

## Marcy L. Rothman

**DIRECTOR**

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Marcy Rothman practices in the Litigation Section. Her experience includes favorable results in civil trials, administrative proceedings, arbitrations, appeals and negotiated resolutions. She has participated in approximately 100 trials to verdict, two-thirds of which she has handled as first chair trial attorney. She has handled appeals and has successfully represented clients before the Texas Supreme Court and the United States Court of Appeals for the Fifth Circuit. A number of her cases have been reported in the federal and state court reporters or constitute "industry firsts." She provides risk management and strategic counseling to a variety of organizations ranging from mid-sized to Fortune 500 businesses. Ms. Rothman served as the Managing Director of the Firm's Houston office from 2014 – 2019. She served on the Firm's Board of Directors and the Firm's inaugural Executive Committee. She also leads the Firm's Railroad practice.

### Scope of Practice

Railroad litigation (tort and commercial); complex commercial litigation; eminent domain and other real estate litigation; insurance (complex coverage, reinsurance, defense, recovery); professional liability; energy litigation; complex multiparty industrial injury and death, catastrophic losses (drilling, transmission, production, factories, refineries, plant and batch production); trucking liability; product liability (heavy equipment); risk management and strategic counseling.

### Practice Focus

Complex Commercial Litigation, Construction, Energy, Oil and Gas, Environmental, Insurance, Litigation, Manufacturing, Personal Injury, Professional Liability, Railroad, Retail, Restaurant & Hospitality, Transportation

### Honors

- AV Preeminent®, Martindale Hubbell (1999-present)
- Super Lawyers, Thomson Reuters (Business Litigation, 2017 - 2018)
- Top Lawyers – *Houstonia Magazine*, Eminent Domain (2016), Aviation, Admiralty, Maritime and Transportation, (2017)
- Selected by the Houston Bar Association to be featured in "A Profile in Professionalism" published in *The Houston Lawyer* (April 2014)
- Texas Bar Foundation, Fellow (2011-Present)
- Top Lawyers in Houston, *H Magazine*, (Insurance Coverage, 2005-2006)

### Admissions

- State Bar of Texas, 1988
- United States Court of Appeals for the Fifth Circuit
- United States District Courts for the Northern, Southern, Eastern and Western Districts of Texas



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#### **LAW SCHOOL**

University of Houston Law Center  
J.D., 1988

#### **UNDERGRADUATE**

Trinity University  
B.A., 1985

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## Associations

- National Association of Railroad Trial Counsel (NARTC),
  - Executive Committee Class, 2020
  - Vice President - Western Region, 2018
  - Trial College Faculty, 2015
  - Member, 2007-present
- SERTC Tank Car Specialist, TTCI Tank Car Safety Course, Pueblo, Colorado, August 2011
- American Bar Association, Tort & Insurance Practice and Litigation Sections
- State Bar of Texas, Insurance Section
- Houston Bar Association
- Texas Association of Defense Counsel

## Languages

- Hebrew
- Spanish

## Experience

- *Arbor Windsor Court, Ltd. v. Weekley Homes, LP*, 463 S.W.3d 131 (Tex. App. – Houston [14<sup>th</sup>] 2015, pet. denied), *reh'g denied* (Jun. 17, 2016).
- *Superbag Operating Co., Inc. v. Sanchez*, 2013 WL 396247 (Tex. App – Houston [1st Dist.] 2013).
- *Clenten Carr and Walterine Carr, Individually and as next friend of Katara McDuffie and Mia Brooks, Minors v. Union Pacific Railroad Company*, Cause No. 14-10-00674 (Tex. Civ. App. -- Houston [14th] Sept. 29, 2011).
- *Royal Ins. Co. of Am. v. Caliber One Indem. Co.*, 465 F.3d 614 (5th Cir. 2006).
- *Admiral Ins. Co. v. Heath Holdings USA, Inc.*, No. 3:03-CV-1634-G, 2003 U.S. Dist. LEXIS 18614 (N.D. Tex. Oct. 17, 2003)(related cases: *Autrey v. 22 Texas Services, Inc.*, 79 F. Supp. 2d 735 (S.D. Tex. 2000), *In re Senior Living Properties, L.L.C.*, 309 B.R. 223 (2004), *In re: Senior Living Properties, LLC*, 42 Bankr.Ct.Dec. 285 (Bankr. N.D. Tex. 2004)) .
- *Zaiontz v. Trinity Universal Ins. Co.*, 87 S.W.3d 565 (Tex. App.—San Antonio 2002, pet. denied).
- *Pederson v. Huey T. Littleton Claims Servs. of Tex., Inc.*, 158 F. Supp. 2d 773 (E.D. Tex. 2001).
- *Rainly Equipos de Riego, S.R.L. v. Pentagon Freight Servs., Inc.*, 979 F. Supp. 1079 (S.D. Tex. 1997).
- *Harper v. E.I. duPont de Nemours & Co.*, No. 01-94-01191-CV, 1997 WL 69858 (Tex. App.—Houston [1st Dist.] Feb. 20, 1997, pet. denied).
- *Actis v. E.I. duPont de Nemours & Co.*, No. 01-95-00375-CV, 1997 WL 69862 (Tex. App.—Houston [1st Dist.] Feb. 20, 1997, no pet.).
- *Cason v. E.I. duPont de Nemours & Co.*, No. 01-94-01191-CV, 1997 Tex. App. LEXIS 811 (Tex. App.—Houston [1st Dist.] Feb. 20, 1997, pet. denied).
- *LaRue v. GeneScreen, Inc.*, 957 S.W.2d 958 (Tex. App.—Beaumont 1997, no pet.).
- *Meadows v. Chevron, U.S.A., Inc.*, 142 F.R.D. 442 (E.D. Tex. 1992).
- *Finkelstein v. West*, No. 01-89-01214-CV, 1990 Tex. App. LEXIS 358 (Tex. App.—Houston [1st Dist.] Feb. 21, 1990, orig. proceeding).
- *Manchester Terminal Corp. v. Port of Houston Authority*, 783 S.W.2d 292 (Tex. App.—Houston [14th Dist.] 1989, no writ).
- *Manchester Terminal Corp. v. Texas TxTx Marine Transp., Inc.*, 781 S.W.2d 646 (Tex. App.—Houston [1st Dist.] 1989,

writ denied).

- *Karp v. The Fair Store*, 709 F. Supp. 737 (E.D. Tex. 1988).

## Other Noteworthy Results and Industry Firsts:

- Represented client in trucking case where the plaintiff was a young professional who was adjudicated *non compos mentis* as a result of the accident. Between the plaintiff's lost wage claim and past and future medical costs, the total potential exposure was in excess of \$100 million. Successfully defused critical scientific issues presented by the plaintiffs and procured an extremely favorable negotiated result well below authority. Parties are confidential.
- *Den-Dol, Inc. v. Robert Piña*, Cause No. 13-000231-CV-85, In the 85th Judicial District Court, Brazos County, Texas, jury verdict and judgment in favor of client, Den-Dol, Inc., for \$1.135 million on breach of contract, \$5.7 million on conversion, \$5.7 million on misappropriation, attorneys' fees, and interest, in case arising from dispute over Wings N More restaurants, December 2014.
- Successfully negotiated eight-figure multi-million dollar royalty and bonus payment settlement in favor of client, parties confidential.
- *Richard Speirs v. Union Pacific Railroad Company*, Cause No. 2009-CI-17924, In the 150th Judicial District Court, Bexar County, Texas. Jury verdict and judgment in favor of client, Union Pacific, on a carman case, where plaintiff asserted total disability and sought in excess of \$1 million, February 2013.
- *Brantley v. Union Pacific Railroad Company*, Cause No. 2009-05059, In the 152nd Judicial District Court, Harris County, Texas. Jury verdict and judgment in favor of client, Union Pacific, on a switch case in which the plaintiff sought \$1.7 million, September 2011.
- *Union Pacific v. ACF, GE Rail Car Services Cemex Boral, et al.*, Cause No. 2009-75429, In the 80th Judicial District Court, Harris County, Texas. Achieved favorable settlement for client, Union Pacific, in multi-million dollar commercial dispute over the cause of a derailment and resulting damages, November 2011.
- *Bahia Las Minas Corp. f/k/a Empresa de Generacion Electrica Bahia Las Minas, S.A. v. Cox Dedicated Corp. Member Ltd. and Underwriters at Lloyds*, 215th Judicial District Court, Harris County, Texas. Product liability and insurance coverage case involving Underwriters at Lloyds for business interruption and property damage to electricity utility's co-generation plant in the Republic of Panama. Jury verdict in favor of client utility for \$5.6 million. With additional statutory sums, total value of verdict was \$10.3 million.
- *Lopez v. Kramer*, 135th Judicial District Court, Jackson County, Texas. Represented NASDAQ-listed liability defendant in a major trucking case involving multiple fatalities and other surviving comatose individuals. Was successful in procuring the first known cut-through applied to reinsurance without an express cut-through provision in a liquidation environment. Strategy preserved the reinsurance proceeds in favor of the individual insured client company, a result not previously obtained in American insurance law. Also protected the client from breach of financial covenants.
- Northline Mall/Magic Johnson Theatres Collapse, Houston, Texas: Representation of first-layer of excess insurance in successful resolution of claims and litigation over construction collapse of the Northline Mall and Magic Johnson Theatres involving massive property damage, multiple deaths and injuries.
- Duncanville Hilton Garden Inn Collapse: Successful representation of general contractor client in OSHA investigation and subsequent property damage and personal injury litigation arising out of collapse of steel structure of hotel under construction. Issues included contractor liability, regulatory compliance and the use of heavy equipment, liens and construction finance.
- *National Union Fire Ins. Co. of Pittsburgh, PA v. American Alliance*, Superior Court of the State of California, Orange County, California. In 2006, procured outright dismissal of client, insurer of fireproofing contractor who was sued for failing to properly fireproof AMC theatres built across the USA from 1988 to 2000.
- *Adams v. American Ecology*, 236th Judicial District Court, Tarrant County, Texas. De minimis settlement achieved for client, a major oil company, in community exposure mass tort litigation arising out of the Winona, Texas Superfund site.
- *Crye v. Reichold Chems., Inc.*, 234th Judicial District Court, Harris County, Texas, and companion cases. Summary judgment for major oil company client in Houston Ship Channel property damage and environmental nuisance litigation

involving over 5,000 plaintiffs.

- *Ford v. Mobil Mining & Minerals*, 269th Judicial District Court, Harris County, Texas. Summary judgment for major oil and gas interest in mass tort, community exposure and personal injury litigation over Naturally Occurring Radioactive Material (NORM).
- *Pleasantville Civic League of Houston v.. Logistics Partner*, United States District Court for the Southern District of Texas, Houston Division. De minimis settlement for client, a batch manufacturer, which compounded the product that allegedly caused catastrophic Market Street Warehouse Fires near the Port of Houston.
- *Wood v. Phonoscope, Blythe and Eason*, successful defense at trial of laborer who drove cherry picker into live high wires, causing horrible burns and disfigurement. Jury verdict and judgment rendered for amount much lower than prior demands and prior settlement offers.
- Defense verdict in Henderson, East Texas, in trial arising out of accident in which local gas field hand was decapitated and killed in well accident.
- Hung jury and favorable settlement in trial in Harris County, Texas, over laborer death arising out of accidental release of anhydrous ammonia in major oil company facility on the Houston Ship Channel.
- *Turner Construction of Tex.v. CNA*, 116th Judicial District Court, Dallas County, Texas, obtained outright dismissal of client from mold litigation pending in Rio Grande Valley against one of the world's largest construction contractors.

## Publications

Marcy Rothman is a frequent commentator and lecturer to clients, industry groups, and professional associations including:

- Author, "What I Learned In My 1st Year: Listen Carefully, Speak Up," Law360 (October 11, 2017).
- Author, 'From Heaven to Hell' - Mineral Rights and Ancient Deeds, Law360 (May 12, 2017).
- Speaker, 2016 National Association of Railroad Trial Counsel Fall Meeting, Jackson Hole, Wyoming, Panel Presentation with United States District Judge Mark W. Bennett, Handling Implicit Bias in Voir Dire.
- Speaker, National Association of Railroad Trial Counsel, 2015 Fall Meeting, Del Mar, California, October 14-17, 2015, "Spoliation – It's the Flavor of the Day".
- Speaker, Fiduciaries In Litigation, Texas Association of Defense Counsel Spring Session (April 28, 2010-May 2, 2010).
- Master Service Agreements & Selected Recent Developments in Insurance Coverage, Houston Claims Association Quarterly Meeting (September 9, 2009).
- Speaker, Texas & New Mexico: Dealing with Mechanic's Liens on the Border, Rothman, M.; Roberts S.; Higgins, K.; Construction Lien Law in Texas Seminar, Lorman Education Services, El Paso, Texas (February 10, 2009).
- Panelist, Texas Lawyer Roundtable Insurance Law (December 10, 2007).
- Panelist, Texas Lawyer E-Discovery Roundtable, (September 2007).
- Speaker, Current Concerns in Commercial Litigation: A Reprise of Ethical Considerations and Related E-Discovery Issues, Rothman, M.; Roberts, S.; Texas Association of Defense Counsel, Vail, Colorado (Summer Session 2007).
- Publication Quote, Best Week: Katrina Lawsuits Pose Serious Threat to Insurance Market, Experts Say (July 2006).
- Author, Houston Business Journal: Question of Who Will Pay Stays Long After the Storm Has Passed (June 2006).
- Women and the Law: Then and Now, Texas Women Lawyers Conference (February 19, 2005).
- Ethical Pitfalls Posed By Corporate Employees: Modern Legal and Practical Issues; Association of Women Attorneys (January 26, 2005).
- Houston Metropolitan Paralegal Association (August 9, 2005).
- Practical Tips for Corporate Risk Management: A Corporate Counsels Guide for Controlling Exposure in Dangerous Times, American Corporate Counsel Association, Houston Chapter (May 2004).
- Texas Association of Defense Counsel Insurance Law Updates (2003 and 2004).
- Current Concerns in Commercial Litigation: Piercing the Corporate Veil & Discovery Pitfalls Posed by Corporate Employees in the Post-Enron Environment, Texas Association of Defense Counsel 2003 Summer Seminar, Cancun,

Mexico. Liabilities and Coverage Issues in Texas: Principles of Handling Claims and Suits, Rothman, Marcy L. and Ziemianski, Joseph A. (4th ed. 2003) (and Rothman, Marcy, for prior editions).

## Presentations

- Speaker, *Hot Topics in Eminent Domain*, KRCL Energy Law Mini Summit, Association of Corporate Counsel, San Antonio Chapter, November 2017
- Speaker, *Procedures and Pitfalls for Post-Incident Investigations*, KRCL Litigation Seminar, February 2017
- 2016 National Association of Railroad Trial Counsel Fall Meeting, Jackson Hole, Wyoming, Panel Presentation with United States District Judge Mark W. Bennett, Handling Implicit Bias in Voir Dire.
- Speaker, National Association of Railroad Trial Counsel, 2015 Fall Meeting, Del Mar, California, October 14-17, 2015, "Spoliation – It's the Flavor of the Day"
- Speaker, *Fiduciaries In Litigation*, Texas Association of Defense Counsel Spring Session (April 28, 2010-May 2, 2010)
- *Master Service Agreements & Selected Recent Developments in Insurance Coverage*, Houston Claims Association Quarterly Meeting (September, 9, 2009)
- Speaker, *Texas & New Mexico: Dealing with Mechanic's Liens on the Border*, Rothman, M.; Roberts S.; Higgins, K.
- Construction Lien Law in Texas Seminar, Lorman Education Services, El Paso, Texas (February 10, 2009)
- Panelist, *Texas Lawyer Roundtable Insurance Law* (December 10, 2007)
- Panelist, *Texas Lawyer E-Discovery Roundtable*, (September 2007)
- Speaker, *Current Concerns in Commercial Litigation: A Reprise of Ethical Considerations and Related E-Discovery Issues*, Rothman, M.; Roberts, S.
- Texas Association of Defense Counsel, Vail, Colorado (Summer Session 2007)
- *Women and the Law: Then and Now*, Texas Women Lawyers Conference (February 19, 2005)
- *Ethical Pitfalls Posed By Corporate Employees: Modern Legal and Practical Issues*; Association of Women Attorneys (January 26, 2005)
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- *Practical Tips for Corporate Risk Management: A Corporate Counsels Guide for Controlling Exposure in Dangerous Times*, American Corporate Counsel Association, Houston Chapter (May 2004)
- *Current Concerns in Commercial Litigation: Piercing the Corporate Veil & Discovery Pitfalls Posed by Corporate Employees in the Post-Enron Environment*, Texas Association of Defense Counsel 2003 Summer Seminar, Cancun, Mexico

## Community

- Lester and Sue Smith Breast Center, Dan L. Duncan Cancer Center at Baylor College of Medicine, Breast Center Advisory Council, Member (January 2010 to 2012)
- Memorial Hermann Prevention & Recovery Center, Family Aftercare Program, Volunteer Facilitator (2008-2009)
- Barrio Dogs, Inc.
- Brave Bully Rescue