

Brandon Duke

Of Counsel

Houston
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Brandon's practice includes complex commercial litigation, critical motions and appeals, antitrust litigation and counseling, and corporate investigations. He has extensive trial and oral-argument experience. Brandon has also briefed and argued motions and appeals in federal and state courts nationwide, with a focus on the Fifth Circuit and Texas appellate courts.

In addition, Brandon teaches administrative law as an adjunct professor at the University of Houston Law Center.

With a focus on the oil and gas sector, Brandon defends upstream and midstream oil and gas and oilfield services (OFS) clients in a broad range of complex commercial disputes and appeals in state and federal courts and in arbitration proceedings. Over the past two years, Brandon has been part of four Winston trial teams that obtained successful judgments for our clients.

Brandon is part of Winston's Texas Appellate Practice. He has briefed and argued several cases in state and federal appellate courts, including before the Texas Supreme Court and the U.S. Court of Appeals for the Fifth Circuit. As both a trial and an appellate lawyer, Brandon helps craft and preserve legal arguments at the trial court level for later review on appeal by drafting and arguing motions to dismiss, summary judgments, and other critical motions as well as proposed jury instructions, motions *in limine*, and posttrial motions. Brandon also practices before the U.S.

Supreme Court, including both merits and amicus briefs, and he has served as counsel of record for emergency applications submitted on the Court's "shadow docket."

Brandon also has deep knowledge and experience in antitrust and competition law. He represents clients defending and prosecuting civil and criminal antitrust actions, involving claims under sections 1 and 2 of the Sherman Act, section 7 of the Clayton Act, and state antitrust and unfair competition laws. In addition to representing corporations and individuals involved in international price-fixing and bid-rigging investigations, Brandon counsels clients on a variety of antitrust and competition compliance issues related to their businesses, with a focus on the convergence of antitrust, intellectual property, and new technology and platforms in the energy and chemical industries. He is an active member of the Texas antitrust community and has served as chair of both the State Bar of Texas's and the Houston Bar Association's Antitrust Sections.

Brandon has a long commitment to public service. Prior to entering private practice, Brandon served as a special assistant corporation counsel with the New York City Law Department, Affirmative Litigation Division. Brandon also serves as pro bono counsel for and is a board member of Disability Rights Texas, the federally designated legal protection and advocacy agency for people with disabilities in Texas. And since 2019, Brandon has taught administrative law to second-and third-year law students as an adjunct professor at the University of Houston Law Center.

Key Matters

COMPLEX COMMERCIAL LITIGATION AND INVESTIGATIONS

- Represented a major OFS supplier in a US\$200M+ dispute regarding the operation of deep-water safety valves in the Southern District of Texas and obtained successful judgment after trial.
- Represented an international oil and gas executive to set aside a billion-dollar default judgment in a dispute alleging RICO, antitrust, and Texas state competition law violations and obtained dismissal of all claims.
- Represented an OFS supplier in a multimillion-dollar oilfield equipment contract dispute in Texas state court and successfully argued and obtained full summary judgment.
- Represented an exploration and production (E&P) company in connection with an internal investigation and Securities and Exchange Commission (SEC) enforcement action.
- Represented an OFS supplier in an international contract dispute and obtained complete dismissal due to lack of personal jurisdiction and *forum non conveniens*.
- Represented the court-appointed examiner in an investigation of certain challenged transactions and related claims involving a multinational Chapter 11 debtor.
- Represented multinational corporations in parallel FCPA investigations by the DOJ and SEC.
- Counsels corporations regarding internal compliance policies and prepares related training programs for clients' employees.

APPEALS

- (5th Cir.) – Lead appellate briefing in the successful defense of a trial court judgment in favor of a major OFS supplier in a major contractual dispute regarding the operation of deep-water safety valves in the Gulf of Mexico and the proper application of certain American Petroleum Institute standards (*Hess Corp. v. Schlumberger Tech. Corp.*, ___ F.4th ___ (5th Cir. 2022)).
- (Tex. App.—Eastland) – Successfully defended the trial court's dismissal of all claims in an environmental action against an OFS client following mandamus from the court of appeals compelling the dismissal based on the law-of-the-case doctrine.

- (U.S.); (5th Cir.) – Counsel of record in multiple applications to the U.S. Supreme Court in connection with stays of injunction and principal author of merits briefing before the 5th Circuit (*Valentine v. Collier*, 140 S. Ct. 1598 (2020)).
- (5th Cir.) – Argued on behalf of Disability Rights Texas as amicus addressing school districts’ Child Find obligations under the IDEA (*Lisa M. v. Leander Indep. Sch. Dist.*, 924 F.3d 205, 212 n.5 (5th Cir. 2019) (citing amicus brief)).
- (5th Cir.) – Argued on behalf of Disability Rights Texas as amicus addressing an 18-year-old student’s right to participate in the development of and changes to the student’s special education plan.
- (Tex. App.—Dallas) – Briefed appeal on behalf of defending trial court’s decision denying a stay of litigation as to claims against nonsignatories to an arbitration agreement in a theft-of-trade-secret, conversion, and tortious-interference dispute.
- (Tex. App.—Eastland) – Obtained mandamus from the Eleventh District Court of Appeals on behalf of a major OFS company, resulting in the complete dismissal of a large environmental action.
- (Tex.) – Argued a statutory-interpretation issue concerning the scope of the sovereign-immunity waiver under the Texas Tort Claims Act before the Texas Supreme Court (*Tarrant Cnty. v. Bonner*, 574 S.W.3d 893 (Tex. 2019)).
- (7th Cir.) – Argued appeal on behalf of an indigent inmate seeking resentencing under 28 U.S.C. § 2255(f) (*Davis v. United States*, 817 F.3d 319, 321 (7th Cir. 2016)).
- (7th Cir.) – Argued an indigent inmate’s appeal concerning the right to proceed *in forma pauperis* under the “three-strikes rule” in the Prison Litigation Reform Act, 28 U.S.C. § 1915(g).
- (U.S.) – Submitted amicus brief on behalf of Mexico and other Latin American countries that helped convince court that Arizona’s S.B. 1070 was preempted by federal immigration law (*Arizona v. United States*, 567 U.S. 387, 395 (2012) (citing amicus brief)).
- (U.S.); (S.C.) – Briefed petitions for writs of certiorari to the South Carolina Supreme Court and the U.S. Supreme Court seeking resentencing in a capital case on postconviction review.
- (2d Cir.) – Briefed appeal from judgment on behalf of the City of New York challenging the merger of its health insurance providers under state and federal antitrust laws.

ANTITRUST LITIGATION AND COUNSELING

- Represents multinational corporations in global cartel investigations involving the U.S. DOJ (Antitrust Division) and foreign competition authorities in Canada, China, Brazil, Europe, India, Japan, South Korea, Mexico, Singapore, South Africa, and Taiwan.
- Represented an oilfield services supplier in a patent dispute regarding price-fixing allegations related to a patent license agreement.
- Represented an e-commerce executive in a criminal antitrust investigation involving allegations of price-fixing products sold online using a pricing algorithm.
- Represented Panasonic Corporation in multidistrict class action antitrust litigations in Michigan and California federal district courts, involving allegations of price-fixing and unfair competition in the automotive-parts and resistors industries.
- Represented a mobile-telephone service operator in an action brought by a former customer in California federal court alleging breach of contract and antitrust violations resulting from the creation of a joint venture and merger.
- Represented a steel supplier in a civil antitrust litigation concerning an anticompetitive exclusive-dealing agreement and additional conspiracy, monopolization, and sham patent litigation claims.
- Counseling for corporate clients in connection with pre-merger filings, including responding to access letters and reviewing materials for potential second requests.

PRO BONO

Brandon also has significant pro bono experience. He works closely with and serves on the Board of Disability Rights Texas, the federally designated legal-protection and -advocacy agency for people with disabilities in Texas. As pro bono counsel, Brandon represents students seeking special education due process hearings and federal appeals pursuant to the Individuals with Disabilities Education Act and the Texas Education Code. Brandon has represented and argued before the Fifth Circuit as amicus on behalf of students' rights, and he successfully defended Disability Rights Texas in the Western District of Texas in a dispute with the Texas Attorney General's office related to an ongoing class action litigation on behalf of adults with developmental disabilities. And this past year, Brandon was part of the trial and appellate team that obtained a permanent injunction against the Texas Attorney General to allow Texas schools to adopt Covid-19 protections for students with disabilities, including masking, in line with the Americans with Disabilities Act and other federal laws.

Brandon was part of the trial and appellate team in *Valentine v. Collier*, which obtained the first permanent injunction during the Covid-19 pandemic securing protective measures and testing for elderly inmates in Texas. Brandon has also represented other indigent inmates in multiple federal appeals.

Brandon has represented individuals seeking asylum and withholding of removal and has authored numerous amicus briefs on behalf of organizations supporting the appeals of LGBTQ individuals who face persecution and torture if returned to home countries.

Recent Experience

Secured Headline-Grabbing Win Blocking Enforcement of Texas Governor's Order Prohibiting Masks in Schools During Pandemic

Recognitions

Brandon was recognized in "The *Lawdragon* Green 500: The 2024 Leaders in Environmental Law" and listed in *Lawdragon's* "500 Leading Energy Lawyers" for Oil & Gas Litigation in 2024. He was also recognized as a "key lawyer" by *The Legal 500 US* in 2023. He was selected as a "Rising Star" in Appeals by *Super Lawyers* and was named a "2020 Crisis Leadership Trailblazer" by the *National Law Journal* for his legal work related to Covid-19. Brandon's work has also been featured multiple times in *The American Lawyer's* Litigator of the Week column.

Brandon was named the 2018 "Pro Bono Attorney of the Year" by Disability Rights Texas for his volunteer pro bono work on behalf of the organization.

Activities

- Fellow, Houston Bar Foundation
- Chair, State Bar of Texas, Antitrust and Business Litigation Section
- Chair, Houston Bar Association, Antitrust and Trade Regulation Section
- Committee Member, State Bar of Texas, Appellate Section
- Member, Bar Association of the Fifth Federal Circuit
- Past Vice Chair, American Bar Association, Antitrust Section, Programs and Teleseminars Committee
- Past Young Lawyer Representative, American Bar Association, Antitrust Section, Cartel and Criminal Practice Committee
- Member, Texas Aggie Bar Association
- Secretary and Board Member, Disability Rights Texas
- Advisory Board Member, Inprint

Brandon has also served as a member of Winston's Associates' Committee and IS Steering Committee.

Credentials

EDUCATION

Brandon received a J.D. from Columbia Law School in 2009, where he served as a Managing Editor of the *Columbia Journal of Law and Social Problems* and a B.A., *magna cum laude*, in history and philosophy from Texas A&M University in 2005.

ADMISSIONS

- Texas
- New York

Related Insights & News

- Author, "When Textualism Divides the Texas Court," *The Texas Law Book* (July 14, 2021)
- Speaker, "Hipsters vs. Boomers: The Antitrust Revolution is Here," Winston & Strawn LLP (September 2021)
- Speaker, "Contracts, Mergers, & Acquisitions," Petroleum Connection 10th Annual Frac Sand Supply Conference (September 2021)
- Coauthor, "Chapter VIII: Compliance, ABA Section of Antitrust Law," *International Criminal Cartel Handbook* (2019)
- Coauthor, "DOJ's Yates Memo Has Little Effect on Antitrust Division," *Competition Law 360* (November 2018)
- Coauthor, "Chapter 1: Federal Criminal Enforcement of Antitrust Conduct," *Lexis Nexis Practice Note* (2017)
- Speaker/Instructor, "Criminal Antitrust Enforcement," Winston & Strawn LLP (May 2017)
- Speaker/Instructor, "Antitrust 101: Fundamental Concepts, the Sherman Act, and Restraints of Trade," Winston & Strawn LLP (January 2017)

- Moderator, “Criminal Antitrust Enforcement: Fundamentals and Best Practices,” ABA Section of Antitrust Law (January 2015)
- Coauthor, “The US Automotive Parts Investigation and Related Private Multidistrict Litigation, Antitrust between EC Law and National Law,” XI Conference (Treviso 2014)
- Author, “The Indirect Bump: Indirect Commerce and Corporate Cartel Plea Agreements,” *ABA YLD Antitrust Law Committee Newsletter* (Spring 2013)
- Coauthor, “The Policy Case for Eliminating the Public Identification of Carve-Outs in Antitrust Plea Agreements,” *104 Antitrust & Trade Regulation Report* 360 (Bloomberg BNA) (March 15, 2013)
- Coauthor, “DOJ’s *Bazaarvoice* Complaint Highlights Risk to All Transactions Despite HSR Reporting Thresholds,” *104 Antitrust & Trade Regulation Report* 217 (Bloomberg BNA) (February 15, 2013)
- Author, “The DOJ’s Air Cargo Cases Encounter Turbulence,” Dewey & LeBoeuf, *Antitrust Enforcement: Focus on Criminal Cartels* (November 2011)

RECOGNITIONS

Winston Attorneys Featured on the 2024 *Lawdragon* 500 Leading Energy Lawyers List

FEBRUARY 16, 2024

ARTICLE

Inland Litigation Under the Outer Continental Shelf Lands Act

FEBRUARY 12, 2024

RECOGNITIONS

Winston Attorneys Featured on *Lawdragon*’s Green 500: The 2024 Leaders in Environmental Law List

FEBRUARY 2, 2024

PRO BONO IN ACTION

On Appeal, Winston Secures the Right to Due Process for a Wisconsin Prison Inmate

SEPTEMBER 19, 2023

IN THE MEDIA

Brandon Duke Discusses Supreme Court Ruling Against Student Loan Forgiveness Plan with *The Houston Chronicle*

JULY 6, 2023

CLIENT ALERT

Supreme Court Issues Decision Potentially Exposing Corporations to Jurisdiction under State Registration Laws

JUNE 28, 2023

RECOGNITIONS

Winston & Strawn Recognized in *The Legal 500 U.S.* 2023

JUNE 7, 2023

IN THE MEDIA

Brandon Duke Discusses Texas Safe Harbor Provision with *Bloomberg Law*

FEBRUARY 13, 2023

RECOGNITIONS

Winston & Strawn Antitrust/Competition Practice Recognized in 2023 GCR 100

DECEMBER 19, 2022

CLIENT ALERT

Winston Files Amicus Brief in *SEC v. Ripple Labs Inc. et al.* on Behalf of Valhil Capital, LLC in Support of Defendants' Motion for Summary Judgment

NOVEMBER 21, 2022

RECOGNITIONS

Winston & Strawn Recognized in *The National Law Journal* Legal Awards 2022

AUGUST 29, 2022

CLIENT ALERT

Supreme Court's "Major Question Doctrine" Challenges Administrative Agencies

JULY 1, 2022

Capabilities

Antitrust/Competition

Litigation/Trials

Technology Antitrust

Antitrust Transactions

Government Investigations, Enforcement & Compliance

Appellate & Critical Motions

Commercial Litigation & Disputes

Energy

Oil & Gas

Energy Industry Litigation & Investigations