

## Michael Klein

Member

### Austin

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Austin, TX 78701



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### Areas Of Practice

Health Care

Non-Compete, Unfair Competition  
and Trade Secrets

Litigation

Business & Commercial

Real Estate

### Industries

Insurance Industry Group

Insurance Regulatory and  
Compliance

### Bar Admissions

Texas, 1981

### Court Admissions

U.S. Court of Appeals, 5th Circuit

U.S. District Court for the Eastern  
District of Texas

U.S. District Court for the  
Southern District of Texas

U.S. District Court for the Western  
District of Texas

### Education

University of Houston Law Center,  
J.D., 1981

The University of Texas, B.B.A.,  
Business Honors Program, 1978

Michael Klein is a trial lawyer in Dykema's Austin office. In his career that spans 35 years, Mr. Klein has tried over 45 matters to final award or judgment in both state and federal courts, as well as arbitration. His five most recent jury trial victories involved first-party wind-hail litigation.

In addition to first-party coverage litigation, Mr. Klein also represents insurance clients in governmental investigations, declaratory judgment actions and injunctive matters involving insurance regulatory and consumer protection issues. He has extensive experience in healthcare Prompt Pay litigation and advising clients on the implications of the statute.

Mr. Klein filed the first lawsuit to challenge the constitutionality of the Insurance Commissioner's power of restitution when the Commissioner ordered 47 insurers to pay \$36 million in "restitution" to medical providers for violations of the Prompt Pay Act, in what the Texas Department of Insurance referred to as the "Prompt Pay Blitz." He has represented clients in healthcare Prompt Pay disputes, including "mass action" lawsuits involving hundreds of providers.

Mr. Klein also represents healthcare and insurance clients in network provider litigation, delegation oversight litigation and provider incentives litigation, as well as other healthcare-related litigation.

Mr. Klein's practice involves all aspects of real estate litigation, including real estate purchase and improvement contracts, real estate fraud and negligent misrepresentation litigation, real estate partnership disputes, residential and commercial construction defect litigation, commercial landlord-tenant litigation, commercial and construction site premises liability litigation, construction site accident litigation, construction site litigation related to storm water discharge, litigation regarding damages to commercial property caused by defective products, and Fair Housing Act litigation related to disparate impact claims and reasonable accommodation claims.

Mr. Klein also handles trade secret litigation matters. He has at different times represented all three parties in trade secret lawsuits.

## Experience

### Representative Matters

- Secured defense verdicts in three separate first-party wind-hail jury trials in Potter County over a six month period involving the contractual portions of the cases in which the bad faith allegations had been abated pending the outcome of the contractual portions of the lawsuits
- Secured a defense verdict in a first-party wind-hail jury trial in Dallas County involving both contractual and bad faith allegations.
- Secured a defense verdict in a first-party wind-hail jury trial in Dallas County involving the contractual portion of a case in which the bad faith allegations had been abated pending the outcome of the contractual portion of the lawsuit.
- Secured dismissal of a first-party wind-hail lawsuit in Hidalgo County following depositions of plaintiffs and plaintiffs' expert.
- Secured a "claimant take nothing" arbitration award on behalf of a Texas HMO. A hospital brought suit under the Texas Healthcare Prompt Pay Statute alleging that the HMO wrongfully denied payment on multiple claims involving long-term acute care hospital stays.
- Represented the Texas Association of Health Plans and prepared its amicus brief at the Texas Supreme Court in support of Aetna in the only healthcare Prompt Pay case to reach the Texas Supreme Court. In April 2013, the court ruled in Aetna's favor.
- Represented the National Association of Home Builders and prepared its amicus brief at the Fifth Circuit Court of Appeals in a Fair Housing Act matter in 2013.
- Represented the National Association of Home Builders and prepared its amicus brief at the Fifth Circuit Court of Appeals in a Fair Housing Act matter in 2012.
- Secured a defense verdict for an apartment landlord evicting a tenant in which the tenant claimed immunity from eviction by virtue of a disability under the Fair Housing Act.
- Obtained a significant arbitration award in a dispute involving the expulsion of several physician medical partners from an imaging center partnership. The case involved breach of fiduciary duty and breach of contract in the expulsion of the physician medical partners, among other issues.
- Obtained a significant arbitration award in a dispute involving the expulsion of a physician medical partner from an ambulatory surgery center partnership. The case involved allegations of breach of fiduciary duty and breach of contract, sham peer review, defamation and other issues.
- Obtained a ruling on behalf of a large HMO that private medical providers had no private right of action against the HMO for alleged violations of the HMO delegation oversight statute.
- Obtained a ruling that the Texas Attorney General and the Texas Department of Insurance could not impose civil penalties against an HMO under the Prompt Pay Act in state court litigation.
- Obtained a summary judgment on behalf of a national rental company against the Texas Department of Insurance declaring that damage waivers were not insurance and hence could be sold without a license from the Department.

### Seminars & Speeches

*Emerging Trends and Issues in Healthcare Litigation*, Texas Association of Health Plans (TAHP) Managed Care Conference, Dallas, Texas  
2016

*Endangered Species and Trade Secrets*, Endangered Species Act Conference, CLE International, Austin, Texas  
May 2013

*Prompt Pay: Emerging Trends and Issues*, Texas Association of Health Plans (TAHP) Managed Care Conference, San Antonio, Texas  
2013

Michael Klein (Cont.)

*The Fair Housing Act & Municipal Zoning*, 2012 American Planning Association National Planning Conference, Los Angeles, California  
2012

*What Could Possibly Go Wrong? Wind Energy Litigation: Trends and Highlights*, 4th Annual Wind Energy Conference, CLE International, Austin, Texas  
2011

*The Fair Housing Act & Municipal Zoning*, The 2010 Land Use Conference, University of Texas School of Law, Austin, Texas  
2010

*30 Days Out: Tips for Being Prepared/Evidence*, Austin Bar Association's 2009 Ultimate Trial Notebook Seminar, Austin, Texas  
2009

*Providing Affordable Housing: Fair Housing Act, Discrimination and Workforce/Affordable Housing Set-Asides*, American Bar Association State and Local Government Law Fall Council Meeting, Austin, Texas  
2009

*The Practical Side of Trying a Fair Housing Act Discriminatory Case*, LANDS Roundtable and Workshop, The National Association of Home Builders, Atlanta, Georgia  
April 1, 2008

*The History and Constitutionality of the Insurance Commissioner's Power of Restitution*, 2004 Annual Meeting of the Texas Association of Life & Health Insurers, Seattle, Washington  
January 1, 2004

*The Constitutionality of Texas Prompt Pay Act and Vulnerability to Challenge*, 2002 Prompt Pay Legal Summit, Health Insurance Association of America  
2002

*To Sue or Not to Sue, Is That the Question? Do We Have Dual Regulation of Insurance in Texas?*, Texas Association of Life & Health Insurers Annual Meeting, Monterey, California  
2002

## Publications

"Unauthorized Insurance: The Texas Story With National Context"  
Fall 2015

*Journal of Texas Insurance Law*, Vol. 13: 4

"Endangered Species and Trade Secrets"  
Spring 2014

*American Bar Association Journal*, Vol. 28: 3; Vol. 28: 4

"Subchapter B of Chapter 542: In Light of Christus, an Old Statute Gets a New Application - But is That What the Legislature Intended?"  
Spring 2014

*Journal of Texas Insurance Law*, Vol. 12: 5

"The History and Constitutionality of the Commissioner's Power of Restitution and Its Extension to the Prompt Pay Act"  
Fall 2013

*Journal of Texas Insurance Law*

## Memberships & Involvement

American Bar Association

American Health Lawyers Association

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State Bar of Texas (Insurance Section)

American Board of Trial Advocates

### **Awards & Recognition**

Recognized in *The Best Lawyers in America*® for Commercial Litigation and Insurance Law, 2019-Present. Copyright 2015 by Woodard/White, Inc., Aiken, SC

Recognized multiple times in *Texas Super Lawyers*®, *Texas Monthly*

Recognized as a *Texas Super Lawyer*®, *Super Lawyers Business Edition*, 2015