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by

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and

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Scott is head of the firm's appellate section and his practice includes all aspects of litigation. He returned to Andrews Kurth in 2009 after 20 years of judicial service at all levels of the Texas court system: six years on the Texas Supreme Court, three years as Justice and Chief Justice of the First and Fourteenth Courts of Appeals respectively, and eleven years as Judge of the 234th District Court. During those years he presided over 670 trials to verdict, and authored more than 600 appellate opinions, including 122 opinions of the Texas Supreme Court.

Scott is board-certified in civil appellate, civil trial and personal injury trial law. He previously served on the Supreme Court Advisory Committee and on the Supreme Court Jury Task Force. He is a co-author of *Texas Pretrial Practice* and has written law review articles in the Baylor, Oak Brook, South Texas, and St. Mary's law reviews.

PROFESSIONAL RECOGNITION

- Recognized as a "Local Litigation Star" in Texas by *Benchmark Litigation* (2012-2014)
- Recognized as a "Local Litigation Star" in the 5th Circuit (Texas) by *Benchmark Appellate* (2013)
- *The Best Lawyers in America*, Appellate Practice (2012-2014)
- Texas Super Lawyer in Appellate Law, *Texas Monthly* (2013)
- Profiled as one of the leading Appellate (2010-2014) lawyers in Texas, *Chambers & Partners USA: America's Leading Business Lawyers*

BRIEFINGS, SEMINARS & SPEECHES

- TexasBarCLE 27th Annual Advanced Civil Appellate Practice Course (September 12-13, 2013)
- 2013 Legislative and Supreme Court Update, Houston Bar Association Civil/Appellate 2013 Bench Bar Conference, Houston, Texas (May 2, 2013)
- TexasBarCLE Judges Panel: How to Lose Your Case Through Poor Legal Writing (April 26, 2013)
- "Jury Charge: The Swinging Pendulum of Broad Form Submission," The History of Texas Supreme Court Jurisprudence, Austin, Texas (April 11, 2013)
- TexasBarCLE: 26th Annual Advanced Civil Appellate Practice Course (September 7, 2012)
- DRI's 10th Appellate Advocacy Seminar (June 21, 2012)

PRACTICES

Appellate
Commercial Litigation
Litigation and Dispute Resolution

EDUCATION

JD, 1980, *cum laude*,
Harvard Law School
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ADMISSIONS

Texas 1980
US District Courts for
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US Court of Appeals for
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US Supreme Court

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- Speaker, "Texas School Funding: How Much is Enough?" Texas Public Policy Foundation, 10th Annual Policy Orientation for the Texas Legislature (January 12, 2012)
- "Respondent's Strategies in the Supreme Court," presented at The Texas Bar CLE: Practice Before the Texas Supreme Court, Austin, Texas (April 15, 2011)
- Panelist, The University of Texas School of Law's 15th Annual Insurance Law Institute (October 14-15, 2010)

AFFILIATIONS

- Justice, Texas Supreme Court (2003-2009)
- Chief Justice, Fourteenth Court of Appeals (2001-2003)
- Justice, First Court of Appeals (2001)
- Judge, 234th District Court of Harris County (1989-2000)
- Board Certified - Civil Appellate, Civil Trial & Personal Injury Law Texas
- Fellow, Texas Bar Foundation, Houston Bar Foundation (1992-present)
- College of the State Bar of Texas (1990-present)

IN THE NEWS

- Featured in "Former Justice Scott Brister Talks About Experience, Amici and Activist Judges," Texas Lawyer (September 27, 2010)

PRESS RELEASES

- Andrews Kurth Continues to Receive High Marks for Litigation Practice from Benchmark Litigation (January 9, 2014)
- 41 Andrews Kurth Lawyers Named in Texas Super Lawyers 2013 (September 9, 2013)
- 61 Andrews Kurth Lawyers Named Best Lawyers in America 2014 (August 15, 2013)
- Andrews Kurth Receives High Marks from *2013 Chambers & Partners USA Guide* (May 24, 2013)
- Andrews Kurth Receives High Accolades in Litigation and Appellate Practices from Benchmark Litigation (November 7, 2012)
- 62 Andrews Kurth Lawyers Named Best Lawyers in America 2013 (August 23, 2012)
- Andrews Kurth Receives High Marks from *2012 Chambers & Partners USA Guide* (June 15, 2012)
- Andrews Kurth Receives High Accolades in Litigation and Appellate Practices (December 16, 2011)
- 54 Andrews Kurth Lawyers Named Best Lawyers in America 2012 (September 22, 2011)
- Andrews Kurth Partner Scott A. Brister to Speak at The Federalist Society, Houston Lawyers Chapter (September 28, 2009)
- Former Supreme Court Justice Scott A. Brister Joins Andrews Kurth (September 8, 2009)
- Texas Supreme Court Justice Scott A. Brister to Join Andrews Kurth (August 17, 2009)

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Kendall is a board certified civil appellate specialist who has represented clients in state and federal appellate courts such as the U.S. Supreme Court, the U.S. Courts of Appeal for the Fifth, Ninth, Tenth and Federal Circuits, the Supreme Court of Texas and many intermediate courts of appeal. His practice includes a variety of complex commercial, medical malpractice, managed care, and toxic tort matters, as well as a particular focus in disputes involving employee benefits, managed care, and ERISA.

REPRESENTATIVE EXPERIENCE

- *Christus Health Gulf Coast v. Aetna, Inc.*, 397 S.W.3d 651 (Tex. 2013)
- *Ford, Bacon & Davis, LLC v. Travelers Ins. Co.*, 635 F.3d 734 (5th Cir. 2011)
- *Klein v. Hernandez*, 315 S.W.3d 1 (Tex. 2010)
- *Zimmerman v. Anaya*, 315 S.W.3d 523 (Tex. 2010)
- *Man Indus. (India) Ltd. v. Bank of Tokyo-Mitsubishi UFJ, Ltd.*, 309 S.W.3d 589 (Tex. App.—Houston [14th Dist.] 2010, no writ)

PUBLICATIONS

- "Commentary: Pinnacle of Practice Requires Creativity" *Texas Lawyer* (April 8, 2013)
- "Commentary: Unleash the Mind's Power by Going Analog" *Texas Lawyer* (January 7, 2013)
- "Commentary: Why Lawyers Need (Yet Don't Hire) Coaches" *Texas Lawyer* (December 10, 2012)
- "Storytelling for Lawyers" *Texas Lawyer* (June 25, 2012)
- "Commentary: Bad Habits and Rhetorical Sins in Court" *Texas Lawyer* (April 16, 2012)
- "Commentary: Get it Write — Embrace Editing Techniques to Improve Briefs" *Texas Lawyer* (January 23, 2012)
- "Commentary: Board Certification — The Last Big Hurdle" *Texas Lawyer* (August 22, 2011)
- "Pick Me! Persuading the Texas Supreme Court to Grant a Petition for Review" *Texas Lawyer* (March 28, 2011)

PROFESSIONAL RECOGNITION

- Recognized as a "Local Litigation Star" in the 5th Circuit (Texas) by *Benchmark Appellate* (2013)

INDUSTRIES

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Health Care
Insurance
Oil and Gas
Technology

PRACTICES

Appellate
Commercial Litigation
Health Care Litigation
and Compliance
Litigation and Dispute
Resolution
Products Liability

EDUCATION

JD, 1994, *summa cum laude*, Baylor Law School, *Baylor Law Review*, Lead Articles Editor, National Order of Barristers, Mock Trial Team
Bachelor of Music, 1989, *with distinction*, University of Wisconsin
Supreme Court of Texas, Briefing Attorney for the Honorable Jack Hightower (1994-1995)

ADMISSIONS

Texas 1994
Board Certified - Civil Appeals - Texas Board of Legal Specialization
US Supreme Court
US Court of Appeals for the Fifth Circuit
US Court of Appeals for the Ninth Circuit
US Court of Appeals for the Tenth Circuit

Kendall M. Gray

- Texas Super Lawyer in Appellate, *Texas Monthly* (2007-2013)
- Texas Rising Star, *Texas Monthly* (2004, 2006)

BRIEFINGS, SEMINARS & SPEECHES

- Speaker, "Bombshells in the Record and Other Ethical Dilemmas for the Appellate Attorney," 23rd Annual Conference on State and Federal Appeals, The University of Texas School of Law, Austin, Texas (June 2013)
- TexasBarCLE: "Clarity and Grace: From Ideas to Sentences to Paragraphs" (April 26, 2013)
- Speaker, "United States Supreme Court Update," 22nd Annual Conference on State and Federal Appeals, The University of Texas School of Law, Austin, Texas (June 2012)
- Don't Be Ugly: Maximizing Persuasion Through Good Typography and Document Design (March 8, 2012)
- Bills of Review, Restricted Appeals, and Other Appellate Issues (August 11, 2010)

AFFILIATIONS

- Houston Bar Association, Appellate Section
- State Bar of Texas, Appellate Section
- Bar Association of the Fifth Federal Circuit

Board Certified - Civil Appellate Law, Texas Board of Legal Specialization

PRESS RELEASES

- 41 Andrews Kurth Lawyers Named in Texas Super Lawyers 2013 (September 9, 2013)
- Andrews Kurth Receives High Accolades in Litigation and Appellate Practices from Benchmark Litigation (November 7, 2012)
- 35 Andrews Kurth Lawyers Named in Texas Super Lawyers 2012 (September 10, 2012)
- The Appellate Record Chosen as One of the ABA Journal's Blawg 100 (December 6, 2011)
- 35 Andrews Kurth Lawyers Named in Texas Super Lawyers 2011 (September 12, 2011)
- 33 Andrews Kurth Lawyers Named in Texas Super Lawyers 2010 (September 10, 2010)
- 35 Andrews Kurth Lawyers Named in Texas Super Lawyers 2009 (September 16, 2009)
- Thirty-Five Andrews Kurth Partners Named in Texas Super Lawyers 2008 (October 3, 2008)

US Court of Appeals for
the Federal Circuit

US District Court for the
Southern District of
Texas

US District Court for the
Eastern District of Texas

US District Court for the
Northern District of
Texas

US District Court for the
District of Colorado

Synopsis of Texaco's 130 Points of Error

- SEC rule 10b-13 bars private offer to buy shares while your tender offer is pending
- No evidence of tortious interference:
 - ☐ No binding Pennzoil/Getty agreement
 - ☐ No knowing interference
 - ☐ No active inducement
- Improper actual / punitive damages
- Allowing tortious interference to stifle takeovers violates Commerce Clause
- Judges Farris & Caleb were disqualified

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Texaco's Overview

first time nineteen (19) new cases not previously considered or argued by either party, but refusing to accept a post-argument brief from Texaco thus denying Texaco the right to rebut the new arguments and new cases raised by Pennzoil. (Germane to First Motion for Rehearing Point 17 and Second Motion for Rehearing Point 17) (Order dated August 20, 1986; Texaco's Motion for Reconsideration filed August 22, 1986; Order Denying Texaco's Motion, August 22, 1986)

130. The court of appeals erred under state law and under the Due Process Clause of the United States Constitution in refusing to release to Texaco the record of the oral argument before the court. (Germane to First Motion for Rehearing Point 18 and Second Motion for Rehearing Point 18) (Joint Motion of appellant Texaco and appellee Pennzoil to obtain a transcribed copy of oral argument filed August 8, 1986; Order Denying Joint Motion, August 18, 1986)

OVERVIEW

The court of appeals has affirmed a judgment against Texaco on the basis of a claim by Pennzoil that Texaco intentionally induced the Getty entities (the Getty Oil Company and its two largest shareholders, the Getty family trust and Getty Museum) to breach a known, existing and valid "contract" to Pennzoil's detriment of more than seven and a half billion

dollars (\$7,530,000,000.00). At the court of appeals' suggestion, Pennzoil remitted two of the three billion dollar (\$3,000,000,000.00) punitive damage award, still leaving a punitive damages judgment against Texaco for one billion dollars (\$1,000,000,000.00). The resulting total judgment (including the accrued post-judgment interest) exceeds one half of the budget for the entire State of Texas for the current fiscal year.¹ The post-judgment interest on this judgment works out to more than one hundred thousand dollars (\$100,000.00) per hour.

Pennzoil's "compensatory" damage award of 7.53 billion dollars (\$7,530,000,000.00) is more than twice what Pennzoil was willing to pay for the rights it claims it "contracted" to purchase--and more than 15 times the difference between the highest established market value of those rights and Pennzoil's alleged contract price. Not only did Pennzoil never pay one cent to Getty for this windfall, but Pennzoil made a profit of nearly thirty-four million dollars (\$34,000,000.00) from Texaco's purchase of the Getty Oil stock Pennzoil had bought a month or two before Texaco's offer. Pennzoil "generously" permitted its profits to be offset against its outrageous damage recovery.

How can such a judgment be justified? Frankly, this egregiously unjust result cannot be legally justified. It can, however, be explained--and that is the office of Texaco's

1. Texas Almanac, State Budget, 69th Legislature, Sept. 1, 1986 -Aug. 31, 1987, p. 718 (\$18,309,566,711.00).

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