

# Linda Burgess

Shareholder

**Practices:** Appellate; Government Enforcement & Regulated Industries  
Litigation; Business Litigation; Public & Regulatory Law

Linda Burgess' practice is focused on litigation in state and federal courts at both the trial and appellate levels with considerable experience in representing insurers' interests. She also has significant experience in trying contested cases before the State Office of Administrative Hearings. Linda has represented individual and corporate clients in matters involving a wide range of issues, including contract, insurance "bad faith" and coverage, administrative law, open records, government investigation and enforcement, fiduciary duty, usury, lender liability, deceptive trade practice and antitrust, and premium and retaliatory tax.

## Representative Experience

### Trial and Appellate

- Obtained a permanent injunction against threatened agency action by the Texas Department of Insurance to disclose confidential trade secrets of a major homeowners insurer under the Texas Public Information Act
- Jury trial defense of a life insurance company in a \$10 million suit against it by an insurance agency for claims of tortious interference and participation with three agency officers in a breach of fiduciary duty
- Representation of primary insurer in equitable subrogation cases brought by the excess insurer for the alleged failure to accept demands within the primary's limits
- Representation of property insurers during the appraisal process, including analysis of appropriateness of appraisal, coverage advice, and motions with respect to issues that arise during the appraisal, and post-appraisal enforcement of awards by summary judgment and appeal, including *Garcia v. State Farm Lloyds*, 514 S.W.3d 257 (Tex. App.—San Antonio 2016, pet. denied)
- Representation of insurer through appeal in a coverage dispute involving a question of first impression in Texas on the meaning of "regular use" as it relates to a rental car where passenger was seeking both UM/UIM and liability coverage for damages caused by the same insured driver (*Johnson v. State Farm Mut. Auto. Ins.*, 520 S.W.3d 92 (Tex. App.—Austin 2017, pet. denied))
- Jury trial defense of insurer in extra-contractual cases where insureds claimed, among other damages, personal injuries, in connection with the insurer's handling of mold claims, including appellate representation in *McMillin v. State Farm Lloyds*, 180 S.W.3d 183 (Tex. App.—Austin 2005, pet. denied)
- Representation of life insurer in suit to declare policy void because policy was procured with intent to kill insured
- Representation of insurer through appeal in an advertising injury coverage dispute (*IDG, Inc. v. Continental Casualty Co.*, 275 F.3d 916 (10th Cir. 2001))



### Austin Office

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### Education

University of Oklahoma College of Law  
– J.D., 1986  
– *with honors*  
– Note Editor, Oklahoma Law Review, 1985-1986  
– Member, Order of the Coif

University of Notre Dame  
– B.A., 1982

- Representation through appellate courts of employer found liable for \$1.1 million in usury penalties and breach of an employment contract when it terminated the contract because of the employee's default on a loan from the employer; judgment was reversed on appeal and a take-nothing judgment rendered for the employer (*First USA Management, Inc. v. Esmond*, 960 S.W.2d 625 (Tex. 1997))
- Representation through appeal of client challenging the enforceability of an indemnity agreement under the fair notice requirements, resulting in the reversal of the trial court's judgment ordering the client to indemnify a power company for its own negligence (*Douglas Cablevision, L.P. v. Southwestern Electric Power Co.*, 992 S.W.2d 503 (Tex. App.—Texarkana 1999, pet. denied))
- Jury trial verdict for client sued for the establishment of a common-law marriage after client made millions in high-tech start-up

### Government Investigation and Enforcement

- Defense of title insurance companies (65% of the market) in an enforcement action by Texas Department of Insurance alleging the companies violated law by excluding coverage of mineral interests from title policies, in which it was determined the carriers violated no statute or rule
- Defense of title insurance underwriter in an enforcement action by Texas Department of Insurance, in which it was determined there was no double charging for lien release services
- Defense of a title insurance agency in an enforcement action brought by the Texas Department of Insurance alleging rebating activities by the agency
- Obtained insurance agent license for a client convicted of a felony involving insurance from the Texas Insurance Commissioner through a contested case hearing
- By administrative hearing, secured for carrier over \$1 million dollar refund of retaliatory tax paid under protest, wherein the carrier argued that the change in the Texas Comptroller's method of calculating the retaliatory premium tax by rule was applied retroactive and, therefore, without authority
- Representation of title companies in Texas Attorney General investigation of alleged restraint of trade arising out of data restrictions by title plant
- Representation of client in a challenge to the validity of a HUD rule, resulting in a federal court vacating the rule and remanding it to HUD

### Professional & Community Service

- State Bar of Texas
- Oklahoma Bar Association
- American Bar Association (Tort and Insurance Practice Section)
- American Bar Foundation (Fellow)
- Texas Bar Foundation (Life Fellow)
- Dress for Success Austin (Emeritus Board)

### Awards & Recognition

- Texas Super Lawyers, Thomson Reuters, Civil Litigation Defense, 2005-2020
- *The Best Lawyers in America*, Woodward/White, Inc., Insurance Law, 2009-2021
- *Chambers USA Guide to America*, Chambers & Partners Publishing, 2013-2015

### Admissions

- Texas, 1989
- Oklahoma, 1986
- U.S. Supreme Court

- U.S. Court of Appeals, Fifth and Tenth Circuits
- U.S. District Court Northern, Southern and Western Districts of Texas
- U.S. District Court Northern and Western Districts of Oklahoma