



## Brian K. Tully



Brian Tully is a Shareholder at GableGotwals. He has more than 20 years of business litigation and appellate experience, representing clients in state and federal courts in a broad range of disputes, including breach of contract, misappropriation of trade secrets, negligence, professional negligence, and fraud.

He previously served as a Law Clerk to the Hon. Nathan L. Hecht of the Supreme Court of Texas.

### Representative Experience

- Counsel to BPX and Zurich American Insurance Company in their successful motion to remand in a \$65 million claim in connection with work that Cameron International Corporation performed on an oil and gas well in DeWitt County, Texas. Cameron removed the case to federal court, claiming that BPX had been fraudulently joined as a plaintiff in an improper attempt to destroy diversity jurisdiction. The judge concluded that federal jurisdiction did not exist and remanded the lawsuit back to Oklahoma state court.
- Counsel for royalty trust in confidential arbitration to allocate responsibility for costs associated with the operator's settlement of class action royalty claims in Oklahoma.\*
- Counsel for privately-held gas producer in confidential arbitration against midstream gathering company regarding access to pipeline used to carry rich gas to processing plant in Webb County, Texas. After obtaining a partial summary judgment on claims for breach of contract, the case settled on favorable terms immediately prior to the final hearing, along with a resolution of other business issues.\*
- Counsel for Chesapeake Louisiana, L.P. in lawsuit arising out of transaction for the purchase and sale of working interests to deep rights in the Haynesville Shale. After settlement with one group of defendants, the rest of the case was decided on summary judgment, including a take-nothing judgment on claims against Chesapeake alleging a "failure to close" on various properties. A portion of the judgment was vacated due to a lack of subject matter jurisdiction, but the take-nothing judgment regarding these claims was affirmed. The remainder of the matter was decided in Texas state court with no liability to Chesapeake and affirmed on appeal.\*
- Counsel for Chesapeake Exploration, L.L.C. in lawsuit involving disputes related to the COPAS Accounting Procedures and revenue distribution in connection with assets in the Fayetteville Shale. The matter settled after significant work with a joint expert for both parties and the magistrate's ruling on cross-motions for partial summary judgment.\*\*  
*matter handled prior to joining the firm*

**Brian K. Tully**  
**Shareholder | Houston**  
**346-200-6017**  
[btully@gablelaw.com](mailto:btully@gablelaw.com)

### SERVICES

- Litigation (State & Federal)
- Appellate
- Energy, Oil & Gas

### EDUCATION

- J.D., Baylor University School of Law, *magna cum laude*
- B.S., Economics, Texas A&M University

### ADMISSIONS

- Texas
- U.S. Court of Appeals 5th Circuit
- U.S. District Courts of the Northern, Southern, Eastern, and Western Districts of Texas
- U.S. District Court of North Dakota

### PROFESSIONAL AFFILIATIONS

- State Bar of Texas
- Texas Bar Foundation
- Garland R. Walker American Inn of Court

### PUBLICATIONS

- *Accounting Issues in Oil and Gas Operations, With or Without COPAS Accounting Procedures*, 60 Rocky Mt. Min. L. Inst. 28-1 (2014) (paper presented at 60th Annual Institute of the Rocky Mountain Mineral Law Foundation in Vail, Colorado in July 2014).
- *How COPAS Accounting Procedures Affect Non-Accountants*, Law 360 (Nov. 18, 2013).
- *Collateral Estoppel Effect of Arbitration*, Vol. 11, No. 4 PIABA B.J. 57 (2004).
- *Determining the "Fair Value" of a Withdrawing Partner's Partnership Interest: Exploring the Uncharted Alphabet Soup of Texas Partnership Law*, 54 Baylor L. Rev. 927 (Fall 2002).

# Brian K. Tully

- Appellate counsel for Chesapeake Energy Corp. in appeal from summary judgment dismissing Texas Securities Act and common law claims alleging “aiding and abetting” of fraud in connection with plaintiffs’ cumulative purchase of \$23.6 million in unsecured bonds. The appellate court reversed the portion of the judgment in favor of another defendant but affirmed the take-nothing summary judgment in favor of Chesapeake.\*
- Lead counsel representing Chesapeake Operating, Inc. to prosecute claims against vendor, and the vendor’s factoring company, for oilfield equipment that was paid for but never delivered. Following summary judgment and a bench trial, the federal district court entered judgment in favor of Chesapeake awarding actual and punitive damages against the vendor, and also awarding Chesapeake a partial recovery against the factoring company on a theory of “money had and received.” The judgment was affirmed in its entirety on appeal.\*
- Counsel for Chesapeake Exploration, L.L.C., as amicus curiae, in appeal from judgment entered on jury verdict, affirmed by the court of appeals, finding that the operator had underpaid royalties. The Supreme Court of Texas initially declined to consider the case, but ultimately reversed and rendered judgment in favor of Shell, holding that the doctrine of fraudulent concealment did not apply to toll the statute of limitations on the mineral interest owners’ claims and that the discovery rule exception to the statute of limitations did not apply.\*

*\* matter handled prior to joining the firm*