

**Practices**

Commercial Transportation
Manufacturer's & Products
Liability
Asbestos Exposure Litigation
Occupational Exposure
Litigation
Premises Liability
Aviation Litigation
Commercial Litigation
Professional Liability of
Attorneys, Accountants, Agents
& Brokers

Industries

Aviation
Manufacturing
Transportation

Bar Admissions

Louisiana
Texas
Federal Claims Court

Education

J.D., summa cum laude, Tulane
University, 1979
- Order of the Coif., 1979
- Tulane Law Review, 1978-1979
B.S., Economics, Tulane
University, 1976

Mr. Cherry represents clients in serious personal injury, property damage and wrongful death claims arising from aviation, oil and gas activities, products liability and chemical exposures.

He defends under professional E&O coverage (legal, insurance broker, accounting). Darrell has handled insurance coverage litigation involving aviation and CGL coverages, as well as business and contractual disputes. He has an appellate practice in the above areas of law and has participated in complex litigation.

Mr. Cherry enjoys traveling and playing music.

Professional Associations and Accolades

Louisiana State Association
Federal Bar Association
Louisiana Association of Defense Counsel
Fifth Circuit Bar Association
New Orleans Bar Association
American Bar Association, Litigation Sections, Aviation Law and
Products
Martindale-Hubbell Peer Review Rating of AV Preeminent

Publications

"Ten Tips from the Tucker Act Trenches"
The Federal Lawyer, Volume 60, Issue 6, July 2013

Successes*Aviation*

Recent successes include extricating a helicopter repair facility with no-pay dismissals from a 10-death S-76A crash offshore, involving avionics upgrade and design claims; defending the insurer against excess liability arising from a pilot who crashed his Beech Baron in New Hampshire, killing all six passengers and himself; and, with Isaac Ryan, obtaining in 2012 a dismissal by developing personal jurisdiction defense relating to claims against an FBO arising from a Nevada crash.

Earlier in his career, Mr. Cherry was one of two primary associate trial counsels in multi-district wrongful death/personal injury/property damage litigation arising from the crash of Pan Am 759 into a suburban neighborhood near New Orleans in 1982. That litigation involved approximately 200 injury and wrongful death suits and was litigated from 1982 through 1985. He personally conducted the discovery in over sixty wrongful death suits, directly participating in over twenty-five Pan Am jury trials, including twelve wrongful death suits, a burn case involving 85% burns to mother and eight-year-old daughter, psychic injury claims of neighborhood residents, personal injury claims (e.g., back injury, knee injury) and numerous house damage claims involving extensive engineering investigation and testimony. He has developed

the law on Warsaw Convention and Montreal Convention issues, including notice issues, "accidents," liability and damages.

Premises Liability

Mr. Cherry has defended premises owners and insurers charged with strict liability and negligence in alleged slip and falls and trip and falls, as well as security issues.

Airport Regulation and Federal Preemption

Mr. Cherry obtained in U.S. Fifth Circuit a *res nova* ruling affording a federal venue under federal question jurisdiction to pursue in federal court a declaratory judgment action on behalf of a local airport authority against an adjoining municipality who sought to interfere with airfield construction projects made the subject of federal grants.

Admiralty

Admiralty law often intersects with personal injury claims in southern Louisiana given the prevalence of oil and gas offshore activities. Mr. Cherry has obtained several admiralty precedents in connection with platform, helicopter and work vessel injuries. Mr. Cherry prevailed in the District Court and then in the U.S. Fifth Circuit in *Scarborough v. Clemco*, 391 F.3d 660 (5th Cir. 2004) (1) having products used by a seaman for his core functions fall within maritime jurisdiction; and (2) having the Court apply the pecuniary damage limitation of the Jones Act to a non-employer maker of equipment that injured a seaman, thus greatly reducing the claim by eliminating non-pecuniary claims. *Miles v. Apex*, 498 U.S. 19 (1990) was successfully advocated to require a uniform general maritime remedy where seaman are involved. He obtained similar precedent under the Outer Continental Shelf Lands Act requiring the law of the adjoining state to be applied to a rig accident, thereby precluding imposition of punitive damages, under a depechage "choice of law" theory. *Wooton v. Pumpkin Air, Inc.*, 889 F.2d 848 (5th Cir. 1989).

Products Liability, General Tort

Mr. Cherry has defended numerous products against claims of defects and causation of injuries, including automobiles, avionics, surgical devices, pacemaker leads, pharmaceuticals, nutritional supplements, protective gear such as blast hoods, respirators, pistols, pumps, valves, appliances, hardware, and rigging devices for lifting by crane.

Toxic Tort/Environmental

Mr. Cherry has successfully defended many silicosis claims, as well as other toxic exposures, such as SO₂, H₂S, aromatic hydrocarbons and DBCP. He has also defended RCRA/ Superfund claims. From 1997-onward, Mr. Cherry handled silicosis litigation subgroups for a protective gear manufacturer. These cases were filed and pend throughout Louisiana. A memorable silicosis trial was an eight-day jury trial of a six-plaintiff wrongful death suit (31st JDC), representing the sole defendant, in August of 2009, resulting in a full defense verdict. In connection with the case, he obtained a precedent-setting en banc ruling prohibiting the retroactive application of a Katrina-related extension of the abandonment statute. *Henry v. SBA Shipyards*, 24 So.3d 956 (La. App. 3rd Cir. 2009) (en banc), cert. denied, 27 So.3d 853 (La. 2010).

Appellate

Mr. Cherry also handles appellate work, including brief writing to the U.S. Supreme Court, U.S. Fifth Circuit, Louisiana Supreme Court, and all Louisiana circuit appellate courts. His extensive appellate

experience in addition to the topics set forth above includes complex legal issues, including Foreign Sovereign Immunities Act, Warsaw Convention (Carriage by Air), personal jurisdiction, subject matter jurisdiction, admiralty jurisdiction, federal inherent power (one involving a \$416 million award, 1995), federal preemption in numerous contexts, choice of law, forum non-conveniens, multi-district litigation, Outer Continental Shelf Lands Act, enforceability of Louisiana Oilfield Indemnity Act, arbitration awards, nuances of the attorney-client privilege, including crime-fraud exception, limits of mental injury recovery, exclusion of expert opinions, securities fraud under federal and state laws, expropriation and constitutional due process rights, Unfair Trade Practices Act, numerous procedural issues such as new trial, remittitur, directed verdict, jury charges, as well as evidentiary issues of all kinds. He also taught various topics at seminars, including federal jurisdiction, preemption, airport liability, products liability, economic damages and trial/litigation techniques.

Appeal - Wrongful Death/Product Liability

In a case involving an insurance coverage dispute arising from a wrongful death and products liability claim, the plaintiff/ appellant appealed the June 26, 2015 judgment of the district court granting summary judgment in favor of the defendant/ appellee, and dismissing all claims against the defendant/ appellee with prejudice.

In the appeal, Mr. Darrell Cherry established in an early summary judgment that there was no basis for coverage of an experimental aircraft that produced two deaths, excluding any duty to defend or indemnify. A quick strike at the beginning of very sympathetic wrongful death claims by Mr. Cherry protected the client from having to expend large sums defending one defendant and itself through protracted litigation. The final rulings extricated the insurer from any obligation to defend or indemnify on an aviation liability policy in the early stages of protracted litigation and established that parol evidence and subjective beliefs cannot be used to contradict or extend the provisions of the policy.

Trucking - Favorable Resolution

Mr. Cherry took over the defense on tender to the excess insurer two weeks before trial of the claims of two women, who struck a turning truck with their car, presenting the claims of physician-supported claims of progressive eye injuries and back and neck injuries allegedly worth \$3 million. With procedural maneuvering to gain time, and with careful expert evaluation and additional discovery locating hidden drug use information, the client was extricated for no payment. In another case, he recently developed defenses exculpating a small owner-operator for liability arising from the suspension failure of his trailer that catastrophically failed and left debris on the road, causing an accident, creating a basis for a more reasonable settlement for below limits, and is currently defending traumatic brain injury claims arising from a truck collision.

Mr. Cherry developed a powerful medical causation defense to rebut the claims of a woman that her total knee replacement operation was caused by a rear-end collision, resulting in a very favorable case resolution; and was able to extract an owner-operator from liability by executing a conspicuity test that disproved the rear-ending driver's claims of poor visibility at night and failure to comply with federal minimum equipment regulations.

Product Liability/Wrongful Death - Silicosis

Mr. Cherry represented a manufacturer of safety equipment in a case in which the original plaintiff was a shipyard worker with confirmed silicosis who eventually died of respiratory failure. The personal injury claim was successfully eliminated by developing and obtaining on appeal a

precedent-setting statute of limitations defense. This left the wrongful death claims of six relatives which were tried to a jury for 10 days, challenging both liability and the causation of death. The jury unanimously exonerated the client as having caused the death.

Product Liability - Summary Judgment Dismissal

The maker of a minimally invasive surgery tool was sued by a patient after an MRI scan showed the presence of a metal particle near the site of the patient's earlier lumbar disc surgery. The tool was previously used to remove disc material. Back problems progressed post-operation, and the alleged emission of metal particles from the device was blamed as the cause. Mr. Cherry, with depositions of the surgeon, radiologist and other doctors—along with regular x-rays—obtained a summary judgment dismissal on the merits of the claim, finding there was no genuine issue as to the metallic particle either having come from the device or having the ability to cause the problems for which the client was sued.

Wrongful Death - Dismissal

Mr. Cherry handled a case in Orleans Parish District Court when a woman's relatives filed a wrongful death action. The deceased allegedly fell while boarding her flight with a major airline, allegedly resulting in liver damage that manifested itself only upon arrival in Miami. The condition deteriorated into multi-system organ failure and she passed away in Baton Rouge. Mr. Cherry developed exacting medical information from oblique sources which showed an alternative cause of the death based on side-effects of alcoholism. In addition, the alleged fall event was shown to have been highly improbable. The suit was dismissed with no payments.

Expropriation and Constitutional Issues

Mr. Cherry obtained reversal of 100 years of contrary Louisiana precedent by requiring a valuation date in "regular" expropriations no earlier than as of the date of trial based upon federal and state constitutional guarantees, thus allowing recovery of tremendous appreciation in value occurring after the suit was filed. As a result, the landowner client received via Mr. Kerrigan's and Mr. Cherry's efforts, a jury valuation of approximately \$9 million greater than the \$4 million the expropriating agency sought to pay. *NOEHA v. Missouri Pacific*, 625 So.2d 1070 (La. App. 4th Cir. 1993), writ denied (La. 1994). In February of 1996, he tried a claim for attorney's fees and costs and received \$3.36 million additional recovery for clients, and establishing a new constitutional measure for recovery of costs and fees for landowners.

Mr. Cherry has represented property owners in expropriation and inverse condemnation actions in state and federal court. His most recent involves an inverse taking by the U.S. Army Corps of Engineers post-Katrina, resulting in a finding of federal liability for the taking of levee clay. *National Food & Beverage Co. v. U.S.*, 96 Fed. Cl. 258 (12/10/10) and 103 Fed. Cl. 63 (1/23/12).