



W. Henry Jernigan, Jr.

Of Counsel
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Henry focuses on the defense of complex litigation involving corporate disputes and product liability claims. He served as a law clerk for H.E. Widener, Jr., United States Court of Appeals for the Fourth Circuit.

Services

- Litigation
- Product Liability
- Appellate
- Antitrust & Trade Regulation
- Class Action
- Mass Tort
- Tort
- Natural Resources Industry

Education

- Washington and Lee University School of Law (J.D., 1975)
- Washington and Lee University (B.S., 1972)
 - Commerce

Bar Admissions

- West Virginia

Court Admissions

- U.S. Supreme Court

- U.S. Court of Appeals for the Second Circuit
- U.S. Court of Appeals for the Fourth Circuit
- U.S. Court of Appeals for the Sixth Circuit
- U.S. District Court for the Eastern District of Kentucky
- U.S. District Court for the Western District of Kentucky
- U.S. District Court for the Northern District of West Virginia
- U.S. District Court for the Southern District of West Virginia

Affiliations/Memberships

- West Virginia State Bar Association
- Defense Trial Counsel of West Virginia, past president and Board of Directors
- Defense Research Institute, past West Virginia State Representative
- Federalist Society
- Rotary International, Paul Harris Scholar
- Thomas Memorial Hospital Foundation, Board of Directors
- Charleston Area Alliance, Business Development Committee
- United Way of the Greater Kanawha Valley, Campaign Coordination Committee
- West Virginia Coal Association
- Carnegie Hall of West Virginia, Board of Directors
- Fund for the Arts, Board of Directors
- West Virginia Chamber of Commerce, chairman, Civil Justice Committee
- WV Bar Foundation, fellow

Distinctions

- *Best Lawyers*[®]
 - "Lawyer of the Year" in Charleston for Product Liability Litigation - Defendants (2016)
 - "Lawyer of the Year" in Charleston for *Bet-the-Company Litigation* (2015)
 - "Lawyer of the Year" in Charleston for Energy Law (2018, 2020)
 - Bet-the-Company Litigation, Arbitration, Antitrust, Energy, Mining, Natural Resources Law and Product Liability, and Commercial Litigation
- Peer Review Rated AV in *Martindale-Hubbell*
- *Chambers USA*[®]: *America's Leading Lawyers for Business*, Litigation: General Commercial
- West Virginia *Super Lawyers*[®]
- Top Commercial Lawyers, *The American Lawyers*

- Leading WV Business Lawyer by *WV Inc.* (2007)
- Local Litigation Star in *Benchmark Litigation*
- Fellow in Litigation Counsel of America
- Retired Partner Award from Dinsmore (2018)

Experience

Murphy v. Kanawha River Terminals, et al.

A young woman was killed when an empty coal truck braked suddenly and jackknifed across the center line of a two-lane highway. The plaintiff brought suit not only against the coal truck driver and the trucking company, but also the coal company whose coal the truck had been transporting that day and the coal terminal that had received the coal. The plaintiff alleged that the defendants were engaged in a civil conspiracy in that the coal company routinely loaded the coal truck over the legal weight, which loads were routinely received and accepted by the coal terminal. The causal theory was that the coal truck driver inflated his tires to account for the illegally heavy loads when full, which resulted in tires that were "overinflated" when the truck was empty, which in turn made the coal truck susceptible to jackknifing in hard braking situations. Extensive testing disproved the causation theory of the plaintiff's expert, and the case settled during jury selection.

West Virginia Flood Litigation

Thousands of individuals in Southern West Virginia filed property damage and personal injury claims in numerous courts alleging damages following a major storm in July 2001 that caused flooding throughout the state. The plaintiffs contend that the flooding was caused, at least in part, by the activities of coal mining, timbering, and other companies whose work requires alteration of the terrain. After referral to the West Virginia Mass Litigation Panel, and after certified questions were answered by the West Virginia Supreme Court of Appeals, the first of what are projected to be many trials commenced in March 2006. We settled all claims against our clients in all watersheds after a seven week trial, which will ultimately result in significant savings to the clients since the litigation is likely to continue for many years.

Commercial Litigation

Represented Central West Virginia Energy (Central Energy) in a suit against Mountain State Carbon and related companies in federal court for breach of a coal supply contract and related tort claims arising out of improper interference with Mountain State Carbon's contractual obligations. Damages claimed exceeded \$30,000,000. After the claims were dismissed for lack of jurisdiction, Central Energy pursued an appeal to the Fourth Circuit Court of Appeals, which reversed the dismissal and reinstated the claims to be resolved on the merits. The Fourth Circuit's opinion was the first federal appellate court decision to apply the United States Supreme Court's "nerve center" test announced in the decision of *Hertz v. Friend*, 130 S. Ct 1181 (2010) for determining where a corporation has its "principal place of business" for purposes of ascertaining federal court jurisdiction over claims between citizens of different states (known as diversity jurisdiction).

Anonymous v. Spartan Mining Company, et al.

The plaintiffs, all miners who worked at a particular mine site for a coal company that went into bankruptcy, brought a class action against the mining company that bought the mining operations in the bankruptcy proceeding alleging that they were not hired by the new mining company on the basis of age. The named plaintiffs asserted both disparate impact and disparate treatment theories of age discrimination. After extensive discovery, the trial court certified the class, whereupon a settlement was reached with the class that resolved all claims of discrimination against the coal company.

Defense of Tobacco Related Claims

Mr. Jernigan has for many years served and continues to serve as West Virginia counsel for the former **Brown & Williamson Tobacco Company** and its successor, the **R.J. Reynolds Tobacco Company** in the defense of tobacco related claims. In this regard, Mr. Jernigan was involved in the successful defense of one of the nation's first class actions seeking medical monitoring for the development of future disease states relating to smoking. Mr. Jernigan remains active in the defense of the **R.J. Reynolds Tobacco Company** in the defense of over a thousand personal injury claims pending against it for tobacco related diseases.

Holcomb v. Spartan Mining Company

The plaintiff was a miner who worked at a particular mine site for a coal company that went into bankruptcy. When she was not hired by the mining company that bought the mining operations out of the bankruptcy proceeding, she brought suit alleging that she was not hired by the new mining company on the basis of her age and gender. The plaintiff asserted both disparate impact and disparate treatment theories of age and gender discrimination. After extensive discovery, the claim settled shortly before trial.

Liquidation of Delta America Re

While in Kentucky, Mr. Jernigan served as lead counsel for the liquidator of **Delta America Re**, an insolvent reinsurance company, suing to recover several hundred million dollars in premium balances and reinsurance premiums due. This representation involved litigation in the state and federal trial courts and appellate courts of Kentucky and New York in actions against insurance companies, brokers and intermediaries located in such diverse locations as Singapore, Tokyo, London, Moscow, Bermuda and the Cayman Islands. These efforts resulted in significant monies being recovered on behalf of the estate for the benefit of its creditors.

OxyContin Litigation

Mr. Jernigan has served as principle West Virginia counsel for **Purdue Pharma, LP** in the defense of claims based upon the marketing of its prescription pain relief medication, **OxyContin**. In the course of that defense, Mr. Jernigan was successful in obtaining one of the first judgments in favor of the company based upon the defense of misuse of the product. Mr. Jernigan was also able to obtain the dismissal of a significant number of individual claims and negotiate a resolution of one of the first actions instituted by a state attorney general against the company.

OxyContin Litigation

Defense of Purdue Pharma, LP in multiple state court cases involving product liability claims based on the marketing of the prescription pain relief medication Oxycontin. In the course of that defense, we successfully obtained one of the first judgments in favor of the company based upon the defense of misuse of the product. We also obtained the dismissal of a significant number of individual claims, and negotiated a resolution of one of the first actions instituted by a state attorney general against the company.

Representation of Corporate Defendants

Over the course of his career, Mr. Jernigan is experienced in the defense of major cases involving primarily corporate defendants. Those cases have ranged from contract disputes to product liability claims involving the statewide representation of, among others, **American Motors** and **Chrysler Corporation** in the defense of Jeep rollover litigation; **Sturm Ruger & Co., Inc.** in the defense of product liability claims involving certain of its firearms; **Johns Manville Corp.** in defense of asbestos related claims; **Black & Decker Corporation** in the defense of various product liability claims involving guiding issues; and **Procter & Gamble** in defense of toxic shock claims.

Representation of Energy Industry Companies

Mr. Jernigan has represented a large number of companies in the energy industry in the defense of personal injury actions, contract disputes, major property damage claims and disputes with the State of West Virginia, including, among others, **Massey Energy Company, Allegheny Energy, Peabody Energy, Consol Energy, Bluestone Coal Corporation, and Foundation Coal** as well as the former **Island Creek Coal, Cannelton Coal Corp., Westmoreland Coal Corp.** and **Pittston Coal**.

Smoking and Health Litigation

Dinsmore & Shohl represented its tobacco clients in cases in a variety of state and federal courts participating in out of town trials in six cases. The cases ranged from medical monitoring class action to a major consolidated personal injury matter to individual lawsuits involving claims of lung cancer, peripheral vascular disease, laryngeal cancer, etc. The cases involved significant document management, as well as complex legal, factual and medical issues. All cases were fully litigated and either dismissed, disposed of on motion or tried to a verdict. In no case handled by Dinsmore & Shohl were the clients subject to punitive damages.