's largest companies within their respective industries, including Texas Instruments, LyondellBasell Industries, MicroUnity Engineering Systems and Anadarko Petroleum Corporation.

Peterson's peers and colleagues have honored him as a Texas Rising Star every year since 2013 (Law & Politics Magazine, Thomson Reuters) and as a Fellow of the Texas Bar Foundation. Since 2018 Peterson has been named to *Benchmark Litigation*'s "40 and Under Hot List," which includes "the most promising emerging talent in their respective litigation communities in US and Canadian litigation by peers and clients."

A past chairman of the firm's Hiring committee, Peterson quickly began making his mark at Susman Godfrey by making court arguments in his first week at the firm and trying his first complex case just a few months later. Prior to joining the firm, he clerked on the Fifth Circuit for the Honorable Priscilla R. Owen.

Peterson is currently a member of Leadership Houston Class XXXII, working together with other leaders in Houston's private, public, and non-profit sectors for the betterment of Houston and its residents.

Peterson previously served for five years on the Board of Directors for Texas Accountants & Lawyers for the Arts, three of those years as President, leading

a staff and volunteer group of hundreds of accountants and lawyers in providing free legal, accounting, and educational services to artists and arts organizations in need of counsel.

Peterson graduated with high honors from The University of Texas School of Law, where he served as an Articles Editor of the Law Review, and was elected into the Order of the Coif.

Notable Representations

Corporate Securities, Mergers, and Asset Acquisitions

- ***Anadarko, et al. v. Natural Resource Partners***. Peterson currently represents Anadarko and an affiliate in their lawsuit against Natural Resource Partners to enforce the terms of an asset purchase agreement. Anadarko sold trona assets located in Wyoming to NRP for a cash price and certain contingent obligations. Shortly after the purchase, NRP participated in a restructuring of the assets, which triggered a contingent payment obligation to Anadarko of approximately $50 million. The case is currently pending in state court in Harris County, Texas.
- ***Texas Instruments, Inc. v. Citigroup Capital Markets, et al.*** Peterson represented global semiconductor design and manufacturing company, Texas Instruments, in its lawsuit against global investment banks Citigroup Capital Markets, BNY Capital Markets, and Morgan Stanley to rescind the purchase of more than $500 million in Auction Rate Securities that became illiquid when financial institutions withdrew support for the auctions. Following the defendant banks' removal to Federal Court, Peterson obtained a remand back to the state court. Peterson then defeated the defendants' special exceptions and motions for severance. The case settled shortly after discovery concluded.
- ***Apollo v. Huntsman.*** Peterson served as Apollo and Hexion's Texas counsel in connection with its multi-billion dollar dispute with Huntsman. Apollo invoked a material adverse effect clause to withdraw from its then-pending acquisition of Huntsman. Apollo sued Huntsman in Delaware, and Huntsman sued Apollo and its sponsoring banks in Texas. Following trial in Delaware Chancery Court, the case settled for a confidential amount. Apollo remained an active party in the Texas litigation until just before trial, when Peterson successfully convinced the Court to dismiss Apollo. In addition to his role in Texas, Peterson, with SG partner Vineet Bhatia, teamed up with the Wachtell Lipton firm to assist with the trial in Delaware Chancery Court.
- ***Eclipse Services, Inc.***Peterson represented Eclipse Services, Inc. in a lawsuit against the Estate of Harry Gray. Gray had been an investor in Eclipse and held four warrants allowing him to purchase shares of Eclipse stock. Gray had agreed to sell the warrants back to Eclipse but passed before the transaction occurred. Gray's Estate then exercised each of the warrants, acquired the stock, and attempted to exercise a put right. The

Estate then began to dispute the price at which the Estate could put its stock back to Eclipse. When the Estate initiated a proceeding for pre-suit depositions, Peterson filed a lawsuit for declaratory relief in Harris County, Texas, which settled under confidential terms.

Energy

- ***Confidential Permian Basin arbitrations*.** Peterson represented a major oil and gas company in a series of confidential arbitrations against a major oil and gas producer relating to assets in the Permian basin. These disputes involved both upstream and midstream entities and issues. The arbitrations and their results are confidential.
- ***Anadarko Petroleum Corporation.*** Peterson has represented Anadarko Petroleum Corporation and its affiliates and subsidiaries in a number of business disputes. Peterson, with SG partner Katie Sammons, arbitrated a dispute relating to natural gas liquids (NGL) allocations at a gas processing plant and the collection of drip condensate on a gathering system. Peterson and a team of SG lawyers represented Anadarko in a dispute in Colorado state court against DCP Midstream relating to an alleged dedication of wells, areas of mutual interest, and accounting and allocation issues in the Wattenberg Field near Denver, Colorado. That case settled for confidential terms following key depositions.
- ***Enterprise Products Operating LLC v. Flint Hills Resources, L.P.*** Peterson, along with Partner, Tom Paterson, represented Enterprise Products Operating LLC and Mid-America Pipeline Company, LLC as plaintiffs in a lawsuit against Flint Hills Resources, L.P., a subsidiary of Koch Industries. The dispute arose in connection with a natural gas liquids (NGL) storage and purchase agreement between Enterprise and Flint Hills. Enterprise and MAPL built a pipeline as part of the agreement. Flint Hills sent notice of early termination but refused to pay a contractual termination fee of up to $30 million to Enterprise. Susman Godfrey filed a lawsuit in Harris County, Texas on behalf of Enterprise and MAPL seeking the termination fee and attorneys' fees. The case settled on confidential terms less than a month before trial and after the SG team filed a motion for summary judgment on all issues besides attorneys' fees.
- ***Willbros v. HydroDive.*** Peterson defended a Nigerian diving and oil pipeline construction subcontractor from allegations of civil RICO and participation in breach of fiduciary duty in the Southern District of Texas. With motions to dismiss for lack of jurisdiction pending, Peterson obtained dismissal of all claims for insufficient service of process, as his clients had been served with the lawsuit in the middle of a deposition for another matter. The dismissal also defeated the plaintiffs' arguments for tag-jurisdiction because the in-person service was held to be improper.

Real Estate

- ***Warmack et al. v. Alight***. Peterson represented real estate developer and owner Warmack against its tenant, Alight, in a dispute relating to properties in The Woodlands, Texas and Orlando, Florida. Alight occupied the buildings under absolute triple-net leases, which required Alight to maintain the buildings (including routine maintenance and capital expenditures) during the term of the leases. The parties disputed whether Alight had maintained the buildings to the standard required by the leases. The case settled for confidential terms just days before the jury trial was scheduled to start in federal court in the Southern District of Texas.
- ***Downer v. Leichtenberg***. Peterson represented a real estate investor in a contract dispute with his business partner relating to buildings in Houston, Austin, and Dallas. Through creative settlement discussions, Peterson was able to settle the dispute early for confidential terms.
- ***Prologis Targeted US Logistics Fund, LP v. Panalpina, Inc.*** Peterson represented logistics company Panalpina in a dispute with its landlord, Prologis, relating to a building that Panalpina was leasing in Houston. Prologis alleged that Panalpina bore responsibility for replacing a leaky roof under a triple-net lease. However, Panalpina's responsibility was limited to maintaining the premises "in the same working order, repair and condition," and the roof was leaking due to defects in the roofing materials present when the roof was built. The case eventually settled on confidential terms.
- ***Holley v. SummerLake et al.*** Peterson represented Kingwood-based developer Ron Holley against partnerships controlled by Jimmy Foster. The three partnership agreements contained a binding arbitration clause, and the SG team arranged a joint mediation prior to the arbitration. Following Peterson's presentation at the mediation, the parties agreed to a settlement that involved cash and property. The SG team's preparation for mediation allowed the parties to understand the value of Holley's partnership interest, and resolve their dispute without the cost and business disruption of a several-day, evidentiary arbitration proceeding.
- ***Greenspoint Plaza Limited Partnership v. ExxonMobil.***Peterson represented GPLP and its parent company Hines in a commercial real estate dispute with tenant ExxonMobil. ExxonMobil alleged that an audit revealed overcharges by GPLP, and GPLP disputed these findings. The SG team also argued that a number of affirmative defenses barred ExxonMobil from recovery. Following a two-week jury trial, the jury returned findings for the plaintiff but also found for GPLP on each of its affirmative defenses. The case eventually settled on confidential terms.
- ***Hartman v. Hartman REIT.***Peterson represented the founder and former CEO of a real estate investment trust (REIT). Following a coup by board members and outsiders to oust the CEO and enact a hostile takeover of the REIT, the SG team brought claims against the REIT and its new

officers and directors on behalf of the CEO. Following the first two days of a scheduled week-long bench trial in Harris County, Texas, the case settled on confidential terms.

Environmental

- **Bayou Corne Louisiana Sinkhole Dispute.** Peterson previously represented the largest independent brine producer in the United States, Texas Brine Company, and its affiliates in a series of state and federal lawsuits relating to a 2012 sinkhole in Assumption Parish, Louisiana. These lawsuits included defense against claims by residents, landowners, pipeline companies, and commercial partners, as well as pursuing claims against oil and gas companies, chemical companies, and insurers. Peterson appeared in state and federal court in Texas and Louisiana in these matters. In 2017, Peterson and co-counsel tried a three-week liability phase bench trial in Assumption Parish, resulting in a favorable allocation of responsibility.

Bankruptcy

- ***In re Lyondell Chemical Company.*** Peterson represented one of the largest plastics, chemicals and refining companies in the world, Lyondell Chemical, Company and its affiliates and subsidiaries as special litigation counsel and conflicts counsel throughout their bankruptcy proceedings in the Southern District of New York. Peterson and Partner Vineet Bhatia, were actively involved from the inception of the proceedings through the companies' reorganization and emergence from Chapter 11. One of the team's major victories included obtaining a then-groundbreaking injunction under 11 U.S.C. § 105, which prevented creditors from seeking enforcement of guarantees against European non-debtor entities. The injunction protected the European non-debtors from involuntary insolvency and was instrumental in the Lyondell group's ability to successfully reorganize and emerge from bankruptcy. Peterson also represented the estate as both plaintiff and defendant in adversary proceedings and claim objections. Most notably, Peterson served as the lead attorney for the Millenium Custodial Trust in a section 502(b) objection to creditor Celanese's $31,407,254 proof of claim. Peterson successfully settled the objection, reducing the allowable claim down to a general unsecured claim of $10,800,00 – less than 35% of the amount originally claimed.
- ***Lehman Brothers (Europe).***Peterson has represented a number of Lehman Brothers European entities in bankruptcy proceedings and disputes. For Lehman Brothers International (Europe) (in administration), Peterson successfully negotiated return of trading accounts with value of over $200 million, from Barclays Capital Inc., who had obtained them from Lehman Brothers Inc. when it sought bankruptcy protection in September 2008. Peterson also represented Lehman Brothers International (Europe)

(in administration) in a dispute against Citibank, N.A. Upon the collapse of the Lehman Brothers empire in September 2008, Citibank froze LBIE's assets in custodial accounts in 18 worldwide branches, and initiated steps to appropriate and dispose of these accounts because other Lehman Brothers entities had defaulted, not because of LBIE's own trades. Peterson successfully argued for the return of securities to LBIE with a value of more than $2 billion.

- ***In re Truvo USA LLC.*** Peterson represented Truvo USA LLC as conflicts counsel in proceedings in the Southern District of New York. Peterson was specifically requested to join the Truvo team due to his experience obtaining the then-groundbreaking § 105 injunction in In re Lyondell. Peterson and the SG team obtained a similar § 105 injunction for Truvo, protecting Truvo's European guarantors from involuntary insolvency and securing a key piece to the debtors' reorganization process.

Antitrust

- ***In re Cathode Ray Tubes (Circuit City).*** Peterson represented the Liquidating Trustee of the Circuit City Estate in its opt-out action against various defendants who conspired to fix the price of cathode-ray tubes ("CRTs"), causing Circuit City to pay more for products containing CRTs (televisions and computer monitors) then it otherwise would have had to pay. Following significant discovery through the In re CRT multi-district litigation in the Northern District of California, Circuit City eventually settled its claims against every defendant for confidential terms.
- ***Group 1 Automotive Inc. v. DaimlerChrysler Motors Company LLC.*** Peterson successfully resolved a dispute between a group of automobile dealers against a major automobile manufacturer and its captive finance company in an Automobile Dealers Day in Court Act and antitrust price discrimination suit in Federal Court in Los Angeles.

Class Action

- **Wage & hour class action.** Peterson defended one of the world's largest retailers in a federal class action under the Fair Labor Standards Act, challenging various aspects of the retailer's wage, time-keeping, and break policies.

Intellectual Property, Internet, and Technology

- ***Intellectual Pixels Limited v. Sony Interactive Entertainment LLC.*** Peterson and a team of SG lawyers currently represent IPL in its patent infringement lawsuit against Sony in the Central District of California. IPL alleges that Sony infringes on IPL's foundational patents in the cloud-gaming and streaming graphics applications space through Sony's Playstation Now and Remote Play systems, and the inclusion of

those systems on video game consoles, televisions, computers, and handheld devices.

- ***MicroUnity Systems Engineering Inc. v. Apple, Inc. et al.*** Peterson and a team of SG lawyers represented MicroUnity Systems Engineering, Inc. in its patent infringement lawsuit against major players in the smartphone and tablet industry, including Apple, Samsung, HTC, LG, Nokia, Qualcomm, Texas Instruments, AT&T, and Verizon among others. MicroUnity alleged that certain processors manufactured by the defendants, the defendants' use of those processors in finished consumer products, and the defendants' sale of those finished products to consumers infringed several MicroUnity patents covering "mediaprocessor" technology. Following two favorable claim construction hearings and just weeks before the jury trial was scheduled to begin, the case settled for confidential terms.

Peterson has also been on the cutting-edge of new and expanding causes of action and issues relating to technology and the internet, including the following:

- **Internet speech defense.** Peterson defended a leading social media website against claims for defamation, intentional infliction of emotional distress, and public disclosure of private facts based on user comments posted to the website. The case settled shortly after Peterson filed a motion to dismiss.
- ***In re Heartland Payments Systems.*** Peterson defended Heartland Payment Systems in a dispute relating to an alleged data breach of a credit card payment processing system. Portions of the case settled, and the court granted a motion to dismiss almost all of the other claims. The plaintiffs voluntarily dismissed their remaining claims following a status conference with Peterson and co-counsel.

Honors & Distinctions

- Benchmark Litigation "40 and Under Hot List" (2018, 2019, 2020, 2021, 2022, Legal Media News)
- Benchmark Litigation Future Star (2022, Euromoney)
- Texas Rising Star; 2013 – 2022 (top 2.5% of Texas lawyers under 40) (*Law & Politics Magazine*, Thomson Reuters)
- Fellow, Texas Bar Foundation (top 1/3 of 1% of Texas lawyers)
- Articles Editor, TEXAS LAW REVIEW
- Order of the Coif
- Carson J. Webster Prize for best senior honors thesis (Northwestern University)
- Presenter, Northwestern University Conference on Undergraduate Research

Clerkships

Honorable Priscilla R. Owen, United States Court of Appeals for the Fifth Circuit

Admissions

Bar Admissions

- Texas

Wins

Susman Godfrey Wins First-Ever Recognition of Patent Agent Privilege from Federal Circuit

Leadership & Professional Memberships

- Leadership Houston, Class XXXII
- Past-President, Texas Accountants & Lawyers for the Arts
- State Bar of Texas, Section of Litigation
- American Bar Association, Section of Litigation
- Texas Young Lawyers Association
- Houston Young Lawyers Association
- Life Member, Ex-Students' Association of The University of Texas