

John B. Shely



Partner

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INDUSTRIES

Insurance

PRACTICE AREAS

Arbitration/Mediation
Litigation

EDUCATION

JD, 1986, University of Houston Law Center, Order of the Coif, Phi Delta Phi, Houston Law Review, Member (1985-86)

BA, 1980, *magna cum laude*, Albion College, Phi Beta Kappa, Phi Eta Sigma

ADMITTED

Texas 1986

All Texas State Courts
US District Court for the Northern, Southern, Eastern and Western Districts of Texas
US District Court of Colorado
US District Courts for the Northern, Eastern and Western Districts of Oklahoma
US Court of Appeals for the Fifth Circuit
US Court of Appeals for the Ninth Circuit
US Court of Appeals for the Tenth Circuit
Supreme Court of the United States

John's practice includes all aspects of managed care litigation, with an emphasis on ERISA benefits litigation, provider litigation and bad faith insurance practices litigation. He also has significant experience handling commercial litigation and products liability cases.

John has served as first chair in jury and bench trials and has argued before the United States Court of Appeals for the Fifth Circuit and the Tenth Circuit, the Supreme Court of Texas, various Texas appellate courts, and other appellate courts. He represents insurers, plan administrators, preferred provider organizations, health maintenance organizations, employers, trustees, banks, fiduciaries and claims administrators in ERISA, managed care and bad faith insurance practices litigation.

John successfully represented a managed care company in a suit brought by a manufacturer of a medical device that had sued alleging that the client's clinical policy bulletin was defamatory. John obtained a dismissal of the case on First Amendment grounds in the federal District Court for Colorado. The manufacturer appealed to the Tenth Circuit Court of Appeals. In August 2007, the Tenth Circuit affirmed the judgment in favor of John's client, and wrote a detailed published opinion in a case that was closely watched in the managed care industry.

John also has jury trial experience defending clients against libel claims. In a recent case, John represented a managed care company in a case brought by a surgeon who alleged that the company had libeled him in correspondence sent to a patient after surgery. The case was tried in the Southern District of Texas, Houston Division. After the first day of testimony, immediately following his cross-examination of the Plaintiff, the first witness in the trial, John obtained a directed verdict in favor of his client.

In another instance, John served as lead counsel in a jury trial representing a large insurer in a major commercial dispute with a former corporate customer. The dispute arose in connection with the termination of a long-term contractual relationship in which the insurer had provided various services to its former customer's employee benefits plan. The former customer sued the insurer and sought at trial more than \$300 million dollars in alleged loss of goodwill and related tort damages. The case was tried to a jury verdict in federal court in Houston, Texas during October 2003. Following a nine-day trial, the jury rejected all of the former customer's claims for loss of goodwill and related tort

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damages.

John has also been lead counsel in a number of cases involving high-profile issues in the managed care industry. For example, John was lead counsel representing several managed care companies in their successful federal court challenge to the State of Texas' HMO Health Care Liability Act. The successful challenge spanned five years and resulted in three published opinions from the Fifth Circuit Court of Appeals. John subsequently was lead counsel in a case in which an individual plaintiff sought to recover damages under the Texas HMO Health Care Liability Act despite the case law which resulted from the earlier challenge. John was lead counsel in both the district court and the Fifth Circuit Court of Appeals on this case. The district court dismissed the individual plaintiff's claim. The Fifth Circuit unexpectedly reversed that ruling. As a result, John assisted in the successful process of obtaining review by the United States Supreme Court.

On June 21, 2004, the Supreme Court reversed the Fifth Circuit and, in a unanimous decision, ruled in favor of the firm's managed care client. The case received extensive publicity nationwide and is viewed as a landmark case in the managed care industry.

John has also defended cases relating to pension claims and breach of fiduciary duty claims under ERISA. He has significant experience in defending suits seeking to certify a plaintiff class. For instance, John represented an HMO in its successful defense of a class action suit asserting a breach of fiduciary duty under ERISA for the alleged failure to disclose financial incentive arrangements. He has expertise with respect to the scope of ERISA preemption and the application of the doctrine to various factual settings. John also has tried numerous ERISA benefits suits in federal court including injunction cases relating to COBRA issues and deselection of providers from managed care networks. Additionally, many of these types of cases have been resolved in favor of clients, prior to trial, as a result of the granting of dispositive motions.

PROFESSIONAL/CIVIC AFFILIATIONS

Member

- State Bar of Texas
- Houston Bar Association

HEADLINE NEWS

- Andrews Kurth Announces Policy Committee Election (August 28, 2008)
- Andrews Kurth Adds Two New Faces to Policy Committee (August 31, 2006)
- Andrews Kurth Announces 2006 Partners (December 6, 2005)
- Supreme Court Rules Federal Law Trumps State Law HMO Suits (June 28, 2004)
- Supreme Court to Rule on Rights to Sue HMOs Under State Law (November 7, 2003)
- Andrews & Kurth Elects Management Team (April 2, 2001)