



## Don Magee

*Partner*

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## PRACTICE AREAS

*General Litigation*

*Oil & Gas / Energy Litigation*

Don has thirty-five years' experience litigating, arbitrating and mediating a broad spectrum of contested cases. Don has been recognized by Martindale-Hubbell as an AV® Preeminent™ rated attorney, and was selected to be included in *The Best Lawyers in America*®, Commercial Litigation (2021). He has successfully represented both plaintiffs and defendants as lead counsel at trial and on appeal in state and federal courts. Don has substantial experience in complex civil litigation, real estate litigation, energy litigation, mining and mineral litigation, employment litigation, personal injury and product liability litigation. This experience includes antitrust claims, deceptive trade practices claims, partition suits, land use and development disputes, environmental litigation including claims of surface and groundwater contamination, firearms law, breach of contract disputes and declarations of contractual rights, tortious interference and other business torts. In addition, Don has represented both plaintiffs and defendants in personal injury litigation, including defense of wrongful death claims and product liability claims.

Don has represented landowners, mineral owners, royalty owners, small independent oil and gas operators and major multinational energy companies in a variety of matters, including royalty disputes, production-in-paying-quantity disputes, marketing claims and breaches of express and implied covenants (including marketing and development claims). Don has also represented landowners, royalty owners and mining companies in a number of lignite mining and sand and gravel mining disputes.

Don is also experienced in construction litigation and arbitration, as well as commercial litigation on behalf of banking and financial services clients. He has assisted clients in class action defense, employment litigation defense, insurance coverage disputes and bad faith claims. He has also represented individuals and companies in lawsuits involving trade secrets, covenants-not-to-compete and misappropriation of confidential information.

## Representative Experience

### General Litigation

Don's substantial litigation experience includes:

- Representing as lead trial counsel a leading home improvement warehouse chain and obtaining a verdict and judgment for the client, which granted specific performance of a multi-million-dollar real estate purchase contract and awarded attorneys' fees.
- Successfully defending as lead trial counsel a leading home improvement warehouse chain against

a host of claims including breach of lease.

- Defending landowners at trial and on appeal as lead counsel in a suit brought by real estate developers. Don obtained a defense verdict and defeated claims of specific performance, fraud and promissory estoppel.
- Acting as lead trial and appellate counsel for a family in bankruptcy court against bankrupt real estate developers. Don obtained judgment for his clients, which was affirmed by the U.S. District Court for the Western District of Texas, as well as the U.S. Court of Appeals for the Fifth Circuit.
- Lead counsel for an internationally known sports/entertainment facility before an AAA arbitration panel over an event seating construction dispute. Panel ruled in client's favor and rejected all counterclaims. Award challenged, but was upheld on appeal.
- Lead counsel on a real estate partition case involving significant waterfront acreage on Lake Austin. The case was tried, and a judgment favorable to the client was entered. The Plaintiffs appealed, but the judgment was affirmed on appeal.
- Serving as lead counsel during trial and in arbitration defending a major telecommunications company against claims of deceptive trade practices and breach of lease.
- Representing as lead trial counsel landowners being sued by a major sand and gravel mining company. At trial, the jury rejected the plaintiff's claims and found in favor of the landowners, awarding substantial attorneys' fees. The judgment was affirmed on appeal.
- Acting as lead counsel at trial for a home purchaser against a seller. Don obtained a verdict favorable to his client at trial, and the verdict was upheld on appeal.
- Serving as lead counsel for a homeowner against a builder. The case settled on confidential terms that were favorable to the client.
- Acting as lead counsel in an arbitration proceeding for a building owner against the builder.
- Successful defense of product liability case involving serious burns.
- Representing a national banking corporation in a closely watched dispute over competing security interests. Don obtained a summary judgment for the client, and the judgment was affirmed by the Fifth Circuit Court of Appeals.
- Successfully representing an internationally-known equipment manufacturer in a product liability death case in Webb County, Texas.
- Successfully representing a nationally-known mining company at trial in defense of claims to invalidate a lease, and other claims seeking actual and punitive damages. Don obtained a favorable verdict for his client.
- Defending a major mining company as lead counsel against breach of contract, fraud, tortious interference and trespassing claims. Don obtained a summary judgment for the client, and the judgment was affirmed on appeal.
- Successfully defending a national bank in Jefferson County, Texas, against claims of breach of fiduciary duty, fraud and related lender liability claims.
- Successfully defending a financial services company in multiple cases involving claims of deceptive trade practices, fraud and breach of lease.
- Defending a nationally-known company against claims of violations of the Texas Finance Code, Texas usury laws and the Truth-in-Lending Act.
- Representing an employee sued by his former employer, alleging claims of fraud, breach of fiduciary duty, legal malpractice, deceptive trade practices and other claims.
- Defending a local company against personal injury claims brought by a former employee. The case was settled on confidential terms favorable to the client.

- Multiple engagements on behalf of insureds making claims for coverage under various insurance policies.
- Acting as lead trial counsel for an e-commerce company in defense of class action claims.
- Serving as lead counsel for automotive dealership lenders, known as “floor-plan lenders,” in multiple cases involving lien priority.
- Defending multiple different individuals against claims of breach of fiduciary duty and misappropriation of property, including intellectual property and confidential and proprietary information.
- Defending multiple sellers of real property against claims of deceptive trade practices, breach of warranties and similar matters.
- Defending numerous different landlords against tenant claims of breach of lease. Many of these disputes were resolved by summary judgment.
- Participating in multiple engagements of employment defense litigation involving alleged age and race discrimination.
- Serving as trial counsel for an e-commerce company in defense of various breach of contract claims and claims for declaratory relief. The matter was resolved on a confidential basis favorable to the client.
- Representing a corporate officer and company founder in a shareholder dispute involving e-commerce. The case was settled on confidential terms favorable to the client.
- Representing a hotel company in a tortious interference case against an international accounting and consulting firm. Verdict and judgment for the client in Webb County, Texas.

## **Oil & Gas/Energy Litigation**

Don’s work in the energy field includes:

- Serving as lead counsel defending an oil and gas operator in a dispute over a joint operating agreement. The plaintiffs nonsuited their claims after pretrial motions were filed and the operator was awarded its attorneys’ fees.
- Representing numerous clients (lessors and lessees) in royalty litigation.
- Counsel for lessors against an oil company lessee asserting claims of failure to produce in paying quantities.
- Representing (as co-counsel) royalty owners against a lessee, asserting claims of breach of express and implied covenants seeking additional royalties.
- Representing a major oil and gas company in defense of claims of surface and subsurface contamination.

## **Mineral & Mining**

Don’s background in mineral and mining includes:

- Successfully defending lessors at trial as lead counsel against claims of breach of a mining lease, and prevailing against the mining company on a counterclaim. Attorneys’ fees were awarded to the client and against the mining company. Judgment for clients affirmed on appeal.
- Serving as lead trial counsel to a major mining company defending against breach of contract, fraud, tortious interference and trespassing claims. Don obtained a summary judgment for the

client, and the judgment was affirmed on appeal.

- Acting as co-counsel in a three-week trial for a nationally-known mining company defending claims of breach of lease, trespassing and tortious interference, as well as other claims seeking actual and punitive damages in hundreds of millions of dollars. The defense verdict was upheld on appeal.
- Acting as trial counsel and obtaining summary judgment for a nationally-known mining company in defense of antitrust claims.
- Acting as trial counsel for assignees for 100 percent of the working interest. Don asserted and obtained injunctive relief against the assignors and related parties.

## Professional Recognition

- Recognized in *The Best Lawyers in America*®, Commercial Litigation (2021)
- Recognized by Martindale-Hubbell as an AV® Preeminent™ rated attorney

## Court Admissions

- United States Court of Appeals for the Fifth Circuit
- United States District Courts for the Northern, Southern and Western Districts of Texas

## Bar Admissions

- Texas

## Education/Professional Background

- The University of Utah School of Law, J.D., 1985
- The University of Utah, B.A., 1982 (*cum laude*)