



## Kelly

### Kelly Brechtel Becker

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#### Overview

Kelly Becker is a litigator whose appellate practice regularly includes cases before the Louisiana courts of appeal, the Louisiana Supreme Court, and the United States Fifth Circuit Court of Appeal. Her practice focuses on complex litigation, including environmental, energy, and commercial matters. Based on her experience, Kelly is also frequently retained to write amicus briefs on behalf of businesses and trade organizations in matters of industry-wide significance.

Kelly is regularly engaged to assess the viability of appeal and often participates at the trial stage of a case as an appellate strategist. Kelly also handles strategic motion practice at the trial court level. Currently, Kelly manages legal strategy and briefing for several oil and gas industry clients in the Louisiana coastal land loss docket.

A couple of cases particularly highlight Kelly's value to clients:

- Shell Oil Company retained Kelly as appellate counsel in the first legacy case (claims for historical oilfield contamination) to go through Louisiana's Act 312 procedure. She secured a unanimous opinion from the Louisiana Third Circuit Court of Appeal reversing in part a trial court judgment that had awarded Plaintiff-landowners \$34 million – holding that the Plaintiff-landowners were not entitled to a private money judgment for the cost of remediation of their property to state regulatory standards. This decision has served as a precedent for the numerous other legacy cases throughout Louisiana.
- Kelly obtained a Rule 12 dismissal at the pleadings stage of RICO and fraud claims asserted by a local tax assessor against numerous oil and gas producers and their corporate officers, claiming that property had been undervalued for tax purposes. The dismissal was affirmed by the United States Fifth Circuit Court of Appeals.

#### Experience

##### Legacy Litigation

- Represented BP America Production Company in securing unanimous opinion from Louisiana Third Circuit Court of Appeal affirming application of Louisiana's subsequent purchaser doctrine to dismiss current

#### Practice Areas

Appellate  
Business Litigation  
Energy Litigation  
Tax

#### Bar Admissions

Louisiana, 2001

#### Education

Paul M. Hebert Law Center, Louisiana State University, J.D., 2001

- Order of the Coif
- *Louisiana Law Review*, Managing Editor, 2000-2001

University of Virginia, B.A., with distinction, 1998

landowner's claims for pre-purchase property damage. *Grace Ranch LLC v. BP America Production Company, et al.*, – So. 3d – (La. App. 7/18/18).

- Represented BP America Production Company in securing unanimous opinion from Louisiana Third Circuit Court of Appeal affirming procedure used under Act 312 to settle claims in land damage litigation when settlement procedure was challenged by insurer of a co-defendant. The insurer's writ application to the Louisiana Supreme Court was denied. *Britt v. Riceland Petroleum Company, et al.*, 240 So. 3d 986 (La. App. 3 Cir. 3/7/18).
- Represented Hess Corporation in the United States Fifth Circuit Court of Appeals and obtained a unanimous opinion affirming the application of Louisiana's subsequent purchaser doctrine to bar a plaintiff's claims against Hess for pre-purchase property damage. *Guilbeau v. Hess Corp.*, 854 F.3d 310 (5th Cir. 2017).
- Represented ExxonMobil in a legacy case and secured (i) unanimous opinion from the Louisiana First Circuit Court of Appeal affirming the dismissal of the Plaintiff-landowner's claims based on the subsequent purchaser doctrine, *Global Mktg. Solutions, L.L.C. v. Blue Mill Farms, Inc.*, 2013-2132 (La. App. 1 Cir. 9/19/14), 153 So. 3d 1209, and (ii) denial of Plaintiff-landowner's writ application to the Louisiana Supreme Court.
- Retained as appellate counsel for Shell Oil Company in a legacy case and secured (i) unanimous opinion from the Louisiana Third Circuit Court of Appeal reversing that portion of a trial court judgment which had awarded Plaintiffs-landowners \$34 million, holding that the Plaintiffs-landowners were not entitled to a private money judgment for the cost of remediation of their property to state regulatory standards, *Savoie v. Richard*, 13-1370 (La. App. 3 Cir. 4/2/14), 137 So. 3d 78, and (ii) denial of the Plaintiff-landowners' writ application to the Louisiana Supreme Court.
- Represented BP in a legacy case and secured (i) unanimous opinion from the Louisiana Third Circuit Court of Appeal affirming a jury verdict in favor of BP, *Houssiere v. ASCO USA*, 12-791 (La. App. 3 Cir. 1/16/13), 108 So. 3d 797, and (ii) denial of Plaintiff-landowners' writ application to the Louisiana Supreme Court. The Houssiere plaintiffs brought breach of contract and tort claims against BP under Act 312 for alleged contamination of property caused by historic oil and gas operations. The jury rejected Plaintiffs' claims, finding that BP did not cause environmental damage to Plaintiffs' property. The Third Circuit affirmed the jury's findings and also held that the trial court properly applied Act 312 to Plaintiffs' claims as presented at trial.

## Oil and Gas Litigation

- Retained as appellate counsel by Louisiana Association of Business and Industry and Louisiana Midcontinent Oil & Gas Association to submit amicus brief to the Louisiana Supreme Court. In this case in which the Supreme Court addressed the proper application of the manifest error standard of appellate review, the Court agreed with the position of the amici and reversed a decision of the Louisiana Third Circuit Court of Appeal, reinstating the district court judgment for defendant-operators which rejected a claim for lost hydrocarbons due to alleged imprudent operations. *Hayes Fund for the First United Methodist Church of Welsh, LLC v. Kerr-McGee Rocky Mt., LLC*, 2014-C-2592 (La. Dec. 8, 2015), – So. 3d – .
- Assisted trial team in obtaining writ grant from the Louisiana Supreme Court, reversing decision of First Circuit Court of Appeal, and reinstating trial court judgment dismissing suit brought by landowners in Haynesville Shale area as an improper use of a declaratory judgment proceeding in an effort to invalidate unit-wide orders of the Louisiana Commissioner of Conservation. *Gatti, et al. v. State of Louisiana, through the Office of Conservation, et al.*, 2014-C-863 (La. 8/25/14).
- Represented Monsanto in seeking appellate review of denial of enforcement of an arbitration agreement. After the Louisiana Second Circuit Court of Appeal denied Monsanto's writ application, Ms. Becker obtained a writ grant from the Louisiana Supreme Court with an order that the Second Circuit issue a decision on the matter. *Hanlon v. Monsanto AG Prods., LLC*, 2013-0169 (La. 3/1/13), 108 So. 3d 781. Following remand from the Louisiana Supreme Court, the Second Circuit reversed the trial court and ruled in favor of Monsanto, finding the arbitration clause valid and enforceable. *Hanlon v. Monsanto AG Prods., LLC*, 48,010 (La. App. 2 Cir. Oct. 9, 2013), 2013 La. App. Lexis 2019.
- Represented Dow Chemical Company as appellate counsel to assist trial counsel in seeking discretionary review by the Louisiana Supreme Court of an intermediate appellate court decision that had reversed a district court judgment dismissing class action plaintiffs' claims for punitive damages. The Louisiana Supreme Court granted the writ application and, with an accompanying order, reinstated the district court decision. *Thomas v. A. Wilbert & Sons, Inc.*, 2012-1534 (La. 10/12/12), 98 So. 3d 879.

- Secured dismissal at the pleadings stage of RICO and fraud claims asserted against numerous oil and gas producers and their corporate officers. The dismissal was affirmed on appeal. *Bonvillain v. La. Land & Exploration Co.*, No. 10-30810, 2011 U.S. App. LEXIS 13366 (5th Cir. June 28, 2011).
- Represented a major oil and gas company at the trial and appellate levels in its defense of a claim for more than \$60 million brought by the State of Louisiana. On cross motions for summary judgment, the district court ordered the money refunded to the taxpayer. The Louisiana First Circuit of Appeal affirmed, and the Louisiana Supreme Court denied writs. *BP Prods. N. Am. v. Bridges*, 2010-1860 (La. App. 1 Cir. 8/10/11), 77 So. 3d 27.
- Obtained a unanimous Louisiana Supreme Court decision in favor of an integrated energy company in a dispute over property taxes. *Gisclair v. La. Tax Comm'n*, 2009-0007 (La. 6/26/09), 16 So. 3d 877.
- Retained as appellate counsel for a major oil and gas producer against whom a Louisiana district court had entered judgment assessing damages with respect to operations conducted on leased premises to support a drilling operation on an adjoining tract. This trial court judgment was reversed in its entirety by the Louisiana Second Circuit Court of Appeal and confirmed by a writ denial from the Louisiana Supreme Court. *Fuller v. XTO Energy, Inc.*, 43,454 (La. App. 2 Cir. 8/13/08), 989 So. 2d 298.

## Involvement

### Professional

- New Orleans Bar Association, 2019 Board of Directors
- New Orleans Bar Association, Appellate Practice Subcommittee Co-Chair, 2018-2019
- Liskow & Lewis, Former Member of the Firm's Board of Directors
- New Orleans Bar Association, 2014 – Chair, Oil and Gas Subcommittee
- Louisiana State Bar Association
- American Bar Association - Appellate Committee
- Federal Bar Association

### Community

- Women's Energy Network, 2010 Board of Directors, Membership Chair

## Recognition

- *City Business*, Leadership in Law 2016
- *New Orleans Magazine's* List of "Top Lawyers," 2015-2018

## Presentations

- "The Winning Brief: Persuading the Court and Following the Rules," along with Judge Terri Love, 4<sup>th</sup> Circuit Court of Appeal, and Judge Susan Chehardy, 5<sup>th</sup> Circuit Court of Appeal, LSBA's Advanced Appellate Practice Seminar, November 16, 2017
- 2017: The Current State of Coastal Land Loss Litigation in Louisiana
- Brief Writing – Tips You Didn't Learn in Law School
- Writs to the Courts of Appeal and the Louisiana Supreme Court
- The Appellate Process – Appeals from Final Judgments and Interlocutory Judgments
- Against the Current: Fighting the New Wave of Coastal Landloss Litigation in Louisiana

## Publications

- Louisiana's Third Circuit (Again) Affirms the Applicability of the Subsequent Purchaser Doctrine to Mineral Leases

- Louisiana Supreme Court's reversal of Gloria's Ranch clarifies calculation of damages for unpaid mineral royalties, provides relief for holders of security interests in mineral rights
- "Initial Civil Appeals: Louisiana," Practical Law State Q&A, Thomson Reuters, May 25, 2018
- "Additional Civil Appeals: Louisiana," Practical Law State Q&A, Thomson Reuters, May 25, 2018
- Louisiana Third Circuit Issues Decision on the Procedure for Settlements in Cases Governed by Act 312
- Louisiana Supreme Court Grants Writs from Second Circuit Decision Finding Holder of Mortgage Encumbering a Mineral Lease Solidarily Liable with Mineral Lessees for Damages Resulting from the Mineral Lessees' Breach of Contractual and Statutory Obligations
- Third Circuit Affirms Trial Court's Refusal to Adopt DNR's Most Feasible Plan in Sweet Lake Land & Oil Co. v. Oleum Operating Company
- Nominees Announced for U.S. Fifth Circuit and Eastern District of Louisiana Seats
- Federal Court Finds A Continuing Duty Under Louisiana Law To Prevent The Erosion of Pipeline Canals
- Strong Dissent Warns of "Devastating Economic Repercussions" of Second Circuit's Decision in Oil & Gas Case
- "U.S. Fifth Circuit Affirms Application of the Subsequent Purchaser Doctrine in Oilfield Contamination Case," Liskow & Lewis' The Energy Law Blog, April 19, 2017
- "U.S. Fifth Circuit Affirms Dismissal of Levee Board's Lawsuit Against 97 Oil and Gas Companies," Liskow & Lewis' The Energy Law Blog, March 3, 2017
- "First Parish Coastal Zone Lawsuit to Proceed to Decision Falls for Failure to Exhaust Administrative Remedies," Liskow & Lewis' The Energy Law Blog, August 9, 2016
- "Regulating the Regulators: Supreme Court Allows Judicial Review of Clean Water Act Determinations," Liskow & Lewis' The Energy Law Blog, June 1, 2016"
- "Louisiana Supreme Court Denies Plaintiff-Landowner's Writ Application in Legacy Case Dismissed on the Basis of the Subsequent Purchaser Doctrine," Liskow & Lewis E-Newsletter, May 2015

## After Hours

Kelly likes travelling as a family, including regular trips to the wine country in Napa, California.

## News/Insights

### NEWS

11.9.18

Thirty-Eight New Orleans Liskow Lawyers Named "Top Lawyer" by New Orleans Magazine

### INSIGHTS

6.28.18

Louisiana Supreme Court's reversal of Gloria's Ranch clarifies calculation of damages for unpaid mineral royalties, provides relief for holders of security interests in mineral rights

### INSIGHTS

6.5.18

Liskow's Appellate Team Published a Q&A Guide to Appealing from a Trial Court of General Jurisdiction in Louisiana

### INSIGHTS

6.5.18

Liskow's Appellate Team Published a Q&A Guide to Appealing from an Intermediate Appellate Court to the Court of Last Resort in Louisiana

### INSIGHTS

3.7.18

Louisiana Third Circuit Issues Decision on the Procedure for Settlements in Cases Governed by Act 312

## INSIGHTS

12.18.17

Louisiana Supreme Court Grants Writs from Second Circuit Decision Finding Holder of Mortgage Encumbering a Mineral Lease Solidarily Liable with Mineral Lessees for Damages Resulting from the Mineral Lessees' Breach of Contractual and Statutory Obligations

## NEWS

11.3.17

Forty Liskow Lawyers Named "Top Lawyer" by *New Orleans Magazine*

## INSIGHTS

10.2.17

Nominees Announced for U.S. Fifth Circuit and Eastern District of Louisiana Seats

## INSIGHTS

8.24.17

Federal Court Finds A Continuing Duty Under Louisiana Law To Prevent The Erosion of Pipeline Canals

## INSIGHTS

8.8.17

Strong Dissent Warns of "Devastating Economic Repercussions" of Second Circuit's Decision in Oil & Gas Case

## INSIGHTS

3.3.17

U.S. Fifth Circuit Affirms Dismissal of Levee Board's Lawsuit Against 97 Oil and Gas Companies

## NEWS

11.10.16

Forty-Four Liskow Lawyers Named "Top Lawyer" by *New Orleans Magazine*

## INSIGHTS

8.9.16

First Parish Coastal Zone Lawsuit to Proceed to Decision Falls for Failure to Exhaust Administrative Remedies

## INSIGHTS

6.1.16

Regulating the Regulators: Supreme Court Allows Judicial Review of Clean Water Act Determinations

## NEWS

3.10.16

Liskow Shareholder Kelly Becker Named to Leadership in Law 2016

## NEWS

8.28.15

Forty Liskow Attorneys Named "Top Lawyer" by *New Orleans Magazine*

## NEWS

6.5.15

Louisiana Supreme Court Denies Plaintiff-Landowner's Writ Application in Legacy Case Dismissed on the Basis of the Subsequent Purchaser Doctrine

## INSIGHTS

5.4.15

Louisiana Supreme Court Denies Plaintiff-Landowner's Writ Application in Legacy Case Dismissed on the Basis of the Subsequent Purchaser Doctrine