

David F. Walker -- My Legal Experience

PROFESSIONAL EXPERIENCE

Litigation

State and federal trial and appellate litigation, primarily as attorney for the defense. Most recently involved in:

- individual and class action litigation in state and federal courts and arbitrations with the American Arbitration Association representing nationwide manufacturing housing company in design defect and other cases;
- representing nation's largest insurance adjusting company in numerous state and federal cases and other matters; and
- handling litigation involving land disputes, premises liability, and contract disputes, as well as responding to grand jury and state regulatory subpoenas and managing litigation.

Prior litigation matters included class action lawsuits, contract disputes, construction defect litigation (including EIFS and other condominium construction cases), disputes between municipalities, personal injury claims, product liability claims, malicious prosecution claims, whistleblower claim, workers compensation claims, and adverse possession and boundary disputes. Also participated in litigation management for multi-state banking client.

Banking

At prior firm, defended numerous lawsuits for banking clients. Also reviewed contracts and lease agreements. Advised banking client's branches in six states regarding letters of credit, new account issues (including U.S. Patriot Act requirements), estate accounts, compliance with court orders, powers of attorney, garnishments and levies, subpoenas, and other daily operations issues via a "hotline" telephone in my office. Drafted operations manuals for garnishment and levy department and subpoena department. Participated daily in bank's handling of subpoenas and summonses, in conjunction with research staff and fraud department. Participated in preparations for examination by bank regulatory agencies. Revised banking client's Bank Secrecy Act procedures, new account resolutions, and several other bank policies and procedures.

Other

Participated in arbitrations, defense of ethics complaint, and governmental affairs (served as counsel to the Alabama State Docks Study Committee).

REPORTED CASES*

Colonial Bank of Alabama v. Lauren McCaffery, 825 So. 2d 746 (Ala. 2001)

Defended Colonial Bank against class action lawsuit brought by Cunningham, Bounds, Yance, Crowder & Brown, L.L.C. The plaintiff sought to represent a class of customers in six states who were charged NSF fees. The plaintiff argued that the bank should post checks received each day in a way that

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would minimize the number of returned checks. The trial court certified a breach of contract class, but we persuaded the Alabama Supreme Court to reverse that decision. The plaintiff voluntarily dismissed her individual claims.

James K. Lyons, as Director of the Alabama State Port Authority v. River Road Constr., Inc., 858 So. 2d 257 (Ala. 2003)

Represented Director of Alabama State Port Authority against claims brought by the Baxley, Dillard firm on behalf of dredging contractor that demanded additional compensation for unanticipated work encountered during project. We moved to dismiss the case on grounds of state immunity, but Mobile County Circuit Court Presiding Judge Robert Kendall denied the motion. We obtained permission to appeal, and the Alabama Supreme Court ordered that the case be dismissed.

Alfa Life Ins. Corp. v. Jackson, 906 So. 2d 143 (Ala. 2005)

Filed *amicus curiae* brief on behalf of Alabama Association of Life Insurance Companies, in support of Alfa's application for rehearing. We argued that insurance companies in particular were susceptible to excessive awards for mental anguish, and, for that reason, the courts should apply a one-to-one ratio when determining whether a punitive damage award is constitutional. The issue of damages became moot when the decision was reversed on other grounds.

H.E. Monroe, Jr., as Commissioner of the Department of Revenue v. Harco, Inc., et al., 762 So. 2d 828 (Ala. 2000)

Represented Harco, Inc. (Rite Aid) and other large retailers, including CVS Pharmacy, Bruno's, Delchamps, Sears, Wal-Mart, and K-Mart, in seeking injunction against enforcement of administrative regulation setting limit on sales-tax discount that could be claimed by retailers. Successfully argued at trial level that executive order leading to promulgation of regulation violated the separation-of-powers provisions of section 43 of the Alabama Constitution, although that decision was reversed on appeal.

Frank Crain Auctioneers, Inc. v. Delchamps, 797 So. 2d 470 (Ala. Civ. App. 2000)

Represented real estate auctioneer in an interpleader action. Randy Delchamps sought a broker's commission on property he purchased at an auction sale, to be paid from the auctioneer's fee. The Baldwin County Circuit Court ruled in favor of Delchamps, but was reversed on appeal, and the disputed funds were paid to the auctioneer.

Zadnichek v. Fidler, 894 So. 2d 702 (Ala. Civ. App. 2004)

Represented plaintiff in adverse possession case during appeal stage. Successfully argued that easements across client's property had been terminated by adverse possession. Appeals court ruled in our favor and reversed decision of Baldwin County Circuit Court Presiding Judge.

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Lee v. Minute Stop, Inc., 874 So. 2d 505 (Ala. 2003)

Successfully defended convenience store clerk against claim of malicious prosecution. Claim was brought by store customer who was arrested and remained in jail until his preliminary hearing, at which time he was released after a finding of lack of probable cause to arrest him. Obtained summary judgment, which was affirmed on appeal.

Perry v. Fleetwood Enterprises, Inc., No. 2:06-cv-502-MEF, 2007 WL 2893410 (M.D. Ala. Sept. 28, 2007)

Represented manufactured housing company against design defect claims. Plaintiff contended that home's design allowed moisture intrusion and deterioration of walls. Court dismissed plaintiff's claims based on our argument that the claims were barred by doctrine of implied preemption, given that HUD regulations specifically allowed choice of design for manufactured homes.

Kennedy v. Fleetwood Enterprises, Inc., No. 1:07-cv-728-MEF, 2007 WL 4287374 (M.D. Ala. Dec. 5, 2007)

Successfully opposed motion to remand in a matter of first impression for the Middle District of Alabama. Plaintiff sought declaratory judgment, asking court to appoint an arbitrator. Plaintiff argued remand was proper because there was no monetary value to a declaratory judgment. Court sided with defense argument that the amount in controversy is measured by the underlying claims the plaintiff seeks to arbitrate.

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