



## Melissa M. Lessell

Partner

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### Practices

Commercial Litigation  
Commercial Transportation  
Insurance Coverage  
Premises Liability  
Professional Liability of  
Attorneys, Accountants,  
Agents & Brokers

### Industries

Banking  
Commercial Real Estate  
Healthcare  
Insurance  
Retail & Restaurant  
Transportation

### Bar Admissions

Louisiana (State & Federal  
courts)  
The Supreme Court of the  
United States

### Education

J.D., Tulane University Law  
School, *cum laude*, 2009  
B.A., University of California  
San Diego, 2005

Forming partnerships with her clients, Melissa Lessell tirelessly defends them in professional liability and complex commercial litigation matters. She helps professionals navigate through disciplinary actions, ethics investigations, malpractice, negligence and breach of fiduciary duty claims and lawsuits.

Melissa is devoted to professional liability defense, defending attorneys, accountants, insurance agents and brokers, title agents, real estate agents and various medical professionals. During her experience as an AV-rated partner in the firm's Commercial Litigation and Professional Liability Department, she has successfully represented professionals in the courtroom, arbitrations, and panel proceedings and before various disciplinary boards.

In addition to handling director and officers' and derivative actions, she helps her commercial clients defend against claims of premises liability, personal injury and other types of tort and insurance matters, including coverage matters. She regularly represents commercial transportation carriers, including 18 wheeler companies, defend against claims and litigation. Moreover, through acting as national coverage counsel for an insurer who represented multiple suppliers, distributors and installers of Chinese drywall, Melissa has considerable experience handling Multi-District Litigation and class actions.

She earned her Juris Doctorate from Tulane University Law School, where she graduated cum laude and received a certification in mediation. While attending Tulane, she was a member of the Dean's Advisory Committee, Moot Court Board and was an oralist for the Jessup International Moot Court team. She was awarded the school's Student Government and Service Award for her service to the school as President of the Student Bar Association.

### Professional Associations

- American Bar Association
  - Standing Committee on Lawyers' Professional Liability, Member (2018-2021)
  - Standing Committee on Lawyers Professional Liability, YLD Liaison (2016-2018)
  - Committee of Ethics and Professional Responsibility, YLD Vice Chair (2015-2017)
  - YLD Ethics and Professional Responsibility Newsletter, Editor (2015-2017)
  - Tort, Trial and Insurance Practice Section's Outreach to Young Lawyer's Committee, Member (2015-2016)
  - National Standing Committee on Lawyer's Professional Liability
  - Young Professionals/In Person Committee, Member
  - Lawyers Professional Liability Reporter for Louisiana for the Standing Committee for

Lawyer's Professional Liability

- Tort, Trial and Insurance Practice Section Public Service Standing Committee, YLD Liaison (2014-2015)
- Tort, Trial and Insurance Practice Section Task Force on Outreach to Young Lawyers, Ex Officio Member (2014-2015)
- Federal Bar Association
- Louisiana State Bar Association
  - Rules of Professional Conduct Committee, *Ad Hoc* Member
  - Insurance Committee, Member
- New Orleans Bar Association

**Accolades**

- *Martindale-Hubbell AV® Preeminent™ Peer Review Rated Lawyer*
- *The Best Lawyers in America® 2020*
- Louisiana *Super Lawyers* "Rising Stars" List, 2017-2019
- *New Orleans CityBusiness* "Ones to Watch: Banking"
- *New Orleans Magazine's* "Top Lawyers" List, 2018, 2019

**Representative Successes**

- **License Defense and Ethics Investigations**

Ms. Lessell has successfully defended lawyers, accountants and miscellaneous medical professionals in defense of their licenses as well as disciplinary matters before the Louisiana Society of CPAs, Office of Disciplinary Counsel and medical licensing boards. She has also successfully defended governmental employees in connection with investigations brought by the Louisiana Board of Ethics.
- **Legal Malpractice**

Mr. Wright and Ms. Lessell successfully obtained a full dismissal of all claims with prejudice against their client, an attorney for a religious institution, in a civil RICO case. Dismissal was obtained via an early dispositive motion, prior to conducting any discovery.
- **Legal Malpractice-Zero Judgment**

Judy Burnthorn, Melissa Lessell, and Andrew Baer successfully obtained a zero judgment in the case defended in Baton Rouge, LA. The three defended a major regional law firm who was being sued for legal malpractice. After a settlement was not reached during mediation, the case went to an arbitration trial in Baton Rouge, LA. During the trial, Ms. Burnthorn, Ms. Lessell and Mr. Baer skillfully handled the defense in this matter from the start. On March 3, 2016, the arbitrator presiding over the case ruled in favor of the law firm. The arbitration award was upheld after appeals to the District Court, Louisiana Court of Appeals for the Fourth Circuit and Louisiana Supreme Court.
- **Legal Malpractice**

Mr. Wright and Ms. Lessell successfully obtained summary judgment in favor of their client, an attorney, when it was alleged that the attorney who foreclosed upon property in his capacity as counsel for a bank, committed unfair trade practices, violated the Federal Debt Collection Practices Act and violated the plaintiffs' due process rights. The plaintiff also brought a claim for damages pursuant to 42 U.S.C. 1983. The rendition of summary judgment at the trial court level was appealed to the United States Supreme Court, where certiorari and a petition for rehearing were denied.
- **Legal Malpractice**

Ms. Lessell successfully has obtained the dismissal of two cases against her attorney and law firm clients through evidentiary trials on an Exceptions of Peremption.

- **Legal Malpractice**  
Ms. Lessell and Mr. Wright successfully obtained the dismissal of a case against their lawyer and law firm clients for legal malpractice and civil RICO in the United States District Court for the Eastern District of Louisiana.
- **Legal Malpractice**  
Ms. Marshall and Ms. Lessell successfully handled the defense and subsequent appeal relating to the defense of legal malpractice and notarial negligence claims against their client. The Louisiana Court of Appeal for the Fifth Circuit affirmed the trial court decision in favor of their clients, resulting in the dismissal of the case with prejudice.
- **Legal Malpractice**  
Ms. Marshall and Ms. Lessell successfully obtained a full dismissal of all claims with prejudice against their client, in a legal malpractice lawsuit that arose out of his representation of a municipality and a police officer who were alleged to have wrongfully or falsely arrested the plaintiff therein. Dismissal was predicated upon La. R.S. 9:5605 and was granted after an evidentiary trial on an Exception of Peremption.
- **Legal Malpractice**  
Ms. Marshall and Ms. Lessell successfully obtained summary judgment in favor of their client, a lawyer, based on a lack of causation defense. They argued that the alleged error, allegedly failing to list an expert witness on a witness list, did not cause any damage to the plaintiff because the trial court allowed the witness's deposition and reports to be admitted into evidence at a bench trial.
- **Insurance Agent and Legal Malpractice Defense**  
Mr. Wright and Ms. Lessell filed a successful Motion for Summary Judgment on the issue of causation on behalf of their client, which was a hybrid of a law firm and title agency, in connection with negligence claims, as well as successfully defended against a cross Motion for Summary Judgment. As a result of the successful Motion for Summary Judgment, the trial court dismissed the bulk of the plaintiff's case, which they alleged was valued between \$7-\$10MM. The United States Court of Appeals for the Fifth Circuit affirmed the rendition of summary judgment in favor of DK's client.
- **Legal Malpractice**  
Ms. Burnthorn and Ms. Lessell successfully obtained a full dismissal of all claims with prejudice against their clients, a New Orleans based law firm and three attorneys. The firm and its attorneys were sued by a former client for whom they had handled a medical malpractice case. Dismissal was obtained on the basis of peremption pursuant to La. R.S. 9:5605.
- **Insurance Agent Liability**  
Ms. Lessell successfully argued and obtained a summary judgment on behalf of an insurance agency in a complex, consolidated case. The case arose out of allegedly defective construction. The insurance agency was named as a third party defendant by the builder, who claimed that the agency must have been negligent in procuring insurance for it, since all of his insurers had denied a defense for the claim. The Motion for Summary Judgment was predicated on both the duty of an insurance agent to the insured and peremption pursuant to La. R.S. 9:5606.
- **Insurance Agent Liability**  
Ms. Lessell successfully obtained a dismissal of a claim against an insurance agent and his agency, where the third party plaintiff allowed his insurance policy to expire and the involved policy was obtained eight years prior to the date the claim was filed. The Motion for Summary Judgment was based on peremption, pursuant to La. R.S. 9:5606.
- **Insurance Adjuster Liability Defense**  
Ms. Burnthorn and Ms. Lessell represented an insurance adjuster in a professional liability

case when both the adjuster's insurer and he personally were sued for negligent misrepresentation, unfair trade practices and intentional interference with business relations and a contract. The plaintiff alleged that Deutsch Kerrigan's clients were at fault because the plaintiff's insurance claim had not been paid within a three-year window, and exposure in the case was estimated at up to one million dollars. However, Ms. Burnthorn and Ms. Lessell argued that an adjuster has no duty to an insured and cannot be held liable for bad faith claims against an insurer. Judge Robin Giarrusso of Orleans Parish Civil District Court agreed, and granted a summary judgment in favor of the defense one month before the matter would have gone to a jury trial.

- **Insurance Coverage/Legal Malpractice**

Ms. Marshall and Ms. Lessell successfully obtained summary judgment on behalf of an insurance company in a legal malpractice action. The policy in question was a claims made insurance policy. The claims made against the would-be insured for legal malpractice arose after the conclusion of the policy period and were not made in accordance with the policy conditions, prior the expiration of the insurance policy. Accordingly, the Motion for Summary Judgment was granted in favor of the insurer.

- **Multi-District Litigation / Insurance Coverage**

Ms. Lessell successfully represented a second layer excess insurer of a major Gulf South distributor and supplier in *In re: Chinese Manufactured Drywall*, MDL 2047. The claimed exposure of the class far exceeded the limits of the primary and first layer excess policies, but through a successful defense, the client was effectively dismissed from the case without any determination of liability or required contribution to any settlements.

*In re: Chinese Manufactured Drywall*, MDL 09-2047.

- **Insurance Coverage**

Ms. Lessell successfully defended a Long Term Care Organizations Professional Liability, General Liability and Employee Benefit Liability insurer by filing a Motion for Summary Judgment which resulted in a full and complete dismissal of claims against their client. The Motion for Summary Judgment was predicated on the claims made nature of the insurance policy.

- **Directors & Officers**

Ms. Lessell successfully obtained a dismissal of the claims against her client, a non-profit, via Motion for Summary Judgment.

- **Accountant Malpractice**

Ms. Lessell obtained the dismissal of claims made against her CPA clients pursuant to an Exception of Peremption and/or Prematurity as a result of the failure of the plaintiff to institute a Review Panel with the Louisiana CPA Society prior to filing suit.

- **Securities Law**

William E. Wright, Jr., Judy Burnthorn and Melissa Lessell represented a client against the claims of a hedge fund investor of fraud, negligence and breach of fiduciary duty. The claims were dismissed on the grounds of lack of subject matter jurisdiction.

## Publications

- "Pick Me, Pick Me: Insurance Insiders Tell How They Hire Lawyers," *ABA/BNA Lawyers' Manual on Professional Conduct*, October 4, 2017
- "How Much of a Client's File Do You Have to Provide to the Client Upon Termination of Representation?" *American Bar Association Young Lawyers Division, Ethics and Professionalism Newsletter* (Vol. 2, No. 4, Summer 2017)
- "Churn That Bill, Baby: Problematic Emails in Legal Malpractice Cases," *ABA/BNA Lawyers' Manual on Professional Conduct*, May 3, 2017
- "50 State Survey of Comparative Fault and Contributory Negligence in the Context of Legal

Malpractice Actions,” ABA National Legal Malpractice Conference, Fall 2016

- “Is Being Friends with a Judge on Social Media an #Ethicsfail?” *Young Lawyers Division, American Bar Association*, TYL, no.1, vol. 21 Fall 2016.
- “Trusts and Estates Claims: Damages,” ABA National Legal Malpractice Conference, Spring 2015
- “Managing the Tri-Partite Relationship for the Young Professional,” Published in connection with the ABA National Legal Malpractice Conference, Fall 2014
- “How Firm Compensation Can Drive Bad Behavior,” *The American Bar Association and The Bureau of National Affairs, Inc. Lawyers' Manual on Professional Conduct, Current Reports*, 30 Law. Man. Prof. Conduct 633; 2014
- “A Primer on Cyber Liability Damages and How to Avoid Them,” *ABA/BNA Lawyer's Manual on Professional Conduct*, 31 Law. Man. Prof. Conduct 236; 2015
- “Steps taken by an attorney to cover-up malpractice constitute fraud,” *LPL eAdvisory: an e-newsletter from the ABA Standing Committee on Lawyers' Professional Liability*, 2014
- “When Your Client Is a Lawyer.” *The Young Lawyer*, 2015
- “How to Pour Water on the Fire of Punitive Damages,” *ABA/BNA Lawyers' Manual on Professional Conduct, Current Reports*, 31 Law. Man. Prof. Conduct 592; 2015
- “Bargained for Coverage in a Claims Made Policy is not Trumped by a Third Party's Right to Bring a Claim Under Louisiana's Direct Action Statute,” *LPL eAdvisory, a newsletter from the ABA Standing Committee on Lawyers' Professional Liability*, March 2013

### Presentations

- “Law Firms and Money Laundering: The Basics, How to Avoid Being an Unwitting Participant, Ethical and Practical Considerations,” Association of Legal Administrators New Orleans Chapter, January 16, 2020
- “Navigating the Attorney/Client Relationship: Engagement Letters, Law Practice Management,” Terrebonne Bar Association, October 31, 2019
- “Litigation 101: Understanding the Process Both when You are an Expert and When you are a Defendant,” Society of Louisiana CPAs' 2019 Forensic, Litigation and Valuation Workshop, October 25, 2019
- “Ethics 101: Ethical Issues for the New Practitioner,” American Bar Association Webinar, (co-presenter), August 5, 2019
- “Litigation's Demands on the Law Department,” Co-presenter, Association of Corporate Counsel CLE presentation, June 28, 2019
- “Ethics and the Opioid Epidemic: Ethical, Legal and Medical Implications,” Louisiana State Bar Association, December 2018
- “You've Been Sued: Now What?” Association of Corporate Counsel Louisiana Chapter, June 2018
- “Understanding the Ethics Behind Insurance Defense Representation,” Professional Liability Attorney Network, January 30, 2018
- “Strategy Snapshots,” ABA Standing Committee on Lawyers' Professional Liability, Chicago, Illinois, June 29, 2017
- “Ethics for Personal Injury Attorneys,” NBI, Baton Rouge, Louisiana September 27, 2017
- “Ethics and Professionalism,” Terrebonne Bar Association, November 2, 2017
- “Ethics and Professionalism CLEs (2 hours),” Terrebonne Bar Association December CLE program, Houma, LA, November 3, 2016
- “Pointing Fingers and Sharing the Pain: Contributory Negligence, Comparative Fault and

Apportionment in Legal Malpractice Actions,” National Standing Committee on Lawyer’s Professional Liability, Chicago, IL, September 22, 2016

- “Shifting Ethical Standards,” ABA Standing Committee on Lawyers’ Professional Liability, Colorado Springs, CO, September 14, 2016
- “Let the Ethical Games Begin: Legal Ethics Jeopardy,” ABA Young Lawyers Division Spring Conference, St. Louis, MO, May 6, 2016
- “Professionalism: Real Life Examples of Lawyers Behaving Badly,” ABA Young Lawyers Division Committee on Ethics and Professionalism, Teleconference, February 11, 2016
- “Multi-jurisdictional Practice: The Ethics of Practicing Here, There and Anywhere,” ABA Mid-Year Meeting, San Diego, CA, February 5, 2016
- “Preparing Your [Lawyer] Client for Deposition, Moderator,” and “Don’t Choke Under Pressure and the Science of Faking It Until You Make It, Moderator,” National Standing Committee on Lawyer’s Professional Liability Young Professionals Program, Chicago, IL, June 18, 2015
- “Avoiding the Summons: Top 10 Legal Malpractice Pitfalls,” ABA Young Lawyers Division, Spring Conference, Pittsburgh, PA, May 16, 2014
- “Protecting Your Practice: What Young Lawyers Need to Know About Malpractice Insurance and Avoidance,” American Bar Association, Young Lawyers Division
- “Top 10 Legal Malpractice and Ethical Pitfalls,” Louisiana State Bar Association's Dazzling Disney CLE, 2015
- “How Many Lawyers Does it Take to Change a Light Bulb?” Legal Malpractice and Professionalism, Terrebonne Bar Association CLE Program