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Civil Appeals

Steve Hayes is a member of the American Law Institute, a former Chair of the State Bar of Texas Appellate Section, and a former Council member of the State Bar's Litigation Section. He frequently speaks about appellate topics at CLE courses, and also publishes extensively on error preservation and the civil docket of the Second Court of Appeals, Fort Worth, Texas. He has successfully represented clients at all stages of appeals and mandamus in Texas state courts, as well as assisting trial counsel in the summary judgment, pre-trial, post-trial, and jury charge aspects of trial.

Qualifications and Recognitions

Education

- Harvard Law School, J.D. (1980)
- Austin College, B.A. (1977),
summa cum laude

Recognitions

- Martindale-Hubble ® Rating: AV
- Best Lawyers in America ®
(2019-Present)
- Texas Super Lawyer, Texas
Monthly (2009 - present; Top 100,
2020)
- Tarrant County Top Appellate
Lawyers, Fort Worth, Texas
Magazine (2008 - present)
- 360 West Magazine Top Attorney
(2017-present)

Public Service

- Briefing Attorney, Supreme Court
of Texas, 1980-1981
- Assistant County Attorney, Bell
County, Texas, 1984-1985

Admissions

- State Bar of Texas
- Supreme Court of the United
States
- U.S. Court of Appeals for the
Fifth Circuit
- United States District Courts (all
districts in Texas)

Member

- American Law Institute (2005-present)
- Bell-Lampasas-Mills Counties Bar Association (1984-1992; former Director) and Young Lawyers Association (former President, Director)
- Eldon B. Mahon Inn of Court (Emeritus, 2010-present; President 2009-2010; Executive Committee, 2010-2013)
 - Serjeant's Inn of Court of North Texas (2012-present)
- State Bar of Texas
 - Appellate Law Section (Chair, 2016-2017; Council, 2008-2011; Course Director, Advanced Civil Appellate Law Seminar, 2012)
 - Litigation Section Council (2011-2017); Co-Chair, Online CLE Committee (2013-2016) and News for the Bar (2011-2013)
 - Life Fellow, Texas Bar Foundation
- Tarrant County Bar Association (Director, 2005-2008, 2013-2015)
 - Appellate Law Section (Chair, 2007-2008)
 - Mentor of the Year, 2009-2010, Fort Worth-Tarrant County Young Lawyers' Association
- Texas Association of Defense Counsel

Representative Results and Activities

- Obtained a reversal of a trial court summary judgment on a question of first impression in Texas involving the interpretation of joint use agreements between electrical cooperatives and telephone companies. *Tri-County Elec. Coop., Inc. v. GTE Southwest Inc.*, 490 S.W.3d 530 (Tex. App.—Fort Worth, 2016, no pet.).
- Obtained a court of appeals ruling that a breach of contract claim against a utility fell within the exclusive original jurisdiction of the Public Utility Commission, which required the plaintiff to first file its claim with that agency before suing in court. *Oncor Elec. Delivery Co. LLC v. Giovanni Homes Corp.*, 438 S.W.3d 644, 645 (Tex. App.—Fort Worth 2014, pet. denied).
- Assisted trial counsel by drafting motion and briefing which convinced trial court to reverse its announced decision to award attorney's fees of nearly \$1 million on Defendant's counterclaim (which alleged breach of a release).
- Successfully responded to Petitions for Review in the Supreme Court of Texas in multiple cases.
- Won affirmance of summary judgment for client in a case in which court of appeals held that the statute preserving governmental claims from the operation of certain statutes of limitations (Tex. Civ. Prac. & Rem. Code Ann. § 16.061) did not obviate the statute of limitations found in Section 2.275 of the Uniform Commercial Code, and that the economic loss rule supported the summary judgment. *Tarrant County Hospital District v. GE Automation Services, Inc., et al.*, 156 S.W.3d 885 (Tex. App.—Fort Worth 2005, no pet.).
- Obtained dismissal of lawsuit seeking \$70,000,000 following service of discovery which put Plaintiff in position of admitting no damages or that statutes of limitations barred claims.

- First chair trial counsel in cases in Federal and State courts in half a dozen counties and three Judicial Administrative Districts, including both civil and criminal cases.
- Served as lead and coordinating counsel for Advance Stores, Inc., and Western Auto Supply Company on litigation in the South and Southwest involving leases of commercial properties.
- Extensive experience in mass tort litigation involving products liability and agriculture, including TMJ litigation and litigation involving Benlate®.
- Drafted legislation to enhance the ability of Texas courts to efficiently handle mass litigation (V.T.C.A., Govt. Code, §74.094(e) and (f)).
- In addition to the work described above, Steve has handled cases involving commercial issues, legal malpractice, medical malpractice, collections, criminal prosecution, Miller Act and construction contract claims and claims involving fraud and the Deceptive Trade Practices Act.
- Author of numerous articles, and highly rated speaker, on appellate law and procedure, including empirical studies of trends and tendencies of The Supreme Court of Texas, error preservation in Texas civil cases, and oral arguments and mandamus proceedings before the Second Court of Appeals in Fort Worth, Texas.
- Publishes a compilation of the issues raised in civil appeals pending before that the Second Court of Appeals in Fort Worth, Texas, as well as a compilation of error preservation decisions in Texas courts of appeals.

Reported Decisions

- *Tedder v. Gardner Aldrich, LLP*, 421 S.W.3d 651 (Tex. 2013).
- *Gen. Elec. Co., et al., v. Moritz*, 257 S.W.3d 211 (Tex. 2008).
- *Energy Transfer Partners, L.P. v. Enter. Prods. Partners, L.P.*, 593 S.W.3d 732 (Tex. 2020) (amicus)
- *SSCP Mgmt. v. Sutherland/Palumbo, LLC*, No. 02-19-00254-CV, 2020 WL 7640150, 2020 Tex. App. LEXIS 10209 (Tex. App.—Fort Worth Aug. 6, 2020, no pet. hist.) (mem. op. on rehearing) (oral argument only)
- *City of San Francisco v. Exxon Mobil Corp.*, No. 02-18-00106-CV, 2020 WL 3969558, 2020 Tex. App. LEXIS 5226 (Tex. App.—Fort Worth June 18, 2020, pet. filed) (mem. op.)
- *Womack v. Oncor Elec. Delivery Co. LLC*, 2019 WL 3023516, 2019 Tex. App. LEXIS 5887 (Tex. App.—Eastland, July 11, 2019, pet. denied) (mem. op.)
- *Tarrant Appraisal Dist. v. Tarrant Reg'l Water Dist.*, No. 02-17-00042-CV, 2018 WL 547777, 2018 Tex. App. LEXIS 747 (Tex. App.—Fort Worth Jan. 25, 2018), opinion withdrawn by, reconsideration denied by, rehearing denied by, substituted opinion at *Tarrant Appraisal Dist. v. Tarrant Reg'l Water Dist.*, 547 S.W.3d 917 (Tex. App.—Fort Worth 2018, no pet.)
- *Tri-County Elec. Coop., Inc. v. GTE Southwest Inc.*, 490 S.W.3d 530 (Tex. App.—Fort Worth 2016, no pet.).
- *Ard v. Hudson*, No. 02-13-00198-CV, 2015 WL 4967045, 2015 Tex. App. LEXIS 8727 (Tex. App.—Fort Worth Aug. 20, 2015, pet. granted) (mem. op.) unopposed motion to vacate and remand pursuant to settlement granted, Case No. 15-0705, June 23, 2017.

- *In re Fisher*, 433 S.W.3d 574, 575 (Tex. App.—Fort Worth 2012) (orig. pro.), mandamus granted *In re Fisher*, 2014 Tex. LEXIS 164 (Tex. 2014)
- *Mote Res., Inc. v. Gardner*, No. 02-12-00175-CV, 2013 WL 6046530, 2013 Tex. App. LEXIS 14071 (Tex. App.—Fort Worth Nov. 14, 2013), Motion granted by, Opinion withdrawn by, Remanded by, Settled by *Mote Res., Inc. v. Gardner*, 2014 WL 3696030, 2014 Tex. App. LEXIS 8026 (Tex. App.—Fort Worth, July 24, 2014)
- *Oncor Elec. Delivery Co. LLC v. Giovanni Homes Corp.*, 438 S.W.3d 644 (Tex. App.—Fort Worth 2014, pet. denied).
- *Theodis Dodson v. Robert Ford*, No. 02-12-00168-CV, 2013 WL 5433915, 2013 Tex. App. Lexis 12159 (Tex. App.—Fort Worth Sept. 26, 2013, no pet.) (mem. op.).
- *Pamela Kay Carpenter and Jeffrey Scott Carpenter v. Robert Joseph Carpenter, et al*, No. 02-10-00243-CV, 2011 WL 5118802, 2011 Tex. App. LEXIS 8587 (Tex. App.—Fort Worth Oct. 27, 2011, pet. denied) (mem. op.)
- *In re Pemmaraju*, No. 02-11-00085-CV, 2011 WL 1601234, 2011 Tex. App. LEXIS 3233 (App.—Fort Worth Apr. 27, 2011) (orig. pro.) (mem. op.)
- *Texas Ethics Commission v. Toby Goodman*, No. 02-09-00094-CV, 2010 WL 323544, 2010 Tex. App. LEXIS 607 (Tex. App.—Fort Worth, Jan. 28, 2010, no pet.) (mem. op.).
- *Adobe Land Corporation, et al, v. Griffin, L.L.C.*, 236 S.W.3d 351 (Tex. App. — Fort Worth 2007, pet. denied).
- *Transport International Pool, Inc. d/b/a GE Capital Modular Space v. The Continental Insurance Company and Continental Casualty Company*, 166 S.W.3d 781 (Tex. App.—Fort Worth 2005, no pet.).
- *Tarrant County Hospital District v. GE Automation Services, Inc., et al*, 156 S.W.3d 885 (Tex. App. — Fort Worth 2005, no pet.).
- *Cook Pizzi, et al, v. Van Waters & Rogers, Inc., et al.*, 94 S.W.3d 636 (Tex. App.—Amarillo 2002, pet. denied).
- *Thweatt v. Jackson*, No. 3-91-364-CV, 1992 WL 117102, 1992 Tex. App. LEXIS 1415 (Tex. App.—Austin June 3, 1992) opinion withdrawn and superseded on reh'g, 838 S.W.2d 725 (Tex. App.—Austin 1992), and affirmed, 883 S.W.2d 171 (Tex. 1994), cert. denied, *Weatherly v. Federal Debt Management, Inc.*, 513 U.S. 872 (1994).
- *Little v. Ciba-Geigy Corp.*, Civil Action No. 3:98-CV-0002-G, 1998 U.S. Dist. LEXIS 13062 (N.D. Tex. 1998).
- *Gui Zhi v. Bell Helicopter Textron*, Civil Action No. 4:97-CV-404-Y (Consolidated with 4:97-CV-403-Y and 4:97-CV-405-Y), 1997 U.S. Dist. LEXIS 20374 (N.D. Tex. 1997)
- *Gui Zhi v. Bell Helicopter Textron*, Civil Action No. 4:97-CV-404-Y (Consolidated with 4:97-CV-403-Y and 4:97-CV-405-Y), 1997 U.S. Dist. LEXIS 19883 (N.D. Tex. 1997)

Legal Publications and Presentations

- State Bar of Texas CLE Fifteen (Top Rated Topics from the Past Year) for the areas of Civil Appellate Law (2020, 2017, 2018), Commercial Litigation (2019), Employment Law and Corporate Litigation (2019) and Trial Practice (2017, 2018)

- *Brief Writing: Make Yourself Useful As Well As Ornamental*, by Hayes, Steven K., and Rollen, Brittani Wilmore, with input from Justice Sue Walker, Dabney Bassel, and Constance K. Hall, p. 27, *The Advocate*, State Bar of Texas Litigation Section, Fall 2016.
- *Anticipating and Preventing Error Preservation Ambushes*, presented to the State Bar of Texas 42nd Annual Civil Trial Course 2019, and the State Bar of Texas 21st Annual Texas Bar College Summer School 2019. (Updated November 16, 2020)
- *Selling Your Case at Trial, Selecting Appellate Issues to Pursue, and Other Implications of Error Preservation Rulings*, presented to the State Bar of Texas Advanced Civil Appellate Practice Course 2017.
- *What Have You Got to Lose?: Perhaps Your Appeal, If You Don't Use Error Preservation to Sell Your Case at Trial*, presented to State Bar of Texas Annual Meeting, Fort Worth, Texas, June 16-17, 2016.
- *Error Preservation Concerning Attorney's Fees Claims: Treat These Claims as the Significant Causes of Action They Are*, by Steven K. Hayes, Dallas Bar Association Headnotes, Vol. 41, No. 10, p. 21, October 2016
- *Error Preservation: Using the Most Common Problems to Sell Your Case*, by Steven K. Hayes, presented to the Parker County Bar Association (June 26, 2015), facilitated judicial panel discussion at State Bar of Texas 38th Annual Advanced Civil Trial Seminar (2015).
- *Error Preservation in Texas Civil Cases*, a newsletter by Steven K. Hayes, Copyright 2013 to present.
- *Conversations with the Court: A Theme for Preserving Error Under Tex. R. App. P.33.1*, By Steven K. Hayes. Copyright 2013. Presented to the Annual Judicial Education Conference, Texas Center for the Judiciary, September 5, 2013, Joint Meeting of the Texas Association of Defense Counsel and Tarrant County Bar Association, May 29, 2013, to the State Bar of Texas 30th Annual Litigation Update Institute and 37th Annual Advanced Civil Trial Course. Previous version printed at Steven K. Hayes, Could You Be a Little More Specific? Tex. R. App. P. 33.1 and the need for "sufficient specificity to make the trial court aware" of your complaint, 66 *The Advocate*, State Bar Litigation Section Report, 270 (Spring 2014).
- *A Growing Fondness—A Cooling Ardor? Trends in the Use of Federal Authority and Authority from Other States by the Supreme Court of Texas over a Quarter Century (9/1/1980-8/31/2006)*. By Steven K. Hayes. Copyright 2006. Presented to the State Bar of Texas Advanced Civil Appellate Practice Course 2006.
- *A TALE OF TWO CASES: Crump and Casas, and Their Lessons About the Pitfalls in Proving Medical Causation*, by Steven K. Hayes. Copyright 2011.
- *Hints and Invitations: Enticements From the Supreme Court of Texas?* by Steven K. Hayes, Copyright 2005 to June 15, 2007.
- *Issues Presented in Some Civil Cases Pending Before the Second Court of Appeals*, compiled and updated monthly by Steven K. Hayes. Copyright 2003-2014.
- *Mandamus Before the Second District Court of Appeals: An Analysis of Mandamus Rulings in 2003 Through 2005*, by Steven K. Hayes. Copyright 2006.
- *Modification, Reversal and Remand: Opinions of the Second Court in Appeals of Criminal Cases, 9/01/08-8/31/09*, By Steven K. Hayes. Copyright 2010.

- *Oral Argument Before the Second District Court of Appeals: The Rules, and an Analysis of 57 Cases*, by Steven K. Hayes. Copyright 2005.
- *Preservation of Error Post-Trial: How to Avoid That Sinking Feeling*, by Steven K. Hayes, updated by Dabney Bassel and Connie Hall. Copyright 2018. Presented to the 2018 and 2010 State Bar of Texas Appellate Law 101 Seminar; earlier version presented to the State Bar of Texas Appellate Boot Camp 2008.
- *Rehearing Practice in the Courts of Appeals: They Heard You the First Time, and Other Rules of Thumb*, by Various Authors, including Steven K. Hayes. Presented to the State Bar of Texas Advanced Appellate Seminar 2010.
- *Still in the Ground, In the Transmission Line, and Flared Off: Oil and Gas Cases Pending Before or Recently Decided by the Second Court of Appeals*, by Steven K. Hayes. Copyright 2010.
- *Taking a Bankruptcy Court Decision to the Fort Worth District Courts: Is The Trip Really Worth It?*, by Steven Hayes. Copyright 2007. Presented to TCBA Bankruptcy Section November 19, 2007.
- *The Year Of Living With Real Estate: Some General Observations From a Year of Real Estate Cases Decided by a Texas Court of Appeals*, by Steven K. Hayes, 53 Real Estate, Probate and Trust Law Reporter No. 2, 46 (2015).
- *Enforcement of Arbitration Clauses*, By Steven Hayes. Copyright 2009. Presented to TCBA and Appellate Section Brown Bag Seminar, January 30, 2009.
- *What Are The Odds? Appeals in the Panther City Court and Big D!*, by Stephanie Dooley Nelson and Steven K. Hayes, Copyright 2011.