



Jonathan J. Ross Partner

Houston
(713) 653-7813
jross@susmangodfrey.com

Overview

I joined Susman Godfrey in 1994, becoming a partner in 1998. Along with my colleagues at the firm, I specialize in winning trials: both the preparation involved in positioning a case for trial, and the ability to convince the fact finder, be it jury, judge, or arbitration panel, of the merit of my client's case. I am equally adept at representing plaintiffs and defendants, and believe that an active practice for both plaintiffs and defendants makes me a more effective lawyer than one who concentrates solely on the plaintiff's or defendant's side.

In today's world of complex business litigation, clients have become risk-adverse, and more cases settle after extensive pre-trial maneuvers than used to. Why then the need for business litigation trial lawyers? There are two reasons. First, better than expected settlements only happen when the attorney handling the case prepares the case for trial, regardless of any settlement expectations. Only when the case is managed to be tried from the first day forward will these settlements happen. I believe in answering the following question in the first weeks of any engagement: what do I need to prove to obtain the verdict my client desires? How the case is managed from that point on flows from that question. I do not waste time trying to "win" discovery disputes. The only "win" that interests me is having the fact finder find for my client.

My experience is as varied as one would expect from an attorney who focuses on litigating cases, and refuses to specialize in anything but trial advocacy. Below is a representative sampling of cases I am currently involved in, as well as past results (weighted to the recent past).

Education

- The Hotchkiss School (1983)
- Georgetown University (B.A. in History & Government, *magna cum laude*, 1987)
- Yale Law School (J.D., 1992)

Clerkship

Law Clerk to The Honorable Lynn N. Hughes, United States District Court for the Southern District of Texas, 1992-94

Notable Representations

Current

Represents Brighton Trustees and the interim class in a putative class action against Genworth Financial. The complaint alleges that the defendant increased its Cost of Insurance calculations for certain Universal Life policies by over 100% for illegitimate reasons in violation of its own form contracts with its policyholders.

Represents relator Douglass Strauser in his qui tam case against Walgreens and subsidiary pharmacies seeking to recover overpayments made by Medicare to these pharmacies in inflated reimbursements for drugs. Relator alleges the defendants reported inflated Usual and Customary charges to the government rather than the actual, lower, prices they charged to their cash paying customers.

Represents The Alley Theater pro bono in its insurance claims against the Hanover Insurance Company for losses incurred during Hurricane Harvey. Obtained favorable settlements several times the amount originally paid by the defendant.

Help manage a docket of over 30 parking lot collision cases for Walmart Inc. as national coordination counsel for the docket, with particular focus on expert work. I have settled many cases on terms favorable to the client, achieved dismissal of others, and tried cases when appropriate.

2019

Represented a putative class of dentists and dental laboratories against the major dental supply distributors in litigation in the E.D.N.Y.. The Consolidated Class Action Complaint alleges a nationwide conspiracy among the defendants to fix the prices for dental supplies through margin agreements and apportionment of customers. The Court approved an \$80 million settlement on behalf of the class.

Represented Mission Measurement in a trade secret misappropriation case against Blackbaud, Inc., Microedge LLC, and Vista Equity Partners in a case pending in the United States District Court for the Northern District of Illinois, Eastern Division. Mission Measurement alleged that the defendants extracted key ideas, data and designs of its Outcomes Taxonomy in the guise of jointly developing a product based on that taxonomy. Rather than developing the joint product, Mission Measurement alleged that Microedge used the information to sell itself to Blackbaud at a significantly greater price based on the trade secrets it obtained from Mission Measurement. The case settled.

Represented the plaintiff in *United States of America ex rel. Jesse Polansky v. Executive Health Resources, Inc. (HER)* in the United States District Court for the Eastern District of Pennsylvania. The plaintiff alleged that HER worked with its clients to defraud the government by claiming reimbursement from Medicare and Medicaid at in-patient levels for procedures that were out patient and should have been reimbursed as such. The Court granted the Government's motion to dismiss due to burden on government resources.

2018

Represented the Victory Healthcare entities in litigation filed in the S.D. Tex. against the Blue Cross/Blue Shield divisions of Healthcare Services Corporation for failure to pay out-of-network claims for according to the reimbursement terms of the plans governing the procedures. The case settled for a confidential amount.

Represented various General Electric entities in ongoing litigation regarding the underwriting of mortgages included in residential mortgage-backed securities, including supervising bench trial of *TMI Trust Co. v. WMC Mortgage Corp.* in the United States District Court, District of Connecticut.

Tried to a complete defense verdict a parking lot incident case for Walmart Inc. in Nueces County, Texas County Court of Law where the victim was killed by a vehicle in a Walmart parking lot. *Gilmore v. Wal-Mart Stores, Inc.*

2017

Represented Humble Surgical Hospital in litigation brought by Cigna over Humble's business practices as an out-of-network provider of hospital services. Humble counter-sued for Cigna's failure to pay reasonable and customary rates for the surgeries performed at Humble. We tried the case to the Court in January 2016. The Court's judgment required Cigna to pay 100% of the damages my client requested, imposed ERISA penalties of over \$2 million, and entered a final judgment of \$19 million. It dismissed all of Cigna's claims. The Fifth Circuit reversed the trial court.

Represented Chevron in a dispute with Occidental Petroleum regarding contractual issues surrounding a gas plant at the Headlee field. The dispute went to arbitration, and was favorably settled before trial.

2016

Represented a class of consumer-packaged goods companies in their class action case against News America Marketing and its parent, News Corp., regarding News' charging supra-competitive prices and illegally maintaining a monopoly of the in-store promotions market. We brought the case to a jury trial, and on the first day of that trial the defendants settled for \$244 million. Accounting for court-awarded attorneys' fees and expenses, class members recovered a total of \$187.5 million.

2015

Represented the Liquidating Trustee of the Circuit City Estate in opt-out antitrust actions against various defendants who conspired to fix the price of cathode-ray tubes ("CRTs") and liquid display panels ("LCDs"), causing Circuit City to pay more for products containing CRTs (televisions and computer monitors) and LCDs than it otherwise would have had to pay. Achieved cumulative settlements in the hundreds of millions of dollars.

Represented GE Mortgage Holding, L.L.C. in a lawsuit brought by The Bank of New York Mellon solely as Trustee for the GE-WMC Mortgage Securities Trust 2006-1, a litigation involving alleged contractual obligations to repurchase certain securitized mortgages that the plaintiff claimed had been made outside of reasonable underwriting standards. The case settled on very favorable terms for the client. Represented a class of plaintiffs against various defendants who engaged in a conspiracy to fix the auctions of municipal derivatives. Achieved settlements with those defendants collectively over \$100 million.

2014

Represented CompleteRx in a contract dispute with a former client concerning the winding up of their relationship. The former client sued for an accounting regarding certain drug charges and claimed over \$1 million in damages. The case settled well below cost of defense.

2013

Represented W.R. Berkley Insurance Company or its insureds in several cases. The cases ranged from representing Berkley's interests in litigation involving its insureds to representing insureds accused of tortious conduct. All cases were resolved to the satisfaction of the respective clients.

Represented the Official Committee of Unsecured Creditors of M. Fabrikant & Sons and Fabrikant-Leer International ("Fabrikant") in its action against eight financial institutions arising out of the bankruptcy of Fabrikant, formerly one of the leading companies in the diamond and jewelry wholesale market. The Second Circuit upheld the bankruptcy court's dismissal based on its negative view of the cause of action relied upon by Fabrikant.

2012

Represented SearchMedia in an international arbitration regarding hidden liabilities in the purchase of a mainland China advertising company. Obtained a favorable settlement from numerous defendants shortly before the arbitration panel was set to hear the case.

2011

Represented Huntleigh USA Corporation in various actions arising out of the 9/11 attacks. Huntleigh provided checkpoint security at Boston's Logan Airport in regard to United Flight 175, one of the planes the Al-Queda terrorists crashed into the World Trade Center towers.

Represented a class of Dynegy Inc. shareholders regarding the merger activity of that company. The shareholders allege that its board of directors breached their fiduciary duties with regard to Dynegy's recent merger attempts with affiliates of Blackstone and Icahn Enterprises. The shareholders allege both substantive violations (i.e., the merger price is not for fair value) as well as disclosure violations (Dynegy has failed to adequately disclose material aspects of the merger negotiations and valuations). After we obtained additional disclosures to the shareholders which cast doubt on the merits of the financial analysis done by the company's advisors, the shareholders voted down the merger.

2010

Represented Sim-Tex L.P. in a dispute with Coutinho & Ferrostaal, Inc. involving whether or not a contract was formed for the purchase of OCTG products. The dispute also involved issues of custom and practice in the OCTG industry and course of dealing regarding cancellation of purchase orders. The case settled the weekend before trial for a confidential amount.

2009

Represented MasTec North America, Inc. in its action against Con Edison Company of New York for Con Ed's activities related to MasTec's construction of a fiber optic network in Con Ed's rights of way in New York City. MasTec alleges that Con Ed tortiously interfered with its contract with the Telergy Corporation to provide construction services by favoring its own telecommunications subsidiary over Telergy. Specifically, MasTec alleged that Con Ed prevented Telergy and MasTec from completing the fiber optic network in various ways, including withholding necessary services in its rights of way, in order to prevent Telergy from effectively competing against Con Ed's subsidiary and to prevent Telergy from being able to pay MasTec for the construction services provided. The case settled for a confidential amount.

2008

Represented a leading insurance company with regard to its insured's defense of allegations of product liability in a home fire that included three fatalities and a surviving child with second and third degree burns over 33% of her body.

Represented general partner of a Houston pharmacy group in partnership dispute with certain limited partners. Focusing on the business goals of the various parties rather than generating legal fees, was able to structure a multi-million dollar buy-out of the limited partners which allowed the client to regain effective control of the business and the business to survive.

2007

Represented Enron in its litigation against the financial institutions who aided and abetted various insiders at Enron in the historic collapse of the company. Enron brought claims against 10 financial institutions. I was responsible for the prosecution of the case against Merrill Lynch and Deutsche Bank, both of which settled for substantial recoveries for Enron's creditors.

Represented New York Network Management (NYNM) in a case against HIP New York. NYNM, an IPA that provided various providers to HIP for its members medical care, alleged that HIP erroneously denied claims far in excess of industry norms, significantly underpaid on other claims, and systematically moved those providers to other IPAs or directly to HIP itself in order to undermine NYNM's business. The case settled for a confidential amount.

2006

Managed the firm's representation of over 2,000 clients in the Fen-Phen diet drug litigation against Wyeth Pharmaceuticals. These cases settled for over 1,100 clients who had "opted-out" (that is, filed lawsuits) resulting in millions of dollars in payments to the clients. The remaining clients who opted-in to a previous settlement favorably resolved their claims.

2005

Obtained a \$38 million jury verdict on behalf of Florida Health Plan Management against HIP New York. Plaintiff alleged that the defendant both understated its liabilities and overstated its assets in the sale of HIP Florida to the plaintiff. In addition to the compensatory damages noted above, the jury found that punitive damages were warranted. In the midst of the parties' presentation of evidence as to the amount of punitive damages to award, the case was settled for a confidential amount.

Represented accounting firm Mann Frankfort in defense of various cases arising out of the collapse of Premiere Holdings. Achieved numerous dismissals of federal cases at the motion to dismiss stage. Remaining cases were settled.

Filed a declaratory judgment action for Brazilian client Mineracao Curimbaba, a manufacturer of proppants, against competitor Carbo Ceramics, which asserted that Curimbaba's intermediate strength proppant violated various Carbo patents. Achieved settlement which will allow Curimbaba to sell its product in the United States with no royalty paid to Carbo.

2004

Defended Intergraph against patent infringement claims brought by American Imaging. Achieved dismissal of the case on summary judgment grounds after a week-long Markman hearing. While the Federal Circuit upheld most of the district court's decision, one small aspect of the case was remanded. Obtained final dismissal of the case on summary judgment after the remand.

2003

Represented the Texas Democratic Congressional Delegation at redistricting trial, focusing on the unconstitutionality of redistricting solely for partisan advantage and mid-decade redistricting. The three-judge panel split 2-1 in favor of the state's redistricting plan. In June 2006 the Supreme Court, on a 5-4 vote, rejected the claims of political gerrymandering and mid-decade redistricting, but did find Latino voter dilution in District 23 and order the redrawing of that district to comply with the Voting Rights Act.

2002

Represented the trustee of the WRT Creditors' Liquidation Trust in bringing actions against accounting firm KPMG and financial advisor CIBC Oppenheimer Corp. for their involvement in the collapse of energy company WRT. Recovered settlements from both defendants for the benefit of the Trust.

2001

Represented the trustee of the DeGeorge companies estate in a jury trial against GMAC subsidiary Residential Funding Corporation for putting DeGeorge out of business. The jury found for the defendant. On appeal, raised legal issues that led to the Second Circuit issuing an opinion remanding the case to district court for determination of factual issues that could require a new trial. The case settled before the district court made its determination.

Represented Bobby Sue Smith Cohn in connection with various probate and estate issues arising out of the R.E. Smith estate. Successfully mediated dispute between the client and the trustees of various estate entities resulting in the client obtaining greater control of inheritance.

2000

Defended Unocal against a \$15 billion lawsuit brought by Argentine oil and gas company Bidas in connection

with the right to build a pipeline across Central Asia. As part of the litigation conducted negotiations with the Turkmenistan Oil & Gas minister and other government representatives. The Court dismissed the lawsuit in Unocal's favor.

Represented Apache Corporation against PetroChina, obtaining the first TRO ever granted by a U.S. Court against quasi-governmental entities of the People's Republic of China. The case settled favorably for the client 10 days after we obtained the TRO.

1999

Tried case on behalf of Century Resources Inc. against New York real estate mogul Sheldon Solow in NY state court. I represented the geologists who made an oil and gas find, only to have their financial partner Mr. Solow freeze them out of the business. The case settled during trial for a confidential amount. Represented Citrus Trading Corporation in a dispute with Pan National Gas Company over Pan National's failure to deliver agreed upon quantities of LNG (liquefied natural gas). Pan National claimed force majeure due to the failure of the Algerian National Oil and Gas Company, Sonatrach, to deliver the LNG. We argued on behalf of our client that Pan National used normal upkeep of Sonatrach's facilities as an excuse to fail to make deliveries under a contract price favorable to our client. In an innovative approach that we suggested, the case settled after both parties' legal teams made a two-day presentation to a panel consisting of three executives from each party.

1998

Defended Brazilian proppant manufacturer Minercao Curimbaba against allegations by its United States distributor, PropTech, that it had breached an agreement to extend the distributorship. The case settled on the eve of trial for a confidential amount.

1996

Represented the employees of Burlington Industries against Burlington, Morgan Stanley, and NationsBank. This ERISA lawsuit alleged that the defendants looted the assets of the employees ESOP (Employee Stock Ownership Plan) pursuant to a scheme by which they arranged for Burlington stock to be sold to the ESOP at a highly inflated price. I was responsible for the depositions and the class action briefing, which was successful. The defendants settled for \$22 million.

Represented Degussa Corporation in claims against it in the Gulf War Syndrome cases filed in Galveston, Texas. Demonstrated to the plaintiffs their lack of a case against the client as well as strategic reasons why Degussa should not be in the case and achieved complete dismissal of the client in the early stages of discovery.

1995

Represented Lloyds of London in an insurance dispute with Exxon arising out of the Exxon Valdez oil spill in Alaska. I played a supporting role in all aspects of this very significant litigation.

Honors and Distinctions

- Named "Super Lawyer" from 2017 – 2019 (*Law & Politics Magazine*, Thomson Reuters)
- Named "Texas Rising Star" in 2005 (*Law and Politics Magazine*, Thomson Reuters)
- Morris Historical Medal for Best Senior Thesis in History, Georgetown Phi Beta Kappa, Georgetown
- Senior Editor, Yale Law Journal (1991-92)
- Managing Editor and Student Writing Editor, Yale Journal of International Law (1990-91)

Professional Memberships and Associations

- State Bar of New York (admitted 1993)
- State Bar of Texas (1994)
- United States Court of Appeals for the Fifth Circuit (1995)
- United States Court of Appeals for the Federal Circuit (1999)
- United States Court of Appeals for the Second Circuit (2002)
- United States Supreme Court (2003)
- Eastern District of Texas (2006)
- Northern District of Texas (2003)
- Southern District of Texas (1995)
- Eastern and Western Districts of Arkansas (2004)
- Northern District of Georgia (2004)
- Eastern District of New York (2007)
- Southern District of New York (2007)
- American Bar Association
- Houston Bar Association
- Houston Trial Lawyers Association