



## Barry A. Moscowitz

Partner

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Barry A. Moscowitz represents clients in catastrophic injury/wrongful death, employment litigation, non-subscriber litigation, Lanham Act claims, healthcare liability claims, complex commercial litigation claims against Directors and Officers, and lawsuits involving products and premises liability. As an experienced trial lawyer, Barry has tried over 100 jury cases to verdict in both state and federal courts. This experience, along with representing clients in hundreds of other lawsuits that were resolved before trial or arbitration, has created a wealth of knowledge and experience upon which he draws upon to advise and represent his clients. His philosophy on litigation is to always look for the possibility of a favorable settlement, but if no settlement is possible, vigorously advocate for the client in the courtroom.

Barry has litigated on behalf of companies from across the country from single-plaintiff cases to class actions. His clients include multi-national corporations, foreign-based corporations, national retailers, home and community based service providers, banking institutions, food service distributors, major insurance companies and business owners. He serves as Texas counsel for a multi-national corporation, a major national retailer, and a California-based property insurer. Litigation for these clients has involved damages ranging from a few thousand dollars to in excess of \$175 million dollars.

In the area of employment law, Barry represents employers before juries and arbitrators throughout Texas in claims involving gender discrimination, racial discrimination, national origin discrimination, religious discrimination, sexual harassment, disability discrimination, and wrongful termination. Recognizing the unique nature of employment lawsuits, he strives to work with his clients to achieve creative and excellent outcomes for complicated problems.

Barry serves as national counsel for a major employment practices insurer. In this capacity, he works closely with local counsel throughout the country in developing litigation and trial strategy, evaluating the case, and advising the insurer as to their potential exposure.

### Services & Industries

- Commercial Litigation
- General Liability
- Labor & Employment
- Products Liability
- Restaurants, Retail & Hospitality
- Health Care
- Community Associations

Barry represents many national employers who are non-subscribers in Texas and frequently defends clients in lawsuits brought by workers who have sustained injuries in the workplace. He is often asked to defend companies where there are catastrophic injuries or death. He frequently advises clients on the formation of their non-subscriber plans and arbitration programs, and has represented clients in several ERISA lawsuits.

As a service to his clients, Barry provides seminars and training on a variety of topics, including tort litigation, courtroom advocacy, ethics, electronic discovery rules in federal court, and Title VII claims.

## **Representative Experience**

- Successfully compelled arbitration as to putative class members thereby defeating class certification in a fraud/ breach of contract claim brought on behalf of hundreds of potential class members;
- Obtained a Judgment as a Matter of Law in an ERISA lawsuit;
- Obtained a defense verdict in a wrongful death, non-subscriber matter on behalf of a Fortune 50 company and major U.S. retailer. The matter was original pending in state court in Brownsville, Texas, but was transferred to arbitration when the company successfully enforced its arbitration provision that was in place as a part of the non-subscriber plan. This was the client's first non-subscriber case that it took all the way to final verdict;
- Obtained a defense verdict on behalf of a multi-national corporation in a multi-party wrongful death lawsuit involving premises liability claims, including the handling of lengthy post-trial motions;
- Obtained a defense verdict in a shareholder derivative action on behalf of two former directors involving allegations of negligence and mismanagement with claimed damages of \$160 million;
- Obtained a defense verdict on behalf of a Fortune 50 company involving claims brought under the Texas Deceptive Trade Practices Act;
- Obtained defense verdict in arbitration on behalf of a national security company involving claims of gender and race discrimination, including handling of the appeal to the 5th Circuit, which affirmed the judgment;
- Obtained summary judgment in a wrongful death lawsuit involving alleged violations of the Texas Dram Shop Statute;
- Obtained summary judgment on behalf of a large national retailer in a premises liability claim where Plaintiff sought \$7.5 million in damages;
- Obtained summary judgment on behalf of a Fortune 50 company involving claims brought under the Texas Deceptive Practices Act and handled the appeals through the Texas Supreme Court;
- Obtained summary judgment in a gender discrimination claim involving allegations of failure to pay commissions, including handling of the appeal to the 5th Circuit, which affirmed the judgment;
- Obtained a favorable resolution on behalf of a leading clearinghouse in a Sabine Pilot claim alleging violations of the Sherman Act/Clayton Act;
- Obtained a favorable resolution on behalf of a large national corporation in a multi-party wrongful death claim involving allegations of premises liability and negligent activity.

## **Education**

- Chicago-Kent College of Law (J.D., 1995)
  - Certificate in Environmental Law
- Northern Illinois University (B.A., 1991)

## **Bar Admissions**

- Texas, 1998
- Illinois, 1995

## **Court Admissions**

- United States District Court, Northern, Southern, Western and Eastern District of Texas
- United States Court of Appeals, Fifth Circuit

## **Professional and Community Activities**

- Dallas Bar Association

## **Speeches and Presentations**

- "Going on Offense: Strategic Planning to Beat Reptile Tactics," Thompson Coe Webinar, February 18, 2020
- "Navigating the Minefield: Best Practices When Terminating Employees", ACC Houston Chapter Meeting CLE, March 15, 2016
- "Employers Under Assault From the NLRB- Are You Prepared?", Ninth Annual Thompson Coe Labor & Employment Seminar, April 2015
- "Increasing Governmental Presence: How the NLRB, the EEOC, and OSHA Are Changing the Workplace" at the 14th Annual PartnerSource Employers' Conference, October 2014
- "To Subscribe or Not to Subscribe: Workers' Compensation and Defending the Nonsubscriber Claim" Thompson Coe's Texas Litigation Update, October 2014
- "But We Don't Have Union Employees! Why The NLRB Wants To See Your Handbook And How They Get It" Eighth Annual Thompson Coe Labor & Employment Seminar, March 2014
- "Alternatives to the Jury Trial--Pros and Cons of Mediation, Arbitration, Choice-of-Venue and Jury Waiver Agreements" Sixth Annual Thompson Coe Labor & Employment Seminar, January 11, 2012
- "Dealing With The Problem Employee" Sixth Annual Thompson Coe Labor & Employment Seminar, January 11, 2012
- "Update on Employment Law" to the Catholic Diocese of Fort Worth, November 2008
- "Workplace Violence" at the annual Thompson Coe Labor & Employment Seminar, October 2008
- "Update on Employment Law" at Daybreak's Corporate Retreat in Las Vegas, Nevada, June 2008

## **Professional Recognition**

- Nominated by peers to *The Best Lawyers in America*® 2020-2021 in the field

## Labor & Employment

### Overview

Barry A. Moscowitz represents employers before juries and arbitrators throughout Texas in claims involving gender discrimination, racial discrimination, national origin discrimination, religious discrimination, sexual harassment, disability discrimination, and wrongful termination. Recognizing the unique nature of employment lawsuits, he strives to work with his clients to achieve creative and excellent outcomes for complicated problems. For example, he resolved a potential lawsuit by quickly getting the matter to mediation before significant expenses had been incurred, thus obtaining a favorable settlement and saving a significant amount of money for the client.

Barry serves as national counsel for a major employment practices insurer. In this capacity, he works closely with local counsel throughout the country in developing litigation and trial strategy, evaluating the case, and advising the insurer as to their potential exposure. In a recent disability discrimination and retaliation he worked closely with local counsel in preparing the case for trial and was able to negotiate a settlement during the trial that was favorable to the insurer and their insured.

As a service to his clients, Barry provides seminars and training on a variety of topics, including tort litigation, courtroom advocacy, ethics, electronic discovery rules in federal court, and Title VII claims.

### Representative Experience

- Obtained defense verdict in arbitration on behalf of a national security company involving claims of gender and race discrimination, including handling of the appeal to the 5th Circuit, which affirmed the judgment
- Obtained summary judgment in a gender discrimination claim involving allegations of failure to pay commissions, including handling of the appeal to the 5th Circuit, which affirmed the judgment

## Publications

February 20, 2017

**Is there a specific risk or risks that a General Contractor may encounter if they hire a subcontractor that is a non-subscriber?**

January 31, 2012

**Workers' Compensation Bar for Borrowed Employees**

September 11, 2009

**Labor & Employment News: 2009, Issue 3**

March 30, 2009

**Labor & Employment Law Alert - COBRA Premium Changes**

January 30, 2009

**Labor & Employment News: 2009, Issue 1**