

# 2018 MID-YEAR LITIGATION REPORT

## A HOT FIRST HALF

The dockets are hot at KRCL! Litigation has been heating up for our attorneys throughout the first half of 2018, with numerous new cases going to trial or appeal, as well as a large number of case victories achieved through Motions for Summary Judgment, arbitration or successful settlements on behalf of our clients.

## A GROWING TEAM

KRCL has added significant bench strength to the litigation team this year. In Dallas, Brian Hail rejoined the firm in Complex Commercial Litigation, as well as Ashley Veitenheimer, Nicole Herron, Mahan Wright, Grace Guan, Courtney Tawresey and Johnathan Jordan. In Houston, James Prappas joined the firm as a Director, adding Business Immigration services to the firm's practice areas. Arthur Nathan is a new Director with 40 years of experience in Mergers & Acquisitions, and who is Board-Certified in Tax Law. Raul Saenz is the newest litigation attorney in Houston.

# 2018 MID-YEAR LITIGATION REPORT

## THE CASES

### A QUICK SUMMARY OF SOME OF THE TRIAL VICTORIES KEEPING OUR LITIGATORS BUSY THIS YEAR

- Aggressive Defense Wins Jury Trial in Wrongful Death Trucking Case
- Construction Case Win at Arbitration for Multi-State Homebuilder
- Disability Trial Victory Upheld on Appeal at 5th Circuit
- 11th Court of Appeals Upholds Trial Victory in Oilfield Death Case
- Jury Awards Commercial Property Buyer Nearly \$2 Million in Breach of Contract Case
- Insurance Broker Vindicated in \$70 Million Life Insurance Fraud Claim
- Fast Food Franchisee Victorious in Negligence Case After Employee Accident in Company Car
- Litigation Win in Oilfield Explosion Case
- Motion to Strike Expert Witness Leads to Settlement Victory
- Hailstorm Bill Supports Motion for Dismissal
- Workplace Violence Case Ends with Successful Motion for Summary Judgment
- Case Dismissed Against Medical Billing Company
- Property Regained to Landlord After Two Years of Wrongful Occupancy
- Special Appearance Granted in Commercial Property Insurance Case
- Jury Awards \$0 to Plaintiffs in Defective Pool Cleaning System Case
- First Impressions Count in Identity Theft Case
- Commercial Landlord's Triple Damages Judgment Reversed on Appeal

**20+ CASES**

LITIGATED IN LOCAL, STATE AND FEDERAL COURTS  
FROM JAN-JUN 2018

**14 NEW ATTYS**

OVER A DOZEN NEW ATTORNEYS JOINED THE FIRM  
IN THE PAST YEAR INCLUDING 8 NEW LITIGATORS

“

Allegations of a truck driver being over hours is always a tough piece of evidence for a jury to digest. The jury reached the right conclusion in spite of what looked like a really strong case for the plaintiff.

”

ZACH MAYER, DIRECTOR

## AGGRESSIVE DEFENSE WINS JURY TRIAL IN WRONGFUL DEATH TRUCKING CASE

**Zach Mayer, Brian Fisher, and Edward Johnson** won a complete defense verdict for a major international food processing company in a wrongful death case following a fatal trucking accident involving two tractor-trailers. The Plaintiffs asked the jury for \$5 million in damages. The KRCL trial team mounted an aggressive defense against the plaintiff's allegations and secured a win for their client with evidence gathered during their early investigation, as well as testimony from the investigating troopers and accident reconstruction expert. [\[more\]](#)

## DISABILITY TRIAL VICTORY UPHELD ON APPEAL AT 5TH CIRCUIT

**Zach Mayer, Robert Rickman, and Brian Fisher** obtained a ruling from the Fifth Circuit Court of Appeals upholding a defense verdict obtained in federal court in Plano in a disability discrimination and workplace injury lawsuit. The original case involved a former employee who had lost a disability case at trial. The plaintiff's counsel filed a motion for leave to interview jurors post-trial, then moved for a new trial, arguing that the jury ignored the evidence when it concluded that employee was not disabled. The district court denied both requests, and the Fifth Circuit appeal followed. The appellate court upheld the decisions of the district court and denied the appeal in [Case No. 17-40161 in the United States Court of Appeals for the Fifth Circuit, Vanity Benson, v. Tyson Foods, Incorporated.](#)

## CONSTRUCTION CASE WIN AT ARBITRATION FOR MULTI-STATE HOMEBUILDER

**David Thrasher** took a construction defect case to arbitration and won a complete defense verdict for a multi-state homebuilder. Claimants alleged that the flooring in their vacation home was defectively installed, exposing their family to toxic chemicals. KRCL compelled the case to arbitration with the American Arbitration Association based upon the construction contract. Claimants sought more than \$700,000.00 in damages; however, the arbitrator found that the builder had established its statute of limitations defense and defeated the causation theories advocated by Claimants' experts. The arbitration award was confirmed by the trial court and survived the appellate process.

## 11TH COURT OF APPEALS UPHOLDS TRIAL VICTORY IN OILFIELD DEATH CASE

**Tom Ciarlone, Amy Taylor and Kevin Riley** secured a victory on appeal at the Eleventh Court of Appeals in the *Godines v. Parsley* case. In this case, KRCL represented Parsley, the operator of a well site in West Texas. The decedent worked for Parsley's contract driller, Precision. A rig was transported by another party, Briley Trucking, from one well site to another. Upon arrival at the subject site, the decedent took a sledgehammer to the safety pins securing the multiple sections of the telescoping rig before the sections were secured by a crane or pole trucks. After the decedent prematurely knocked out one of the pins, the mast of the rig fell, crushing him against the fifth wheel of Briley's truck. Amy Taylor and Kevin Riley served as lead trial counsel, while Tom Ciarlone briefed and won summary judgment. On appeal, the summary judgment was affirmed by the appellate court after KRCL demonstrated that the firm's client did not retain contractual or actual control over the workplace operations or workplace safety and therefore owed no duty to the decedent. [The Eleventh Court of Appeals Case No. 11-16-00139-CV.](#)

## JURY AWARDS COMMERCIAL PROPERTY BUYER NEARLY \$2 MILLION IN BREACH OF CONTRACT CASE

**Robert LeMay** and **Jamie DeWees** represented the purchaser of a commercial property in a breach of contract case against the seller in federal court in Peoria, Illinois. The tenant on the property was purported to be a franchisee of CKE (the franchisor of Hardee's and Carl's Jr. restaurants) and had a valid, operative franchise agreement to operate the Property as a Hardee's restaurant. This and other misrepresentations by the seller caused the buyer to sustain significant damages. The KRCL trial team argued that under Illinois law, the injured party in a breach-of-contract case is entitled to be placed in the position it would have been in absent the breach. After a five-day trial, the jury returned a verdict for KRCL's client, awarding 1,990,011.72, plus an award of pre- and post-judgment interest on the damages.

## FAST FOOD FRANCHISEE VICTORIOUS IN NEGLIGENCE CASE AFTER EMPLOYEE ACCIDENT IN COMPANY CAR

**Marcy Rothman** and **Danny Guerra** obtained summary judgment on behalf of a large fast food restaurant franchise organization, defeating claims of negligent entrustment and other employment-related negligence. One of the company's district managers left work in his company car and spent the afternoon and evening drinking with friends. He was involved in a serious accident and the plaintiffs sought to hold the company vicariously liable for his acts alleging that he was a vice principal. The KRCL team developed evidence to establish that the manager was not in course and scope and that his status as a vice principal was not relevant. After vigorous oral argument and supplemental briefing, the Court granted summary judgment on all claims and allegations, handing the client a complete victory.

## INSURANCE BROKER VINDICATED IN \$70 MILLION LIFE INSURANCE FRAUD CLAIM

**Larry Bowman** and **Don Waltz** successfully defended an insurance broker in a complex case involving allegations of fraud and breach of fiduciary duty. The plaintiff in the case purchased \$70,000,000 worth of life insurance policies from the firm's client as an investment. After the financial markets collapsed in September 2008, the plaintiff lost more than \$3,200,000 and filed suit against the firm's client, among others, claiming a conspiracy was involved. The trial court granted KRCL's Motion for Summary Judgment, which was later upheld on appeal. [\[more\]](#)

“

The plaintiff took a calculated risk buying \$70 million in life insurance as an investment. When the risk didn't pay off, he sued everyone in sight to try and recoup his losses. The court understood our client's role in this; there was no fraud, and certainly no liability for the insured's losses.

”

LARRY BOWMAN, DIRECTOR

## LITIGATION WIN IN OILFIELD EXPLOSION CASE

**Marcy Rothman**, **Danny Guerra** and **Brian Clark** represented a large oilfield contracting company in a case involving injuries caused when a compressor exploded. The firm's client opened a blowdown valve on a flash compressor that required service. After the repairs were performed and the mechanics started the compressor back up, the oxygen intake caused an explosion, injuring the plaintiff. The KRCL team was able to establish in depositions that their clients met the standard of care in the field; they moved for summary judgment and prevailed.

## MOTION TO STRIKE EXPERT WITNESS LEADS TO SETTLEMENT VICTORY

In this first-party commercial property insurance case, **Bill Pilat** represented the defendant in a case in which \$300,000 in damages were demanded. The court granted the firm's motion to strike the plaintiff's expert witness on causation, leaving the plaintiff's counsel only one course of action: He voluntarily non-suited the case. The plaintiff could have re-filed the lawsuit; instead, in May 2018, the plaintiff agreed to settle that claim for less than five percent it had demanded just six weeks earlier. Civil Action No. 1:17-cv-00195; Superior Home Health Services, LLC v. Philadelphia Indemnity Insurance Company, et al.; In the United States District Court for the Southern District of Texas, Brownsville Division.

## WORKPLACE VIOLENCE CASE ENDS WITH SUCCESSFUL MOTION FOR SUMMARY JUDGMENT

**Edward Johnson** defended a national food processing company in a case involving allegations of gross negligence after two coworkers were involved in a physical altercation at a company facility. One of the women was involved in an extramarital affair with a male coworker and was allegedly jealous of a perceived relationship with another female coworker. Johnson and the KRCL trial team argued that the Plaintiff failed to establish that the Defendant owed her a legal duty and failed to address her gross negligence claim. The Court granted the KRCL Motion for Summary Judgment in Civil Action No. 9:17-CV-126 in the United States District Court for The Eastern District of Texas Lufkin Division.

## HAILSTORM BILL SUPPORTS MOTION FOR DISMISSAL

On May 25, 2018, **Bill Pilat** obtained dismissal with prejudice of the plaintiff's claims against independent adjusting company Paul R. White & Company, Inc. and general adjuster Elizabeth Ortiz in Cause No. 2018-CV-01938; Judson Post No. 2059, Veterans of Foreign Wars v. Philadelphia Indemnity Insurance Company, et al.; In the County Court at Law No. 10 of Bexar County, Texas. The trial court dismissed our clients on motions we filed under the provisions of the so-called "Hailstorm Bill," which the Texas Legislature adopted in 2017.

## CASE DISMISSED AGAINST MEDICAL BILLING COMPANY

A medical billing company represented by **Richard Hathaway** were the Plaintiffs in a state court case. Defendants in the state court case turned the tables and filed a federal lawsuit. At more than 80 pages with 13 causes of action and more than 400 paragraphs, the complaint was scathing, riddled with inaccurate statements and generally besmirched the good name of the firm's client. The Dallas Morning News wrote an unflattering article about the client based on the lawsuit. Adding insult to injury, the most recent settlement demand for the federal case was \$5 million. Richard Hathaway moved to dismiss the federal lawsuit with the briefing help of **Brian Clark, Jaime DeWees, and Harrison Papaila** and the Eastern District of Texas granted the motion. The federal claims were dismissed with prejudice and the federal court declined to exercise supplemental jurisdiction of the state court claims raised in the complaint.

“

Our clients had a strong case in state court and the opposing side filed their federal lawsuit in an unsuccessful attempt to muddy the waters. In spite of their efforts to generate negative publicity and paint our client in an unflattering light, the Eastern District Court granted our motion to dismiss the federal case, which was the right outcome.

”

## PROPERTY REGAINED TO LANDLORD AFTER TWO YEARS OF WRONGFUL OCCUPANCY

**Brian Fisher** obtained summary judgment in a forcible detainer lawsuit in Travis County, and was able to return possession of property to his client, a commercial landlord, that had been wrongfully occupied by a retail tenant for approximately two years.

“ The commercial tenant employed multiple stall tactics to maintain occupancy of the premises for nearly two years after being asked to vacate. Once we were ultimately brought into the dispute, we successfully utilized creative methods to legally return occupancy of the premises to our commercial landlord client within approximately ninety days.

BRIAN FISHER, DIRECTOR

”

## JURY AWARDS \$0 TO PLAINTIFFS IN DEFECTIVE POOL CLEANING SYSTEM CASE

**Clark Samuelson** represented a swimming pool design and construction company in a case involving allegations that they installed a faulty cleaning system in the Plaintiffs' swimming pool. Plaintiffs were suing for the cost of the cleaning system that they alleged was defective and the replacement system they had installed. After a brief trial, a jury awarded the plaintiffs \$0 in monetary damages, but instead awarded a free maintenance service call of the previously installed cleaning system.

## SPECIAL APPEARANCE GRANTED IN COMMERCIAL PROPERTY INSURANCE CASE

In this first-party commercial property insurance case, **Bill Pilat** filed a special appearance to challenge the court's jurisdiction over one of the firm's clients, an out-of-state individual defendant. In March 2018, the court granted the special appearance and ordered the plaintiff to pay the attorneys' fees incurred by the firm's client in Cause No. 2017-25426; Immanuel United Church of Christ v. Philadelphia Indemnity Insurance Company, et al.; In the 164th Judicial District Court of Harris County Texas.

## FIRST IMPRESSIONS COUNT IN IDENTITY THEFT CASE

On behalf of a car dealership client, **David Thrasher** and **Demetri Economou** won a dismissal of claims for identity theft under the FTC Safeguards Rule and the Gramm-Leach-Bliley Act, presenting a case of first impression for any court in the Fifth Circuit.

## COMMERCIAL LANDLORD'S TRIPLE DAMAGES JUDGMENT REVERSED ON APPEAL

**Zach Mayer**, **Kevin Riley** and **Demetri Economou** won an appeal in a case involving allegations of bad faith against the firm's client, a commercial landlord who had retained a tenant's security deposit. In a case of first impression argument at the Court of Appeals, KRCL achieved the reversal of treble damages judgment against the firm's client and the Supreme Court denied the petition for review.