

Kenneth P. Held



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Kenneth's principal areas of practice include business litigation and arbitration, securities litigation, energy litigation, and class action defense. Prior to joining Schiffer Odom Hicks and Johnson PLLC, Kenneth was a litigation partner at Vinson & Elkins LLP, where he served as co-head of its Securities Litigation and Enforcement practice group. In 2007 - 2011, he was named in *Chambers USA: America's Leading Business Lawyers* in securities litigation law. He represents litigants in state and federal courts, and in regulatory enforcement matters. A member of both the New York and Texas state bars, Kenneth spends a significant amount of his time representing financial industry clients in securities litigation and other matters. He also has experience defending clients against shareholder derivative actions and consumer and shareholder class action suits. He has obtained the dismissal of numerous securities fraud class actions at the pleadings stage.

REPRESENTATIVE EXPERIENCE

Securities and Derivative Litigation

- Represented the publicly-traded general partner of a gas and crude oil processing and transportation master limited partnership (MLP) and certain of its directors in Delaware litigation challenging the MLP's acquisition of its general partner; after Delaware court denied plaintiffs' motion to expedite, the merger closed and plaintiffs dismissed their claims
- Represented conflicts and governance committee of publicly-traded MLP in Texas litigation challenging MLP's \$2.5 billion acquisition by its majority unitholder; after Texas federal court denied plaintiffs' motion to expedite, the merger closed
- Represented manufacturer of wheeled-shoes in securities class action, derivative actions, and individual shareholder lawsuits arising from drop in stock price after initial public offering; cases settled satisfactorily to client
- On behalf of Blockbuster and certain of its officers and directors, obtained dismissal of all 1933 Act and 1934 Act claims in putative securities fraud class action arising from Blockbuster's split-off from Viacom, Inc.; obtained dismissal of all related state law claims asserted in class action suit filed in Delaware Chancery Court
- On behalf of a Big Four accounting firm, obtained dismissal of all claims, with prejudice, in this putative class action securities fraud case arising out of the restatement of four years of its audit client's financial statements
- On behalf of a hospice care provider, and several of its officers and directors, obtained dismissal with prejudice of all claims in this putative securities fraud class action involving the loss of over \$300 million in market capitalization; companion state court derivative claims were also dismissed after the court granted our special exceptions on grounds of lack of standing and the dismissal was affirmed on appeal
- On behalf of Blockbuster and certain of its officers and directors, obtained dismissal with prejudice of all claims in this putative securities fraud class action involving the loss of over \$2 billion in market capitalization; a companion state court derivative lawsuit against the directors and officers was nonsuited after the court granted our special exceptions on grounds of lack of standing
- Obtained dismissal of Section 10(b) and Section 11 claims on motion to dismiss in class action asserted against mobile phone service provider
- Assisted in defense of publicly-held corporation in shareholder derivative action challenging fairness of merger consideration, resulting in dismissal of plaintiffs' claims
- Represented numerous individuals in various insider trading and accounting fraud SEC investigations; many of which were terminated with no action being taken against our clients

Case Citations

- *Gerber v. Enterprise Products Holdings, LLC*, 2012 WL 34442 (Del. Ch. Jan. 6, 2012)

- *Northumberland County Retirement System v. GMX Resources, Inc.*, -- F. Supp. 2d --, 2011 WL 5578963 (W.D. Okla. Nov. 16, 2011)
- *Davis v. Duncan Energy Partners L.P.*, -- F. Supp. 2d --, 2011 WL 3518263 (S.D. Tex. August 10, 2011)
- *Lonergan v. EPE Holdings LLC, et al.*, 5 A. 3d 1008 (Del. Ch. 2010)
- *Rines v. Heelys, Inc.*, 2009 WL 5196519 (N.D. Tex. Nov. 17, 2009)
- *Pfeffer v. Redstone, et al*, 2008 WL 308450 (Del. Ch. Feb. 1, 2008)
- *Congregation Ezra Sholom v. Blockbuster Inc., et al*, 504 F. Supp. 2d 151 (N.D. Tex. 2007)
- *Connolly v. Gasmire, et al.*, 257 S.W.3d 831 (Tex. App. -- Dallas, July 2, 2008)
- *Hanson v. Odyssey Healthcare, Inc.*, 2007 WL 5186795 (N.D. Tex. Sept. 21, 2007)
- *In re: Odyssey Healthcare, Inc. Securities Litigation*, 424 F.Supp. 2d 880 (N.D. Tex. 2005) and 2006 WL 826467 (N.D. Tex. 2006)
- *In re Carreker Corporation Securities Litigation*, No. 3:03-CV-0250-M (N.D. Tex. Mar. 29, 2005)
- *In re: Blockbuster Inc. Securities Litigation*, Fed. Sec. L. Rep. P 92,806 (N.D. Tex. 2004)

ERISA Litigation

- Obtained dismissal of ERISA stock-drop class action filed against Blockbuster and certain of its officers and directors in connection with Blockbuster's split-off from Viacom, Inc.

Case Citations

- *Halaris v. Viacom, Inc.*, 2008 WL 3855044 (N.D. Tex. Aug. 19, 2008)

Energy Litigation and Arbitration

- Represented Canadian crude oil trading company in arbitration under rules of the Society of Maritime Arbitrators of New York concerning quality of two cargoes of Canadian mixed sweet crude oil that our client sold to another trading company; Panel ruled that cargoes met contractual specifications and awarded damages and attorneys' fees
- Represented energy trading and marketing firm in price-reopener dispute under long-term gas supply contract with electrical cooperative in American Arbitration Association proceeding; shortly before hearing, dispute was settled with favorable price adjustment for our client
- Represented chemical pipeline manufacturer in bankruptcy proceedings in which debtor/lessor sought to recharacterize pipeline lease agreement as unsecured sale of pipeline; case settled favorably for our client
- In a Canadian arbitration proceeding, obtained complete refund of purchase price dispute for a portfolio company of a private equity fund that purchased natural gas storage facilities from a Canadian energy company, the arbitrator awarded \$17.7 million; the arbitrator agreed with our client's position that the natural gas remaining in the facility at closing was not working gas for which our client should have been required to pay an additional purchase price amount; the respondent applied to the Court of Queen's Bench of Alberta to set aside the award, and the court denied the application
- Obtained a liability finding in favor of the gas and power trading and marketing company in the Canadian arbitration of a claim against a major oil producer for wrongful termination of a gas supply contract, with damages exceeding \$80 million to be determined in second phase of bifurcated arbitration; obtained favorable settlement for clients after hearing on damages

Case Citations

- *In the Matter of the Arbitration Between Astra Energy Canada, Inc., Claimant/Counterclaim Respondent and Glencore Ltd., Respondent/Counterclaimant*, SMA No. 4109, 2010 WL 5866007 (Society of Maritime Arbitrators of New York, Inc. Dec. 22, 2010)
- *In re Bigler, LP*, 2011 WL 3809975 (Bankr. S.D. Tex. Aug. 18, 2011)
- *Alenco Inc. v. Niska Gas Storage US, LLC*, 2009 ABQB 192 (Court of Queen's Bench of Alberta, 2009)

Class Action Defense

- Obtained dismissal of RICO claims and defeated class action certification of putative nationwide class of trademark and common law mark owners in Illinois federal court action against website domain parking companies alleging RICO violations, cybersquatting, trademark infringement and related claims
- Defeated class certification of putative nationwide class of consumers in Kansas federal court action alleging consumer fraud and negligent automotive maintenance services against major oil company
- Defeated class certification in securities fraud action asserted against a Big Four accounting firm based on plaintiffs' inability to demonstrate fraud-on-the-market classwide presumption of reliance
- Defeated class certification of putative nationwide class of consumers in Arkansas state court action alleging consumer fraud against major oil company

Defended national chain of automotive service providers in nationwide consumer class action and related cases regarding add-on fees; obtained settlement for clients, which was affirmed on appeal

- Defended local cable companies in state court class actions alleging improper pass-through of property taxes on cable television bills; obtained favorable settlement for clients

Case Citations

- *Vulcan Golf, LLC v. Google, Inc., et al.*, 254 F.R.D. 521 (N.D. Ill. 2008), 552 F. Supp. 2d 752 (N.D. Ill. 2008), and 2008 WL 2959951, (N.D. Ill. July 31, 2008)
- *Thompson v. Jiffy Lube International, Inc.*, 250 F.R.D 607 (D. Kan. 2008) and 505 F. Supp. 2d 907 (D. Kan. 2007)
- *In re Seitel, Inc. Securities Litigation*, 245 F.R.D. 263 (S.D. Tex. 2007)
- *Stephani Bayhulle v. Jiffy Lube International, Inc.*, 146 P.3d 856 (Okla. App. 2006)

Other Litigation

- Represented franchisee in food service industry in AAA arbitration against franchisor; obtained favorable settlement for clients
- Represented British bank in protecting its security interest in securitized assets in bankruptcy proceedings, which enabled bank to obtain full repayment of its loans
- Obtained injunction for sports equipment manufacturer to prevent former corporate officer from misappropriating trade secrets

Prior results do not guarantee a similar outcome.

Education and Professional Background

- Yale Law School, J.D., 1993 (Senior Editor, *The Yale Law Journal*, August 1991 - June 1993); Coker Fellow, teaching assistant, in Civil Procedure, Fall 1992
- Cornell University, B.A. English *cum laude*, 1990 (Phi Beta Kappa)
- Judicial clerk to The Honorable Milton Pollack, U.S. District Court for the Southern District of New York, 1993 - 1994
- Admitted to practice: New York, 1994; Texas, 2001; Fifth U.S. Circuit Court of Appeals; Tenth U.S. Circuit Court of Appeals; U.S. District Courts for the Southern and Eastern Districts of New York, and the Northern, Southern, Eastern, and Western Districts of Texas

Professional Recognition

- Euromoney's *Benchmark Litigation* - Future Litigation Star, 2009 and 2010, 2012
- *Chambers USA: America's Leading Business Lawyers* in securities litigation law, 2007 - 2011
- Recognized in *Texas Rising Stars*, 2004 - 2008

Activities and Affiliations

- Member: American Bar Association; ABA Litigation Section and Class Action and Derivative Suits Committee; Houston Bar Association
- Fellow: Texas Bar Foundation