



Kermit (Tre') Roux

Partner

504.593.0792

kroux@deutschkerrigan.com

Practices

Commercial Litigation
Insurance Coverage

Industries

Insurance
Retail & Restaurant

Bar Admissions

Louisiana
U.S. District Court for the
Eastern, Middle and Western
Districts of Louisiana
Texas
U.S. Court of Appeals for the
Fifth Circuit

Education

J.D., Tulane University, 1994
B.B.A., Southern Methodist
University, 1991

Kermit Tre' Roux works extensively with insureds, claims adjusters, third-party administrators and underwriters in the development of strategy and defense of all insurance related matters from the time of the accident through ultimate resolution of the case. He is experienced in all facets of civil litigation with an emphasis on insurance coverage related litigation work from initial case analysis and strategy formation to trial/arbitrations and Writ applications/Appeals.

Tre' is a trusted advisor for some of the world's leading insurance companies in the United States, Canada, Bermuda, and London. He defends hotels, restaurants, bars, grocery stores, convenience stores and transportation companies against premises liability claims, food poisoning claims, slip and fall claims, wrongful death, chemical exposure, and catastrophic injury cases whether single party, multi-party, or class action cases.

Maintaining a diverse practice, Tre' has an ongoing domestic/family law practice. He understands that family law matters can be tough, so Tre' counsels clients to develop an aggressive strategy for the resolution of the matter at hand while working within the financial means of the client. As one of the leading domestic attorneys in the greater New Orleans area, Tre' handles all aspects of domestic/family law from a simple divorce to heavily contested custody, child support, spousal support, relocations, visitation, domestic abuse, community property and paternity claims.

He currently serves as the Legal Staff Officer for the Eighth Coast Guard Auxiliary District, Coastal Region where he handles all legal related issues of the Division, its Flotillas, and its 1900 men and women. Mr. Roux has been a Flotilla Commander for the New Orleans based Flotilla 4-3 and a Staff Officer for the Fourth Division of the Eighth District, Coastal Region. Tre' has been awarded the Auxiliary Award of the Operational Merit, the Auxiliary Sustained Service Award, the Coast Guard Meritorious Team Commendation, the Coast Guard Unit Commendation, the Specialty Training Award, the Operations Program Award, the Program Examiner Award, and the Auxiliary Membership Award.

Professional Associations

- Louisiana Bar Foundation, Fellow
- Louisiana State Bar Association
- American Bar Association
- New Orleans Bar Association
 - Bankruptcy Section
- Louisiana Association of Defense Counsel
- Texas State Bar Association
- Federalist Society

- Lawyers Chapter, New Orleans, LA
- Republican Lawyers

Accolades

- *Martindale-Hubbell* AV® Preeminent™ Peer Review Rated Lawyer
- *Best Lawyers in America*® List, 2018-2020
- Who's Who in American Law, 2000-present
- *New Orleans Magazine* "Top Lawyers" List, 2012
- Pro Bono Volunteer Recognition Award, 2009
- New Orleans *CityBusiness* "Leadership in Law" List of the Top 50 Lawyers in New Orleans, 2012

Representative Successes

- ***Lapuyade v. Rawbar, Inc.* 190 So.3d 1214**
The plaintiff filed a negligence action alleging that she contracted salmonella poisoning after eating at a local restaurant. I represented one of the defendants in this case. The 24th Judicial District Court sustained our Exceptions of Prescription and dismissed plaintiff's claims. On Appeal, the Fifth Circuit held that the Trial Court erred when it held that the Doctrine of Contra Non-Valentum applied to suspend the running of the one-year prescriptive period for the restaurant's patron's negligence actions. Regrettably, the matter was reversed on appeal.
- ***Regenbogen v. United States*, 2015 WL 7296597**
The plaintiff filed a Petition for injuries he allegedly sustained while he was visiting a property that was for sale in Metairie, LA. The United States District Court for the Eastern District of Louisiana granted by client's Motion for Summary Judgment finding that the plaintiff's claims against it were statutorily time barred.
- ***Bell v. Daiquiris & Creams No. 8, Inc.*, 2008 WL 2355846**
Tre' Roux represented an insurance company whose insured was a daiquiris shop being sued for \$4 million. Thirteen plaintiffs filed a constitutional claim that they had been discriminated against in violation of federal and state public accommodations laws, and also alleged intentional infliction of emotional distress. Specifically, the plaintiffs argued that they had been ejected from the shop because of their race and not, as the daiquiri shop claimed, because of their failure to comply with posted policy. Rinardo and Roux filed a Motion for Summary Judgment arguing the claim was filed prematurely, as it had not yet gone to the appropriate state agency. At a settlement conference on June 3, 2008, with both a Rule 12(b) (6) Motion and Motion for Summary Judgment pending, the plaintiffs significantly reduced their demand, but the daiquiri shop refused to counter the offer. The court accepted Deutsch Kerrigan's novel argument of prematurity, and Judge Duval granted the Motion for Summary Judgment on those grounds.
- ***Guilbeau v. Custom Homes by Jim Fussell, Inc.*, 985 So.2d 79**
The plaintiffs in this case entered into a contract with Custom Homes By Jim Fussell, Inc. to build a house on their lot. After occupying the home for a period of time, they began to notice cracks in the walls and floors and other defects in the quality of the construction of the house. After having the house inspected, the plaintiffs were informed that the foundation of their home was defective. Thereafter, they filed suit against the builder under the New Home Warranty Act asserting defects in the design of the slab, the preparation of the site, the preparation of the base and the construction of the slab.

The plaintiffs' experts concluded that the problem with the house was caused by soil movement, either settlement or uplift. Custom Homes By Jim Fussell, Inc. filed a Motion for

Summary Judgment alleging that the plaintiffs had expressly waived any claim for loss or damage caused by conditions of the soil movement pursuant to the New Home Warranty Act. The trial court granted the defendant's motion for summary judgment.

In affirming the trial court's ruling, the First Circuit Court of Appeal held that the reports of various experts who inspected the plaintiffs' home and property all attributed the defects complained of to soil movement. Thus, it was clear that the plaintiffs validly waived their claims for these damages under their contract with the contractor.

During the course of the litigation, Mr. Roux issued an offer of judgment to the plaintiffs pursuant to LSA-C.C.P. art. 970 which was rejected. Mr. Roux ultimately recovered approximately \$2,500 in costs from the plaintiffs and returned these funds to his client.

- ***Duplantis v. Cadillac Fairview Shopping Center Properties (Louisiana), Inc.*, 894 So.2d 393**

Mary Duplantis, a shopper at the Esplanade Mall in Kenner, Louisiana, was severely injured when she slipped and fell on an unknown substance on a staircase. She claimed that she attempted to grab the handrail but was unable to grip it and stop her fall because the handrail was too large. She subsequently sued the shopping center and the security company responsible for periodically policing the mall alleging inter alia that they allowed a dangerous condition to exist on the premises, failed to inspect the stairways and handrails to ensure safe conditions, and failed to take necessary precautions to clear the stairs of slippery substances. Mr. Roux represented the mall's security company and its insurer.

Mr. Roux filed a motion for summary judgment seeking the dismissal of his client on the grounds that there was no evidence of negligence by the company's employees. The trial court granted Mr. Roux's summary judgment finding that there was no evidence that there was any substance on the step upon which the plaintiff fell; that there was no evidence to establish that the defendants were placed on notice or should have been aware of any substance on the step; and that there was no evidence that any improper condition of the stairs caused the fall. The trial court's granting of Mr. Roux's motion for summary judgment was affirmed on appeal when the issue of the security company's negligence was abandoned by the plaintiffs.

- ***Ballas v. Kenny's Key West, Inc.*, 836 So. 2d 289**

In this case handled by Mr. Roux, the plaintiff brought an action against Kenny's Key West after he allegedly slipped and fell while at the bar. The Trial Court entered a judgment in favor of the defendants at the close of the trial. In affirming the Trial Court's judgment, the Fifth Circuit clarified LSA-R.S. 9:2800.6 and found that a bar is a merchant under Louisiana's slip and fall statute. It further held that the plaintiff did not prove that the bar had constructive notice of the spill when he only showed that his pants were damp after the fall. The plaintiff also failed to prove that the bar had actual notice of the condition because the bar had employees stationed throughout the bar to check for dangerous conditions. The bar presented positive proof that there were no reports of any puddles or spills on the evening of the alleged accident.

- ***Thomas v. Miller*, 159 So.3d 491**

This was a highly publicized case involving world-renowned rap artist Corey "C-Murder" Miller who shot and killed a 14 year old boy at a rap concert in a New Orleans area bar. C-Murder was twice convicted of second degree murder of Steve Thomas. He is currently serving a life sentence at the Louisiana State Penitentiary in Angola, LA.

Steve Thomas' parents file a Petition for Damages against Corey Miller, the Platinum Club, and the club's commercial general liability insurer for damages resulting from their son's tragic death. Mr. Roux was retained by the club's insurer to represent it in the coverage dispute.

The policy at issue excluded losses arising out of assault and battery, whether caused by, at the instruction of, the direction of, or the negligence of the insured or its employees and allegations that the insured's negligent acts, errors, or omissions in connection with the

hiring, retention, supervision or control of the employees, agents, or representatives caused, contributed to, related to, or accounted for the assault and battery.

Mr. Roux filed a Motion for Summary Judgement on behalf of the club's London based insurance company alleging that the injuries complained of were sustained as a result of an assault and battery and thus, they was no coverage for the plaintiff's claims. The plaintiff's argued that the policy excluded claims arising out of assault and batteries and allegations that the negligent acts, errors or omissions in connection with the hiring, retention, supervision or control of the employees, agents, or representatives caused or contributed to or related to the assault and battery. The Trial Court granted Mr. Roux's Motion for Summary Judgement. On Appeal, the Fifth Circuit Court of Appeal discounted the plaintiff's arguments and found that whether the battery was committed by a patron, employee, or any other individual is of no consequence under the terms of the assault and battery contained in the policy. According to the Fifth Circuit, the exclusion clearly denied coverage for any claims arising out of assault and batteries irrespective of who made or allowed the harmful or offensive contact. The Fifth Circuit found that the exclusionary clause was clear and unambiguous and must be given effect. According to the Fifth Circuit "there was no reasonable interpretation of the policy when applied to the disputed materials facts of the case under which coverage could be afforded".

- ***Sacco v. Paxton, 133 So.3d 213***

This case involved a dispute between a purported business partner who brought an action against his other partner and her two businesses for Declaratory Judgment that they had a partnership or joint venture. The purported partner alleged a breach of fiduciary duty and breach of the Partnership Agreement. The Civil District Court entered a Judgment on a Jury Verdict finding a breach of fiduciary duty and a breach of a partnership and/or joint venture agreement and awarded damages.

On appeal, the Fourth Circuit affirmed finding that the limited liability company and its corporate successor could be held liable to the owner's partner for the owner's breach of fiduciary duty while running the business as a partnership even it was not a member, officer, or shareholder in either company.

- ***Eckert v. Roux, 39 So.3d 636***

Mr. Roux had the honor and privilege of representing his father and his father's medical corporation in protracted litigation with a former member of the professional medical corporation which lasted 21 years. In the last aspect of the case, a minority shareholder in Roux and Associates brought an action against Dr. Roux asserting a derivative claim for breach of fiduciary duty and asserting individual claims for breach of fiduciary duty, mismanagement of corporate assets and self-dealings. During the course of the litigation, the Trial Court granted an Exception of Right of Action regarding the minority shareholder's individual claims. Eventually, the remaining claims proceeded to trial where the District Court and the Court of Appeal held that the minority shareholder had no right of action in his individual capacity to bring a breach of fiduciary duty claim and that the minority shareholder failed to prove the majority shareholder exercised gross negligence. The plaintiff's claims in this case, at one point, exceeded \$5 million.

- ***I-20 Corridor Properties, LLC v. Mahony Title Services, LLC, 986 So.2d 821***

American Capital, Inc. (ACI) contracted to buy commercial property in East Baton Rouge Parish for \$1.75 million. ACI's representative Charles Theus began scouting for someone to flip it to or to finance the deal. He tapped one of his regular sources, Eddie Hakim, who was interested in the property. They made an oral agreement that ACI would convey the property to I-20 Corridor Properties, Inc., an entity controlled by Hakim, the same day it was bought.

Theus hired Mahony Title Services, L.L.C. to serve as closing agent. Theus told Mahony's closer, Denise Strobel, to send a draft HUD-1 to Hakim. When Theus showed up for closing, Strobel told him that Vicki Spurlock, the listing broker, also had a prospective buyer for the property, Bustec, L.L.C. Theus testified that Spurlock applied pressure on him to close with Bustec. A contract was negotiated on the spot, and ACI sold to Bustec that

day, for considerably more than Hakim had agreed to pay. Joseph Hakim, Eddie's brother, came to the closing, but was turned away.

Hakim's entity I-20 sued Mahony, claiming that it had breached its "duty of supervision as a closing agent," and that Mahony owed I-20 a fiduciary duty to protect its oral contract rights. Mr. Roux represented the defendant in the multi-million dollar claim. I-20 claimed that Mahony steered the sale toward Bustec because Hakim had decided it did not want title insurance, and "Strobel expressed to Theus her dislike for the Hakims."

The trial court granted summary judgment to Mahony finding that the title company hired to close the sale of property to one buyer was not a fiduciary as to a competing buyer, and the losing buyer may not sue the title company for its alleged damages. In affirming the trial court's ruling, the Second Circuit found that it was Theus and not Mahony who had sold the property to Bustec, and I-20's recovery was against Theus. It also did not buy the argument that Strobel, as the closer, had the power to steer the deal. It noted that Bustec paid several hundred thousand dollars more than Hakim had agreed to pay. If that was not enough, Spurlock also threatened Theus that, if he did not sell to Bustec, the seller would not sell to him and he would forfeit a \$50,000 down payment. Theus described this as "an economic gun . . . to my head."

The Second Circuit also found there was no contractual relationship between Mahony and I-20, which was not a party to an escrow. Without an escrow relationship, Mahony also owed no fiduciary duty to I-20. It noted that I-20 was unable to cite any authority suggesting that Mahony had a duty to prevent the sale, or had done wrong even if it had refused to close the sale to I-20.

During the course of the litigation, Mr. Roux issued an offer of judgment to the plaintiffs pursuant to LSA-C.C.P. art. 970 which was rejected. Mr. Roux ultimately recovered approximately \$4,000 in costs from the plaintiffs and returned these funds to his client.

- **National Information Services, Inc., v. Gottsegen, 737 So.2d 909**
National Information Services brought a Deficiency Judgment proceeding against Warren Gottsegen, et al for amounts due under a mortgage note. After a trial, the 24th Judicial District Court entered Judgment for the creditor. On appeal, the Fifth Circuit held that computer print-outs listing payments made and the balance due on the debt were sufficiently authenticated; that the debtor's did not establish that the appraiser failed to make a proper appraisal; and that the attorney's fee award of 20% of the amounts owed under the mortgage note was reasonable.
- **H & H Inv. Group, Inc. v. Brown, 732 So.2d 555**
H&H Investment Group sought a Deficiency Judgment against the signatories on certain promissory notes. The 24th Judicial District Court entered a Summary Judgment in favor of the note holder. On appeal, the Fifth Circuit reversed the Trial Court's holding finding that there were genuine issues of material fact as to whether the purchaser was only a holder or a creditor as opposed to a holder in due course.
- **Ad-Med, Inc. v. Bruce J. Iteld, M.D., 728 So.2d 556**
Mr. Roux assisted in the representation of Ad-Med, Inc. in a week long arbitration involving a corporate dispute over the operation of a New Orleans based medical clinic. At the conclusion of the arbitration, the three arbitrators awarded Mr. Roux's client more than \$850,000.00. Eventually, Ad-Med, Inc. moved for confirmation of the arbitration award. The Civil District Court confirmed the award over the defendant's objection. On appeal, the Fourth Circuit affirmed the Trial Court's judgment holding that the award was not rendered invalid by the fact that the arbitrator selected by the plaintiff had an undisclosed, ongoing attorney-client relationship with the president and sole shareholder of the plaintiff. The Court concluded that arbitrators selected by parties are not neutral arbitrators and are, therefore, not subject to the American Arbitration Association's disclosure and bias laws.
- **Whitney Nat. Bank v. Cambridge Realty Corp., 690 So.2d 213**
Whitney National Bank sued Cambridge Realty Corporation to collect on a money judgment and enforce its mortgage liens. Cambridge Realty Corporation reconvened

seeking the return of wrongfully seized rents and other relief. The Trial Court granted each party's Motion for Summary Judgment in part and denied each Motion in part and subsequently amended those Judgments. Whitney National Bank appealed. The Fifth Circuit held that the Judgments appealed from were unauthorized partial summary judgments; that irreparable injury did not provide the basis for an Interlocutory Appeal; and even if the appeal was in a procedural posture of a Supervisory Writ Application, the Judgments were advisory opinions which should be vacated.

- ***Johnson v. McAlpine*, 688 So.2d 203**

A shareholder who withdrew from a professional law corporation filed a Petition for Damages against the professional law corporation and its remaining shareholders. The Civil District Court entered Judgment in favor of the withdrawing shareholder for his expense reimbursements and for fees earned by the withdrawing shareholder in a case otherwise dismissed all of the other claims and counterclaims including the shareholder's claim that the corporation was obligated to repurchase his tendered shares. On appeal, the Court of Appeal held that there was no employment contract between the former shareholder and the corporation at the time the former shareholder resigned. The Court of Appeal further found that the plaintiff's resignation from the professional law corporation had not been given under duress. Most importantly, the Fourth Circuit found that the Buy/Sell Agreement did not compel the corporation to acquire the withdrawing shareholder's shares.

- ***Huntleigh Corp. v. Louisiana State Bd. Of Private Sec. Examiners*, 906 F.Supp. 357**

The Huntleigh Corporation contracted with individual air carriers to provide pre-departure screening at airports. Huntleigh brought an action challenging the State of Louisiana's enforcement of State regulations regarding the services provided by the corporation. On Cross-Motions for Summary Judgment, the United States District Court for the Middle District of Louisiana held that the Louisiana Private Security Regulatory and Licensing Law governing the registration and training of private security officers performing pre-departure screening at airports, affected "services" of air carriers and therefore was preempted by the express preemption provisions of the Airline Deregulation Act and the Federal Aviation Administration Authorization Act.

- ***Gulf Coast Bank and Trust Co. v. Eckert*, 656 So.2d 1081**

In a suit on promissory notes, the 24th Judicial District Court granted the borrowers' Exception of Prescription. The lender subsequently appealed. The Fifth Circuit Court of Appeal affirmed the granting of the Exception of Prescription based on the creditor's fatal flaw in evidence of record as the lender failed to offer and introduce into evidence at the hearing on the Exceptions the documents attached to its Opposition Memorandum on which it relied to refute the Exception of Prescription.

Speaking Engagements

- "Consumer Debt Collection: Resolve Debts Quickly and Easily," CLE Seminar, New Orleans, LA, September 2008
- "Personal Injury Cases: Calculating and Providing Damages," National Business Institute CLE, New Orleans, LA, October 2007
- "Taking and Defending Effective Depositions in Louisiana," CLE Seminar, New Orleans, LA, September 2007

Publications

- "Commonly Asked Questions Regarding Louisiana Community Property"
- "Ten Common Questions Regarding Louisiana Divorce"