

Cover Story

MIKE MCKOOL  
*The Worker*

# THE ADVOCATES

Whether they're representing aggrieved consumers or another company, these five top lawyers are adversaries you *never* want to face in court.

By *John G. Browning*  
Portraits by *Dan Sellers*

## THE TAKEAWAY

- 1** Be prepared: Never assume a case won't make it to trial. And do your homework.
- 2** Be relatable: Juries don't want to be talked down to.
- 3** Be there: A CEO's attendance in court is critical.

## THEY ARE APEX PREDATORS AT THE TOP OF THE LITIGATION FOOD CHAIN,

moving as effortlessly and efficiently in the courtroom as great white sharks gliding through their watery habitat. Their courtroom exploits throughout Texas and the rest of the country have earned them princely sums and larger-than-life reputations in the legal community.

Given the impact their verdicts have had on corporate bottom lines, it's no surprise that trial lawyers like Mike McKool, Martin Rose, Jeff Tillotson, and Mark Werbner have increasingly found Corporate America turning to them

for high-stakes litigation. Along with Frank Branson—the longtime dean of plaintiff's personal-injury lawyers in North Texas—they are, quite simply, the lawyers an opposing CEO does not want to grapple with in the courtroom.

What are the secrets of their success? And, more importantly, what can they teach chief executives about the things that can make or break a company facing trial? Here, they offer their insight, drawn from years of trial experience.

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### Preparation Pays Off

MIKE MCKOOL [McKool Smith]

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FOR MIKE MCKOOL, FOUNDER AND SENIOR partner at McKool Smith (which has more than 90 lawyers in Dallas; Austin; Marshall, N.Y.; and Washington, D.C.), courtroom success comes down to a near-obsessive level of preparation. A veteran of more than 120 trials, McKool says that while “you can be good without much preparation, you can't be consistently good.”

Known for the intensity he brings to each case, McKool synthesizes a complex case that may involve millions of pages of documents into a lengthy outline of key facts, necessary proof, and an index of all of the case's exhibits. He's been known to isolate himself for days or even weeks as he prepares for trial, and he serially tests his cases using focus studies and mock trials to evaluate what works and what doesn't.

McKool remains keenly attuned to fundamentals, even in an age where technology and multimedia presentations dominate high-stakes litigation. “You have to create analogies for people that they can relate to, without talking down to the jury,” he says, but “90 percent of the graphics I see in the courtroom are too busy.”

McKool's track record shows that preparation pays off. He's been the go-to lawyer for people like Tom Hicks and Ray Hunt. His client roster reads like a who's who of Corporate America, including EDS,



American Airlines, ExxonMobil, Ericsson, and Holly Corp. McKool's results against corporate defendants—often multimillion-dollar outcomes—are some of the biggest reasons CEOs want him on their side.

Says Ray Hunt of Hunt Consolidated: “What I really look for and value the most is knowing not only that the person is a great legal mind, but that he has judgment that I have confidence in. I value Mike's non-legal judgment as much as I value his legal skills.”

Another factor in McKool's success is the level of personal dedication he brings to his cases. Discussing his successful defense of the Hicks Muse private-equity firm (now

known as HM Capital) against accusations of mismanagement by a bankruptcy trustee for a failing dental company, McKool says, “It was very emotional for me. These were friends of mine, being accused of something that was so off-base; if anything, Hicks Muse had been defrauded.” After an eight-week jury trial in Worcester, Mass., McKool and his client emerged victorious.

For lawyers who have squared off against McKool, his intensity and passion for detail are all too familiar. According to Jones Day partner Terence M. Murphy, who has represented companies like Trammell Crow and Texas Instruments in litigation with McKool on the other side, “Mike will dig to the bottom and get every fact he needs. You know you're in a battle royal when you go up against him.”

McKool's victories on both sides of the bar have given him a keen insight into what CEOs should and shouldn't do in the courtroom. “The reality of the courtroom and the reality of the boardroom are two different things,” he cautions. “Many executives pay relatively little attention to a lawsuit until trial is bearing down,” resulting in a kind of “panic” setting in. McKool recommends that CEOs control what they can by familiarizing themselves with key documents and events, since juries “tend to hold them accountable for a level of direction and detail that would stun a CEO.” At the same time, McKool warns against CEOs trying to take control and argue their case. “A CEO needs to know who is going to stand up and be his representative in the courtroom,” he says. “Put faith in your lawyer to state your side.”