



Mike F. Pipkin

Attorney

Phone: 214.865.7012



Mike Pipkin's wide range of experience allows him to be creative when crafting strategies and solutions for his clients. Throughout his 30+ year legal career, Mike has represented clients in complex business, surety, construction, bankruptcy, fidelity, and insurance litigation and trials, as well as legal analysis and counseling to businesses of all varieties.

Mike's approach is to work with his clients to determine one or more desirable outcomes, then fashion the appropriate plan to achieve success. Throughout the course of the engagement, Mike and his team keep in close contact with the client, so that they are aware of current developments, and expectations are established and managed using the latest information.

Mike is recognized nationally as a thought leader in the legal industry. Mike serves on the Council for the American Bar Association's Tort Trial and Insurance Practice Section, with his term concluding in 2022. Mike's election to Council is a reflection of his years of leadership within TIPS, including as Chair of the ABA/TIPS Fidelity and Surety Law Committee in 2014-2015, his continuing service as Co-Chair of the ABA/TIPS Book Publishing Editorial Board, Co-Chair of the TIPS Section Conference Task Force, and his contributions to the ABA/TIPS Content Management and Finance Standing Committees and CLE Board. Mike also serves as one of eight attorneys in the USA on the National Association of Surety Bond Producers (NASBP) Attorney Advisory Council. Mike is also a member in the Federation of Defense & Corporate Counsel (FDCC), an organization comprised of leaders in the insurance and corporate defense bar. FDCC membership is selective and by invitation to those who have been judged by their peers to have achieved professional distinction.

In 2017, Mike passed the Louisiana State Bar Examination, allowing WRP to expand its base of services beyond Texas, Oklahoma, and Arkansas.

REPRESENTATIVE EXPERIENCE

Construction and Surety

- Represented a bankruptcy trustee bond surety in an action filed in the U.S. Bankruptcy Court for the Southern District of Texas by a successor trustee in a long-running Chapter 7 case against an earlier trustee who had been removed by the court for breach of fiduciary duty. After successfully defending a motion for partial summary judgment adjudicating the amount of coverage available under the bond and following the first day of trial (consisting only of opening arguments and the cross-examination of the plaintiff successor trustee), the matter settled on favorable terms to the surety.
- Obtained a take-nothing summary judgment in Gregg County Court at Law No. 2 for our surety client in which the plaintiff sought to recover more than \$18 million in delay and other damages arising out of a failed independent living, assisted living, and memory care facility. We successfully argued that the owner failed to satisfy an express condition precedent in its construction contracts with the surety's principal, because it did not provide financial assurances upon request, resulting in a material breach of the contracts, and that the principal did not waive the owner's failure to provide financial assurances by continuing to perform in the midst of an ongoing payment dispute. The matter is currently on appeal.
- Obtained a summary judgment in the U.S. District Court for the Western District of Texas, Del Rio Division, for a surety client seeking to recover more than \$1 million in damages arising out of a performance bond claim. The Court granted the surety's motion for summary judgment not only on its indemnity claim, but also defeating the indemnitors' breach of contract, conversion, and commercial reasonableness claim after the surety settled not only the obligee's claim on the performance bond, but also the principal's affirmative claims against the obligee. Taking aggressive steps to collect on the judgment, including an action against a bank issuing a dishonored letter of credit, the amount of the judgment was collected in full.
- Obtained a take-nothing summary judgment in Williamson County District Court for our surety client in which the plaintiff sought hundreds of thousands of dollars in damages on a hotel construction project. Relying upon the Texas Supreme Court's seminal holding in *Old Colony Ins. Co. v. City of Quitman*, 352 S.W.2d 452 (Tex. 1961), we successfully argued that the project owner's consistent failure to abide by key contract terms governing payment and notice of claims materially altered the bonded construction contract without the surety's consent, thereby releasing the surety from liability. Taking the court through the motion by means of a thorough PowerPoint presentation, we demonstrated that the project owner could have withheld payment of contract funds, including retainage, when it was aware of defective work not remedied and/or not completed in accordance with the contract, but failed to do so. When the case could not be resolved by settlement, the team crafted a discovery strategy designed to support a successful summary judgment strategy.
- Obtained a preliminary injunction for a surety client in an action filed in the U.S. District Court for the Northern District of Texas, Dallas Division, initiated after the surety received multiple claims from subcontractors and suppliers in connection with several of the contractor's projects on which the surety issued performance and payment bonds. Facing existing and potential losses under payment bonds written for the contractor, the surety tendered a collateral demand, pursuant to the general indemnity agreement, which was ignored by the contractor. The surety brought a motion for preliminary injunction asking the court to order the contractor to post certain collateral deemed necessary by the surety to protect itself from actual or anticipated loss. The court was convinced that the evidence demonstrated: 1) the surety was likely to succeed on the merits of its case because the indemnity agreement presented no ambiguity or element of surprise, the conditions precedent to the contractor's obligation to post collateral were met, and the contractor raised no defense to the demand for collateral itself; and 2) the surety was likely to suffer irreparable harm from the loss of its contractual right to collateral security. The court found that the failure of the indemnitors' response to the collateral demand supported a conclusion that the indemnitors were disposing assets or lacked an ability to pay a judgment. The court specifically noted that the harm was not monetary, but rather the loss of a right to immediate payment. The court further found the remaining two

HONORS AND AWARDS

- Recognized, AV Preeminent Rating (5.0 out of 5), Martindale-Hubbell Attorney Directory
- Recognized, Top Rated Lawyer in Construction Law, by Legal Leaders, ALM
- Recognized, Superb Rating (10.0 out of 10), Avvo (avvo.com)
- Recognized, Best in Surety—Texas, Corporate America Legal Elite, 2015
- Repeatedly selected as a Texas Super Lawyer by *Texas Monthly* and *Law and Politics Magazine*.

EDUCATION

- Southern Methodist University Dedman School of Law (J.D., 1989)
- Abilene Christian University (B.B.A., 1986).

ADMITTED TO PRACTICE

- State Courts of Texas and Louisiana
- U.S. Court of Appeals for the Fifth Circuit
- U.S. District Courts for the Northern, Southern, Eastern, and Western Districts of Texas
- U.S. District Court for the Western District of Louisiana
- U.S. District Court for the Eastern District of Arkansas
- U.S. District Court for the District of Colorado
- U.S. Bankruptcy Courts for the Northern, Southern, Eastern, and Western Districts of Texas
- U.S. Bankruptcy Court for the Western District of Louisiana

- American Bar Association
 - Tort Trial and Insurance Practice Section, Fidelity & Surety Law Committee—Past Chair and Founding Co-Chair of Construction Subdivision of Law Division
 - Tort Trial and Insurance Practice Section—Council (Member), Book Publishing Editorial Board (Co-Chair), Section Conference Task Force (Co-Chair), Content Management and Finance Standing Committees and CLE Board (Member)
 - Tort Trial and Insurance Practice Section—Cybersecurity and