BRENT M. ROSENTHAL

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LICENSE AND BOARD CERTIFICATION

State Bar of Texas, 1980

Board Certified, Civil Appellate Law, 1989; Recertified 1994, 1999, 2004, 2009, 2014

Admitted to practice in the United States Supreme Court (1987), the United States Courts of Appeals for the Third (1993), Fourth (1989), Fifth (1983), Seventh (2010) Ninth (1987), Tenth (1988), and Eleventh (1987) Circuits, and United States District Court for the Northern District of Texas (1981). Also admitted pro haec vice in trial and appellate courts across the country (most frequently Alabama, Florida, Illinois, and Louisiana), and has argued cases in the United States Supreme Court and in the supreme courts of Alabama, Georgia, Missouri, and Texas.

EDUCATION

J.D. (with honors), University of Texas School of Law, 1980
Co-founder and Note Editor, The Review of Litigation, 1978-80

B.A., Columbia University, 1977

EMPLOYMENT

Rosenthal Weiner, LLP, February 1, 2014-present

The Law Office of Brent M. Rosenthal, P.C., January 26, 2011-January 31, 2013

Partner, Rosenthal Pennington LLP, June 1, 2011-August 1, 2012

Baron & Budd, P.C., 1980-2010
Shareholder from 1986-2006; Of Counsel from January 1, 2007-December 31, 2010

Founded in 1977 by legendary Texas trial lawyer Fred Baron, the law firm that is now known as Baron & Budd began as a solo practice specializing in worker's compensation, occupational disease, and products liability litigation. Baron was one of the first lawyers in the country to try and to settle cases on behalf of victims of asbestos-related injury, and his success in handling such cases earned him a national reputation. As Baron gained expertise first in toxic tort and then in mass tort litigation, the firm grew rapidly. The firm

is now headed by nationally known trial lawyer Russell Budd and continues to pursue claims on behalf of persons injured by asbestos exposure as well as other types of mass tort, toxic tort, and consumer litigation.

After serving as a law clerk to the firm between his second and third years at the University of Texas School of Law, Rosenthal joined the firm as an associate upon his graduation in 1980. In 1986, Rosenthal became a shareholder in the firm and became the head of the firm's Legal Issues/Appellate Department. Although Rosenthal continued to try cases, he spent most of his time handling and managing the firm's substantial appellate caseload and developing litigation strategies. In December of 2006, he changed his status to "of counsel" to provide him with more time to pursue his academic, civic, and community interests described below. In 2011, after an amicable departure from Baron & Budd, he opened his own law office specializing in civil appeals.

Southern Methodist University School of Law, 1996 — 2013
Adjunct Professor of Law, teaching "Mass Tort Litigation"

Baron & Budd, P.C., 1979
Summer Clerkship while in law school

Vinson & Elkins, 1978
Summer Clerkship while in law school

SIGNIFICANT DECISIONS IN CASES ARGUED

Fifth Circuit Cases

McCleary v. Armstrong World Industries, Inc., 913 F.2d 257 (5th Cir. 1990)--affirmed punitive damage verdict against manufacturer over objections based on the United States and Texas Constitutions. Also interpreted Texas provisions regarding offsets for prior settlements made by the plaintiff with other tortfeasors.

Irving v. Owens-Corning Fiberglas Corp., 864 F.2d 383 (5th Cir.), cert. denied, 493 U.S. 823 (1989)--reversed federal district court's dismissal for lack of in personam jurisdiction of over 100 actions against a Yugoslavian supplier that shipped raw asbestos into the state of Texas.

Whatley v. Armstrong World Industries, Inc., 861 F.2d 837 (5th Cir. 1988)--increased the amount of an award to cancer victim from asbestos manufacturer, based on interpretation of Texas law regarding offsets for prior settlements.

Texas Cases

In re Union Carbide Corp., 145 S.W.3d 805 (Tex. App.–Houston [14th Dist.] 2004, orig. proceeding)–denied to issue mandamus to require the MDL pretrial court presiding over asbestos litigation to create a special docket for cases that do not meet certain medical criteria.

Pustejovsky v. Rapid-American Corp., 35 S.W.3d 643 (Tex. 2000)–reversed a summary judgment in favor of an asbestos manufacturer based on the statute of limitations, ruling that the statute began to run not when the plaintiff was diagnosed with a non-malignant asbestos disease, but when the plaintiff developed the asbestos-related cancer on which the suit was based.

Pittsburgh Corning Corp. v. Walters, 1 S.W.3d 759 (Tex. App. — Corpus Christi 1999, pet. denied) –affirmed a judgment of over $10 million to the survivor of a California resident who died of asbestos-related cancer, rejecting objections to the court's jurisdiction, to the court's choice of applicable law, to various evidentiary rulings, and to the size of the award.

North American Refractory Co. v. Easter, 988 S.W.2d 904 (Tex. App. — Corpus Christi 1999, pet. denied)--affirmed a judgment of over $8 million to three plaintiffs over objection to the consolidation of the cases for trial, complaints about alleged evidentiary errors, and challenges to the sufficiency of the evidence.

Owens-Corning Fiberglas Corp. v. Malone, 972 S.W.2d 35 (Tex. 1998) (representing the Wasiak plaintiffs) — affirmed awards of punitive damages of $3.2 million over constitutional objections

Smith v. Atlantic Richfield Co., 927 S.W.2d 85 (Tex. App. — Houston [1st Dist.] 1996, writ denied) — reversed summary judgment in favor of a refinery worker's employer, re-establishing the right to seek punitive damages from an employer that has caused the death of an employee by gross negligence.

Keene Corp. v. Rogers, 863 S.W.2d 168 (Tex. App.--Texarkana 1993, no writ)--affirmed verdicts to shipyard workers over various procedural and substantive objections.

Pittsburgh Corning Corp. v. Thomas, 668 S.W.2d 876 (Tex. App.-Houston [14th Dist.] 1984, no writ)--affirmed order overruling venue challenge to asbestos case filed in county where exposure to asbestos occurred.

Cases in Other Jurisdictions

Tooey v. AK Steel Corp., ___ A.2d ___, 2013 WL 6150887 (Pa. 2013)—ruled that employees who sustained mesothelioma from their exposure to asbestos at work could assert viable common-law claims against their employees not withstanding the exclusive remedy provisions of the Pennsylvania Workers' Compensation Act.

Wagner v. Bondex Intern., Inc., 368 S.W.3d 340 (Mo. Ct. App. 2012)—affirmed verdict against two of three manufacturers found liable at trial who argued that the evidence was legally insufficient to establish that the decedent's exposure to their asbestos-containing products was a contributing cause of his death from cancer (mesothelioma).

DaimlerChrysler v. Ferrante, 637 S.E.2d 659 (Ga. 2006)—declared unconstitutional the retroactive application of Georgia legislation establishing new substantive and procedural requirements for asserting claims for asbestos-related injuries, reviving hundreds of claims based on cancer and nonmalignant diseases.

Ruiz-Guzman v. Amvac Chemical Corp., 7 P.3d 795 (Wash. 2000) (filed brief but did not argue)—held that pesticides are not categorically "unavoidably unsafe products" under comment k to section 402A of the Restatement (Second) of Torts but that the issue must be determined on a case-by-case basis, allowing three farm workers to proceed with their products liability claims against pesticide manufacturer.

Kochan v. Owens-Corning Fiberglas Corp., 610 N.E.2d 683 (Ill. Ct. App. 1993), cert. denied, 510 U.S. 1177 (1994)--affirmed awards of compensatory and punitive damages to five asbestos workers of over $6 million, over objections based on Illinois substantive law and the Illinois and United States Constitutions.

Pace v. Armstrong World Indus., Inc., 578 So.2d 281 (Ala. 1991)--ruled that wrongful death claim was viable even if the decedent's claim would have been time-barred in Alabama so long as decedent could have pursued claim in another proper jurisdiction.

Willis v. Raymark Industries, Inc., 905 F.2d 793 (4th Cir. 1990)-affirmed verdicts in favor of four victims of asbestosis, rejecting the applicability of the "sophisticated user" defense under Virginia law.

Oakes v. Pittsburgh Corning Corp., 546 So.2d 427 (Fla. Ct. App. 1989)--reinstated $2.5 million award to asbestosis victim, reversing trial court's reduction of the verdict based on the victim's alleged comparative negligence.

In re Temple, 851 F.2d 1269 (11th Cir. 1988)--granted a writ of mandamus requiring district court to vacate its certification of a "limited fund" class action of asbestos cases against a manufacturer, which certification had the effect of staying all cases in the country against that manufacturer.

In addition to these cases, all of which Rosenthal argued personally except as noted, Rosenthal has also assisted in the briefing and preparation of two landmark cases on class certification in the United States Supreme Court, Amchem Prods., Inc. v. Windsor, 521 U.S. 591 (1997) and Ortiz v. Fibreboard Corp., 526 U.S. 815 (1999), both of which were argued by Professor Laurence Tribe of Harvard Law School.

AMICUS CURIAE PARTICIPATION

In the course of his career at Rosenthal has been engaged by various organizations to draft and file amicus curiae briefs in cases in the United States Supreme Court and other courts. The cases in which Rosenthal served as lead counsel for the amici curiae include:

Philip Morris USA v. Williams, 549 U.S. 346 (2007) (counsel for amicus curiae Association of Trial Lawyers of America)

Dow Chemical Co. v. Stephenson, 539 U.S. 111 (2003) (counsel for amicus curiae Trial Lawyers for Public Justice

Norfolk & Western Ry. Co. v. Ayers, 538 U.S. 135 (2003) (counsel for amicus curiae Trial Lawyers for Public Justice)

Hyundai Motor Co. v. Vasquez, 189 S.W.3d 743 (Tex. 2006) (counsel for amicus curiae American Board of Trial Advocates—Texas)

Cortez v. HCCI—San Antonio, Inc., 159 S.W.3d 87 (Tex. 2005) (counsel for amicus curiae American Board of Trial Advocates—Texas)

Fortis Benefits v. Cantu, 234 S.W.3d 642 (Tex. 2007) (counsel for amicus curiae Texas Trial Lawyers Association)

Clair v. Monsanto Co., 412 S.W.3d 295 (Mo. Ct. App. 2013) (counsel for amici curiae Torts Scholars)

MEMBERSHIPS

American Bar Association

American Association for Justice (formerly the Association of Trial Lawyers of America)

Dallas Bar Association

Dallas Bar Foundation

Dallas Trial Lawyers Association

Texas Bar Foundation

Texas Center for Legal Ethics

Texas Trial Lawyers Association

SPEECHES AND PRESENTATIONS

George Mason University School of Law, Eighth Annual Judicial Symposium on Civil Justice Issues, November 19, 2013, "Hydraulic Fracturing and Federalism"

Texas Center for Legal Ethics, The Ethics Course, Dallas, Texas, May 7, 2010, "Navigating the Ethics Rules"

University of Texas School of Law, Eighteenth Annual Conference on State and Federal Appeals, Austin, Texas, May 29, 2008, "Has the Fat Lady Sung? Punitive Damages in an Age of Tort Reform"

Harris-Martin Publishing Conference, Texas Asbestos and Silica Litigation: Life After *Borg-Warner v. Flores*, October 16, 2007, "The Difference Between Substantive Law and Procedural Law"

University of Texas School of Law, Fifteenth Annual Conference on State and Federal Appeals, Austin, Texas, June 3, 2005, "Standards for Judicial Review of 'Soft' Compensatory Damages: Recent Developments"

University of Texas School of Law, 2004 Page Keeton Civil Trial Conference, Austin, Texas, October 28, 2004 (Co-Chair)

University of Texas School of Law, Fourteenth Annual Conference on State and Federal Appeals, Austin, Texas, June 3, 2004, "Where Will the Big Cases Come From After House Bill 4" (panel)

Dallas Bar Association \ Tarrant County Bar Association, Joint Appellate Seminar, Fort Worth, Texas, November 6, 2003 (Co-Chair and Moderator)

University of Texas School of Law, Twenty-Seventh Annual Page Keeton Products Liability and Personal Injury Law Conference, Austin, Texas, October 31, 2003, "Cap Busting and Maximizing Economic Damages" (with Michael Sean Quinn, Austin, Texas)

Mealey Publications Conference, "Asbestos Litigation 101," Dallas, Texas, June 16-17, 2003 (Co-Chair)

University of Texas School of Law, Twenty-Sixth Annual Page Keeton Products Liability and Personal Injury Law Conference, Austin, Texas, October 3, 2002, "Damages Update"

Mealey Publications Conference, "Asbestos Litigation 101," Pentagon City, Virginia, February 11-12, 2002, Co-Chair and presentation entitled "The History of the Litigation"

University of Texas School of Law, Twenty-Fifth Annual Page Keeton Products Liability and Personal Injury Law Conference, Austin, Texas, November 30, 2001, "Tricky Limitations Issues in Texas Products Liability and Personal Injury Cases: Application of the Discovery Rule in Latent Injury Cases After *Childs* and *Pustejovsky*"

Dallas Bar Association Appellate Section, Seminar on "Practice Before the Dallas Court of Appeals," Dallas, Texas, September 14, 2001, "Ten Tips for Effectively Presenting the Appellee's Case to the Court of Appeals"

Mealey Publications Conference, "Asbestos Litigation 2000," Chicago, Illinois, September 15, 2000, "Appellate Rulings in the Last Year"

Dallas Bar Association Appellate Section, Seminar for the Dallas Court of Appeals, Dallas, Texas, August 31, 2000, "Texas Supreme Court Update"

University of Texas School of Law, Tenth Annual Conference on State and Federal Appeals, Austin, Texas, June 8, 2000, Texas Supreme Court practice panel

Association of Trial Lawyers of America (ATLA) National Convention, Washington, D.C., July 13, 1998, panel on "Ethics of Mass Tort Settlement"

Mealey Publications Conference, "New Fronts in the Asbestos Wars" Boston, Massachusetts, September 14, 1998, "Big Tobacco's Possible Culpability in Asbestos Litigation"

Dallas Bar Association, Appellate Section Luncheon, January 15, 1998, "Hot Issues in Mass Tort Litigation"

Andrews Publications Twelfth Annual Asbestos Litigation Conference, New Orleans, Louisiana, April 24, 1997, "Update: Flanagan v. Ahearn"

University of Houston Law Center, Guest Lecturer in Mass Torts Seminar, September, 1995 (Prof. Sofia Androgue-Gustafson)

ATLA Mid-Winter Convention, Maui, Hawaii, February 1, 1995, presentation to Constitutional Litigation Section entitled "Future Shock: The Use of Class Actions To Resolve Unaccrued Personal Injury Claims" (paper only)

State Bar of Texas, July, 1993, Advanced Personal Injury Law Course, on "Toxic Torts"

South Texas College of Law, February, 1993, Advanced Personal Injury Law Course, on "Technological Opportunities for the Small Budget"

ATLA National Convention, Toronto, Canada, July, 1991, address to Constitutional Litigation Section on "Expert Testimony"

Connecticut Trial Lawyers Association, February, 1991, Seminar on Toxic Tort Litigation, on "Trends in Expert Testimony in Toxic Tort Cases"

University of Texas School of Law, Guest Lecturer in Toxic Torts Seminar, February, 1990 and November, 1990 (Prof. Ellen Widess)

ATLA National Convention, San Diego, California, July 23, 1990, address to Constitutional Litigation Section on "Trial by Jury or Judiciary: Judicial Activism in Toxic Tort Cases"

State Bar of Texas, October, 1989, Seminar on Civil Practice, on "Utilizing Experts in Litigation"

PUBLICATIONS

"Toxic Torts and Mass Torts" in Survey of Developments in Texas Law, 66 SMU L. REV. 1203 (Winter 2013)

"Toxic Torts and Mass Torts" in Survey of Developments in Texas Law, 64 SMU L. REV. 583 (Winter 2011)

"Toxic Torts and Mass Torts" in Survey of Developments in Texas Law, 63 SMU L. REV. 845 (Spring 2010)

"Toxic Torts and Mass Torts" in Survey of Developments in Texas Law, 62 SMU L. REV. 1483 (Summer 2009)

"Toxic Torts and Mass Torts" in Survey of Developments in Texas Law, 61 SMU L. REV. 1155 (Summer 2008)

"Toxic Torts and Mass Torts" in Survey of Developments in Texas Law, 60 SMU L. REV. 1345 (Summer 2007)

"Toxic Torts and Mass Torts" in Survey of Developments in Texas Law, 59 SMU L. REV. 1579 (Summer 2006)

"Toxic Torts and Mass Torts" in Survey of Developments in Texas Law, 58 SMU L. REV. 1183 (Summer 2005)

"Toxic Torts and Mass Torts" in Survey of Developments in Texas Law, 57 SMU L. REV. 1267 (Summer 2004)

"Toxic Torts and Mass Torts" in Survey of Developments in Texas Law, 56 SMU L. REV. 2053 (Summer 2003)

"Toxic Torts and Mass Torts" in Survey of Developments in Texas Law, 55 SMU L. REV. 1375 (Summer 2002)

"Georgine v. Amchem Products, Inc.: The Asbestos 'Future Claims' Class Action," Voir Dire (a publication of the American Board of Trial Advocates), Vol. II, No. 2, Spring, 1995

"When Opt-Out Class Actions Are Charades," Legal Times, Vol. XVI, No. 8, July 12, 1993

"Panacea or Pandora's Box," Texas Lawyer, June 21, 1993

APPOINTMENTS, HONORS AND PROJECTS

Member, Board of the Texas Center for Legal Ethics and Professionalism (elected September 22, 2009); Chair of the Board of Trustees, 2013-14

Member, American Law Institute (elected August 10, 2007)

Chair, Dallas Bar Association Appellate Section, January, 2004 – December, 2004

Life Fellow, Texas Bar Foundation

Appointed to the three-member Trustee's Advisory Committee in the H.K. Porter bankruptcy proceedings, Pittsburgh, Pennsylvania, September, 1998; member, 1998–present

Named to the Council of the Dallas Bar Association's Appellate Section, December, 1994; member, 1994 – present

Recipient of the Public Justice Award, given by the Trial Lawyers for Public Justice in August, 1993 for "outstanding contribution to environmental protection and the public interest" in the Exxon Valdez litigation

Named to Board of Contributors of The Texas Lawyer, August, 1991

Named to Committee on Analyzing the State of Expert Testimony, American Bar Association, February, 1990

COMMUNITY ACTIVITIES

Board of Directors, Lakehill Preparatory School, August, 2000–present
Chair of the Board, May 2006—May 2012

Member, City of Dallas Permit & License Appeal Board, February, 2004–present; appointed and confirmed as Chair, January 30, 2012

Member, St. Matthew's Episcopal Cathedral, May 1994–present

Head Coach, Boys Baseball, 2000–2002 (Dallas Little League, Spring Valley Athletic Association, North Dallas Chamber of Commerce); Head Coach, Girls Softball, 2003–2004 (White Rock YMCA), 2005–2006 (Spring Valley Athletic Association); Assistant Coach, Lakehill Preparatory School Girls Softball Team, 2008-2010

PERSONAL

Born October 7, 1956 in Brooklyn, New York

Married to Betty Ann Rosenthal, and father of Crystal, Benjamin, Lauren, and Leah