

D. Scott Funk

Partner

Scott Funk is a trial lawyer first, but he is also a business advisor and problem-solver who understands the outcome of high-stakes commercial litigation can jeopardize a client's entire business. Leader of the Commercial Litigation Practice Group, he has nearly three decades of experience focused on helping plaintiffs and defendants successfully resolve all types of complex, intellectually challenging business disputes through creative resolution, and if necessary, through a hard-hitting litigation approach. Although Scott handles all business-related litigation, his practice most often includes cases involving contract and partnership disputes, real estate, fiduciary duties, trade secret theft, non-compete enforcement and ad valorem tax appeals for sophisticated, high-value properties.

Scott's clients include companies, executives and entrepreneurs across virtually every industry, from healthcare, real estate and energy to manufacturing and distribution. What Scott enjoys most about his practice is the opportunity to resolve the wide variety of complex issues that clients may face throughout the life cycle of their businesses. Whether he's managing a national litigation docket for a publicly-traded real estate investment trust or helping a departing executive navigate fiduciary issues while starting a new venture, Scott's approach is always the same – determine the client's ideal outcome and find the most effective, cost-efficient path to take them there.

Experience

General Contract/Business Tort

- Obtained reversal of default award by the American Arbitration Association (AAA) against client on motion to vacate with district court.
- Defense of Medical Properties Trust (a NYSE real estate investment trust) against fraud and breach of fiduciary duty claims arising from the



D. Scott Funk

1300 Post Oak Blvd.
Suite 2000
Houston, TX 77056
sfunk@grayreed.com

D: 713.986.7171
C: 713.530.3975
T: 713.986.7000
F: 713.730.5816

Industries

Real Estate
Construction

Practices

Commercial Litigation
Real Estate Litigation
Tort Litigation
Employment Law
Class Actions - Mass Torts

Education

J.D., *with honors*, The University of
Texas School of Law (1989)
B.B.A., *with highest honors*, The
University of Texas (1985)

Bar Admissions

Texas (1989)

Court Admissions

United States Court of Appeals, Fifth
Circuit
United States Court of Appeals, Tenth
Circuit
United States District Court, Southern
District of Texas

failure of the Houston Town & Country Hospital.

- Defense of Chevron Phillips against fraud and breach of contract claims asserted by its distributor of polyethylene in Mexico.
- Defense of Coastal Securities Company, a foreign subsidiary of El Paso Corp., against breach of contract claims asserted by a German agent for commissions relating to oil trades in India.
- Prosecution of breach of contract claims against IBM for failure to pay software royalties.
- Prosecution and defense of breach of contract, fraud and breach of fiduciary duty claims against the Taiwanese and Israeli national oil companies.
- Defense of Belcher Oil Co. against fraud claims arising from an oil trade.
- Prosecution of breach of contract and breach of warranty claims for Voest Alpine arising out of international chemical trading.
- Defense of Stewart Title against loan/mortgage fraud claims.
- Prosecution of breach of contract, breach of fiduciary duty and fraud claims for Italian investors against a Swiss trust company.
- Defense of tortious interference claims against oil and gas operator who purchased working interests and successful appeal of same.
- Prosecution of breach of fiduciary duty claims for Phillips Entertainment relating to a partnership involving a Ripley's Believe It or Not! attraction.
- Defense of trustee and financial advisor against client's claims of breach of fiduciary duty and fraud.

United States District Court, Western
District of Texas
United States District Court, Eastern
District of Texas

Real Estate

- Represent Memorial Hermann on numerous real estate matters every year.
- Defense of hospital owner and landlord against claims of fraudulent termination of the lease.
- Prosecution and defense of trespass to try title claims for Plains Exploration/3TEC relating to working and overriding royalty interests.
- Defense of claims for Randall's/Safeway against alleged violations of real estate deed restrictions.
- Defense of insured for Stewart Title against claims that 50 year old real estate easement was invalid.
- Assisted client that manages foreign investments in identifying and purchasing approximately \$25,000,000 of real estate under Section 1031.
- Representation of clients that issue and/or purchase promissory notes secured by real property and then syndicate the notes with loan participation agreements.
- Representation of clients that jointly purchase real property using a trustee and nominee arrangement on T.I.C. (tenant in common) agreements.

Energy

- Obtained a settlement on behalf of a subsidiary of Crestwood Equity Partners in two lawsuits challenging the appraised value of a natural gas storage facility in Matagorda County, Texas. The settlement reduced the facility's taxable value by more than \$360 million across the four tax years at issue, resulting in a total tax savings in excess of \$5 million.
- Successfully represented a subsidiary of Crestwood Equity Partners in a lawsuit to challenge the taxable value of a natural gas storage facility

and underground caverns in Matagorda County, Texas. Following a two week trial, the court reduced the facility's taxable value by more than \$250,000,000 for the two tax years at issue.

- First Court of Appeals wrote "James McGraw and Scott Funk ... both demonstrated their experience as seasoned oil and gas practitioners" - Case No. 01-04-00077-CV; *Devon SFS Operating, Inc. and IMC Global, Inc. v. First Seismic Corporation*.
- Prosecution and defense of breach of contract, fraud and breach of fiduciary duty claims against the Taiwanese and Israeli national oil companies arising out of venture to develop the Tengiz Field (second largest) in Kazakhstan.
- Defense of tortious interference claims against operator who purchased working interests from owners and successful appeal of same.
- Prosecution of claims for Corum Production Co. relating to down-hole tool failure during fishing operations.
- Representation of client in dispute over alleged joint venture to acquire numerous leases and working interests.
- Defense of claims arising out of an oil trade with European company in the Netherland Antilles.

Securities Fraud

- Defense of registered investment advisory firm against securities fraud and breach of fiduciary duty claims.
- Prosecution of securities fraud and breach of fiduciary claims against numerous brokers, including Prudential, Fahnestock, Oppenheimer and Prime Charter.
- Defense of fund manager against securities fraud claims by Italian investors.

- Prosecution of claims under Texas Securities Act to set aside sale of limited partnership interests.

Accounting Claims

- Prosecution and defense of complex accounting claims involving hundreds of accounts and investments by a Swiss trust company in the U.S. totaling tens of millions of dollars.
- Prosecution and defense of accounting claims for Timco against AIG.
- Prosecution of accounting claims for software royalties against IBM.

Minority Shareholder Oppression

- Defense of company in Trinidad against minority shareholder oppression claims.
- Prosecution of minority shareholder oppression claims in family owned business.
- Obtained reversal on appeal of trial court judgment for minority shareholder oppression.

Employment & Trade Secret Disputes

- Prosecution of trade secret and lien claims to recover the rights to a revolutionary engine oil formula.
- Defense of large, international manufacturer of valves against alleged misappropriation of trade secrets.
- Prosecution of claims for ABC Pest Control and other employers to enforce non-compete clauses and protect customer lists as trade secrets, including obtaining multiple injunctions.
- Prosecution of claims to avoid non-compete clause in distributor contract for Grant Sales against Ryko.

- Defense of employers against claims of wrongful termination.
- Defense of employer against claims of wrongful denial of benefits.
- Defense of several claims against a manufacturer of valves and actuators that new employees misappropriated trade secrets of prior employer.
- Prosecution of claims for a manufacturer of valves and actuators against ex-employee to enforce non-compete and for misappropriation of trade secrets and confidential information.

International

- Defense of claims against Canadian corporation because of lack of jurisdiction in the United States
- Defense of claims arising out of an oil trade with European company in the Netherland Antilles.
- Defense of local employer against claims of 35 Vietnamese laborers in the U.S. on H2B work visas.
- Defense of El Paso foreign subsidiary against claims for commissions by an Indian agent involving oil trades in India;
- Prosecution and defense of numerous arbitrations involving worldwide trading of chemicals.
- Prosecution and defense of arbitrations involving the development of the second largest oilfield in Kazakhstan.
- Defense of claims against Chevron Phillips by its distributor of polyethylene in Mexico.
- Defense of a company in Trinidad relating to shareholder claims.
- Prosecution and defense of numerous claims by and against Italian and

Swiss individuals and companies.

Defense of Serious Injury/Wrongful Death

- Defense of Coastal in a wrongful death case arising out of a high rise fire.
- Defense of Coastal in an injury case where plaintiff had third degree burns arising out of an oil field fire.
- Defense of M-I Swaco in an injury case where plaintiff had severe neck injuries (multi-level neck fusion) arising out of an automobile accident.
- Defense of M-I Swaco in an injury case where plaintiff lost the use of her right wrist and hand arising out of an automobile accident.
- Defense of Ninfa's and other Riostar restaurants against numerous non-subscriber personal injury claims by employees.
- Defense of Coastal in a wrongful death case arising out of a gas pipeline explosion during a water pipeline construction project.
- Defense of nursing home against non-subscriber personal injury claims by an employee alleging back injuries that prevented her from ever working again.

Tax Disputes

- Prosecution of appeal of ARB order regarding a natural gas storage facility appraised at \$400 million, including appeal that fair market value was excessive and that facility was not appraised in an equal and uniform manner compared to other similar properties.
- Obtained a settlement on behalf of a subsidiary of Crestwood Equity Partners in two lawsuits challenging the appraised value of a natural gas storage facility in Matagorda County, Texas. The settlement reduced the facility's taxable value by more than \$360 million across the four tax years at issue, resulting in a total tax savings in excess of

\$5 million.

- Prosecution of dozens of appeals of ARB orders regarding the fair market value of residential and commercial properties.

Construction

- Defense of Coastal as the owner against breach of contract and fraud claims relating to construction of a gas processing plant.
- Prosecution of breach of contract and bad faith claims for concrete subcontractor against Hartford as bonding company relating to construction of a Metro project.
- Prosecution and defense of breach of contract and fraud claims for dirt subcontractor relating to construction of a Wal-Mart parking lot.

Appellate

- Obtained affirmation on appeal of dismissal of claims asserted against Canadian corporation because of lack of jurisdiction in the United States.
- Obtained reversal on appeal of minority shareholder oppression judgment entered against small company represented by other counsel at trial.
- Obtained affirmation on appeal of summary judgment dismissing plaintiff's breach of contract claims against client pertaining to statute of limitations and discovery rule.
- Obtained affirmation on appeal of trial court judgment for client against Devon and IMC Global for indemnity and attorneys' fees pertaining to seismic data.
- Obtained affirmation on appeal of dismissal of tortious interference claims against oil and gas operator who purchased working interests.

Deceptive Trade Practices Act (DTPA)

- Defense of Stewart Title against DTPA claims.
- Prosecution of numerous DTPA claims, including claims relating to purchases of real estate, automobiles, equipment and various products.
- Defense of Genco, a subsidiary of Fedex, against DTPA claims exceeding \$10 million.

Uniform Commercial Code (UCC)

- Defense of Belcher Oil Co. against UCC claims and successful appeal of same.
- Prosecution of UCC claims for Coastal relating to failure of commercial pistons for a gas processing plant.
- Prosecution of claims for MacSteel, a metal supplier, against Goodman Air Conditioning and Heating for refusing to buy what it ordered.
- Prosecution of claims for a NYSE metal supplier against an energy company for refusing to buy what it ordered.

Press Releases

- “Twenty-Nine Gray Reed Attorneys Named 2018 Top Lawyers in Houston” (December 3, 2018)
- “Gray Reed Saves Public Midstream Company Millions in Tax Burden After Successful Property Tax Lawsuits” (August 27, 2018)
- “Gray Reed & McGraw Wins Jury Verdict that Exonerates Landlord” (March 22, 2010)
- “Gray Reed & McGraw Successfully Negotiates Settlement Between Medical Properties Trust and Stealth, L.P.” (November 20, 2009)

Thought Leadership

- “Pay Your Fair Share (And No More) of Property Taxes in Texas”,
Texas Real Estate Business (May 2016)

Honors

- Named a “Super Lawyer” by Texas Super Lawyers (a Thomson Reuters company) as published in *Texas Monthly* (2010 - 2020)
- Named a *Houstonia Magazine* Top Lawyer in Houston (2018 - 2019)
- AV Preeminent® rated (the highest possible Martindale-Hubbell Peer Review Rating designation)

Organizational Involvement

- State Bar of Texas
- Houston Bar Association
- [Gray Reed Pro Bono Committee member](#)