


# Tommy Jacks

## Of Counsel

 Austin, TX

 512-226-8171

 jacks@fr.com

## Overview

### About Tommy

Tommy Jacks is of counsel to the Austin office of Fish & Richardson P.C. His practice emphasizes a broad range of general commercial and IP litigation. Tommy has over 49 years of experience in litigation on a wide range of complex commercial, trade secrets, qui tam, class action, professional liability, pharmaceutical, medical device, fiduciary duty, construction, antitrust, securities, environmental, product liability, aviation, and general business litigation. He has also served as an arbitrator in complex commercial disputes. He has been named as Texas Trial Lawyer of the year by the Texas Chapters of the American Board of Trial Advocates and based on the recently announced 2021 publication, has been listed in Best Lawyers in America for 27 consecutive years and in Texas Super Lawyers every year since its inception.

Tommy is active in professional activities. He is a fellow of the American College of Trial Lawyers and the International Academy of Trial Lawyers. Tommy has served on the Texas Supreme Court's rules advisory committee and on Texas Supreme Court task forces on the jury system and on judicial selection. He has served on multiple magistrate merit selection committees and on the local rules revision committee for the U.S. District Court for the Western District of Texas.

Tommy has also been active throughout his career in pro bono and public interest pursuits. Early in his career, he spent two years working as a litigator with the Public Citizen Litigation Group in Washington, D.C., handling cases in U.S. district and appellate courts. In 1974, Tommy argued before the U.S. Supreme Court one of the first cases he had filed while at Public Citizen. He has served as president and a member of the board of directors of the Legal Aid Society of Central Texas. He was instrumental in founding "Austin Lawyers Care," a program that later evolved into Volunteer Legal Services ("VLS"), administered by the Austin Bar Association. He still handles pro bono

litigation matters for VLS on a regular basis. Tommy also assisted in the launching of Texas Appleseed, a highly-regarded public interest organization that represents the interests of underrepresented, minority, and low-income individuals in courts and before the Texas Legislature, and still serves as a member of the Texas Appleseed board of directors.

Tommy has authored several journal articles in such publications as the Texas Law Review, Texas Trial Lawyers Forum, and Trial. His publications have won awards from the Ford Foundation and the Texas Bar Foundation. He is invited frequently to speak at legal seminars for the State Bar of Texas and at numerous law schools.

Tommy is married to Laura Jacks, who is also an attorney, and has three children and two grandchildren.

## Focus Areas

---

### Services

- Litigation
- Commercial Litigation
- False Claims Act and Qui Tam
- Product Liability and Mass Torts
- Trade Secret Litigation

### Industries

- Academic Research and Medical Centers

## Education

---

J.D. *with honors*, *Order of the Coif, Chancellors* , University of Texas Law School (1971) Projects-  
Research Editor, *Texas Law Review*

B.A., Baylor University (1968)

## Experience

Represented Gilead Sciences, Inc. in the defense of a product liability suit brought by a participant in a Phase 3 clinical trial of the anti-HCV drug combination sofosbuvir/ledipasvir (brand name Harvoni®). The plaintiff contended that he suffered heart damage as a result of having taken the combination tablet once daily for eight weeks. After taking the plaintiff's deposition and obtaining expert reports, Gilead moved for summary judgment, which was granted by the United States District Court for the Southern District of Texas, bringing the litigation to a favorable conclusion for Gilead Sciences.

Along with a number of other Fish & Richardson attorneys, represented Gilead Sciences, Inc. and related companies in litigation in the United States District Court for the District of Delaware against AbbVie, Inc., asserting breach of contract claims and defending against patent infringement claims brought by AbbVie against Gilead. After over three years of litigation, Gilead and AbbVie entered into a global settlement of the Delaware litigation and other related litigation in numerous countries in the Americas, Europe, Asia and Australia, allowing Gilead to market its anti-HCV drug combination Harvoni® unfettered by AbbVie's patent claims.

Along with other Fish & Richardson attorneys, represented whistleblowers Michael Fisher and Brian Bullock in a federal False Claims Act suit against Ocwen Financial Corporation and a related company. The case focused on allegations of Ocwen's misconduct in connection with the United States Treasury's Home Affordable Mortgage Program ("HAMP"), in which home mortgage servicing companies like Ocwen received incentive payments from the federal government in return for assisting homeowners in obtaining mortgage relief following the onset of the Great Recession in 2008. The case was set for trial in the United States District Court for the Eastern District of Texas in June 2016 and was settled shortly before trial on terms favorable to the Relators.

Represented whistleblower Allen Jones in his claims that Johnson & Johnson's Janssen exaggerated the benefits of its antipsychotic drug Risperdal in order to dupe the Texas Medicaid Program. Following expert testimony by plaintiffs' experts regarding Janssen's concealment and manipulation of scientific data, the manufacturers agreed to a \$158 million settlement that represents the largest Medicaid fraud recovery in Texas history. The record-breaking case was the subject of news coverage in *The New York Times*, *Bloomberg*, *The Texas Tribune*, and a variety of other U.S. and international media outlets.

Represented computer game industry pioneer, Richard Garriott (known to his fans as "Lord British") in a suit against his former employer, Korean game company NCsoft, based on NCsoft's failure to honor the terms of a stock option agreement upon Mr. Garriott's departure from the company. Mr. Garriott was quoted in the *Austin American Statesman* as saying: "The facts were clear that my departure from NCsoft was not voluntary. I am very pleased with the final award." The case was tried under

Korean law. The judgment for over \$32 million was unanimously affirmed by a panel of the U.S. Court of Appeals for the Fifth Circuit in 2012.

Represented Austin-based prepaid debit card company NetSpend Corporation in a license agreement action brought by Alexsam, Inc. The case was tried to a jury verdict in an Austin state court in 2012 and was later settled on terms favorable to NetSpend after the jury returned an award of less than half of the plaintiffs' damages demand during trial. Not long after the settlement, NetSpend, a public company, was acquired by TYSYS, Inc.

Represented Harris County (Houston) and Harris County Hospital District in Texas Tobacco Litigation Negotiations with the State of Texas, resulting in Permanent Fund of over \$1.2 billion established by Texas Legislature for benefit of counties and hospital districts.

Represented a Texas-based wind power company in lease dispute against Florida Power & Light subsidiary resulting in favorable jury verdict leading to substantial confidential settlement before entry of judgment.

Represented buyers and sellers of real estate in Cabo San Lucas, Mexico, against Texas individual and corporations who owned Mexican national franchise for Coldwell Banker arising out of theft of escrow funds by local agent — favorable confidential settlement after first week of trial.

\$39 million settlement for software companies in antitrust counterclaim against BMC Software, Inc., which had brought trade secrets claim against Mr. Jacks' clients.

\$24 million (net) settlement after the first week of trial in a federal court in Alabama in an environmental mass tort suit against Monsanto Chemical Company arising out of PCB contamination of a minority neighborhood near Monsanto's Anniston, Alabama facility.

Represented wind power companies in trade secrets case against former executives and their current employer and related companies.

Represented manufacturer of semi-conductor fabrication tools in trade secrets/patent infringement counterclaim against companies who brought an antitrust suit against Mr. Jacks' client.

Represented common shareholders of FundsXpress, Inc., in suit against acquiring entity and preferred shareholders based on breach of fiduciary duty in seeking to exclude holders of common shares from sharing in proceeds of acquisition.

Represented provider of software development and maintenance services in trade secrets suit brought by software manufacturer (pending).

Represented semiconductor manufacturer in suit brought by another semiconductor company claiming misappropriation of trade secrets and copyright infringement (pending).

Represented vacation rental company HomeAway, Inc., in suit against software companies alleged to have obtained and used material from HomeAway's websites in violation of website terms and conditions (pending).

## Insights

---

### Speaking Engagements

"Trade Secrets Damages," co-speaker, *Fish Litigation Webinar* (October 27, 2020).

### Publications

Mr. Jacks is a contributing author to Fish's IP Law Essentials.

"Recent Developments in Trade Secrets Damages," *Fish Litigation Blog*, January 2021 (co-author).

"Best Practices: Protecting Your Trade Secrets in the M&A Virtual Data Room," *Fish IP Law Essentials Blog*, August 2020 (co-author).

"Best Practices: How to Protect Trade Secrets From Loss Through Departing Employees," *Fish IP Law Essentials Blog*, June 2020 (co-author).

"Best Practices: HR Risk Management to Avoid IP Theft Liability," *Fish IP Law Essentials Blog*, June 2020 (co-author).

"E-Discovery Sanctions Traps in the Remote Workplace: Preserving Digital Data Even When the Office is Closed," *Fish IP Law Essentials Blog*, April 2020 (co-author).

Federal Copyright Preemption Extends to Preempt State Laws Which Protect Material That Congress Expressly Declined to Protect Under Federal Copyright Law: *Ultraflo Corp. v. Pelican Tank Parts, Inc.* (5th Cir. Jan. 11, 2017), *Fish Litigation Blog*, February 2017 (author).

Sanctions for Failure to Conduct a Reasonable Inquiry Into Factual/Legal Basis for Discovery Responses, *Fish Litigation Blog*, December 2016 (author).

False Claims Act: Recent First Circuit Opinion on Remand in *U.S. ex rel. Escobar v. United Health Services*, *Fish Litigation Blog*, December 2016 (author).

The Corporate Litigant and Rule 30(b)(6) Depositions: The Duty to Prepare the Corporate Representative to Testify, *Fish Litigation Blog*, November 2016 (author).

Federal Copyright Preemption of State Law Claims – Still a Powerful Defense Tool in Commercial Litigation, *Fish Litigation Blog*, November 2016 (co-author).

*Texas adopts Uniform Trade Secrets Act—Does this mean predictability for your business? Maybe*, Blog post, July 2013 (co-author).

J&J's \$158 Million Settlement With Texas Approved by Court: a Fish & Richardson trial team, led by Mr. Jacks and a former Fish attorney, successfully represented whistleblower Allen Jones in his claims that Johnson & Johnson's Janssen exaggerated the benefits of its antipsychotic drug Risperdal in order to dupe the Texas Medicaid Program. Following expert testimony by the plaintiffs' experts regarding Janssen's concealment and manipulation of scientific data, the manufacturers agreed to a settlement that represents the largest Medicaid fraud recovery in Texas history. The record-breaking case was the subject of news coverage in *The New York Times*, *Bloomberg*, *The Texas Tribune*, and a variety of other U.S. and international media outlets. This verdict was recognized by *Texas Lawyer* as the second-largest settlement in Texas in 2012.

Richard Garriott Wins \$28 million Jury award in NCsoft Suit: A Fish & Richardson trial team, led by Mr. Jacks and a former Fish attorney, successfully represented computer game industry pioneer, Richard Garriott (known to his fans as "Lord British") in a suit against his former employer, Korean game company NCsoft, based on NCsoft's failure to honor the terms of a stock option agreement upon Mr. Garriott's departure from the company. Mr. Garriott was quoted in the *Austin American Statesman* as saying: "The facts were clear that my departure from NCsoft was not voluntary. I am very pleased with the final award." The case was tried under Korean law. The judgment for over \$32 million was unanimously affirmed by a panel of the U.S. Court of Appeals for the Fifth Circuit in 2012.

## Recognition

---

Selected by his peers to be included in *The Best Lawyers in America* (1993-2021), and in Texas Super Lawyers every year since its inception. Selected as Trial Lawyer of the Year by the Texas Chapters of the American Board of Trial Advocates (ABOTA).

## Clerkships

---

U.S. District Court for the District of Maryland, The Honorable Roszel C. Thompson, 1971 - 1972

## Memberships & Affiliations

---

American College of Trial Lawyers (Fellow); International Academy of Trial Lawyers International Society of Barristers; American Board of Trial Advocates; Board Certified in Civil Trial Law, Texas Board of Legal Specialization; Texas Trial Lawyers Association (President, 1990-91); Travis County Trial Lawyers Association (President, 1988-90); Texas Bar Foundation (Fellow); Legal Aid Society of Central Texas (Member of Board of Directors, 1980-83; President, 1982-83); American Bar Association; District of Columbia Bar Association.