



## *Brent J. Gurney*

**PARTNER**

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Brent Gurney is a first-chair trial lawyer with over 30 years of significant jury trial and other court experience in challenging civil and criminal cases throughout the United States. Mr. Gurney's experience includes a wide variety of high-profile matters involving complex commercial disputes, intellectual property disputes, white collar criminal defense and government investigations into a wide variety of matters, including the False Claims Act, government contracts, health care fraud, conspiracy, wire and mail fraud. Mr. Gurney is a Fellow of the American College of Trial Lawyers and a Member of its Complex Litigation Committee. He is regularly listed in *Best Lawyers in America* for Commercial Litigation and White Collar Criminal Defense and in Washington DC *Super Lawyers*.

Among Mr. Gurney's substantial jury trials is his defense of a former manager for a medical device manufacturer accused of fraudulent off-label marketing. In that case, Mr. Gurney obtained a complete dismissal of all charges following opening statements and testimony from the government's first witness. *AmericanLawyer.com* called the dismissal "quite the dramatic turn." The dismissal was one of five cases featured in "Winning," the *National Law Journal's* annual report on significant trial victories.

Mr. Gurney's significant jury trials also include the jury verdict for IGEN that allowed it to terminate its licensing agreement with Roche, IGEN's key business objective, and awarded \$505 million in damages. The US Court of Appeals for the Fourth Circuit sustained the termination right, after which Roche purchased IGEN in a \$1.25 billion deal. The \$505 million jury verdict, which the Fourth Circuit reduced, ranks fourth in the *National Law Journal's* top verdicts in that year.

Mr. Gurney is also regularly called upon to advise clients on a wide variety of sensitive matters that cut across diverse subject matters that do not involve the courtroom. For example, he is currently advising a major U.S. company regarding compliance with the Uyghur Forced Labor Prevention Act that was signed into law by President Biden on December 23, 2021. He has also represented the City of Baltimore, the City of Chicago, the government of Puerto Rico and

their respective police departments in high-profile civil rights pattern and practice investigations by the US Department of Justice. He also served as counsel to the Working Group on Police Reform and Racial Justice of the US Conference of Mayors, which released a detailed blueprint for improving policing and promoting equal justice in America's cities.

Mr. Gurney has taught at both Stanford and Harvard Law School's Trial Advocacy Workshops and Introduction to Trial Advocacy Courses. In 2023 he taught a flagship Trial Advocacy Program in Poland alongside fellows of the American College of Trial Lawyers. He is co-author of a book on electronic evidence for the American College of Trial Lawyers that was published in early 2022 by Bloomberg and was interviewed for the recently published book, *The Art and Science of Expert Witness Testimony: A Multidisciplinary Guide for Professionals*, by Karen Postal (Routledge, Sept. 2021). He maintains an active *pro bono* practice and is a member of the Board of Directors of Leveling the Playing Field, which provides children the opportunity to enjoy youth sports participation by donating used and excess sporting equipment to low-income communities.

Mr. Gurney previously served as Assistant US Attorney in the US Attorney's Office for the District of Maryland and was later appointed Deputy Chief for the Southern Division. Mr. Gurney's successes while at the US Attorney's Office included obtaining convictions of nine defendants for distributing fentanyl and heroin that led to the deaths of 30 persons.

## *Recent Publications & Highlights*

- Mr. Gurney is the co-author of a book on electronic evidence for the American College of Trial Lawyers published by *Bloomberg Law* in 2022.
- Mr. Gurney was interviewed for the book *The Art and Science of Expert Witness Testimony: A Multidisciplinary Guide for Professionals* by Karen Postal (Routledge, Sept. 2021) to share their experiences and observations as successful trial lawyers.
- Mr. Gurney presented at a webinar titled "Hard Truth: Disinformation Threatens Business" on June 20, 2019.
- Mr. Gurney hosted and presented the "Autonomous Vehicle Webinar: The Next Frontier in IP Litigation" on June 5, 2019.
- Mr. Gurney presented at the ACTL CLE on "Opening Statements and Closing Arguments" on June 6, 2017.
- Mr. Gurney spoke at the ACEC Meeting in Washington DC as part of a panel in the session "No Disputing It: Risk Mitigation Strategies from an AE Litigator" on April 24, 2017.
- "Prosecutors and EPA consider the energy industry to be a prime target for investigation and enforcement." This topic is addressed in an article in the *Energy Law Journal* on Minimizing Risk Under the Clean Water Act, by Carol Clayton, David Gold, Brent Gurney, Mark Kalpin and Alexander White.
- "Fiduciary Duty Claims Against Construction and Design Professionals"  
An article by Brent Gurney, Doug Curtis and Rachel Murphy, published in the January

13, 2014 edition of *New York Law Journal*

- "A Good Offense: The Benefits of Early and Aggressive Affirmative Discovery in Defending Trade Secret Misappropriation Claims"  
An article by Brent Gurney, Josh Ferrentino and Alex White, published in the June 13, 2013 edition of *New York Law Journal* Special In-House Counsel Section
- US Fights Crime by Seizing Funds from Foreign Banks' Interbank Accounts  
An article by Brent Gurney, Richard Johnston and Alyssa DaCunha, published in the April 2013 edition of *International Bar Association International Litigation Newsletter*
- Second Circuit Invalidates Misbranding Conspiracy Conviction on First Amendment Grounds  
A WilmerHale client alert by Brent Gurney, Karen Green, Stephen Jonas, Howard Shapiro and Jonathan Cedarbaum
- Mr. Gurney spoke about several recent high profile criminal cases as part of a panel called "An Exploration of Ethical Issues Raised by *Stevens*, *Stryker Biotech*, and Similar Cases" at the Food and Drug Law Institute Annual Conference on April 25, 2012.
- Mr. Gurney spoke in a panel entitled "Anatomy of a Health Care Fraud Case: Lessons from Stryker" at the Boston Bar Association Health Care Fraud 2012 CLE Program on April 10, 2012.
- Mr. Gurney spoke in the panel "A Year in Legal Insight: Developments to Meet a Rapidly Evolving Industry" at the Park Plaza Hotel in Boston which was part of the Medical Devices Summit 2012 produced by Opal Events on March 7, 2012.
- Mr. Gurney presented "Disturbing Developments: Increased Strict Liability Prosecutions of Corporate Officers: The Crime of Doing Nothing" at the FDLI Enforcement and Litigation Conference in Washington DC on October 13, 2010.
- Mr. Gurney presented "The Crime of Doing Nothing: Strict Liability for Corporate Officers under FDCA" at the FDLI Enforcement and Litigation Conference in Washington DC on October 13, 2009.
- Mr. Gurney also presented "Problems and Pitfalls for In-House Counsel: Personal Liability of Corporate Counsel" at the Personal Care Products Council's 2009 Legal and Regulatory Conference in Vancouver, British Columbia on June 18, 2009.
- Mr. Gurney was quoted in *The Daily Record* on October 5, 2008. He discussed a recent law amending the Federal Rules of Evidence and limiting the circumstances under which attorney-client privilege is waived during discovery in the article, "New Rule Curbs Inadvertent Waiver."
- Mr. Gurney was quoted in the September 30, 2008 article, "Embracing 502, the New Hope for Attorney-Client Privilege," which appeared in *Compliance Week*.
- Mr. Gurney was quoted in the September 29, 2008 article, "New Discovery Rule to Curb Accidental Privilege Waiver," which appeared in *Massachusetts Lawyers Weekly*, discussing a newly signed law that amends the Federal Rules of Evidence.
- Mr. Gurney was quoted in the March 2008 issue of the RPM Report article, "No Walk in the Park: FDA Talks Tough About Executive Accountability" discussing the applicability

of the *Park Doctrine* in strict liability prosecutions in the pharmaceutical industry, under the Food Drug & Cosmetic Act.

- Mr. Gurney was quoted in the July 6, 2007 issue of *Rx Compliance Report* discussing strict liability prosecutions in the pharmaceutical industry under the responsible corporate officer doctrine.
- Mr. Gurney was quoted in *U.S. News & World Report* concerning trends in white-collar crime: "The Crackdown Cracks, Getting tough on corporate crime is so yesterday. The pendulum is swinging back, hitting everyone from gumshoes to judges," *U.S. News & World Report*, April 24, 2006 (available at [www.usnews.com](http://www.usnews.com)).

## Professional Affiliations



- Fellow, American College of Trial Lawyers
- Member, District of Columbia Bar
- Member, American Bar Association

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## Solutions

Litigation

False Claims Act

Life Sciences

Government Contract  
Investigations

White Collar Defense and  
Investigations

Foreign Corrupt Practices Act  
and Anti-Corruption

Commercial Litigation

Federal Inspector General  
Investigations

Trials

Crisis Management and  
Strategic Response

Construction and  
Infrastructure

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## Experience

- Represented a software developer in a copyright infringement suit against the federal government for its mass installation of the developer's software onto hundreds of thousands of Navy computers without authorization.
- Represented software provider in a dispute arising from a Fortune 500 company's unilateral decision to walk away from a longstanding IT services project without paying for the software and services developed and provided by Mr. Gurney's

client.

- Represented large privately held contractor in two-and-a-half-week AAA arbitration in connection with multimillion dollar claims for delay damages and other claims arising out of delayed construction project.
- Obtained complete dismissal of all claims against a software company in lawsuit arising out of a contract with the US Air Force for breach of contract, misappropriation of trade secrets, unfair competition, conversion, tortious interference with business relations and contract, conspiracy and unjust enrichment. The case centered on software that worked by automatically converting raw technical data provided by OEMS into an interactive electronic technical format. Mr. Gurney obtained a dismissal of all charges by launching an aggressive discovery and early motions strategy.
- Represented large tech company in a lawsuit filed in federal court by an international real estate company for breach of contract, breach of covenant of good faith and fair dealing, and unjust enrichment arising out of a marketing agreement.
- Oversaw successful lawsuit in Beijing Intermediate Court in the People's Republic of China for copyright infringement under the Berne Convention that required Chinese government to protect the literary and artistic works of US citizens. The decision represents a landmark case in China for the protection of foreign copyrights under the Berne Convention.
- Represented a former manager for a medical device manufacturer who was alleged to have participated in a fraudulent off-label marketing scheme. Mr. Gurney obtained a complete dismissal of all charges. AmericanLawyer.com called the dismissal "quite the dramatic turn." The dismissal was one of five cases featured in "Winning," *The National Law Journal's* annual report on significant trial victories.
- Represented IGEN in a lawsuit against Roche, wherein the jury returned a verdict for IGEN that allowed it to terminate its licensing agreement with Roche and awarding \$505 million in damages. The US Court of Appeals for the Fourth Circuit sustained the termination right, after which Roche purchased IGEN in a \$1.25 billion deal. The \$505 million jury verdict, which the Fourth Circuit reduced, ranked fourth in the National Law Journal's top verdicts for that year.
- Represented a prominent automaker in ongoing constitutional and other litigation in multiple states concerning the marketing of the company's automobiles.
- Represented the City of Baltimore, the City of Chicago, the government of Puerto Rico and their respective police departments in high profile civil rights pattern and practice investigations by the US Department of Justice.
- Represented the owner in a lawsuit filed in New York Supreme Court arising out of construction defects at its high-profile, iconic Frank Gehry-designed corporate headquarters.
- Represented a large online mortgage lending company in a lawsuit filed in the US District Court for the District of Colorado by an international real estate company for breach of contract.
- Represented the developer of high-end condominium project against claims filed in DC Superior Court by owners of construction defects, negligence and fraud.
- Represented the owners of multiple office buildings in a prominent US city arising out of curtain wall construction defect claims against general contractors and subcontractors.

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## *Recognition*

- Selected by peers for inclusion in *Best Lawyers in America* for Commercial Litigation and White-Collar Criminal Defense in 2010–2024. WilmerHale's white collar and commercial litigation practices earned a first-tier ranking for the Washington DC area in the "Best Law Firms" rankings by *U.S. News - Best Lawyers®*.
- Recognized in the 2015–2023 editions of Washington DC *Super Lawyers* for his Criminal Defense: White Collar practice.
- Named a 2022 and 2023 "Life Sciences Star" by *LMG Life Sciences*.
- Selected by *Benchmark Litigation* as a "Litigation Star" (2021–2024).

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## Credentials

### EDUCATION

Harvard Business School Online  
*Credential of Readiness (CRe), Business Analytics, Financial Accounting, Economics for Managers, with High Honors, 2015*

Harvard Business School Online  
*Disruptive Strategy with Clayton Christensen: Certificate of Completion, 2015; Becoming a Better Manager, 2017; Negotiation Mastery: Certificate of Completion, 2018*

JD, Harvard Law School, 1985  
*cum laude*

*Comments Editor, Harvard International Law Journal*

*Thomas J. Watson Fellowship recipient*

BA, Kalamazoo College, 1981  
*magna cum laude*

*Phi Beta Kappa*

London School of Economics  
*General Course Student*

### GOVERNMENT EXPERIENCE

Department of Justice

United States Attorney's Office

*Assistant US Attorney and Deputy Chief, Southern Division, District of Maryland*

### ADMISSIONS

District of Columbia  
US Supreme Court

### CLERKSHIPS

The Hon. Warren Matthews,  
Supreme Court of Alaska,  
1985 - 1986