



Kenneth E. Mcneil Partner

Houston
(713) 653-7814
kmcneil@susmangodfrey.com

Overview

As a 35-year partner with Susman Godfrey L.L.P., I have played a key role in some of the most significant lawsuits in the United States — half for plaintiffs and half for large corporate defendants.

And the result: a long track record of success of in-court and out-of-court settlements involving disputes as large as hundreds of millions and billions of dollars.

There is a common theme in all of them: the ability to quickly organize, simplify and resolve big lawsuits — in many cases, within months of my first day on the file:

- Around the world — including huge cases involving China, Australia, Canada, and Dubai.
- In virtually every major industry and financial sector — pension funds, energy companies, airlines, HMOs, hospitals, many types of manufacturing, Internet, accounting, banking, railroads, power companies, pipelines, law firms, and the automobile industry.
- Across most areas of law — securities, antitrust, contract, ERISA, patent, fraud and other commercial torts, bankruptcy, accounting malpractice, actuarial malpractice, oil and gas law, international law, environmental law, administrative law, Native American law, libel/disparagement, enforcement of foreign judgments, Lanham Act trademark infringement, false advertising and trust law.
- In complex crisis management for massive “perfect storm” situations — unexpected “bet-your-company” cases and other disastrous problems (ranging from HMOs to energy companies to pension funds).

Education

- Ph.D., Vanderbilt University,
- J.D. cum laude, University of Wisconsin-Madison.

Clerkship

Judicial Clerk for Judge Sam Johnson, United States Court of Appeals, Fifth Circuit, 1981-1982.

Honors and Distinctions

Former U.S. Fifth Circuit Judicial Clerk

Former university professor at University of Wisconsin-Madison

Selected by a lawyer poll to appear on Woodward White Inc.'s list of "Best Lawyers in America" (2014-2022, Woodward White Inc.)

Speaker, Conference on Fiduciary Duty in Support of Responsible Investment and Financial Behavior, Kennedy School of Government, Harvard University, January 14, 2015

Co-Organizer and Speaker, "Helping Institutional Investors Increase Recoveries in Corporate Fraud Litigation" Conference, held at University of Chicago Graduate School of Business, Chicago, Illinois

Speaker, American Conference Institute's 16th Annual Summit on D&O Liability

Speaker, New York Law School Symposium on the Plaintiffs' Bar

Speaker, 29th Annual Securities Regulation Institute, sponsored by Northwestern University School of Law

Speaker, "Vanishing Trials" Seminar, ABA Litigation Section, San Francisco

Speaker, Canadian Institute Seminar on Class Actions, Toronto, Canada

Speaker, Seminar on Federal Class Actions, State Bar of Texas, Antitrust & Litigation Section, Houston, Texas

Articles Editor, University of Wisconsin Law Review

Order of the Coif, University of Wisconsin Law School

Wins

2012-2022 RESULTS

- Served as lead settlement counsel in a major dispute over drainage and environmental cleanup problems affecting a large shopping center tract.
 - The shopping center tract was being developed in one of the largest cities in the United States.
 - The client, owner of a large shopping center tract, is a nationally prominent businessman, who had earlier founded a company that by merger became a leading Fortune 500 company.
 - This client had been trying for a decade to resolve the environmental and drainage issues on adjoining tracts, and it was slowing his ability to develop the shopping center.
 - The settlement after a number of months resolved the problem to the client's satisfaction – while avoiding any depositions or trial in this complex matter.

- Served as lead outside counsel for Fortune-500 company Apache Corporation and its Australian subsidiaries in overseeing defense at trial of a \$2 billion lawsuit.
 - The trial in Melbourne, Australia, against these defendants and others, was the largest in Melbourne's history, as reported by Australian newspapers.
 - The trial began in June 2016.
 - The plaintiffs were members of billionaire families in India.
 - We developed a half-billion dollar counterclaim.
 - We made Australian legal history at trial by using the first beginning-to-end PowerPoint narrative graphic opening statement.
 - Only a week after that presentation was made, the plaintiffs entered settlement negotiations and settled with Apache.
 - The agreement is confidential, but our client is happy with the results.

- Served as lead outside counsel for Apache Corporation and certain Australian affiliates in overseeing major Australian lawsuits, relating to a gas pipeline explosion in Western Australia in 2008.
 - These claims – brought by mining companies and others in a number of lawsuits – involved hundreds of millions of dollars.
 - In 2015, these were successfully resolved, including with London-based insurers.
 - The terms of the settlements are confidential, but the clients are happy with the results.
- Served as lead outside counsel overseeing litigation defense relating to alleged Australian Trade Practices Act claims brought against Apache Corporation involving hundreds of millions of dollars.
 - Less than one month before the 2015 trial, the plaintiff dropped his lawsuit and all claims in it.
 - Our client paid nothing.
- Served as lead advocate in a major international arbitration matter in Dubai representing the owners of the one of the largest chains of hospitals in the Middle East.
 - The matter settled in 2014 after only the second day of the arbitration hearing – during my cross-examination of the opposing party's CEO.
 - It was settled confidentially to the client's strong satisfaction, including settlement of a related matter as well.
 - Opposing party was represented by a veteran British Queen's Counsel from a prestigious London chambers.
- Served as lead counsel defending one Fortune 500 company against another Fortune 500 company in a major products liability dispute involving over \$200 million.
 - Settled the case after a number of weeks of negotiation – before any lawsuit was filed.
 - Settled very favorably to the client.
- Served as lead counsel for one of the largest energy companies in the United States in overseeing the defense of a criminal statutory fine prosecution in Australia over a major gas pipeline explosion.
 - The matter involved an explosion of a major pipeline providing gas to Western Australian customers – including large mines and other plants.
 - The explosion temporarily disrupted 30 percent of Western Australia's gas supply.
 - Nevertheless, the Western Australian state prosecutors ultimately dismissed the prosecution completely – well before trial.
- Served as lead counsel for one of the largest energy companies in the United States in obtaining a stay against a major case filed in the U.S. relating to a dispute over a huge gas supply contract in Australia.
 - The plaintiffs alleged damages of several hundred million dollars.
 - We stayed the case – kept it from proceeding – for approximately two years.
 - The case was ultimately dismissed on grounds that the United States was not a convenient forum.
 - Plaintiffs were therefore unable to prosecute this case in the United States.

OTHER RECENT TRIAL AND SETTLEMENT RESULTS

- Served as lead plaintiff lawyer for Milwaukee County and the Milwaukee County Pension Fund.
 - Obtained a \$45 million settlement after two weeks of jury trial in Milwaukee federal district court.
 - The recovery was paid by defendant Mercer, Inc., the largest employee-benefits company in the U.S.
 - The lawsuit had allegations of actuarial malpractice in connection with passage of a new employee

benefits package in 2000-2001 by Milwaukee County.

- Wisconsin Governor Scott Walker was then Milwaukee County Executive and worked closely on the case.
- Served as lead plaintiff lawyer overseeing Canadian trial team in a major Canadian trial victory.
 - Was hired to oversee the Canadian trial team in a case in Canada where Apache Corporation's Canadian subsidiary faced a \$300 million counterclaim in a dispute over drilling rights.
 - The trial lasted eight weeks.
 - The judge's decision just gave Apache a big victory — dismissing the counterclaim, and awarding disputed drilling lands and production proceeds to Apache worth tens of millions.
 - The court decision made new Canadian law on theft of confidential information.
- Served as lead plaintiff lawyer for Bank of Montreal in a major commercial dispute.
 - Obtained a confidential settlement within 12 weeks of being retained to the client's satisfaction.
 - Settled the case before a lawsuit was even filed.
- Served as lead plaintiff trial lawyer — JURY TRIAL LISTED IN "TOP 100 VERDICTS OF 2005" by *Verdict Search* magazine.
 - The jury trial involved our client's purchase of a large Florida HMO from HIP New York (New York City's HMO for its government employees) — and was in state court, Fort Lauderdale, Florida.
 - The jury returned a \$38 million actual damages jury verdict — for fraud, breach of contract, and unjust enrichment against HIP New York.
 - Plus the jury had found clear and convincing evidence that punitive damages were warranted (rarely awarded in Florida in a commercial case).
 - The case settled one day after verdict to the client's satisfaction.
 - Our client is now a member of the Board of Trustees of the University of Florida.
- Served as lead defense trial lawyer and settled a major patent dispute for Rockwell Automation, Inc., a Fortune 500 company.
 - Was hired by Rockwell Automation to represent it as lead counsel in a major patent, antitrust and unfair competition dispute.
 - The dispute had been ongoing for four years before I was hired.
 - It was resolved approximately two months after I was hired.
 - The settlement resolved the dispute and provided significant business benefits to Rockwell.
- Served as lead plaintiff trial lawyer for a North Carolina bankruptcy estate in settling a dispute with Ford Motor Company over alleged patent infringement by Ford.
 - Was settled without filing any lawsuit.
 - Settled after a mock trial before a U.S. bankruptcy court judge as part of a mediation.
- Served as lead settlement counsel for a leading national builder of housing projects for the working poor in a dispute with Sun Trust Bank.

- The dispute involved allegations of \$20 million – \$40 million against the client.
- The case was resolved with the client paying nothing.

Other Results in 2004-06

- 2006 Selected to Special Counsel list for the Pennsylvania State Employees' Retirement System.
- 2004 Retained as special settlement counsel for the City of San Diego in a dispute with its auditing firm.
- 2004 Selected to Special Counsel list for State Retirement System of Maryland.

Other Results in 2000-2004

Served as lead trial lawyer for a joint prosecution group — the State of Wisconsin Investment Board (for a shareholder class), the Anicom bankruptcy estate, and several Chicago banks.

- \$21.5 million settlement from accounting firm PricewaterhouseCoopers LLP.
- \$18.0 million settlement from certain officers and directors of Anicom, Inc.
- \$40 million in total settlements were obtained in federal court in Chicago involving now-bankrupt wire distributor Anicom, Inc.
- Two directors paid \$12 million out of their own pockets, not from D&O insurer.

Obtained first-ever U.S. temporary restraining order against three oil companies of the People's Republic of China.

- Lead trial counsel in a \$100 million lawsuit filed by a subsidiary of Apache Corporation against Petrochina, et al.
- Involved a \$120 million investment in a major drilling project on the coast of China, where the Apache subsidiary is operator.
- Settled favorably for Apache 10 days after the TRO was obtained.
- Resolved issues that had been holding up the project for 2 years.

Obtained settlement of a major dispute by a Fortune 500 company against a “big-six” accounting firm within 6 months from filing the lawsuit.

- Represented a multi-billion-dollar corporation as plaintiff.
- Settled favorably to client.

Obtained settlement of a major dispute against a national insurance company in 13 days.

- Represented an East Coast corporation in a dispute with its insurer over denial of coverage.
- Settled for the entire multi-million-dollar payment the client sought from the insurer.

Obtained settlement of another major dispute against a “big-six” accounting firm within 15 months from filing of the lawsuit.

Obtained settlement of an employment termination dispute in 3 weeks on terms which the client sought.

Other Plaintiff Contingent-Fee Litigation

Settled two major cases during May and June 1999 (\$12 million).

- Served as lead counsel in June 1999 in obtaining \$6.25 million settlement in an international oil and gas dispute.
- Served as co-lead counsel in May 1999 in obtaining a \$6 million settlement for a terminated CEO of a telecommunications company.

Obtained the largest Employee Stock Ownership Plan recovery in history (\$27 million).

- Lead counsel for much of the case, which settled in 1996.
- One of the largest recoveries in the history of North Carolina courts.
- Defendants were Morgan Stanley, NationsBank, and Burlington Industries.

Obtained \$120 million stock appraisal award against Royal Dutch Shell.

- Won against Shell in connection with its cash-out merger of Shell Oil U.S. stock.
- Upheld by the Delaware Supreme Court in 1992.

Won \$38 million disclosure violation award for class of Shell stockholders who tendered their Shell stock.

- Resulted from my discovery of a \$1 billion error in Shell's published oil and gas reserve calculations.
- Award upheld by the Delaware Supreme Court in 1992.

Won \$40 million award for plaintiff class in antitrust class action.

- Plaintiff class included Wisconsin Power and Light, and other electrical utilities suing for alleged bid-rigging in fabricated steel provided to construction projects.
- Final settlement occurred just before trial.

Served as client attorney for our firm, which served as lead counsel for the first six months of the Exxon Valdez litigation against Exxon.

- Worked with Steve Susman in setting up coordination among dozens of plaintiff-side law firms in the case.
- Left that role only because of a technical conflict that appeared with one of numerous defendants.
- After our firm left the case, plaintiffs we organized won a substantial judgment and recovered hundreds of millions of dollars, net of attorneys' fees and expenses.

Other Plaintiff Litigation on an Hourly Basis

Served as lead counsel in a successful 3-day trial in 1999, defending my client for filing an involuntary bankruptcy petition against an opposing party for failing to pay \$10 million.

- Client was lead lawyer for a large publicly-traded oil and gas company creditor.
- Opponent debtor filed a \$17 million arbitration claim as offset.
- Opposing party was represented by distinguished counsel.
- Court held the opponent did not even raise a "bona fide" dispute over the vast majority of its claims.

Served as lead counsel in 1998 in a very favorable settlement for our clients (majority shareholders of a telecommunications company), just one month after minority shareholders instituted this legal dispute.

Served as lead counsel in a 1998 case in which our client, president of a large title company, was allowed by settlement to become president of a competing title company in the same city within weeks of leaving the first company, despite an attempt to enforce a non-compete restriction on him.

Served as lead counsel in a case representing Enron Oil & Gas against Meridian Oil.

- Won bench trial in North Dakota.
- Opinion issued in 1997.

Served as lead counsel in 1996 in a major dispute over a \$50 million trust fund.

- Several major law firms in Atlanta initially represented my client, the trust beneficiary.
- I entered the case four years into the litigation.
- It settled three weeks later, and my client got what she wanted.

Appointed head of expert witness work for Northwest Airlines and Continental Airlines in largest antitrust litigation in airline history — against American Airlines (1994).

- Organized expert work among economics professors from M.I.T., Stanford and University of Chicago, and attacked expert work of American Airlines witnesses.
- Worked with lead trial lawyers David Boies of Cravath, Swaine & Moore and Joe Jamail.
- American Airlines stopped the practice in dispute after this lawsuit got underway.

Other Defense Litigation on an Hourly Basis

Served as lead counsel in 1998 successful defense of a \$30 million lawsuit, brought against our client, a major midwest public utility holding company.

- Was retained by client, NIPSCO, to try this six-year-old case just weeks before trial.
- Case was tried in federal district court in Chicago.
- After two weeks of trial, confidential settlement was reached.

Successfully defended NIPSCO Industries (Northern Indiana's public utility holding company) in 1997 against allegations of \$60 million actual damages and \$140 million punitive damages.

- Case settled two weeks into trial at a tiny fraction of alleged actual damages.
- Contingency-fee lawyers who brought the case failed to get from the public settlement anything close to even their regular hourly billing rates.

Served as co-lead counsel in successful defense in 1997 of Sysco Corporation, one of the largest food distributors in the nation, against allegations by the owners of the popular Houston-based Ninfa's restaurant chain for tens of millions of dollars.

- Case settled within five months after the opposing side filed the case.
- Sysco received a public apology from Mama Ninfa, the founder of the Ninfa's restaurant chain, for ever bringing the lawsuit.
- Sysco was allowed to keep its entire creditor claim in bankruptcy against the plaintiff.

Represented of Placid Oil, Penrod Drilling, and Hunt Trusts in \$1.5 billion counterclaim lawsuit against 22 banks (1986).

- An estimated 200 lawyers on other side.
- Five to six main lawyers working on our side.
- Headed up key parts of discovery in the case.

Track Record for Quick Settlement

I have a long track record of resolution of cases ranging from \$5 million to \$600 million or more in dispute — some even without taking them to court. Some recent settlements involve times as short as 2 days in dispute, 5 days, and 30 days. Among the clients for whom these have occurred are Apache Corporation, Bank of Montreal, Enron Oil and Gas, Rockwell Automation, and the owner of a major HMO.

Professional Associations and Memberships

- Member, Board of Directors, Lawyers' Committee on Civil Rights, founded by President John F. Kennedy (2006-).
- President, Wisconsin Law Alumni Association (national association of 12,000 alumni of the University of Wisconsin Law School) (1999-2001).
- Member of 12-person Civil Justice Institute of the American Bar Association, Litigation Section (2001-2004).
- Chair of the Antitrust & Business Litigation Section of the State Bar of Texas (1996).

Notable Representation

Chief outside litigation counsel for almost 20 years for what was at one time the fourth-largest U.S.-based energy company.

Lead trial lawyer for plaintiff shareholders and creditors in Chicago “mini-Enron” case that was cited in American Lawyer article in 2005 naming Susman Godfrey LLP as one of the top two boutique commercial litigation law firms in the United States.