

SERVING BUSINESS LAWYERS IN TEXAS

Dearth of Jury Trials Puts Courtroom Skills at a Premium

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Partners at Bailey Brauer

January 14, 2014 – Over the last 15 years, the number of jury trials in Texas has declined significantly. As has been reported by this publication, jurors in state and federal civil courts heard only about a third as many cases in 2012 as they did in 1997.



Clayton Bailey

There are many reasons behind this trend, including the effects of tort reform, the rising cost of litigation, and the increased use of alternative dispute resolution methods, among others. But one undeniable effect is that, while there are countless litigators in Texas, there are very few attorneys with demonstrated experience taking cases to trial, and even fewer with significant appellate experience.

The attorneys at Bailey Brauer, however, have an extensive track record of trial victories in state and federal courts, including client wins in some of the nation's most challenging jurisdictions. Our complex commercial litigation victories include many dismissals, summary judgments and directed verdicts, but we have also handled more than our fair share of successful jury trials. In fact, we have been called in to take on cases shortly before the eve of trial, after the client has become unsure of the previous counsel's courtroom abilities.

Even more unusual than a wealth of courtroom experience, however, are demonstrated appellate skills. And our attorneys have had more successful appellate rulings than firms many times our size. We have argued — and won — cases before the 5th U.S. Circuit Court of Appeals, Louisiana

Supreme Court, Mississippi Supreme Court, 2nd Court of Appeals in Fort Worth and other state and federal appellate courts. Not only have we won reversals and remands and preserved favorable judgments, but we also have obtained an *en banc* rehearing before the 5th U.S. Circuit that resulted in a major, precedent-setting decision protecting an entire industry.



Alexander Brauer

Bailey Brauer was founded by two former members of one of the world's largest law firms. Our big firm experience schooled us in the ways of complex litigation and appellate work. The knowledge we gained handling some of the country's biggest lawsuits for major national and international clients was invaluable. Ultimately, however, we decided that our clients would be better served if we were in a boutique law firm that would allow us to provide them with the same level of service in a more flexible and nimble environment.

Time and again, we have found that few attorneys, regardless of the size of their firm, have had the kind of courtroom experience we provide. And we have discovered that our experience arguing cases before juries and trial and appellate judges is one of the main strengths that set us apart from our competitors.

Granted, most lawsuits never see the inside of a courtroom beyond the most preliminary of discovery disputes. Of the federal lawsuits filed within the 5th Circuit's jurisdiction (which includes Texas), only 1.4 percent reach the trial phase, according to statistics compiled by the Judicial Business of the United States Courts >

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and published in *Litigation*, the Journal of the American Bar Association's Litigation Section (membership required). Of the handful that goes to trial, even fewer are taken up on appeal. But "hoping for the best" (summary judgment or early dismissal) isn't usually a wise litigation strategy. At Bailey Brauer, we believe that "preparing for the worst" (a hard-fought trial and possible appeal) often represents the best way to bring about an early resolution.

In one recent example, our clients – both of which are large, international companies – were served with a RICO complaint on Sept. 9. RICO allegations are serious and referred to as a "thermonuclear device" in the litigation arena because of their *in terrorem* effect on defendants. After being retained, we immediately responded with a robust motion to dismiss, and the plaintiffs voluntarily dismissed their complaint on Oct. 15.

In another example, our client was seeking to recover funds that were misappropriated by a former employee. Another law firm issued the initial demand letter and attempted to resolve the matter short of litigation. After having no success, the client retained us to take the matter to trial. Shortly after we filed suit and began to put on the pressure, the former employee relented and agreed to pay the full amount owed.

In another case, our client was on the receiving end of a mandatory buyout under a partnership agreement with a purchase price that drastically undervalued her ownership interests. We filed suit and moved for summary judgment within two weeks of the defendants filing their answer. The defendants then agreed to settle the matter – at a price our client was very pleased with – within weeks of our motion being filed.

So our opponents know we're not bluffing when we say, "See you in court."

Clearly, our skills and our track record are a major aspect of our appeal to large, corporate clients with high-stakes legal disputes. Equally

important is our ability to do the same level of sophisticated legal work as the world's largest law firms, but we do it more cost-effectively.

Because we are a boutique firm, we have minimal overhead and a singular focus. We also offer flexibility in billing arrangements. We have entered into a variety of alternative billing agreements with our clients that offer predictability as well as the prospect of sharing the potential risks and rewards of litigation.

Reducing the cost of litigation does more than simply bring down a client's legal bills; it profoundly changes the decision-making on the front end of a major piece of litigation. If a business client anticipates spending far more in legal fees than it hopes to recover (or avoid paying in damages), the company is likely to enter into a settlement that may not be in its long-term best interest.

If, however, the legal fees for taking a case to trial are manageable, then the odds of that client throwing in the towel prematurely are greatly reduced. And if the attorney offers the same level of expertise as the "name brand" law firm, then the math is even easier.

General counsel need to know – and be able to tell their CEO and board – that their company has a lawyer with the street cred and gravitas to handle high-stakes matters. Bailey Brauer offers those general counsel the brand name attorneys they love, but at a price that leaves CFOs smiling.

Clayton Bailey and Alexander Brauer are the co-founders of Bailey Brauer PLLC, which focuses on complex commercial litigation, agribusiness, appeals, and class and collective actions. For more information, visit baileybrauer.com. Mr. Bailey can be reached at cbailey@baileybrauer.com, and Mr. Brauer can be reached at abrauer@baileybrauer.com.

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