

James H. Stilwell



Counsel

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James has a wide-ranging litigation practice that includes fiduciary litigation, homeowners association work, builder and developer litigation, insurance litigation, and commercial litigation. His trial practice includes matters in state and federal court, as well as arbitration and mediation. In addition to serving as trial counsel for his clients, James routinely advises them on contract and insurance matters.

James has received an "AV" rating from Martindale-Hubbell, indicating "Very High to Preeminent" legal ability.

REPRESENTATIVE EXPERIENCE

Fiduciary Litigation

- Represented clients involved in multimillion dollar lawsuits involving executors, trustees and other fiduciaries
- Represented fiduciaries in declaratory actions, removal actions and breach of fiduciary duty suits
- Published Cases
 - *In re Estate of Hersey*, ___ S.W.3d ___, 2006 WL 756088 (Tex.App.—Amarillo, April 25, 2006). James was the lead lawyer at trial and second chair on appeal for this case, which involved an appeal of attorneys' fees stemming from defense of an executor/corporate officer in a breach of fiduciary duty case.
 - *Lee v. Hersey*, ___ S.W.3d ___, 2006 WL 756088 (Tex.App.—Amarillo, March 24, 2006). James was the lead lawyer at trial for this case, which involved the defense of an executor in a breach of fiduciary duty and conspiracy case.
 - *Paul v. Merrill Lynch Trust Co. of Texas*, 183 S.W.3d 805 (Tex.App.—Waco, December 14, 2005). James was the lead lawyer at trial for this case, which involved the defense of a corporate executor in a removal suit and breach of fiduciary duty case.

Homeowners' Association Work

INDUSTRIES

Insurance
Real Estate
Construction

PRACTICE AREAS

Litigation

EDUCATION

JD, 1995, University of Texas School of Law
The Review of Litigation, Articles Editor
Coats, Rose, Yale, Holm, Ryman & Lee Award, UT's Environmental Law Essay Competition Winner
BA, 1992, Economics and Political Science, Baylor University
Baylor Honor Council
Lyndon B. Johnson Intern to Congressman Bill Archer, US House of Representatives (1990)
National Youth of the Year, Exchange Clubs of America (1988)

ADMITTED

Texas 1995
US Court of Appeals for the Fifth Circuit
US District Court for the Northern District of Texas
US District Court for the Southern District of Texas
US District Court for the Eastern District of Texas

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- Represented homeowners' associations as outside general counsel on transactional matters, deed restrictions enforcement, Architectural control committee issues, policy development and enforcement, board of directors representation, community elections disputes, officer and director law and litigation, real property filings, secretary of state filings, insurance claims, meeting minutes and record keeping, and numerous other issues needed by various clients.
- Represented HOA and its board of directors in litigation pertaining to home builder claims of arbitrary enforcement of covenants and policies and ACC disputes.
- Represented major land developers in negotiations and dealings with HOAs.
- Represented individual homeowners against HOAs and its board of directors in litigation pertaining to arbitrary and capricious ACC denials of swimming pool and landscaping applications.

Builder and Developer Litigation

- Represented custom home builders in home defect and misrepresentation/fraud cases in both litigation and arbitration
- Represented track home builder in home defect, misrepresentation/fraud cases, and breach of contract claims in litigation and arbitration
- Represented major land developers in a variety of litigation relative to development activities in both litigation and arbitration
- Advised builders and developers regarding contractual and insurance matters
- Represented major land developers in negotiations and dealings with HOAs.

Insurance Litigation

- Represented major insurance carriers on first and third party personal lines
- Represented corporations on denied insurance claims under a variety of policy types
- Wrote coverage opinions for insurance clients, for corporate clients and to assist third parties in litigation
- Brought declaratory actions, breach of contract claims, and statutory and common law bad faith suits

Commercial Litigation

- Represented corporate clients in construction and engineering disputes, covenant not to compete litigation, nuisance cases, breach of contract suits, premises liability suits, products liability suits, and a variety of other commercial litigation
- Advised corporate clients regarding contract drafting, insurance and indemnification matters
- Published Cases
 - *Parks v. Landfill Marketing Consultants, Inc.*, 2004 WL 1351545 (Tex.App.—Houston [1st Dist.], June 17, 2004). James was the lead lawyer at trial for this case, which involved a commercial suit in a breach of an oral contract case).

ARTICLES/PUBLICATIONS

- "Fiduciary Fall Out: Updates from Five Fairly Recent Texas Opinions" (June 8, 2008)
- "The Chicken or the Egg - Insurance and Indemnification Clauses in the Same Contract" (March 29, 2004)
- "Straddling the Work/Life Divide" *Texas Lawyer* (February 16, 1998)
- "Texas Premises Liability Jury Definitions, Instructions, and Questions for Criminal Actor Cases – A Pattern to Ease the Madness?" *17 Rev. Litig.* 259 (1998)
- "Walking the High Wire: Practical Possibilities for Regulatory Responses to the Electromagnetic Field Quandary" *15 Rev. Litig.* 141 (1996)

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BRIEFINGS, SEMINARS & SPEECHES

- "Creditor Exempt Assets: When You Can't Take it With You, and the Creditors Can't Take it Either," Wills & Probate Institute, South Texas College of Law CLE (2007)
- "Opening Statements for the 21st Century," The Jury Trial 2007 CLE, Houston (August 16, 2007) and Dallas (August 23, 2007).
- "Dealing With Your Insurance Company on Claims: If at First You Don't Succeed, Try, Try Again," panel moderator, Texas General Counsel Forum (February 22, 2005)
- "Bad Faith and Beyond," Insurance Adjuster Continuing Education Presentation (1999)
- "Using the New Rules of Civil Discovery: Effects on Insurance and Insurance Defense Litigation," Insurance Adjuster Continuing Education Presentation (1999)

PROFESSIONAL/CIVIC AFFILIATIONS

Membership/Leadership Positions

- Vice President & Director – South Montgomery County Woodlands Chamber of Commerce
- Member – Texas Bar Association Insurance Section
- Former Director – Alden Bridge Village Association Inc.; and Alden Bridge Village Scholarships Foundation, Inc.
- Former Director – Town Center Improvement District (1999-2002)
- Former Chairman – Funding Request Committee of Town Center Improvement District (1999-2002)
- Former Director and Vice President – The Woodlands Association, Inc. (1998-2000)
- Member – The Woodlands Bar Association; Houston Bar Association

Awards

- Recipient of the 2005 South Montgomery County Woodlands Chamber of Commerce Chairman's Award

HEADLINE NEWS

- Andrews Kurth Lawyers Join in Providing Pro Bono Estate Planning for Firefighters (September 18, 2007)