



## MARK K. SALES

### Partner

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Mr. Sales is a commercial litigator with a focus on probate, trust and related fiduciary duty litigation. He also represents clients on a wide variety of trial and appellate matters in the federal and state courts, including litigation involving lender liability and financial services, products liability, personal injury, toxic tort, energy, and insurance.

Prior to joining Diamond McCarthy, Mr. Sales was a partner with Dykema Gossett, where he was a member of its Commercial Disputes practice group and also co-chaired its Probate, Trust and Related Fiduciary Duty practice group. Prior to Dykema, he practiced for 25 years with Hughes & Luce, where he served on the firm's Executive Committee and as Hiring Partner before that firm merged with K&L Gates in 2008.

Mr. Sales served as a Director of the State Bar of Texas from 2007 to 2010 and previously served as President of the Dallas Bar Association in 2006 and President of the Dallas Association of Young Lawyers in 1994.

### Publications

- "Compelling Trust Beneficiaries to Arbitrate in Texas," Co-Author (DBA Headnotes, July 2013)
- "Trust Reformation" (Smart Business Dallas, February 2011)
- "Codifying the Good Faith & Probable Cause Exception", Co-Author (DBA Head Notes, January 2011)
- "The Attorney-Client Privilege in Will and Trust Contests", Co-Author (*DBA Headnotes*, October 2009)
- "Trust Modification: Helpful Techniques to Fix What is Broken", Co-Author (*Estate Planning Counsel of Central Texas*, March 2008)
- "Taking Advantage of New Opportunities for Trust Modification", Contributor (DBA Headnotes, August 2007)
- "Trust Modification" (State Bar of Texas 31st Annual Advanced Estate Planning and Probate Course, June 2007)
- "Judicial Construction and Modification of Trusts: Practical Advice for the Client" (May 2007)

### Location

Dallas, Texas

### Education

Baylor Law School (J.D., *cum laude*, 1985)

- Law Review, Editor-in-Chief
- Order of Barristers
- Past President, Law Review Alumni Association (1992)

Texas A&M University (B.S., 1979)

### Areas of Practice:

Complex & High-Stakes Litigation

- Probate, Trust, and Fiduciary Litigation

### Admitted to Practice:

Texas, 1986

United States District Court, Eastern District of Texas, 1990

United States District Court, Northern District of

Texas, 1987

United States District  
Court, Southern District of  
Texas, 1993

U.S. District Courts for the  
Western District of Texas,  
1999

U.S. Court of Appeals, 5th  
Circuit, 2005

- "Rare Fifth Circuit Victory of Evidentiary Points" (November 2005)
- "H&L Attorney Takes Office as DBA President" (January 2005)
- "The 1998 Texas Rules of Evidence: Changes Made and Changes Rejected", Author (State Bar of Texas Professional Development Program)
- "The 1997 Texas Rules of Evidence: Changes Made and Changes Rejected", Author (Southern Methodist University Law Institute on Practicing Law Under the New Rules of Trial and Appellate Procedure, 1997)
- "Key Issues in Tort Litigation Involving Foreign Defendants in the United States", Author (American Conference Institute on Successful Strategies in Toxic Tort Litigation, 1996)
- "Toxic Tort Update", Author (State Bar Eleventh Annual Litigation Update Institute, 1995)
- "Key Aspects of Texas Tort Reform Relating To Venue and To Deceptive Trade Practices", Author (Eighth Annual Baylor Litigation Institute, 1995)
- "The International Challenge: Handling Products Liability Claims Involving Foreign-Country Defendants in Texas Courts", Author (9 Tex. Personal Injury L. Rptr. 17, 1991)
- "Government Contract Defense: Sharing the Protective Cloak of Sovereign Immunity After McKay v. Rockwell International Corp.", Author (37 Bay L. Rev. 181, 1985)
- "Investigating, Preparing and Presenting Witnesses", (Patrick E. Higginbotham American Inn of Court, 1995)
- "Procedural Pitfalls in Probate and Trust Litigation", Author (Texas Lawyer, 1998)
- "The New Texas Rules of Evidence: Changes - Part I," DBA Headnotes (April, 1998)
- "New Rules Changes - Part II," DBA Headnotes (May, 1998)

### **Representative Matters**

- Successfully defended family partnerships in tax litigation with the IRS arising out of more than \$100 million of taxes owed
- Successfully handled reformation suit for various high wealth and individual family trusts
- Represented various corporate fiduciaries in breach of fiduciary suits arising out of trusts and/or estates
- Represented client involving claims to remove her father as trustee of a \$1.3 billion trust
- Defended various insurers against claims of breach of contract, deceptive trade practices, violations of Texas Insurance Code, and for bad faith denial of coverage or delay in payment of claims, including claims for health, disability and life insurance benefits
- Defended claims of trade secrets and confidential/proprietary information arising out of a discovery dispute in a false advertising lawsuit
- Prosecuted a multimillion dollar unfair competition and antitrust lawsuit
- Defended a large Dallas bank in various lender liability lawsuits
- Represented a real estate developer in a declaratory relief action brought against a savings and loan association and its successor to enjoin foreclosure proceedings on various real estate holdings

- Handled a mandamus action to set aside trial court's order requiring production of privileged documents based on theories of offensive use, joint representation, and subject matter waiver
- Defended electronics company in a \$50+ million consolidated action brought by former dealers and by a private realtor under the Federal False Claims Act arising out of the termination of its office automation equipment business
- Successfully prosecuted \$30+ million claim for lost profits against financing sources for breach of contract
- Prosecuted breach of contract and malpractice suit arising out of a negligent due diligence investigation regarding the sale of an office/warehouse facility
- Obtained a \$6.9 million settlement in a wrongful death and survival suit against a trucking company and a road construction company on behalf of the heirs and beneficiary of the estate of an accountant who was fatally injured in a traffic accident
- Obtained a jury verdict of \$300,000 in a personal injury/products liability suit
- Defended a hospital in federal multi-district litigation panel involving more than one hundred personal injury lawsuits arising out of design, manufacture and sale of pedicle screw medical devices
- Successfully prosecuted breach of contract and bad faith insurance claims arising out of insurance company's denial of disability benefits to a physician under an "own occupation" disability policy
- Defended and obtained take nothing jury verdict in a \$100+ million lawsuit against an oil company for breach of contract and fraud, involving a dispute over coal mining rights in the Republic of Colombia
- Defended and obtained a take nothing judgment in a \$3+ million lawsuit for alleged overcharging of drilling and operating expenses
- Defended hundreds of personal injury lawsuits arising out of manufacture and sale of asbestos-containing products
- Defended a computer chip manufacturing plant against personal injury claims of employees alleging that exposure to silica and silicon products caused them to contract scleroderma and Raynaud's phenomenon
- Defended a paint manufacturer against numerous suits brought by painters claiming that exposure to benzene and other chemicals contained in its paint products allegedly caused them to contract leukemia and/or lymphoma
- Defended a medical clinic against numerous negligence, malpractice and product liability claims arising out of injuries allegedly caused by the diet drug known as Phen-fen

### **Memberships**

- Dallas Bar Association
  - Immediate past president, 2007
  - President, 2006
  - President-elect, 2005
  - Vice-president, 2004
  - Chair, Board of Directors, 2002
  - Chair, Finance Committee, 1998-2003
  - Member of the Business Litigation and Corporate Counsel Sections
- State Bar of Texas

- Director, 2007-present
- Chair, Administration of the Rules of Evidence Committee (1994 and 1996-2003)
- Member, 1986-present
- Dallas Bar Foundation, Chair, 2014; Trustee 2007 to present
- Texas Bar Foundation, Life Fellow; Nominations Co-Chair for Dallas District 6, 2013-14
- Dallas Association of Young Lawyers, President, 1994
- Dallas Association of Young Lawyers Foundation, Director, 1999-2004
- Patrick E. Higginbotham American Inn of Court, Barrister, 2002-2004
- International Society of Barristers, Member, 2007-present

#### **Awards / Honors**

- Recognized as a Dallas/Fort Worth "Lawyer of the Year" in Litigation - Trusts and Estates by *The Best Lawyers in America* (2020 Edition).
- 2019 Recipient of AV Preeminate Attorney Rating from Martindale-Hubbell®
- Recognized in *The Best Lawyers in America*, 2015 Edition, for work in the areas of Commercial Litigation, Trusts and Estates Litigation
- Recognized in *The Best Lawyers in America* 2013-2019. Copyright 2013 by Woodward/White, Inc., Aiken, SC
- Recognized in *Texas Super Lawyers* for Estate & Trust Litigation and Business Litigation, 2004-2019
- Named a "Best Lawyer in Dallas" list by *D-Magazine*, 2012
- Recipient of the 2006 Pro Bono Appreciation Award presented by Legal Aid of Northwest Texas