



The Alabama

July 2014 | Volume 75, Number 4

# Lawyer

## Maneuvering To Terrain:

Enforcement of Forum-Selection  
Clauses after *Atlantic Marine*

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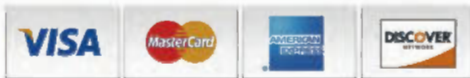


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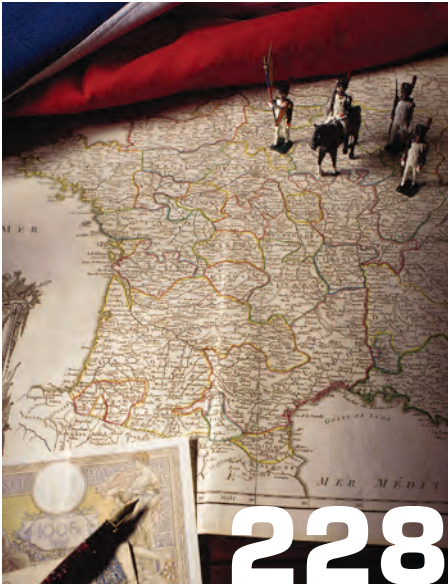
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## ON THE COVER

Fourth of July fireworks over Lake Martin Amphitheater as seen by boat

Photo by Noelle M. Buchannon, The Finklea Group, [www.taplink.com](http://www.taplink.com)

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## ARTICLE SUBMISSION REQUIREMENTS

Alabama State Bar members are encouraged to submit articles to the editor for possible publication in *The Alabama Lawyer*. Views expressed in the articles chosen for publication are the authors' only and are not to be attributed to the *Lawyer*, its editorial board or the Alabama State Bar unless expressly so stated. Authors are responsible for the correctness of all citations and quotations. The editorial board reserves the right to edit or reject any article submitted for publication.

The *Lawyer* does not accept unsolicited articles from non-members of the ASB. Articles previously appearing in other publications are not accepted.

All articles to be considered for publication must be submitted to the editor via email ([ghawley@joneshawley.com](mailto:ghawley@joneshawley.com)) in Word format. A typical article is 13 to 18 letter-size pages in length, double-spaced, utilizing endnotes and not footnotes.

A brief biographical sketch and a recent color photograph (at least 300 dpi) of the author must be submitted with the article.

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## Got It!

In the south, we sometimes use the expression, “Even a blind hog finds an acorn every now and then.” It means that everyone on occasion stumbles on the right answer, or sometimes a good result comes from an unexpected source. Not that I’m trying to compare myself to a hog (no commentary please), or to characterize my efforts this year as finding a prized acorn, but I can now say after 10 months and seven days into my role as president that I think I finally “got it!” I finally understand. To those of you who know me, I am certain you will say that it took me long enough. Let me be clear that by saying “got it,” I’m not suggesting that I have all the answers, nor am I trying to say “mission accomplished.” It’s far from that. What I can say without any shred

of doubt is that I have seen who we are as a bar, I have looked at the challenges that we face and I can see a light at the end of the tunnel. At the end of the day, isn’t that what it’s all about? That is, recognizing the needs, dedicating the resources necessary to meet those challenges, having a strong desire to make it happen, and having hope. MLK said it best when he declared that “[he] might not get there with [us]” . . . but he had a dream of where we were going and what we could become. His dream was predicated on a vision, universal truth and hope. Our hope as a bar lies within our bar’s motto:

“Lawyers Render Service to the Profession and to the Community”

Service defines what it means to be a lawyer.



## Relevancy Now and for the Future of Our Profession

Service is our mission, but relevancy must remain our cornerstone. While we exist to serve the profession and the greater community, we must recognize what is relevant to the current needs of each part, and subpart, of those we serve.

## Access to Justice

Alabama is the seventh poorest state in the country. Almost one-fifth (900,000) of our citizens live below the poverty level. The civil legal needs of many of those existing at that level are not being met. However, I am proud to report that this year, as in the past, many lawyers have stepped up to volunteer through our pro bono initiatives. Over 1,500 members of bar volunteers have spent almost 11,000 hours and served over 9,300 of our citizens. What a great team effort!

One of the goals for the bar this year was to increase the number of volunteers from our “common” group of volunteer lawyers, while also tap into other groups within the bar, such as in-house counsel lawyers and government/public lawyers. Please don’t get me wrong—there are some in-house and government lawyers who regularly participate in bar activities and are strongly encouraged by their respective employers. It’s just that we, as a bar, have never really focused on getting these groups involved.

This year, our efforts changed with the appointment of an in-house counsel and public/government task force led by **Cooper Shattuck**, general counsel, University of Alabama Systems, and **Sharon Broach**, law clerk to **U.S. District Judge Abdul Kallon**. The task force has 20 members and includes judges, general counsel; state and federal public defenders; city, state and federal prosecutors; and lawyers from various state and federal agencies.

This task force will explore ways of obtaining greater participation by in-house lawyers and public/government lawyers in bar activities, including sections, committees, volunteer lawyer programs, pro bono programs and other related areas of service to the bar and community. This group continues to meet and I am more excited about our future with this group of dynamic lawyers.

## Law Students and Law Schools

While the media and some commentators continue to paint the legal profession in a dismal light, I still believe that the legal profession is the greatest and most-needed profession on the planet. Even so, law school applications are down 8.9 percent.

It has been estimated that there will be only 28,000 new law grad jobs each year over the next 10 years, while law schools are on pace to graduate approximately 44,000 students per year. Notwithstanding, I firmly believe the suggestion that the legal sky is falling is misleading and void of vision of need and purpose.

It has been reported that the legal industry is a \$211 billion industry. Globalization and increased regulations will continue to expand and become more complex. Fifty-five percent of our lawyers are baby boomers. Those baby boomers are getting closer and closer to retirement. Meanwhile, many of the civil legal needs of our poorest citizens are going unmet every day. Lawyers will continue to be needed as advocates, advisors, counselors, negotiators and litigators. All of that is to say that the profession may not look the way it did 10 or 15 years ago, but the need for lawyers will be greater than ever.



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As a bar, we have a responsibility to be beacons of hope for the profession, as well as active participants in the law school journey and beyond. The law schools need our active involvement. This year, the bar initiated a law school summit, and through the Young Lawyers' Section, developed an **ASB Law Student Division**. The bar invited all five state law schools for a day-long discussion covering a variety of topics involving law students and the future of the profession. The summit's goal was to work in a collaborative effort to help inspire law students, help them on their journey and help them become ready-made practitioners and contributing and responsible lawyers in the future. Our president-elect, **Rich Raleigh**, participated in this year's efforts and reports that it will continue next year and hopefully beyond. I also recognize the great work of the Alabama State Bar's Young Lawyers' Section president, **Chris Waller**, and that section's overall great work, and express my gratitude for their efforts in developing the Law Student Division of the bar. Our presence in the law schools shows that we care, and it also encourages law students to get involved early and to continue their involvement when they become members of the bar. I am inspired by our heritage, motivated by our legacy and encouraged by our future.

## Veterans' Court Task Force

Our veterans are returning home from wartime duties and need the support of our communities in re-joining civilian life.

This year, the bar took a serious look at how the legal community could help. A Veterans' Court Task Force was appointed. The purpose of this task force was to assist in establishing veterans' courts statewide, and where already established, extend veterans' access to additional benefits and services, such as education, housing and employment opportunities. As a result of many months of hard work and coordination with various stakeholders, the task force has developed a "plug-and-play" guide to establishing or expanding a veterans' court, to be presented at conferences this summer. The work will benefit our veterans and is one way the bar may say "thank you" for the many sacrifices given by veterans on our behalf. I am particularly thankful for the leadership of **Judge Bill Bostick, Ed Sledge, Sandy Speakman** and many others.

In addition to the efforts regarding the veterans' court, the ASB Board of Bar Commissioners overwhelmingly approved a **military spouse exception to admission** in the bar. Under this rule, an attorney who is married to a person who is stationed in Alabama can be admitted to the bar, assuming that all other prerequisite qualifications are met. This is another great example of leadership and compassion for the sacrifices borne by our service members and their families. The bar commissioners are outstanding leaders with a

sense of duty and a strong passion for right and wrong. It was an honor to work with the BBC this year.

## Digital Communications

At the beginning of my term I noted that digital communications would be an important ingredient in our efforts to remain relevant to the membership. Providing tangible services to all our members is critical. We needed to improve our product visually and upgrade our systems to make digital communication more functional, practical and user-friendly. We reported that we had invested in both manpower (or should it be "person power") and infrastructure to make that happen. You have seen and will continue to see greater cosmetic changes in the future. Functionality will continue to improve our ability to provide more offerings and greater visibility for our community services. That will help all of our members.

This initiative is great for our membership and is also important for demonstrating transparency and responsibility to the public.

## Our Bar Family/Team

The 55 men and women in our bar office family are individually and collectively some of the greatest folks I have had the pleasure of being around and working with. Not only are they good-hearted, but they really care about the mission of the bar and its importance to us. Volunteers are important, but the engine that drives our bar and compels us to greatness is the staff housed at the state bar office—those special people who carry out their roles efficiently, professionally and with special grace. It has been my pleasure to work with each one of them. I have been blessed.

## Conclusion

To the members of the Alabama State Bar and to our bar team/family, I am grateful for the blessing of serving as president. I appreciate the hard work and support that I have been given, and look forward to serving in some capacity in the future. I congratulate Rich Raleigh on becoming the 138<sup>th</sup> president of the Alabama State Bar and hope and pray that he will enjoy his journey as much as I have. He will represent us well.

I will be forever grateful for this opportunity. It has been my pleasure to serve. Got it!

To each of you, I say:

*Be dressed and ready for service and keep your lamp burning*

—Luke 12:35

Blessings to all, AJ



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# Casemaker— A Member Benefit Worth Keeping?

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Next year is the tenth and final year of our contract with Casemaker. Consequently, soon we will begin the process of determining whether or not to renew our contract and continue our participation in the Casemaker consortium. So, we want your thoughts about whether this service is valuable enough to your practice for the state bar to continue its expenditure of more than \$100,000 each year to provide this benefit. I hope that Casemaker has been a resource that has allowed many firms and solo practitioners to avoid the significant financial cost of the other online legal research services. Let us know what you think! | [AL](#)

# ALABAMA STATE BAR Lawyers' Hall of Fame

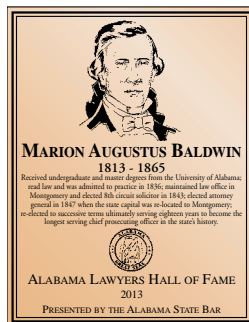
The Alabama State Bar recently inducted five new members into the Alabama Lawyers' Hall of Fame.

**“The lawyers we are recognizing have improved the communities in which they live, have had a profound influence on our laws and have improved the quality of society by pursuing justice.”**

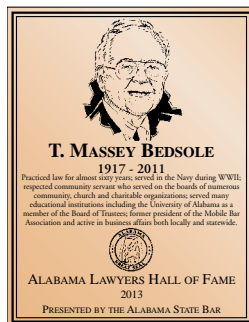
—Alabama State Bar President Anthony A. Joseph

The five lawyers inducted into the 2013 Hall of Fame include:

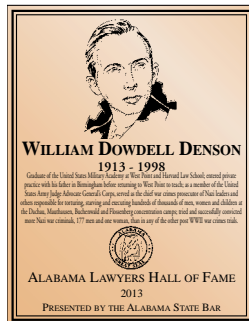
**Marion Augustus Baldwin (1813–1865)** Baldwin received his undergraduate and master's degrees from the University of Alabama; read law and was admitted to practice in 1836; maintained a law office in Montgomery and was elected 8<sup>th</sup> circuit solicitor in 1843; elected attorney general in 1847 when the state capital was relocated to Montgomery; re-elected to successive terms, ultimately serving 18 years to become the longest-serving chief prosecuting officer in the state's history



**T. Massey Bedsole (1917–2011)** Bedsole practiced law for almost 60 years; served in the Navy during WWII; was a respected community servant who served on the boards of numerous community, church and charitable organizations; served many educational institutions, including the University of Alabama as a member of the board of trustees; was former president of the Mobile Bar Association and active in business affairs both locally and statewide

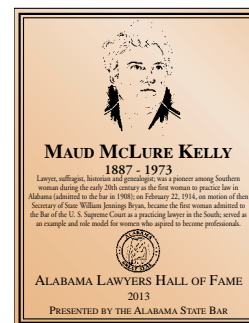


**William Dowdle Denson (1913–1998)** Denson was a graduate of the U.S. Military Academy at West Point and Harvard Law School; entered private practice with his father in Birmingham before returning to West Point to teach; as a member of the U.S. Army Judge Advocate General's Corps, served as the chief war crimes prosecutor of Nazi leaders and others responsible for torturing, starving and executing hundreds of thousands of men, women and children at the Dachau, Mauthausen, Buchenwald and Flossenberg concentration camps

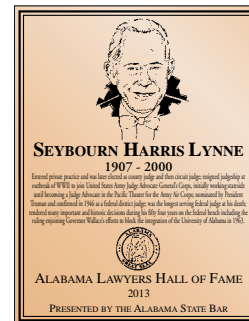


tration camps; tried and successfully convicted more Nazi war criminals, 177 men and one woman, than in any of the other post-WWII war crimes trials

**Maud McLure Kelly (1887–1973)** Kelly was a lawyer, suffragist, historian and genealogist; was a pioneer among Southern women during the early 20<sup>th</sup> century as the first woman to practice law in Alabama (admitted to the bar in 1908); on Feb. 22, 1914, on motion of then-Secretary of State William Jennings Bryan, became the first woman admitted to the Bar of the U.S. Supreme Court as a practicing lawyer in the South; served as an example and role model for women who aspired to become professionals



**Seybourn Harris Lynne (1907–2000)** Lynne entered private practice and later was elected county judge and then circuit judge; resigned judgeship at the outbreak of WWII to join the U.S. Army Judge Advocate General's Corps, initially working stateside until becoming a Judge Advocate in the Pacific Theater for the Army Air Corps; nominated by President Truman and confirmed in 1946 as a federal district judge; was the longest-serving federal judge at his death; rendered many important and historic decisions during his 54 years on the federal bench, including the ruling enjoining Gov. George Wallace's efforts to block the integration of the University of Alabama in 1963



The Alabama Lawyers' Hall of Fame inducted its first class in 2004, and now totals more than 40 Alabama lawyers. Inductees must have a distinguished career in law and each must have died at least two years before the time of their selection. In addition, at least one of the inductees must be deceased a minimum of 100 years.

The newly unveiled plaques honoring each inductee are on display in the Alabama Lawyers' Hall of Fame located on the lower level of the Heflin-Torbert Judicial Building. | AL



### **Standards for Attorneys Representing Parents in Dependency and Termination Cases**

### **Notice of Changes to the Statute of Judicial Recusal In Alabama**

## Standards for Attorneys Representing Parents in Dependency and Termination Cases

The Alabama Parents' Attorney Standards Subcommittee, chaired by John Bodie of Trussville, has discussed the adoption of standards for representing parents in dependency and termination-of-parental-rights (TPR) cases in Alabama. A copy of the American Bar Association (ABA)'s "Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases" was distributed to the subcommittee, which agreed that the standards would serve as a working draft. Several amendments were made. Subcommittee comments identified as "Alabama Comments" are included to provide clarifications for interpretation and/or implementation in Alabama.

These standards (available at [www.alabar.org](http://www.alabar.org)) have been approved by the Alabama State Bar's Family Law Section Board and apply to all state-provided attorneys (whether the attorneys are appointed, provided under contract, are public defenders or are otherwise paid for by state funds), recognizing that individuals always maintain the right to hire counsel of their own choosing.

## Notice of Changes to the Statute Of Judicial Recusal in Alabama

The Alabama State Bar is providing this notice of change as a service to its members. During the 2014 Legislative Session, the law of judicial recusal was revised, reflecting the standards set forth in recent United States Supreme Court decisions, as well as the new electronic filing requirements that provide greater transparency in contributions. This new law took effect July 1, 2014 and specifically repeals *Ala. Code* 12-24-1 and 12-24-2, replacing it with the following new requirements.

Section 1. (a) In any civil action, on motion of a party or on its own motion, a justice or judge shall recuse himself or herself from hearing a case if, as a result of a substantial campaign contribution or electioneering communication made to or on behalf of the justice or judge in the immediately preceding election by a party who has a case pending before that justice or judge, either of the following circumstances exist:

- (1) A reasonable person would perceive that the justice or judge's ability to carry out his or her judicial responsibilities with impartiality is impaired.
- (2) There is a serious, objective probability of actual bias by the justice or judge due to his or her acceptance of the campaign contribution.

(b) A rebuttable presumption arises that a justice or judge shall recuse himself or herself if a campaign contribution made directly by a party to the judge or justice exceeds the following percentages of the total contributions raised during the election cycle by that judge or justice and was made at a time when it was reasonably foreseeable that the case could come before the judge or justice: (1) Ten percent in a statewide appellate race, (2) Fifteen percent in a circuit court race or (3) Twenty-five percent in a district court race. Any refunded contributions shall not be counted toward the percentages noted herein.

(c) The term party, as referenced in this section, means any of the following:

(1) A party or real party in interest to the case or any person in his or her immediate family.

(2) Any holder of five percent or more of the value of a party that is a corporation, limited liability company, firm, partnership or any other business entity.

(3) Affiliates or subsidiaries of a corporate party.

(4) Any attorney for the party.

(5) Other lawyers in practice with the party's attorney.

(d) An order of a court denying a motion to recuse shall be appealable in the same manner as a final order to the appellate court which would otherwise have jurisdiction over the appeal from a final order in the action. The appeal may be filed within 30 days of the order denying the motion to recuse. During the pendency of an appeal, where the threshold set forth in subsection (b) is met, the action in the trial court shall be stayed in all respects.

Act 2014-455, HB 543 | AL



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# Maneuvering to Terrain:

Enforcement of Forum-Selection Clauses after *Atlantic Marine*

By Edward S. Sledge, IV and Christopher S. Randolph, Jr.

Philosophers of war, Sun Tzu and Carl von Clausewitz, espoused the importance of using terrain in waging battle.

Sun Tzu described “[t]he natural formation of the country” as “the soldier’s best ally.”<sup>1</sup> Clausewitz explained the significance of terrain in defending against attack: “defense is nothing more than a means by which to attack the enemy most advantageously, in a terrain chosen in advance, where we have drawn up our troops, and have arranged things to our advantage.”<sup>2</sup> The Army Doctrine Publication discusses as a “core competency” the principle of *maneuver* to be applied in moving to and fighting on desirable terrain:

Combine arms maneuver is the application of the elements of combat power in unified action to defeat enemy ground forces; to seize, occupy and defend land areas; and to achieve physical, temporal and psychological advantages over the enemy to seize and exploit the initiative. It exposes enemies to friendly combat power from unexpected directions and prevents an effective enemy response.<sup>3</sup>

Predictable results followed for battlefield commanders who well-applied the principle of maneuver to fight on favorable terrain. King Leonidas with the Spartans at Thermopylae is one example, but there are many others. While the real-life consequences of effective or ineffective use of maneuver and terrain are obviously different for the soldier and the lawyer, maneuver and terrain are no less significant in shaping the battlefields and affecting outcomes for both professionals.

Lawyers often rely on forum-selection clauses when trying to maneuver to more favorable territory. Federal courts took divergent approaches to enforcing forum-selection clauses for decades, but the United States Supreme Court significantly clarified the law in this area in its December 3, 2013 opinion in *Atlantic Marine Construction Co., Inc. v. United States District Court for the Western District of Texas* (“*Atlantic Marine*”).<sup>4</sup> The Supreme Court in *Atlantic Marine* adopted a set of rules for enforcement of forum-selection clauses that is consistent with the relevant procedural rules and the federal policy favoring enforcement of forum-selection clauses, but in doing so, overruled precedent from the Eleventh Circuit and other federal circuits. This article briefly explains how *Atlantic Marine* has changed the law on enforcement of forum-selection clauses,

possible effects of the decision on litigation strategy and questions that remain after *Atlantic Marine*.

## Enforcement of Forum-Selection Clauses before *Atlantic Marine*

Forum-selection clauses have been used by contracting parties for decades to ensure greater predictability in litigation and to steer litigation to tribunals experienced at adjudicating the types of disputes anticipated. Forum-selection clauses may also give a litigant a strategic advantage by directing litigation of both contract and tort claims to a more convenient forum. Enforcement of a forum-selection clause may affect the procedural rules applicable to an action and, because the contractually designated forum will apply its own choice-of-law rules, may also affect the applicable substantive law. Enforcement of a forum-selection clause, for example, may prevent the plaintiff from flouting the statute of limitations in the contractually designated forum. Proceeding with litigation in the contractually designated forum may also preserve the parties' reasonable expectations with respect to the contours of the litigation "battlefield."

Forum-selection clauses were once void as against public policy. In 1972, however, the United States Supreme Court in *M/S Bremen v. Zapata Off-Shore Co.* ("*Bremen*")<sup>5</sup> held that forum-selection clauses were presumptively enforceable in admiralty and lower federal courts, and state courts have since applied *Bremen* to disputes arising outside the admiralty context. Alabama courts continued to refuse to enforce forum-selection clauses for 25 years after *Bremen*,<sup>6</sup> but in 1997 the Alabama Supreme Court overruled that line of authority and adopted the *Bremen* approach in *Professional Insurance Corp. v. Sutherland* ("*Sutherland*").<sup>7</sup> Under both *Bremen* and *Sutherland*, a forum-selection clause is prima facie valid and enforcement will be denied only in limited circumstances,<sup>8</sup> such as when the clause is

Proceeding with litigation in the contractually designated forum may also preserve the parties' reasonable expectations with respect to the contours of the litigation "battlefield."

"affected by fraud, undue influence, or overwhelming bargaining power"<sup>9</sup> or when the clause violates the strong public policy of the forum.<sup>10</sup>

In the years following *Bremen*, litigants in federal court used a variety of procedural vehicles to enforce forum-selection clauses. Defendants could seek *dismissal* under *Federal Rule of Civil Procedure* 12(b)(3) ("Rule 12(b)(3)") for a plaintiff's choice of an "improper venue" or similarly request *dismissal or transfer* under 28 U.S.C. § 1406 ("Section 1406") for a plaintiff's choice of a "wrong" venue. Defendants could also have an action *transferred* under 28 U.S.C. § 1404(a) ("Section 1404") to the contractually designated forum. Under a motion to dismiss, enforcement of forum-selection clauses was mandatory, assuming the clause was valid and enforceable. This rule followed from *Bremen*, which involved a motion to *dismiss* for *forum non conveniens*.<sup>11</sup> In contrast, as the Supreme Court explained in *Stewart Organization, Inc. v. Ricoh Corp.* ("*Stewart*"),<sup>12</sup> if a defendant sought transfer under Section 1404(a) to enforce a forum-selection clause, a district

court would weigh various interests and exercise discretion in deciding whether to transfer an action to the contractually designated forum.<sup>13</sup>

Dicta in *Stewart* created confusion over whether Rule 12(b)(3) or Section 1406 could be used to enforce forum-selection clauses. *Stewart* noted that "[t]he parties do not dispute that the District Court properly denied the motion to dismiss the case for improper venue under 28 U.S.C. § 1406(a) because respondent apparently does business in the [district where the plaintiff filed the action]."<sup>14</sup> Following *Stewart*, several circuits held that Rule 12(b)(3) and Section 1406(a) could not be used to enforce a forum-selection clause that designated a *federal* forum because venue was not "wrong" or "improper" when the requirements of the relevant venue statute<sup>15</sup> were satisfied, regardless of whether a forum-selection clause required litigation in a different forum.<sup>16</sup> Some of these courts, however, held Rule 12(b)(3) or Section 1406 could be used to enforce a forum-selection clause that designated a *non-federal* forum since there was no procedural mechanism to transfer an action from a federal court to a non-federal forum.<sup>17</sup> Other circuits, including the Eleventh Circuit, held that an action could be dismissed for wrong or improper venue to enforce a forum-selection clause, regardless of whether the clause designated a federal or non-federal forum.<sup>18</sup>

Courts have also relied on other procedural rules to enforce forum-selection clauses. Some courts have held that a forum-selection clause may be enforced through a motion to dismiss under Rule 12(b)(6).<sup>19</sup> One district court has even held that a forum-selection clause could be enforced through dismissal for lack of subject matter jurisdiction under Rule 12(b)(1),<sup>20</sup> but the Eleventh Circuit ultimately rejected that approach.<sup>21</sup> Some courts have also enforced non-federal forum-selection clauses through dismissal based on common law *forum non conveniens*.<sup>22</sup>

The differences between a dismissal and transfer could have significant consequences. A dismissal could end an action if the statute of limitations had already run, but it could also give a plaintiff an opportunity to add a non-diverse party in an effort to prevent removal after refileing

in state court. Under a motion to transfer under Section 1404(a), it was also possible that a plaintiff whose claims were time-barred in the designated forum could sue in a state with a longer statute of limitations and have that limitations period applied following transfer to the designated forum.<sup>23</sup>

## The Atlantic Marine Decision

The decision of the Fifth Circuit in *In re Atlantic Marine Construction Co., Inc.*<sup>24</sup> illustrated the confused state of federal law on forum-selection clauses. In that action, J-Crew Management, Inc. sued Atlantic Marine Construction Co., Inc. in a Texas federal court despite a forum-selection clause that required litigation in Virginia.<sup>25</sup> Atlantic Marine moved to dismiss under Rule 12(b)(3) and Section 1406 or, alternatively, to transfer the action to a Virginia federal court under Section 1404(a). The district court denied the motion, holding that Section 1404(a) was the correct mechanism for enforcing the clause but that Atlantic Marine had failed to show that interests weighed in favor of transfer.<sup>26</sup> In denying Atlantic Marine's mandamus petition, the Fifth Circuit adopted the minority approach and held that a clause that designates a federal forum cannot be enforced under Rule 12(b)(3) or Section 1406 if venue is correct under the relevant venue statute.<sup>27</sup> The Fifth Circuit maintained that a Rule 12(b)(3) dismissal remained the correct mechanism for enforcing a clause that designates a state, foreign or arbitral forum because there is no procedural mechanism for a federal court to transfer to a non-federal forum.<sup>28</sup> The court cited no textual basis for treating federal forum-selection clauses differently from non-federal clauses. The Fifth Circuit then held that the district court did not clearly abuse its discretion by placing the burden on the party seeking enforcement of the forum-selection clause and by treating the inconvenience of the plaintiff as a relevant consideration.<sup>29</sup> The Supreme Court granted certiorari.

The Supreme Court significantly clarified the law regarding enforcement of

forum-selection clauses while adhering to the text of the relevant procedural rules, upholding the federal policy favoring enforcement of forum-selection clauses and reducing litigants' opportunities for gamesmanship. In doing so, however, the Supreme Court expressly or implicitly overturned circuit precedent and left several important questions unanswered.

In a unanimous opinion by Justice Alito, the Supreme Court agreed with the Fifth Circuit on two issues: first, that a forum-selection clause cannot render venue "wrong" or "improper" when the relevant statutory venue provision is satisfied, and second, that Rule 12(b)(3) or Section 1406 cannot be used to enforce a forum-selection clause.<sup>30</sup> Federal venue statutes, not private agreements, determine whether venue is correct, the Supreme Court explained.<sup>31</sup> A federal court could enforce a forum-selection clause designating a federal forum by transferring the action under Section 1404(a).<sup>32</sup> In so holding, the Supreme Court overturned precedent from the Eleventh Circuit and several other circuits<sup>33</sup> that allowed enforcement of a forum-selection clause under Rule 12(b)(3) or Section 1406. This holding was also consistent with the *Stewart* dicta.<sup>34</sup>

The Court rejected the Fifth Circuit's explanation, however, that a forum-selection clause that designates a state or foreign forum could be enforced under Rule 12(b)(3) or Section 1406. Instead, it held that a motion to dismiss for *forum non conveniens* is the correct method for enforcing those clauses.<sup>35</sup> "If venue is proper under federal venue rules, it does not matter for the purpose of Rule 12(b)(3) whether the forum-selection clause points to a federal or a nonfederal forum."<sup>36</sup> The same analysis applies whether a forum-selection clause is enforced under Section 1404(a) or common law *forum non conveniens* since both mechanisms require the same balancing of interests.<sup>37</sup>

The Court proceeded to provide rules to guide courts asked to enforce forum-selection clauses. While the majority opinion in *Stewart* stressed that enforcement of forum-selection clauses requires a balancing of various interests,<sup>38</sup> *Atlantic*

*Marine* adopted a position closer to Justice Kennedy's concurrence in *Stewart* and explained that "[o]nly under extraordinary circumstances unrelated to the convenience of the parties should a § 1404(a) motion be denied."<sup>39</sup> This position is consistent with Eleventh Circuit precedent holding that forum-selection clauses will be enforced in all but "exceptional" situations.<sup>40</sup>

The Supreme Court also held that "the plaintiff must bear the burden of showing why the court should not transfer the case to the forum to which the parties agreed."<sup>41</sup> The plaintiff's forum preference is irrelevant when the plaintiff previously agreed to a forum-selection clause and is not weighed in the *forum non conveniens* or Section 1404(a) analysis. This holding followed the approach of the Eleventh and Third circuits.<sup>42</sup>

Significantly, the Court also explained that the parties' private interests should not be considered in a Section 1404(a) or

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*forum non conveniens* analysis when enforcement of a forum-selection clause is sought.<sup>43</sup> Under this new rule, factors such as “ease of access to sources of proof,” “availability of compulsory process,” costs of obtaining attendance of witnesses and other “practical problems that make trial of a case easy, expeditious and inexpensive” that are ordinarily considered in a *forum non conveniens*<sup>44</sup> analysis are irrelevant when a party seeks enforcement of a forum-selection clause. Public interest factors may still be considered in determining whether a forum-selection clause is to be enforced and, in an exceptional case, could defeat a motion to transfer or dismiss for *forum non conveniens*.<sup>45</sup> These public interest factors may include “the administrative difficulties flowing from court congestion, the local interest in having localized controversies decided at home [and] the interest in having the trial of a diversity case in a forum that is at home with the law.”<sup>46</sup> State policy hostile to forum-selection clauses does not automatically prevent enforcement.<sup>47</sup>

The Court also explained that “when a party bound by a forum-selection clause flouts its contractual obligation and files suit in a different forum, a § 1404(a) transfer of venue will not carry with it the original venue’s choice-of-law rules.”<sup>48</sup> The Supreme Court thus limited the application of *Ferens v. John Deere Co.*, which held that following transfer under Section 1404(a) the transferee court applies the law of the transferor court.<sup>49</sup>

## Implications of *Atlantic Marine*

A motion to dismiss under Rule 12(b)(3) or Section 1406 would have generally been the preferred method for defendants to enforce forum-selection clauses prior to *Atlantic Marine* given that dismissal did not require a balancing of interests that invited district court discretion and that dismissal had the potential to render plaintiffs’ claims time barred. In light of *Atlantic Marine*, an action cannot be dismissed for improper venue based on a forum-selection clause (assuming venue is proper under the venue statutes),

In light of *Atlantic Marine*, an action cannot be dismissed for improper venue based on a forum-selection clause (assuming venue is proper under the venue statutes), but the decision still takes a position decidedly in favor of enforcement of forum-selection clauses and significantly limits the discretion of district courts to refuse enforcement of a forum-selection clause.

but the decision still takes a position decidedly in favor of enforcement of forum-selection clauses and significantly limits the discretion of district courts to refuse enforcement of a forum-selection clause. Nonetheless, at least one district court already has refused to enforce a mandatory forum-selection clause after *Atlantic Marine* and, in doing so, distinguished the consumer dispute at issue in that proceeding from the dispute between sophisticated businesses at issue in *Atlantic Marine*.<sup>50</sup>

*Atlantic Marine* could lead to some forum-selection clauses being enforceable in federal court but not in state court. State policies that prohibit or limit the enforceability of forum-selection clauses<sup>51</sup> would be considered by state courts and may have received considerable weight in a Rule 12(b)(3) analysis,<sup>52</sup> but these policies could receive little weight in a federal court under *Atlantic Marine*. The

Supreme Court in *Stewart* recognized this possibility that a forum-selection clause might not be enforced in state court but may be enforced if the action were removed.<sup>53</sup> Thus, the removability of an action may be determinative of whether a forum-selection clause is enforced.

Appellate review of decisions regarding the enforcement of forum-selection clauses can be difficult to obtain. Preliminarily, a ruling on a motion to transfer under Section 1404(a), unlike a dismissal, is an interlocutory order that cannot be reviewed as a final judgment. Additionally, a ruling on a motion to transfer may only be reviewed by mandamus in the circuit court that encompasses the district court that issued the challenged decision.<sup>54</sup> A petitioner seeking mandamus relief faces a demanding burden,<sup>55</sup> though *Atlantic Marine*’s directive that enforcement of forum-selection clauses may be denied only in exceptional instances may somewhat ease that burden. Appellate review remains complicated, however, because a circuit court cannot review an order transferring an action out of the circuit after the transferee court receives the transfer papers.<sup>56</sup> If an action is transferred to a trial court in another circuit, the transferee circuit may lack jurisdiction to review the transfer decision.<sup>57</sup> Retransfer may be sought from the transferee court, but the law of the case doctrine limits a transferee court’s discretion to retransfer an action back to the original court.<sup>58</sup> The insulation of many transfer decisions from appellate review may make interlocutory appeals under 28 U.S.C. § 1292(b) an attractive option when a district court faces a difficult transfer question.<sup>59</sup>

It is also worth noting that *Atlantic Marine* involved a mandatory forum-selection clause. The logic of *Atlantic Marine* would not apply when enforcement of a non-mandatory forum-selection clause is sought because the plaintiff did not violate any agreement by filing somewhere other than the forum named in the agreement. Courts addressing the enforcement of non-mandatory forum-selection clauses have applied the traditional *forum non conveniens* analysis that balances both private and public interest factors.<sup>60</sup>

## Remaining Questions

*Atlantic Marine* is a “must read” for the practitioner considering maneuvering to different terrain. A number of questions remain unanswered after *Atlantic Marine*, however.

### Can a Forum-Selection Clause Be Enforced under Rule 12(b)(6)?

*Atlantic Marine* expressly left open whether a forum-selection clause may be enforced under Rule 12(b)(6).<sup>61</sup> A dismissal under Rule 12(b)(6) may be attractive to defendants because, like a dismissal under Rule 12(b)(3), it does not invite district court discretion and could render an action time-barred. The Eleventh Circuit, prior to *Atlantic Marine*, noted that some courts have used Rule 12(b)(6) to enforce forum-selection clauses and explained that “[a]lthough we perceive no significant doctrinal error in that approach, we consider Rule 12(b)(3) a more appropriate vehicle.”<sup>62</sup> Perhaps the Eleventh Circuit will be more receptive to the enforcement of forum-selection clauses under Rule 12(b)(6) following *Atlantic Marine*. If courts enforce forum-selection clauses under Rule 12(b)(6), further questions remain whether state or federal law would determine the validity of the forum-selection clause. The circuits have split over whether state or federal law determines the validity of a forum-selection clause when enforcement is sought under Rule 12.<sup>63</sup>

### How Does *Atlantic Marine* Affect the Enforceability of Arbitration Clauses?

The opinion also raises a number of questions for arbitration. Arbitration provisions are a type of forum-selection clause.<sup>64</sup> The Fifth Circuit in *Atlantic Marine* said that Rule 12(b)(3) or Section 1406 may be used to enforce an arbitration agreement, but the opinion of the Supreme Court notably made no reference to arbitration agreements. If an agreement that requires a dispute to be resolved in a

state or foreign court cannot render venue wrong or improper, the same analysis would apply if the agreement required a dispute to be resolved in an arbitral forum unless the Federal Arbitration Act somehow alters the analysis.<sup>65</sup> *Forum non conveniens* ordinarily applies as a matter of discretion, but it would be difficult to see district courts having any real discretion to refuse to enforce arbitration agreements in the light of decades of precedent to the contrary.<sup>66</sup>

### Does *Atlantic Marine* Affect the Standard of Review?


It also remains to be seen what standard of review will be applied to the enforcement of forum-selection clauses. The Second Circuit has noted that *Atlantic Marine* did not address the standard of review that appellate courts should apply when reviewing decisions to enforce or not to enforce forum-selection clauses.<sup>67</sup> Transfer and *forum non conveniens* rulings are generally reviewed for abuse of discretion,<sup>68</sup> but dismissals for improper venue based on forum-selection clauses had been reviewed *de novo*.<sup>69</sup>

## Conclusion

*Atlantic Marine* held that a forum-selection clause does not make a venue “wrong” or “improper,” but emphasized that enforcement of a forum-selection clause may be denied only in exceptional circumstances. While questions remain after *Atlantic Marine*, the decision changes or clarifies the landscape for disputes involving forum-selection clauses. Practitioners, like the commanders who so adeptly maneuvered to favorable terrain to gain an advantage over their enemy, would be well-served to fully appreciate its implications. | [AL](#)

### Endnotes

1. Sun Tzu, *The Art of War*, Ch. X (Thomas Cleary trans., Shambhala Pocket Classics 1991).
2. Carl von Clausewitz, *Principles of War*, Pt. II, Ch. 1 ¶ 6 (Hans W. Gatzke trans., Military Service Pub. Co. 1942).
3. U.S. Dep’t of the Army, Army Doctrine Publication 3-0, Unified Land Operations 6 (2011).
4. 134 S. Ct. 568 (2013).
5. 407 U.S. 1, 10 (1972).
6. See, e.g., *Redwing Carriers, Inc. v. Foster*, 382 So. 2d 554, 556 (Ala. 1980).
7. See 700 So. 2d 347, 351 (Ala. 1997). Forum-selection clauses are enforceable in Alabama despite Alabama Code § 6-3-1, which provides that “[a]ny agreement or stipulation, verbal or written, whereby the venue prescribed in this article is proposed to be altered or changed so that actions may be commenced contrary to the provisions of this article, is void.”
8. Although Alabama law and federal law on the enforceability of forum-selection clauses are similar, some minor differences exist. An examination of these differences is beyond the scope of this article, but practitioners should note that some forum-selection clauses enforceable under federal law may not be enforceable under Alabama law. Compare, e.g., *F.I.*



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*Crane & Sons, Inc. v. Malouf Constr. Corp.*, 953 So. 2d 366, 373 (Ala. 2006) (refusing to enforce forum-selection clause when doing so would lead to parallel litigation) *with Slater v. Energy Servs. Group Int'l, Inc.*, 634 F.3d 1326, 1331 (11th Cir. 2011) (taking opposite approach).

9. *See Bremen*, 407 U.S. at 10, 12; *Sutherland*, 700 So. 2d at 352.
10. *Bremen*, 407 U.S. at 17; cf. *Ex parte Thicklin*, 824 So. 2d 723, 733 (Ala. 2002) (explaining that an arbitration provision that would prevent the award of punitive damages would not be enforced), *overruled on other grounds, Patriot Mfg., Inc. v. Jackson*, 929 So. 2d 997, 1006 (Ala. 2005).
11. *Bremen*, 407 U.S. at 4.
12. 487 U.S. 22 (1988).
13. *See id.* at 30-31; *Jones v. Weibrecht*, 901 F.2d 17, 19 (2d Cir. 1990);

*Carroll v. CMH Homes, Inc.*, 2013 WL 960408, at \*4 (S.D. Ind. March 12, 2013) (“A motion to transfer under 1404(a) is a matter entrusted to the Court’s discretion, whereas a Rule 12(b)(3) motion is based on the specific terms of the [forum-selection clause] at issue in the case.”); *see also Atlantic Marine*, 134 S. Ct. at 579 (noting that if a forum-selection clause rendered venue wrong then “a defendant could always obtain automatic dismissal or transfer under § 1406(a) and would not have any reason to resort to § 1404(a).”).

14. 487 U.S. at 28 n.8.
15. *See*, e.g., 28 U.S.C. § 1391.
16. *See*, e.g., *In re Atlantic Marine Constr. Co., Inc.*, 701 F.3d 736, 739 (5th Cir. 2012); *Kerobo v. Sw. Clean Fuels Corp.*, 285 F.3d 531, 538-39 (6th Cir. 2002); *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879 (3d Cir. 1995).

17. *In re Atlantic Marine Constr. Co.*, 701 F.3d at 740; *see also Shell v. R.W. Storage, Ltd.*, 55 F.3d 1227, 1228 (6th Cir. 1995).
18. *See Union Elec. Co. v. Energy Ins. Mut. Ltd.*, 689 F.3d 968, 970-73 (8th Cir. 2012); *TradeComet.com, LLC v. Google, Inc.*, 647 F.3d 472, 479 (2d Cir. 2011); *Slater v. Energy Servs. Group Int'l, Inc.*, 634 F.3d 1326, 1333 (11th Cir. 2011); *Doe 1 v. AOL, LLC*, 552 F.3d 1077, 1081 (9th Cir. 2009); *Muzumdar v. Wellness Int'l Network, Ltd.*, 438 F.3d 759, 760 (7th Cir. 2006).
19. *See*, e.g., *Silva v. Encyclopedia Britannica, Inc.*, 239 F.3d 385, 387 (1st Cir. 2001); *Salovaara v. Jackson Nat'l Life Ins. Co.*, 246 F.3d 289, 298 (3d Cir. 2001); *Evolution Online Sys., Inc. v. Koninklijke PTT Nederland N.V.*, 145 F.3d 505, 508 n.6 (2d Cir. 1998).
20. *AVC Nederland B.V. v. Atrium Inv.*

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- P'ship*, 740 F.2d 148, 153 (2d Cir. 1984) (Friendly, J.).
21. *Lipcon v. Underwriters at Lloyd's, London*, 148 F.3d 1285, 1289 (11th Cir. 1998) ("*Lipcon*").
  22. *See, e.g., Wong v. PartyGaming, Ltd.*, 589 F.3d 821, 824-25 (6th Cir. 2009).
  23. *See Ferens v. John Deere Co.*, 494 U.S. 516, 531 (1990).
  24. 701 F.3d 736 (5th Cir. 2012).
  25. *Id.* at 737-38.
  26. *Id.* at 738.
  27. *Id.* at 739.
  28. *Id.* at 740.
  29. *Id.* at 741-42.
  30. *Atlantic Marine*, 134 S. Ct. at 577.
  31. *Id.* at 578.
  32. *Id.* at 579.
  33. *See supra* n.18.
  34. 134 S. Ct. at 579.
  35. *Id.* at 580.
  36. *Id.*
  37. *Id.*
  38. *See, e.g., Stewart*, 487 U.S. at 31.
  39. *Atlantic Marine*, 134 S. Ct. at 581; *see Stewart*, 487 U.S. at 33 (Kennedy, J., concurring).
  40. *In re Ricoh Corp.*, 870 F.2d 570, 574 (11th Cir. 1989).
  41. *Atlantic Marine*, 134 S. Ct. at 582.
  42. *In re Ricoh Corp.*, 870 F.2d at 573; *Jumara*, 55 F.3d at 880.
  43. *Atlantic Marine*, 134 S. Ct. at 582.
  44. *See Piper Aircraft v. Reyno*, 454 U.S. 235, 241 n.6 (1981); *Tazoe v. Airbus S.A.S.*, 631 F.3d 1321, 1331 (11th Cir. 2011).
  45. *Atlantic Marine*, 134 S. Ct. at 582.
  46. *Id.* at 581 n.6 (quoting *Piper Aircraft*, 454 U.S. at 241 n.6) (alteration in original).
  47. *Stewart*, 487 U.S. at 31.
  48. *Atlantic Marine*, 134 S. Ct. at 582.
  49. 494 U.S. at 523.
  50. *Stewart v. Am. Van Lines*, No. 4:12-cv-394, 2014 WL 243509, at \*5 (E.D. Tex. Jan. 21, 2014). This decision also turned on the unique venue rules that applied under the statute that governed the plaintiff's claims.
  51. *See, e.g., Idaho Code* § 29-110 (providing that forum-selection clauses are void); *Thicklin*, 824 So. 2d at 733 (refusing to enforce as against public policy an arbitration agreement under which the plaintiffs would be deprived of their right to recover punitive damages); *Dyersburg Mach. Works, Inc. v. Rentenbach Eng'g Co.*, 650 S.W.2d 378, 381 (Tenn. 1983) (refusing to enforce a clause designating a Kentucky forum when, *inter alia*, Kentucky would be a less convenient forum for the parties than Tennessee).
  52. *See, e.g., Doe 1 v. AOL, LLC*, 552 F.3d 1077, 1084 (9th Cir. 2009).
  53. *Stewart*, 487 U.S. at 31.
  54. *See In re Ricoh Corp.*, 870 F.2d at 572 n. 4.
  55. *In re Ricoh Corp.*, 870 F.2d 570 is a rare example of a federal appellate court granting a writ of mandamus to direct a district court to transfer an action under Section 1404(a) based on a forum-selection clause. *See also Hicks v. Duckworth*, 856 F.2d 934, 935 (7th Cir. 1988) (reviewing order transferring action to another circuit by writ of mandamus).
  56. *See* 15 Charles A. Wright, et al., *Federal Practice and Procedure* § 3846 (4th ed. 2013). To allow for the possibility of appellate review, a party opposing enforcement of a forum-selection clause may ask for the transfer to be stayed so that an interlocutory appeal or mandamus petition may be filed. *See Roofing & Sheet Metal Servs., Inc. v. La Quinta Motor Inns, Inc.*, 689 F.2d 982, 988 n.10 (11th Cir. 1982).
  57. *See* 28 U.S.C. § 1294; *Moses v. Business Card Express, Inc.*, 929 F.2d 1131, 1136 (6th Cir. 1991) ("*Moses*").
  58. *Moses*, 929 F.2d at 1137.
  59. *See Stewart Org., Inc. v. Ricoh Corp.*, 810 F.2d 1066, 1073 n.7 (11th Cir. 1987) (en banc) (noting that the appeal of the denial of a transfer under Section 1404(a) was considered under 28 U.S.C. § 1292(b)); *but see Garner v. Wolfinbarger*, 433 F.2d 117, 120 (5th Cir. 1970) ("We are of the view that § 1292(b) review is inappropriate for challenges to a judge's discretion in granting or denying transfers under § 1404(a).").
  60. *Blanco v. Banco Indus. De Venezuela, S.A.*, 997 F.2d 974, 979-80 (2d Cir. 1993).
  61. 134 S. Ct. at 580.
  62. *Lipcon*, 148 F.3d at 1290.
  63. *Compare Albermarle v. AstraZeneca UK, Ltd.*, 628 F.3d 643, 650 (4th Cir. 2010) (applying federal law); *Jones v. Weibrecht*, 901 F.2d 17, 19 (2d Cir. 1990) (same); *Manetti-Farrow, Inc. v. Gucci Am., Inc.*, 858 F.2d 509, 513 (9th Cir. 1988) (same) with *Abbott Labs. v. Takeda Pharma. Co.*, 476 F.3d 421, 423 (7th Cir. 2007) (applying state law); *Yavuz v. 61 MM, Ltd.*, 465 F.3d 418, 431 (10th Cir. 2006) (applying Swiss law to a forum-selection clause when the parties rights under the relevant contract were governed by Swiss law).
  64. *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519 (1974).
  65. 9 U.S.C. § 1, *et seq.*
  66. *See, e.g., Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983).
  67. *Martinez v. Bloomberg LP*, 740 F.3d 211, 217 (2d Cir. 2014).
  68. *Tazoe*, 631 F.3d at 1330; *Brown v. Conn. Gen. Life Ins. Co.*, 934 F.2d 1193, 1197 (11th Cir. 1991).
  69. *Xena Investments, Ltd. v. Magnum Fund Mgmt., Ltd.*, 726 F.3d 1278, 1283 (11th Cir. 2013).

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# Some Shall Pass:

## Corporate Veil-Piercing in Alabama in the Wake of *Hill v. Fairfield Nursing and Rehabilitation Center, LLC*

By Will Hill Tankersley and Adam K. Israel

This article updates the January 2010 *Alabama Lawyer* article by Will Hill Tankersley and Kelly Brennan,

“Piercing the Corporate Veil: When Is Too Much Fiction a Bad Thing?”<sup>1</sup> As that article explained, the corporate veil is difficult to pierce. However, the Alabama Supreme Court has recently provided new guidance regarding the kinds of facts necessary to advance a veil piercing theory past summary judgment. *Hill v. Fairfield Nursing and Rehabilitation Center, LLC*<sup>2</sup> is the Alabama Supreme Court’s most recent pronouncement regarding the interplay between “control” and veil-piercing. In *Hill*, the Alabama Supreme Court made it clear that it joins the emerging national consensus that the veil-piercing analysis also involves considering the type of plaintiff who is seeking to pierce the veil. Involuntary creditors (for example, plaintiffs in tort cases) need not prove “excessive control,” misrepresentation as to the corporate

structure or some proximate relationship between the misuse of the corporate structure and the plaintiff’s injury. In *dicta*, the court, likewise, seemed to suggest that even properly organized and capitalized corporate entities could have their corporate veils pierced if the plaintiff can show “excessive control,” misuse of that control and that the misuse was the proximate cause of plaintiff’s injury.

This article discusses the relevant facts of *Hill* that led the Alabama Supreme Court to hold that Hill had presented sufficient evidence to survive summary judgment on her attempt to pierce Fairfield Nursing and Rehabilitation Center, LLC’s corporate veil. This article also highlights Justice Murdock’s special concurrence in that case, in which he clarifies the proper application of the court’s jurisprudence regarding “excessive control” as a basis for disregarding the corporate form. Justice Murdock’s concurrence in *Hill* not only holds the line as to the veil piercing standards for “involuntary” creditors (such as plaintiffs in tort cases) but also gives specific examples of what a voluntary creditor must show to pierce the veil of a properly documented and capitalized corporate entity.

# Piercing the Corporate Veil in Alabama

## Basic Principles

Corporations are designed to control risk. At its most basic level, “[a] corporation is a form of business association, having the rights, relations, and characteristic attributes of a legal entity distinct from that of the persons who compose it or act for it in exercising its functions.”<sup>3</sup> As a separate legal entity, “[t]he rights and liabilities of a corporation are distinct from those of its members, and thus, the shareholders of a corporation are ordinarily not liable for the corporation’s obligations, liabilities, or debts.”<sup>4</sup> Alabama courts have recognized that “limited liability is one of the principal purposes for which the law has created the corporation.”<sup>5</sup> While “the corporate form is not lightly disregarded,”<sup>6</sup> shareholder limited liability is not sacrosanct. Indeed, “the corporate veil may be pierced in an appropriate case to impose personal liability” upon shareholders for corporate debts.<sup>7</sup>

Although Alabama courts are generally reluctant to pierce the corporate veil because “limited liability is one of the principal purposes for which the law has created the corporation,”<sup>8</sup> they will disregard the corporate form in certain “extraordinary” circumstances.<sup>9</sup> In determining whether to disregard the corporate form, the courts are to consider “substance over form” and will pierce the veil “when the corporate form is being used to evade personal responsibility.”<sup>10</sup> The determination of whether to pierce the corporate veil is a highly fact-intensive inquiry “to be determined on a case-by-case basis.”<sup>11</sup> Generally, under Alabama law, courts will disregard the corporate form and pierce the corporate veil: “1) where the corporation is inadequately capitalized; 2) where the corporation is conceived or operated for a fraudulent purpose; or 3) where the corporation is operated as an instrumentality or alter ego of an individual or entity with corporate control.”<sup>12</sup>

Piercing the veil is an exercise of the courts’ equitable powers.<sup>13</sup> Accordingly, courts have “significant discretion in applying the factors.”<sup>14</sup> Moreover, the “doctrine is not a claim.”<sup>15</sup> Instead, “[i]t merely furnishes a means for a complainant to reach a second corporation or individual upon a cause of action that otherwise would have existed only against the first corporation.”<sup>16</sup> Therefore, whether the corporate form should be disregarded is “properly decided by a judge after a jury has resolved the accompanying legal issues.”<sup>17</sup>

## Undercapitalization

While undercapitalization is a basis upon which courts may pierce the corporate veil, the Alabama Supreme Court has been careful to explain that “[t]he fact that a corporation is undercapitalized is not *alone* sufficient to establish personal liability.”<sup>18</sup> Instead, where undercapitalization has been the primary basis upon which the courts have based their decisions to disregard the corporate form, there has also generally been “other evidence of abuse of the corporate entity besides the inadequate capital of the corporation to sustain the court’s decisions.”<sup>19</sup>

Furthermore, the nature of the plaintiff’s interactions with the defendant-corporation bears on the inquiry. For example,

whether the plaintiff is a voluntary or an involuntary creditor is a significant factor the courts consider when determining whether a corporation’s undercapitalization is a sufficient justification for disregarding the corporate form. Indeed, as the Alabama Supreme Court has noted:

Voluntary creditors of corporations are held to a higher standard because they “are generally able to inspect the financial structure of a corporation and discover potential risks of loss before any transaction takes place.

Consequently, courts are less sympathetic with voluntary creditors who, having had the opportunity of inspection, nevertheless elected to transact with an undercapitalized corporation.”<sup>20</sup>

In such cases, the voluntary creditor can be said to have acted at his own peril.

On the other hand, “the involuntary creditor is most often a tort victim who is unable to collect a judgment from a corporation with which he has not chosen to deal.”<sup>21</sup> Indeed, “[i]nvoluntary creditors, such as tort victims, cannot choose the perpetrator of their misfortune.”<sup>22</sup> The tort by its very nature is non-consensual and the “involuntary creditor [must] take[] his corporate debtor as he finds it.”<sup>23</sup> Therefore, in tort cases involving involuntary creditors “[t]he equities in favor of subjecting shareholders to liability are stronger.”<sup>24</sup>

## Fraudulent Conception or Operation

Although “[a] corporation and the individual or individuals owning all its stock and assets can be treated as identical, even in the absence of fraud, to prevent injustice or inequitable consequences,”<sup>25</sup> “where the corporate device is used to hinder or evade an outstanding creditor claim, a court will almost always disregard the corporate entity and impose shareholder liability.”<sup>26</sup> “To establish a fraudulent purpose . . . a plaintiff must show more than just a shareholder’s desire to avoid personal liability for the business’ debts.”<sup>27</sup> Instead, “a plaintiff must show fraud in asserting the corporate existence”<sup>28</sup> or that “the corporation is conceived or operated for a fraudulent purpose.”<sup>29</sup> “For example, a conveyance by a shareholder to a corporation for the purpose of removing personal assets from the reach of existing creditor claims generally constitutes justification for ignoring the existence of separate entities.”<sup>30</sup> Likewise, “if a shareholder has drained company assets from a corporation for the purpose of creating a creditor-proof corporation, courts will disregard the limited liability privilege and allow creditors to reach the shareholders directly.”<sup>31</sup>

## Instrumentality or Alter Ego

The Alabama Supreme Court has also explained that a “parent corporation [that] so controls the operation of the subsidiary corporation as to make it a mere adjunct, instrumentality, or alter ego of the parent corporation” may, under certain circumstances, be held liable for the debts of the subsidiary.<sup>32</sup> However, “[t]he mere fact that an individual or another corporation owns all or a majority of the stock of a corporation does not, of itself, destroy the separate corporate entity.”<sup>33</sup> Instead, the Alabama Supreme Court has announced a three-part test that applies when a party seeks to pierce the corporate veil based solely upon “excessive” shareholder control:

# Hill v. Fairfield Nursing and Rehabilitation Center, LLC: How The Veil Was Pierced

- (1) The dominant party must have complete control and domination of the subservient corporation's finances, policy and business practices so that at the time of the attacked transaction the subservient corporation had no separate mind, will or existence of its own;
- (2) The control must have been misused by the dominant party. Although fraud or the violation of a statutory or other positive legal duty is misuse of control, when it is necessary to prevent injustice or inequitable circumstances, misuse of control will be presumed; and
- (3) The misuse of this control must proximately cause the harm or unjust loss complained of.<sup>34</sup>

In *Duff v. Southern Railway Co.*<sup>35</sup>, the Alabama Supreme Court identified the following (non-exhaustive) list of factors that may satisfy the control element above:

- (a) The parent corporation owns all or most of the capital stock of the subsidiary;
- (b) The parent and subsidiary corporations have common directors or officers;
- (c) The parent corporation finances the subsidiary;
- (d) The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation;
- (e) The subsidiary has grossly inadequate capital;
- (f) The parent corporation pays the salaries and other expenses or losses of the subsidiary;
- (g) The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to it by the parent corporation;
- (h) In the papers of the parent corporation or in the statements of its officers, the subsidiary is described as a department or division of the parent corporation, or its business or financial responsibility is referred to as the parent corporation's own;
- (i) The parent corporation uses the property of the subsidiary as its own;
- (j) The directors or executives of the subsidiary do not act independently in the interest of the subsidiary but take their orders from the parent corporation in the latter's interest;
- (k) The formal legal requirements of the subsidiary are not observed.<sup>36</sup>

As the *Duff* court explained, "no one of these factors is dispositive" and this list does not "exhaust the relevant factors."<sup>37</sup> Indeed, only a handful of the above-mentioned factors were actually present in *Duff*.<sup>38</sup>

Although these tests—undercapitalization, fraud, and excessive control—are formulated as distinct grounds for disregarding the corporate form, in practice "these 'factors' entail overlapping considerations and are often considered in tandem in order to justify an equitable piercing of the corporate veil."<sup>39</sup>

In October 2012, the Alabama Supreme Court issued its original opinion (authored by Justice Murdock) in *Hill v. Fairfield Nursing and Rehabilitation Center, LLC*—one of its most recent decisions addressing the doctrine of corporate veil-piercing.<sup>40</sup> The plaintiff in that case, Myrtis Hill, was a resident of a nursing home that was owned and operated by Fairfield Nursing and Rehabilitation Center, LLC.<sup>41</sup> In 2006, Hill broke her leg as the result of a fall while being helped out of her bed by a nursing assistant at Fairfield Nursing Home.<sup>42</sup> Hill sued Fairfield Nursing and Rehabilitation Center, LLC, as well as a number of other entities, including D&N, LLC, DTD HC, LLC, Donald T. Denz, Norbert A. Bennett, Aurora Cares, LLC (doing business as Tara Cares) and Aurora Healthcare, LLC.<sup>43</sup> Prior to trial, the trial court granted summary judgment for all of the defendants except Fairfield Nursing and Rehabilitation Center, LLC.<sup>44</sup> Hill's medical malpractice action proceeded to trial against Fairfield Nursing and Rehabilitation Center, LLC and, at the close of Hill's case, Fairfield Nursing and Rehabilitation Center, LLC moved for judgment as a matter of law.<sup>45</sup> The trial court granted that motion and Hill appealed, arguing, among other things, that the trial court had erred in granting summary judgment for all of the other defendants because Hill had presented substantial evidence to support her assertion that the corporate veil between Fairfield Nursing and Rehabilitation Center, LLC and the other defendants should be pierced.<sup>46</sup> The Alabama Supreme Court agreed.<sup>47</sup>

In its opinion, the court noted that Hill had presented substantial evidence of the following facts:

1. Fairfield Nursing Home is a 190-bed skilled nursing facility located in Fairfield, Alabama;
2. Fairfield owns no real property and no significant personal property;
3. Fairfield carries only \$25,000 in liability insurance;
4. Fairfield's balance sheet for the most recent year showed a loss of \$579,851;
5. Donald T. Denz is the sole member of DTD, LLC. Similarly, Norbert A. Bennett is the sole member of D&N, LLC;
6. Neither DTD nor D&N has any employees or an operating agreement;
7. DTD and D&N are the sole owners and members of Fairfield, each having a 50-percent interest;
8. Denz originally served as president and chief financial officer of Fairfield; Bennett originally served as chairman of the board and chief executive officer of Fairfield;
9. Fairfield, DTD and D&N were created as LLCs within a few days of one another in May 2003. Tara Cares also was created in May 2003;

10. DTD and D&N are the sole owners and members of Tara Cares, each with a 50-percent interest;
11. Denz and Bennett are currently co-chief executive officers of Tara Cares. Tara Cares has no operating agreement;<sup>48</sup>
12. Tara Cares owns no real or personal property;
13. Tara Cares has entered into a long-term “administrative services agreement” with Fairfield and at least 30 other affiliated nursing homes, as discussed below;
14. In addition to Fairfield, DTD and D&N also own at least 30 other LLCs operating nursing homes in Alabama, Missouri, Illinois, Tennessee, Louisiana, Mississippi and Georgia. DTD and D&N are the sole owners and members of each of these other nursing-home LLCs, each holding a 50-percent interest in each of them;
15. Like Fairfield, none of the above-described nursing-home LLCs owns any real property or significant personal property;
16. The real property and most of the personal property at the nursing homes affiliated with the above-described nursing-home LLCs are owned by another entity called “Healthcare REIT.” In 2003, Denz and Bennett arranged for Healthcare REIT to purchase all of this real and personal property from Beverly Healthcare for the purpose of leasing it to Aurora Healthcare, LLC; and
17. Aurora Healthcare’s sole purpose is to serve as the “middleman” in the leasing of the real and personal property used at the nursing homes operated by these various LLCs. That is, Aurora Healthcare leases all of this real and personal property from Healthcare REIT and then subleases it to Fairfield and the other nursing homes described above.<sup>49</sup>

The court also observed that Hill had introduced an administrative services agreement between Fairfield Nursing and Rehabilitation Center, LLC and Tara Cares that established Tara Care’s extensive control over Fairfield Nursing and Rehabilitation Center, LLC.<sup>50</sup> According to the court, that administrative services agreement indicated that Tara Cares had the following responsibilities:

1. “[P]ropos[ing] the standards, policies, and procedures” concerning the operation of Fairfield Nursing Home that are approved by the facility;
2. [P]erform[ing] the bookkeeping, ledgering and accounting for Fairfield, including preparing all tax returns;
3. [P]erform[ing] “accounts receivable services and . . . otherwise assist[ing] [Fairfield] in the issuance of bills and in the collection of accounts and monies owed for goods and services furnished by [Fairfield]”;
4. [P]ropos[ing] the annual operating budget for approval by Fairfield’s executive director, a document that is also reviewed by Denz and Bennett;
5. [P]repar[ing] advertising and publicity materials for Fairfield;

6. “[P]rovid[ing] Medicare and Medicaid cost reporting and rate setting services”;
7. “[A]ssist[ing]” Fairfield in maintaining licenses and qualifications for all regulatory authorities;
8. “[A]dvis[ing]” Fairfield on the purchase of supplies and equipment, which, according to Fairfield employee, Cynthia Southall, actually means that Fairfield must get approval from the Tara Cares Buffalo, New York, office for all equipment purchases;
9. [A]rrang[ing] for and maintain[ing] hazard insurance for Fairfield’s facility and equipment;
10. “[P]erform[ing] payroll services and . . . establish[ing] salary levels, personnel policies and employee benefits [as well as] employee performance standards as needed . . . to ensure the efficient operation of all departments within and services offered by [Fairfield]”;
11. “[P]repar[ing] and provid[ing] to [Fairfield] any reasonable operational information which may, from time to time, be specifically requested by [Fairfield]”;
12. “[T]hrough its legal counsel, coordinat[ing] all legal matters and proceedings with [Fairfield’s] counsel”;
13. [M]aintain[ing] checking accounts in Fairfield’s name on which Tara Cares is the cosigner from which are paid “[a]ll expenses incurred in the operation of [Fairfield],” and from which withdrawals and payments “shall be made only on checks signed by a person or persons designated by Tara [Cares].”<sup>51</sup>

Based on Hill’s evidentiary submission in response to the defendants’ motion for summary judgment, which, according to the court, included: extensive evidence of control by Tara Cares, Denz and Bennett; evidence that Fairfield Nursing and Rehabilitation Center, LLC was only insured for \$25,000; and evidence that the corporate ownership was structured in such a way as to protect the owners from the payment of “just obligations,” the court held that the trial court had erred when it granted summary judgment for all the defendants except Fairfield Nursing and Rehabilitation Center, LLC.<sup>52</sup> According to the court, Hill had presented sufficient evidence to, at the very least, survive summary judgment.<sup>53</sup>

## Justice Murdock’s Special Concurrence

Following the release of the Alabama Supreme Court’s original opinion on October 19, 2012, the defendants filed an application for rehearing, in which they argued that Hill had not produced substantial evidence that they “exercised complete control or dominated Fairfield” and that Hill had not adduced substantial evidence that any such control or domination was the proximate cause of her injury.<sup>54</sup>

According to the defendants, the court erred when it “relied on irrelevant and objectively incorrect evidence in concluding that a fact question existed as to whether the Affiliated Defendants<sup>55</sup> exerted ‘control’ over Fairfield.”<sup>56</sup> These facts, according to the defendants, included “the number of beds at Fairfield; the amount of Fairfield’s liability insurance; the date Fairfield and the

Affiliated Defendants were created; that certain Affiliated Defendants own other nursing homes; and that Tara Cares has administrative service agreements with other nursing homes.”<sup>57</sup> They argued that such information was irrelevant as to whether Fairfield Nursing and Rehabilitation Center, LLC “. . . had no separate mind, will or existence of its own . . .”<sup>58</sup> The defendants also argued that the court incorrectly determined that the “Administrative Service Agreement between Tara Cares created an issue of fact”<sup>59</sup> and that the court had “adopted portions of the Appellant’s briefing regarding this Agreement that are not supported by the record.”<sup>60</sup>

In addition to contending that the Alabama Supreme Court had erroneously concluded that Hill had presented substantial evidence that they completely controlled and dominated Fairfield Nursing and Rehabilitation Center, LLC, the defendants argued that Hill had failed to present any evidence at all that “the Affiliated Defendants misused their (alleged) control.”<sup>61</sup> Various *amici* also filed briefs in support of the defendants’ application for rehearing. Among other things, *amici* urged the court to compare the facts at issue in *Hill* to those of *First Health, Inc. v. Blanton*.

On June 28, 2013, the Alabama Supreme Court withdrew its October 19, 2012 opinion, and issued a substituted opinion.<sup>62</sup> With a few minor exceptions, the June 28, 2013 majority opinion was virtually identical to the October 19, 2012 majority opinion. The June 28, 2013 opinion did, however, include a special concurrence by Justice Murdock, who also authored the majority opinion.

In his special concurrence, Justice Murdock rejected *amici*’s call to compare *Hill* to *Blanton*, noting that (1) “*Blanton* involved not a tort claim” (that is, an “involuntary” creditor), “but an attempt to collect a contract debt”<sup>63</sup> (a “voluntary” creditor), (2) *Blanton* “did not hold that the control shown in that case did not rise to the level necessary for piercing the corporate veil,”<sup>64</sup> and (3) *Blanton* did “not involve the splintering of operational control and assets among numerous different legal entities within a single business enterprise in a manner that allows the enterprise to avoid responsibility for a significant judgment against it.”<sup>65</sup> According to Justice Murdock, “[f]or all that appears, [in *Blanton*,] there was no justification for attempting to pierce the corporate veil other than the ‘mere domination,’ as the court put it, of a wholly-owned subsidiary by its parent.”<sup>66</sup> In Justice Murdock’s view, *Blanton* was based *solely* on an allegation of excessive control. According to Justice Murdock, “[i]t is under such circumstances” that courts must “consider whether the control has been misused in a way that proximately caused the plaintiff’s injury.”<sup>67</sup> Justice Murdock seems to be suggesting that the added elements of misuse and proximate cause are necessary elements only when excessive control is the *sole* ground upon which a plaintiff seeks to pierce the corporate veil. When all three elements are present, even a properly formed and properly capitalized corporation may have its corporate veil pierced. Justice Murdock also called particular attention to the evidence that the nursing home facility itself maintained only \$25,000 in liability insurance.

Justice Murdock then made clear, however, that *Hill* was not that type of case; “more than ‘mere domination’ or control [wa]s alleged and evidenced here.”<sup>68</sup> Instead, Justice Murdock reiterated the majority’s holding, stating that

there was “substantial evidence” from which a reasonable fact-finder could conclude that Fairfield was part of a single business enterprise and that, although it maintained direct responsibility for a 190-bed skilled-care nursing

home, it maintained almost no liability insurance and owned virtually no real or personal property and was controlled by other elements of the enterprise.<sup>69</sup>

Justice Murdock was careful to note that the ultimate merits of whether Fairfield Nursing and Rehabilitation Center, LLC’s corporate veil should actually be pierced were not before the court. Instead, the court merely concluded that Hill had presented enough evidence to survive summary judgment on that question.<sup>70</sup>

## Conclusion

Too often, veil-piercing is seen as a path through which none shall pass. With *Hill*, the Alabama Supreme Court showed that veil-piercing remains difficult, but not impossible; that is, “some shall pass.” The *Hill* court declined to utilize the higher standards for voluntary creditors when it created a test for veil-piercing in cases involving involuntary creditors. To the extent there was any doubt, Alabama joined the growing consensus that the analysis for piercing the veil should also include a consideration of the type of claim asserted, that is, the nature of the plaintiff’s relationship with the corporate defendant, not just a consideration of the characteristics of the corporate defendant alone. | [AL](#)

## Endnotes

1. Will Hill Tankersley & Kelly Brennan, *Piercing the Corporate Veil: When Is Too Much Fiction a Bad Thing?*, 71 Ala. Law. 58 (2010).
2. *Hill v. Fairfield Nursing & Rehab. Ctr., LLC*, No. 1090549, 2013 WL 3242867, (Ala. June 28, 2013)
3. 1 William Meade Fletcher et al., *Fletcher Cyclopedia of the Law of Corporations* § 1 (perm. ed., rev. vol. 2006).
4. *Id.* at § 14.
5. *Chenault v. Jamison*, 578 So. 2d 1059, 1061 (Ala. 1991) (internal quotations omitted).
6. *Id.* (internal quotations omitted).
7. 1 Fletcher, *supra*, note 3 at § 14.
8. *Chenault*, 578 So. 2d at 1061.
9. *See Gilbert v. James Russell Motors, Inc.*, 812 So. 2d 1269, 1273 (Ala. Civ. App. 2001) (listing the “extraordinary circumstances in which [the Alabama Supreme Court has held] it would be appropriate to pierce the corporate veil”); *see also id.* (“Piercing the corporate veil to impose personal liability on a corporation’s shareholder is not a power that is exercised lightly.”); *Cohen v. Williams*, 318 So. 2d 279, 280-81 (Ala. 1975) (“The doctrine that a corporation is a legal entity existing separate and

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- apart from the persons composing it is a legal theory introduced for purposes of convenience and to subserve the ends of justice. The concept cannot, therefore, be extended to a point beyond its reason and policy, and when invoked in support of an end subversive of this policy, will be disregarded by the courts. Thus, in an appropriate case and in furtherance of the ends of justice, a corporation and the individual or individuals owning all its stock and assets will be treated as identical.” (quoting 18 Am. Jur. 2d *Corporations* § 14)).
10. *Cohen*, 318 So. 2d at 281.
  11. *Ex parte AmSouth Bank of Ala.*, 669 So. 2d 154, 156 (Ala. 1995) (quoting *Messick v. Moring*, 514 So. 2d 892, 893 (Ala. 1987)); see also *Wright Therapy Equip., LLC v. Blue Cross & Blue Shield of Ala.*, 991 So. 2d 701, 709 (Ala. 2008) (“The record in this case is unusually voluminous, and the issues are relatively complex and fact intensive, dealing with issues of piercing the corporate veil and successor liability.”).
  12. *Gilbert*, 812 So. 2d at 1273.
  13. *Heisz v. Galt Indus., Inc.*, 93 So. 3d 918, 929 (Ala. 2012).
  14. Tankersley & Brennan, *supra* note 1, at 61.
  15. *Ex parte Thorn*, 788 So. 2d 140, 145 (Ala. 2000).
  16. *Id.*
  17. *Heisz*, 93 So. 3d at 929.
  18. *Simmons v. Clark Equip. Credit Corp.*, 554 So. 2d 398, 400 (Ala. 1989) (citing *Co-Ex Plastics, Inc. v. AlaPak, Inc.*, 536 So. 2d 37 (Ala. 1988)).
  19. *E. End Mem’l Ass’n v. Egerman*, 514 So. 2d 38, 43 (Ala. 1987); see also Forrest Stephen Latta, Comment, *Disregarding the Entities of Closely Held and Parent-Subsidiary Corporate Structures In Alabama*, 12 Cumb. L. Rev. 155, 165 (1981) (“More commonly, however, courts refuse to disregard the corporate entity if undercapitalization is not accompanied by some other factor or factors that reflect the presence of shareholder misconduct.”).
  20. *Ex parte AmSouth Bank of Ala.*, 669 So. 2d 154, 157 (Ala. 1995) (quoting *E. End Mem’l Ass’n*, 514 So. 2d at 44).
  21. Sandy J. Grisham, Commentary, *Piercing the Corporate Veil in Alabama: In Search of a Standard*, 35 Ala. L. Rev. 311, 313 (1984).
  22. Latta, *supra* note 19, at 165.
  23. Grisham, *supra* note 21, at 313.
  24. *Id.*
  25. *Deupree v. Ruffino*, 505 So. 2d 1218, 1222 (Ala. 1987) (quoting *Barrett v. Odum, May & DeBuys*, 453 So. 2d 729, 732 (Ala. 1984)).
  26. Latta, *supra* note 19, at 166.
  27. Tankersley & Brennan, *supra* note 1, at 60.
  28. *Simmons v. Clark Equip. Credit Corp.*, 554 So. 2d 398, 400 (Ala. 1989).
  29. *Gilbert v. James Russell Motors, Inc.*, 812 So. 2d 1269, 1273 (Ala. Civ. App. 2001).
  30. Latta, *supra* note 19, at 166.
  31. *Id.*; see also *S. Sash Sales & Supply Co., Inc. v. Wiley*, 631 So. 2d 968, 969–71 (Ala. 1994).
  32. *Duff v. S. Ry. Co.*, 496 So. 2d 760, 762 (Ala. 1986).
  33. *First Health, Inc. v. Blanton*, 585 So. 2d 1331, 1334 (Ala. 1991) (citing *Messick v. Moring*, 514 So. 2d 892 (Ala. 1987)).
  34. *Id.* at 1334–35 (quoting *Messick*, 514 So.2d at 894–95).
  35. *Duff v. S. Ry. Co.*, 496 So. 2d 760, 762 (Ala. 1986).
  36. *Duff*, 496 So. 2d at 763.
  37. *Id.*
  38. *Id.*
  39. *Hill v. Fairfield Nursing & Rehab. Ctr., LLC*, No. 1090549, 2013 WL 3242867, at \*14 n.15 (Ala. June 28, 2013) (Murdock, J. concurring specially).
  40. As discussed more fully below, on June 28, 2013, the Alabama Supreme Court withdrew its October 19, 2012 opinion, and issued a substituted opinion. With a few minor exceptions, the June 28, 2013 main opinion was virtually identical to the October 19, 2012 main opinion. Accordingly, all citations in this article are to the June 28, 2013 version of the opinion.
  41. *Hill*, 2013 WL 3242867, at \*1.
  42. *Id.*
  43. *Id.*
  44. *Id.*
  45. *Id.* at \*2.
  46. *Id.* at \*3.
  47. *Id.* at \*8.
  48. In its original opinion, the Alabama Supreme Court erroneously stated that Tara Cares had no employees.
  49. *Id.* at \*10–\*11
  50. *Id.* at \*11.
  51. *Id.*
  52. *Id.* at \*12.
  53. *Id.* at \*8, \*12.
  54. Appellees’ Brief in Support of Application for Rehearing at 10, 14, *Hill v. Fairfield Nursing & Rehab. Ctr., LLC*, No. 1090549 (Ala. Nov. 9, 2012).
  55. In its brief, the defendants defined the term “Affiliated Defendants” to mean all defendants other than Fairfield Nursing and Rehabilitation Center, LLC.
  56. Appellees’ Brief in Support of Application for Rehearing, *supra* note 54, at 12.
  57. *Id.*
  58. *Id.* (quoting *Messick v. Moring*, 514 So. 2d 892, 894 (Ala. 1987)).
  59. *Id.* at 12–13.
  60. *Id.* at 13.
  61. *Id.* at 14–15.
  62. *Hill v. Fairfield Nursing & Rehab. Ctr., LLC*, No. 1090549, 2013 WL 3242867 (Ala. June 28, 2013).
  63. *Id.* at \*12 (Murdock, J. concurring specially).
  64. *Id.* at \*13.
  65. *Id.*
  66. *Id.*
  67. *Id.*
  68. *Id.*
  69. *Id.*
  70. *Id.* at \*15 (“The purpose of the equitable doctrine of piercing the corporate veil is to prevent an injustice associated with a misuse of the corporate form. Our decision today is entirely consistent with that purpose in regard to a business enterprise that operates a 190-bed skilled-nursing-care facility where financial and operational control have been divided among a variety of different legal entities within the enterprise, where ownership of essentially all real and personal property used in connection with the facility has been transferred to one or more legal entities other than those exercising operational control over the facility, and where the facility itself maintains only \$25,000 in liability.



**J. Anthony McLain**

*The letter opinion below was recently submitted to and approved by the Alabama State Bar Board of Bar Commissioners.*

**MEMORANDUM**  
**FROM: J. Anthony McLain**  
**TO: Board of Bar Commissioners**  
**DATE: April 24, 2014**  
**RE: Title Insurance Act 2012-397**

The Title Insurance Act 2012-397 became effective January 1, 2013. The Act amends sections 27-25-3 and 27-25-4, *Code of Alabama*, 1975. Section 27-25-4.4 specifically requires any individual who holds a title insurance agent license to complete a minimum of 24 hours of continuing education courses as may be approved by the insurance commissioner, of which three hours shall be in ethics, and reported to the commissioner on a biennial basis in conjunction with the license renewal cycle.

Following passage of the act, Alabama lawyers, who are also licensed title insurance agents, contacted the Office of General Counsel of the Alabama State Bar to seek an interpretation of the act's continuing education requirements, in view of the already existing obligation of lawyers to obtain the Mandatory Continuing Legal Education as required by the rules of the Alabama Supreme Court.

The Alabama Supreme Court has exclusive plenary authority over lawyers licensed to practice law in Alabama. As a part of that exclusive licensing and regulatory authority, the court, through its own rules, has placed an obligation on lawyers practicing law in this state to obtain 12 hours of CLE each year, with one hour of that CLE being in ethics. Additionally, new admittees have to obtain three hours of professionalism CLE within 12 months of their admission. Based on these already-existing obligations placed on Alabama lawyers, and recognizing the separation of powers within state government which vests in the judicial branch of government the exclusive authority over lawyers licensed to practice law in this state, the Office of General Counsel is of the opinion that the continuing education component of the Title Insurance Act does not apply to those lawyers licensed to practice law in Alabama who are also licensed title insurance agents. | [AL](#)

JAM/jl





# The Law of Salvage and The Law of Finds

By Gregory C. Buffalow

A popular misconception  
is that a **salvor**

(one who takes possession of salvage) who preserves property from peril<sup>1</sup> on navigable water acquires ownership, as opposed to a right to receive compensation. This summary provides an overview of the law of “finds” versus the law of “salvage.” A good rule of thumb for the practitioner is to consider the law of salvage as the default setting, and the law of finds as the exception to the rule.

## *Law of Finds*

The law of finds can be summarized, generally, as a situation involving ‘finder’s keepers’ where the subject property has been abandoned. Under the law of finds, “title to abandoned property vests in the person who reduces that property to his or her possession.” *Treasure Salvors, Inc. v. Unidentified Wrecked Sailing Vessel*, 569 F.2d 330, 337 (5<sup>th</sup> Cir. 1978). Absent clear abandonment, however, the law of salvage applies, which provides only compensation for the successful salvor, but not full ownership of the subject property. *R.M.S.*

*Titanic Inc. v. Wrecked Vessel*, 286 F.3d 194, 205 (4 Cir. 2002), quoting *Benedict on Admiralty* §150. Abandonment must be shown based on the standard of clear and convincing evidence. *Columbus-America Discovery Group v. Atl. Mut. Ins. Co.*, 974 F.2d 450, 464-65 (4 Cir. 1992).

## *Elements of Salvage*

The elements of salvage require the “existence of a marine peril, voluntary action by the salvor, and successful salvage.” *R.M.S. Titanic Inc. v. Wrecked Vessel*, 286 F.3d 194, 206 (4 Cir. 2002), citing *The Sabine*, 101 U.S. 384 (1879). “To sustain a claim for marine salvage, a plaintiff must prove that he voluntarily rendered services which preserved, or contributed to the preservation of, imperiled marine property. *Blackwall*, 77 U.S. 1, 12 (1869).” *Padilla and So. Puerto Rico Towing v. The Norseman*, 1967 A.M.C 1531, 1545 (D.P.R. 1967). Success is essential. Where a salvor does not “save the property” he will be denied any fee or reward. *Hener v. United States*, 525 F. Supp. 350, 357 (S.D.N.Y. 1981).

# Ownership vs. Compensation

As noted above, a would-be salvor does not acquire ownership of salvaged property. Instead, the general rule is that “the salvor of derelict property does not acquire title (unless no owner comes forward); he can claim only an increased award....” Shoenbaum, *Admiralty and Maritime Law*, §16-7 Treasure salvage, and the law of “finds,” p. 2 (4<sup>th</sup> ed. Westlaw 2010 update). In other words, the successful salvor acquires a right to compensation, but only temporary possession. The salvor obtains “only a superior right of possession, and not title, until a court has passed on title, and the salvage fee.” *Hener, supra*, 525 F. Supp. 350, 357 (S.D.N.Y. 1981).

## Abandonment

Abandonment is difficult to prove. “In admiralty cases, courts have traditionally applied a legal fiction to ships, under which an owner or the owner’s successor retains title to a ship no matter how long it has been abandoned.” *Dluhos v. Floating and Abandoned Vessel*, 1999 A.M.C 658, 671 (2 Cir. 1998); 3A Norris, *Benedict on Admiralty* §150, at 11-1 (1997) (“Should a vessel be abandoned without hope of recovery or return, the right of property still remains with the owner.”) “Abandonment is defined as the ‘surrender, relinquishment, disclaimer, or cession of property or of rights. Voluntary relinquishment of all rights, title, claim and possession, with the intention of not reclaiming it.” *United States v. Steinmetz*, 973 F. 2d 212, 222 n. 10 (3d Cir. 1992), quoting *Black’s Law Dictionary* 2 (5 ed. 1979).

The rationale for the foregoing is to apply the law of salvage instead of the law of finds, “because salvage law encourages less competitive and secretive forms of conduct than finds law.” *Id.*, *Dluhos*, 1999 A.M.C at 671. Based on that rationale, the courts favor the law of salvage. *Hener v. United States*, 525 F. Supp. 350, 356 (S.D.N.Y. 1981).

Stated another way, “the law of salvage applies as a general rule. The law of finds applies only in two categories of cases: (1) where the owners have expressly and publicly abandoned their property; and (2) where items are recovered from an ancient shipwreck and no one comes forward to

claim them.” Shoenbaum, *supra*, p. 3. The law of finds “with its concomitant dogma of ‘finders keepers’” is limited to “instances of long lost and abandoned wrecks” and “things found in seas or rivers that were never the property of any person.” *Hener, supra*, 350 F. Supp. at 355, quoting 3A Norris, *Benedict on Admiralty: The Law of Salvage*, 11-14 (7<sup>th</sup> ed. Rev. 1980).

Applying the difficult standard of proof for abandonment, for example, the C.S.S. ALABAMA was not found to be abandoned when its bell was recovered, *United States v. Steinmetz, supra*, 973 F. 2d 212 (3d Cir. 1992) (holding that the United States did not abandon the C.S.S. ALABAMA when it sank in 1864); a Spanish frigate, the MERCEDES, which sank in combat in 1804 was not found to be abandoned, *Odyssey Marine Exploration, Inc. v. Unidentified Shipwrecked Vessel*, 567 F. 3d 1159, 1174 n.8 (11 Cir. 2011) (also applying sovereign immunity as a defense); and even the TITANIC was not found to be abandoned when various artifacts were recovered, *R.M.S. Titanic v. Wrecked and Abandoned Vessel, supra*, 286 F. 3d 194 (4th Cir. 2002). The law of finds was inapplicable because there was not “clear and convincing evidence” of abandonment. *Id.*, 286 F. 3d at 205. Other illustrations include an old tug left afloat on a barge canal for four years which was, likewise, not abandoned. *Dluhos v. Floating and Abandoned Vessel*, 1999 A.M.C 658 (2d Cir. 1998).

## Notice Requirements

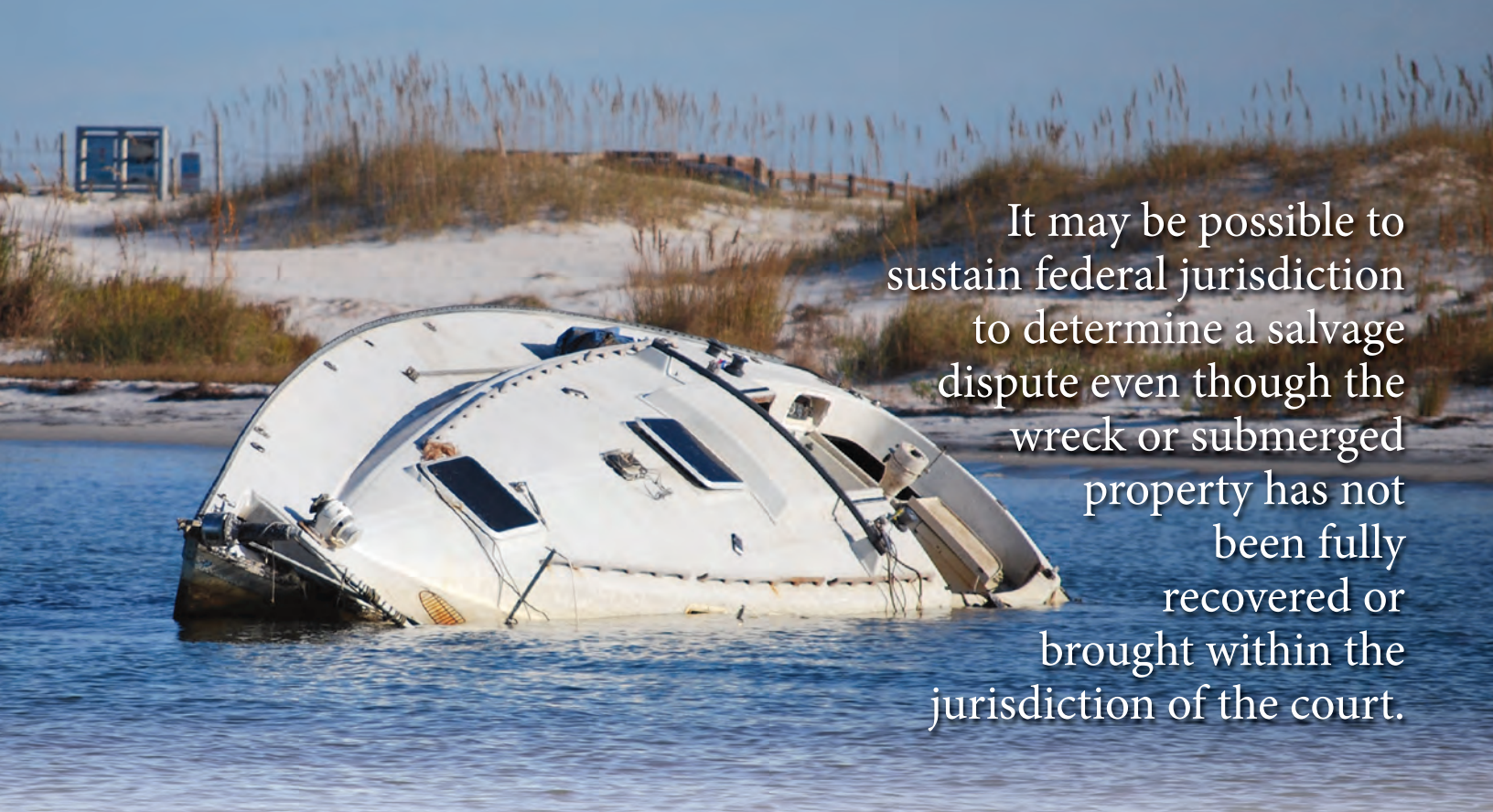
In addition to the elements of salvage outlined above, a salvor must comply with notice requirements and make a *bona fide* effort to locate the owner by bringing the property before a court. “In fact, the salvor is required to give notice of his recovery of property and, unless he reaches an agreement with the owner, to bring the property before an admiralty court.” *Hener, supra*, 325 F. Supp. at 358; citing 3A Norris, *Benedict on Admiralty: The Law of Salvage*, 11-2 to 11-3 (7<sup>th</sup> ed. Rev. 1980). “[R]efusal to permit owner to examine property ... constitutes misconduct.” *Hener, supra*, 525 F. Supp. at 358. Misconduct of a salvor jeopardizes and may forfeit any right to recovery of a salvage fee. *Id.*

An Alabama Salvage Act claim against the owner of the property may be filed *in*

*personam* in state court, as discussed below, but only federal courts have exclusive jurisdiction for a salvor to assert a general maritime lien for salvage against the property *in rem*.<sup>2</sup> An action in state court has its limitations and, therefore, would be subject to and primed by an *in rem* action in federal court. A Rule C *in rem* lien claim requires a verified complaint, describing the property, and alleging “that the property is within the district or will be within the district while the action is pending.” Rule C(2), *Fed. R. Civ. P.*, Supplemental Rules for Maritime Claims. The Supplemental Rules also provide for publication of notice of the action, Rule C(4). The statute governing marshal’s fees requires advance deposit of funds with the U.S. Marshal prior to the arrest to cover initial expense for service of the writ of arrest, and for safekeeping of the vessel. *See*, 28 U.S.C. §1921.

Typically, an *in rem* plaintiff makes arrangements for a substitute custodian other than the U.S. Marshal, which must be approved by the court, in order to reduce the expense charged by the marshal for storage, watchmen, insurance and the like. Customary expenses are also listed at 28 U.S.C. §1921. *The Manual for U.S. Marshals* requires that a substitute custodian must provide “proof of financial ability or sufficient insurance coverage,” at a minimum of \$1 million coverage. Schoenbaum & McClellan, 3 *Admiralty & Mar. Law* Appendix D A-17 (4<sup>th</sup> Ed. (2010 Pocket Part Update)).

It may be possible to sustain federal jurisdiction to determine a salvage dispute even though the wreck or submerged property has not been fully recovered or brought within the jurisdiction of the court. Those cases are based on a legal fiction involving “constructive possession” of the property in which courts have assumed jurisdiction of shipwrecks outside of the district where, for example, the salvage plaintiffs simply bring a few artifacts before the court. *Treasure Salvors, Inc. v. Unidentified, Wrecked, and Abandoned Sailing Vessel*, 569 F.2d 330, 1978 A.M.C 1404 (5th Cir.1978); *Columbus-America Discovery Group, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel*, 742 F. Supp. 1327, 1990 A.M.C 2409 (E.D. Va. 1990), *rev’d on other grounds*, 974 F.2d 450, 1992 A.M.C 2705 (4th Cir.1992) (court upheld *in rem* jurisdiction over a wreck 160 miles offshore on the basis of some lumps of coal



It may be possible to sustain federal jurisdiction to determine a salvage dispute even though the wreck or submerged property has not been fully recovered or brought within the jurisdiction of the court.

tendered to the court); *Odyssey*, *supra*, 657 F. 3d at 1166 (salvage claim commenced involving approximately 594,000 coins, based on deposit of a small bronze block with the court).

## Alabama Salvage Act

There is an alternative remedy in state court based on the Alabama Salvage Act, *Ala. Code* §35-13-1-10 (1975). This remedy avoids the requirement of a deposit with the U.S. Marshal required to commence suit *in rem*, but would be subject to a federal maritime lien. An *in rem* action in federal court would have priority and it is only a U.S. Marshal sale that can discharge prior lien claims. A marshal's sale "discharges all liens against the ship [or property] and grants title to the purchaser free and clear of liens." *Eurasia Int'l Ltd. v. MV Emilia*, 2005 A.M.C 1726, 1732 (5th Cir. 2005).

While the Alabama statutory remedy cannot provide title free of liens, it is a simple procedure in which a salvor may pursue a claim at lesser expense than a federal court action. The statute initially authorizes that "[a]ll property adrift may be taken up by any person and secured," *Ala. Code* §35-13-1. Within two days the claimant is required to "exhibit" the property to state

district court, and make application for appraisalment by three persons appointed by the court. *Ala. Code* §35-13-2. The appraiser's compensation is limited to \$2 each. *Ala. Code* §35-13-6. If the property has an appraised value in excess of \$30, newspaper notice is required within 10 days, *Ala. Code* §35-13-3. Where the property is valued at less than \$30, it "must be advertised at the next steamboat landing, if the property was taken up on a navigable stream, otherwise, at the nearest public place, within five days after the taking up." *Ala. Code* §35-13-3. Presumably, the court would determine the place and form of notice given the current shortage of steamboat landings. Possession may be restored to the owner of the property based on proof of ownership, and payment required by the court. *Ala. Code* §35-13-4. The owner must act within the time specified dependent on the appraised value of the property, e.g., within three months for value up to \$30; within six months for value between \$30 and \$100; and within one year for value over \$100. *Ala. Code* §35-13-7.

The Alabama Act provides for compensation based on a scale, e.g., 10 percent of appraised value of each bale of cotton, and for other property at 25 percent on all property under \$30; 20 percent on property between \$30 and \$100; 15 percent between \$100 and \$500; 10 percent

between \$500 and \$1,000; and 5 percent on all over \$1,000. *Ala. Code* §35-13-5.

The statute authorizes award of court fees, expense of advertising and "reasonable compensation for the keeping, if necessary to preserve the property from loss or injury." *Ala. Code* §35-13-5. This is similar to the general maritime remedy in which reasonable custodial expenses may be awarded. For illustrations of recoverable expense, see *Marshal Sales*, 72 J. Transp. L. Logistics & Pol'y 262 (2005). Consistent with general maritime law, the Alabama Act imposes liability for concealment, injury or destruction. *Ala. Code* §35-13-9.

## Misconduct of Salvor

A salvage claim under general maritime law also penalizes misconduct of the would-be salvor. "Over-aggressiveness may also constitute misconduct thereby adding a further deterrent against tortious or criminal behavior by would-be salvors." *Hener, supra*, 525 F. Supp. at 359. Misconduct barring any salvage recovery may also be found where a salvor embezzles any of the distressed property. "Salvors are responsible for the reasonable care of the property which they take in charge." *Padilla, supra*, citing *Bremen*, 111

Fed. 228, 234 (S.D.N.Y. 1901). “Salvors who embezzle any distressed property forfeit not only an award for salvage, but, by way of penalty for their fraud, *quantum meruit* compensation for their services.” *Padilla, supra*, 1967 A.M.C at 1546, citing *Island City*, 66 U.S. 121, 130 (1861).

Attempts to mislead the court concerning the condition of the subject property, or the extent and effect of claimed salvage services, may also be considered misconduct barring recovery. *Padilla, supra*, at 1546. The *Padilla* Court, reviewing evidence of misconduct including looting and misleading the Coast Guard concerning condition of the vessel, “have consistently attempted to mislead the Court as to the extent and effect of their services. . . .” *Padilla, supra*, 1967 A.M.C at 1546.

## Salvage Award

A final practical consideration is: how much does my client get?

There is quite a range of awards set forth in reported cases and it appears in many instances that courts are simply applying *ad hoc* percentages, ranging from 1 percent to 45 percent, applying lesser value to simple operations, and greater value to operations involving a greater degree of risk and greater value of the benefitted property, e.g., *Reiss v. One Schat-Harding Lifeboat No. 120776*, 2006 A.M.C 1401 (D.S.C. 2006) (fishing boat received 45 percent of the value of ship’s \$110,000 lifeboat which was found adrift and towed to port from 100 miles at sea in heavy seas); *Margate Shipping Co. v. United States*, 143 F. 3d 976 (5th Cir. 1998) (salvage award of \$4.125 million based on 12.5 percent of value of salvaged property consisting of space shuttle fuel tank where salvage occurred during tropical storm); *Biscayne Towing & Salvage Inc. v. Kilo Alfa, Ltd.*, 2005 A.M.C 129 (S.D. Fla. 2004) (salvor who brought pump to prevent sinking of \$100,000 yacht awarded \$10,000, roughly 10 percent); *Miami Yacht Divers Inc. v. MV ALL ACCESS*, 20080 A.M.C 170 (S.D. Fla. 2007) (divers securing a 38-foot yacht valued at \$300,000), following a hurricane, received \$22,500 representing approximately 7.5 percent of the value of the yacht); *Sea Tow Portland v. High Steaks*, 2007 A.M.C 2705 (D. Ore. 2007) (salvors received nominal \$3,000 award for brief work towing a 65-foot yacht valued at \$2,160,000 away from

Following successful salvage and recovery of property in peril, and notice to the owner, the safest course of action is to conclude that the situation is governed by the law of salvage instead of “finders keepers.”

danger of an adjacent fire); *Lancaster v. Smith*, 330 F. Supp. 65 (S.D. Ala. 1971) (fishing vessel operator received nominal \$500 award for 15-mile tow of motorsailer with engine trouble). As a general rule, a larger award is based on the greater the value of the equipment involved in the salvage operation, and the greater the difficulty and perceived risks of the operation.

It is profit, not principle, that is the driving force behind the law of salvage, and the question for the court is simply what amount of profit is fitting in the case before it. The general economic reality is simply that, the greater the value of the threatened property, the greater the potential loss, and, consequently, the more the salvee would be willing to pay to save that property from destruction. To approximate properly the incentive that the salvee himself would offer, it follows that the law of salvage must generally grant its highest awards where the property has highest value (assuming the other factors remain constant).

*Margate Shipping, supra*, 143 F. 3d at 988.

A more definitive analysis of how the percentages were determined in the foregoing illustrations is beyond the scope of this article because the cases cite the same six factors for setting the amount of a salvage award from *The Blackwall*, 77 U.S. (10 Wall.) 1, at 13-14 (1869), which include: (1) the labor of the salvors; (2) their promptitude, skill and energy; (3) the value of the property employed by the salvors and the danger to it; (4) the risk incurred by salvors; (5) the value of the property saved; and (6) the degree of danger from which the property was rescued.

## Conclusion

Following successful salvage and recovery of property in peril, and notice to the owner, the safest course of action is to conclude that the situation is governed by the law of salvage instead of “finders keepers.” It should also be assumed that proof of abandonment of the property is doubtful. The keys to sustaining a significant percentage for a salvage award requires a showing of difficulty and hazards encountered, and should also involve property of substantial value. | [AL](#)

## Endnotes

1. Salvage requires “a marine peril from which the ship or other property could not have been rescued without the salvor’s assistance.” Gilmore & Black, *The Law of Admiralty*, Ch. VIII, Salvage at pp. 534-535 (2d Ed. 1975). Illustrations of peril include grounding, fire, raising a sunken vessel and rescue from pirates. *Id.* at pp. 536-537.
2. Admiralty *in rem* jurisdiction “against the vessel” required to assert a general maritime law lien is exclusively the province of the United States District Courts. The “saving to suitors” clause permits only *in personam* actions to be filed in state courts. “Admiralty’s jurisdiction is ‘exclusive only as to those maritime causes of action begun and carried on as proceedings *in rem*, that is, where a vessel or thing is itself treated as the offender and made the defendant by name or description in order to enforce a lien. See, e.g., *The Moses Taylor*, 71 U.S. 411, 427; *The Resolute*, 168 U.S. 437, 440-441. It is this kind of *in rem* proceeding which state courts cannot entertain. *Madruza v. Superior Court*, 346 U.S. 556, 560-561, 1954 AMC 405, 409 (1954).



• Scottsboro attorney **Melanie Bradford** has been appointed the acting executive director for the Alabama Family Trust. Bradford is a member of the Elder Law Section of the Alabama State Bar (past president).



*Bradford*

• **Eric L. Pruitt** of Baker Donelson has been named a Fellow of the American College of Mortgage Attorneys, a national organization made up of more than 400 attorneys who are leaders in the mortgage industry. | [AL](#)



*Pruitt*

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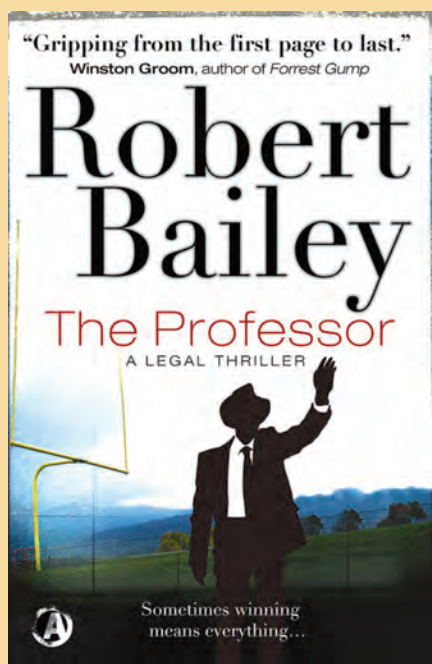


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Robert Bailey

# *The Professor*

By Robert Bailey

## Reviewed by Angie Cameron

Alabama football, rules of evidence and suspense—it may sound like a strange combination but Robert (“Bob”) Bailey has written a book that combines all three. Most book reviews in *The Alabama Lawyer* have been non-fiction, practical books about the practice of law, so I was intrigued by the assignment to read a “legal thriller” written by an Alabamian and fellow attorney. I am glad I took the assignment.

As the story opens, a young trial attorney, Tom McMurtrie, sits down at the Waysider restaurant (a familiar haunt for University of Alabama alums) with Coach (“The Bear”) Bryant to discuss his future. Not a bad start to the book for this Alabama graduate! The Bear is persuading his former player to return to Tuscaloosa and teach at the law school. Of course, McMurtrie obliges. As the book moves on, the reader may think this was just a fleeting reference to the main character’s football days, but as you will see, the end of the book does an excellent job of bringing it full circle.

Fast forward to the present day as Professor McMurtrie addresses his evidence class at the university. Following his meeting with Coach Bryant, Tom took the job as the evidence professor and has had a long distinguished career as a teacher. One of my favorite parts of the book was the description of the students in Professor McMurtrie’s class. It was very similar to my own evi-

dence class with Dean Gamble. Isn’t it funny how all law school classes have the same “characters?”

In addition to catching my attention by reminding me of my law school days, Bailey captures the reader’s attention in a different way with a horrible car accident. An 18-wheeler that is racing to make the next stop on schedule slams into another car turning into a gas station. The car contains a young family—mom, dad and young child. All involved die in the crash, and there is only one witness, the small-town gas station owner. The issue of who is at fault for the accident reappears later in the book, and this witness plays an important role.

The reader is brought back to the professor, who has been summoned before the board of trustees of the university. Although Tom has had a successful teaching career at the university, he finds himself in a little hot water because he lost his temper with a student during a trial ad competition. Despite his long tenure and good record, the university dean asks for his resignation/retirement. Tom is shocked and disappointed to learn that the person leading the charge behind this request is a former law school classmate, whom he considered a friend. To add insult to injury, Tom begins to have health issues and decides that this is an ideal time to resign and move to his family farm out in the country.

Before he can completely cut himself off from civilization, Tom receives a call from an old friend whose son and young family were the ones killed in the car accident involving the 18-wheeler. The friend is seeking advice about whether to file a lawsuit against the trucking company.

Tom decides the best referral for this case would be to a local lawyer with hometown connections. Ironically, the lawyer who comes to mind is the student with whom he had scuffle at the trial ad competition—the same student who essentially caused his forced retirement. Tom refers the case to the young attorney, Rick Drake. Unbeknownst to Drake, the professor arranges for one of his students to assist him in the trial preparations. As a recent graduate of law school, Drake is struggling to get his practice off the ground, and he is looking for the case that can make a name for him. The professor drops that case in Drake's lap. Initially, it appears that his ego is going to get in the way of accepting a case that he desperately needs, but his better judgment wins and he accepts the case from the professor.

As the story continues, the focus shifts from Professor

McMurtrie to Drake who is investigating and preparing for the biggest civil trial of his life—his first trial for that matter. The book does a great job of following the investigation and the hurdles that Rick and his young apprentice have to overcome to get the case ready. At times, a defense verdict seems like a forgone conclusion because there are no witnesses and no documents to support the plaintiff's theory of greed, in addition to the fact that the trucking company is a lawyer's worst nightmare. Intertwined with the facts, the legal team encounters arson, bribery, murder and extortion, adding intrigue to the story and complicating the evidence that would seal the trucking company's fate.

The ending is riveting as we see the reemergence of Professor McMurtrie on the verge of trial. I hope I have left out just enough to pique your interest!

It is an excellent book, worth the read and I found it hard to put it down. In fact, it is just as good, or better, than any Grisham novel, and it's written by a fellow state bar member and Alabama attorney. I highly recommend the book and hope others enjoy it as well. | [AL](#)

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L A W D A Y 2 0 1 4 :

# Why Every Vote Counts



The Alabama State Bar recently held its annual Law Day ceremony and awards presentation announcing the winners of the 2014 competition.

This year, more than 500 entries were received from students across Alabama in three categories: posters, essays and social media. Submissions focused on the 2014 Law Day theme of “Why Every Vote Counts,” which was chosen to celebrate the 50<sup>th</sup> anniversary of the Civil Rights Act of 1964, as well as the Voting Rights Act of 1965.

“For more than half a century, Law Day has provided young people throughout the nation with the opportunity to learn more about the rule of law. This year, they are discovering the importance of the rule of law as a fundamental human right which enables citizens to cast a vote in free and fair elections,” said Alabama State Bar President Anthony A. Joseph.

The winners participated in a ceremony at the Alabama Supreme Court Courtroom with guest speaker Chief Judge W. Keith Watkins, U.S. District Court for the Middle District of Alabama. Judge Watkins presented each winner with an engraved medal and a certificate. Each winning student received a monetary award for first, second and third place:

- \$200, \$150 and \$100 in the essay and social media category;
- \$175, \$150 and \$100 in the poster category

The winners’ teachers also received \$50 for each winning entry from their classroom, and winners’ schools will be awarded certificates. | AL

## The winners of the 2014 Law Day competition include:

### Posters K-3

- 1<sup>st</sup>—Shania Brunson, Union Springs Elementary, Union Springs
- 2<sup>nd</sup>—Brodee Hyche, Vance Elementary, Vance
- 3<sup>rd</sup>—Alex Aldenderfer, Mixon Elementary, Ozark

### Posters 4-6

- 1<sup>st</sup>—Carter Pridmore, Fort Payne Middle School, Fort Payne
- 2<sup>nd</sup>—Lauren Bonikowski, Bear Exploration Center, Montgomery
- 3<sup>rd</sup>—Jenifer Andrews, Williams Intermediate, Pell City

### Essays 7-9

- 1<sup>st</sup>—Lana Marie Johnson, Cherokee High School, Cherokee
- 2<sup>nd</sup>—Darby Kennedy, Cherokee High School, Cherokee
- 3<sup>rd</sup>—Ja’Len Davis, Phenix City Intermediate, Phenix City

### Essays 10-12

- 1<sup>st</sup>—John Butler, Central High School, Phenix City
- 2<sup>nd</sup>—Win Chandler, Albertville High School, Albertville
- 3<sup>rd</sup>—Dylan Harris, Cherokee High School, Cherokee

### Social Media (Twitter)

- 1<sup>st</sup>—Nick Jackson, Central High School, Phenix City
- 2<sup>nd</sup>—Ethan Calhoun, Central High School, Phenix City
- 3<sup>rd</sup>—Cordell Thomas, Brewbaker Tech Magnet, Montgomery

### Social Media (Facebook)

- 1<sup>st</sup>—Diamond Alexander, Brewbaker Tech Magnet, Montgomery
- 2<sup>nd</sup>—Tatiana Thomas, Brewbaker Tech Magnet, Montgomery
- 3<sup>rd</sup>—Malisa Ray, Brewbaker Tech Magnet, Montgomery



Phenix City and Montgomery schools captured half of the total awards. Phenix City students placed first and third in the essay category and placed first and second in the Twitter entries; Montgomery students earned second place in the poster contest, third place for Twitter entries and swept the Facebook category.



# LAW DAY 2014 PARTICIPANTS

## Posters (K-3)

Shania Brunson  
 Kyran Thomas  
 Johan Perez Vaquera  
 Morgan Mason  
 Ty'Liana Pritchett  
 Kuvaye Armistead  
 Jaylon McClaney  
 Noah Nelson  
 Jacob Lowery  
 Jonathan Jones  
 Sydni McKee  
 Kimberly Jones  
 Timber Black  
 Tamaya Hasley  
 Melanie Smith  
 Willie Bradley  
 Jamarion Whatley  
 Thomas Cobb  
 Sean Thomas Kelsoe  
 Zalaeh Rhodes  
 Jaitarius Paterson  
 Dekeyah Peterson  
 Sakenya Mobley  
 Alexis Capers  
 Nehemiah Altidor  
 Vicayvor Watson  
 Ireland Nelson  
 Ashton Nelson  
 Logan Kendrick  
 Cy Carpenter  
 Elijah Chamberlain  
 Zamarly Ball  
 Daziyah Johnson  
 Hunter Brogden  
 Emily Ward  
 Tremel Moore  
 Coburn Blackmon  
 De'montarius Peterson  
 JaLaun Malone  
 Dasia Johnson  
 Bishop Smith  
 John Connor  
 Brodee Hyche  
 Payton Bircheat  
 Lydia Sloan  
 Keeleie Salter  
 Nate Mink  
 Clayton Hemingway  
 Sawyer Herring  
 Sam Linde  
 Caroline Randall  
 Miles Gignilliat  
 Gabriele Walker  
 Masani Ward  
 Clif Stimpson  
 Phobe Rominger  
 Oliver Geltinger  
 James Myers  
 Lila Mitchell  
 Campbell Swanner  
 Lily Naylor  
 Carrington Hodge  
 Ada Weems  
 Legion Gaston  
 Preston Dowling  
 Davis Singleton  
 Andrew Johnson  
 Izabella Kulczycka  
 Om Gopurala  
 Madeline McAlister  
 Lucy Craig  
 Lauren Gardner  
 Annikah Mishra  
 Isaac Russell  
 Peter White

Donovan Marshall  
 Sam Smith  
 Norah Roller  
 Teddy Oastes  
 Manon Lesort  
 Jake Ammon  
 William Edberg  
 Meg Trammell  
 Reese Burks  
 Jalen Smith  
 Savanna Childree  
 Gracie Jordan  
 Dayla Roman  
 Keenan McGowen  
 Aiden Tolison  
 Brooke Foist  
 Gavin Myers  
 Braxton Broddy  
 Hannah Walker  
 Alisabeth Jones  
 Alex Aldenderfer  
 Yumaca Wright  
 Tayandrea March  
 Jade Byars  
 Ryan Roberson

## Posters (4-6)

Dalton Coleman  
 Lauren Bonikowski  
 Braden Chambless  
 Gracey Norris  
 Kenny Hergenroeder  
 Caden Bishop  
 Landen Holley  
 Robert Parker  
 Alexandria Stallworth  
 Hariaksha Gunda  
 Meaghan Curenton  
 Joseph Talley  
 Camryn Perine  
 Melody Triplett  
 Jane Riley Smith  
 Isaiah Scott  
 Catherine Capps  
 Reagan Gee  
 Tyler Toth  
 Ellie Stevens  
 Phoenix Lucio  
 Hudson Whitt  
 Madelyn Wingard  
 Conner Longpre  
 Lahela Harrison  
 Emily Muffley  
 Bennett Murray  
 Mary Elise Brady  
 Jamie Sippial  
 Colton Criswell  
 Sophia Isham  
 Jackson Tyus  
 Anna McKnight  
 Sage Etheridge  
 Bailey Lanier  
 Mark Boggan  
 Caitlin Russell  
 Cameron Greene  
 Jasmine Bell  
 Blake Carr  
 Katy Deloney  
 Davis Baker  
 Blake Center  
 Nicholas Harris  
 Kelly Evans  
 Hannah Chunn  
 Max Kelley  
 Clayton Craft  
 Bethany Singleton

Izzy Woodham  
 Walker Parsons  
 Luke Moody  
 Khamani Driver  
 Jaelie Mills  
 Paydon Smith  
 Kolbi Bates  
 John Weatherford  
 Mary Helen Greene  
 Kaitlyn Burbage  
 Carson Relf  
 Chapel Conway  
 Santos Ortega  
 Terry Cook  
 Payton Guines  
 Jasmene Critenden  
 Wyatt Henderson  
 Jordan Ward  
 Janaye  
 Sam Schofield  
 Reandayvion Williams  
 Aaliyah Mobley-Powell  
 Kacey Messer  
 Corianna McDonald  
 Shanira Porter  
 Amari Feagin  
 Kailey Moore  
 Zachariah Boggan  
 Bryant Mitchell  
 Wesley Yadon  
 Ahante Marshall  
 Dylan Smith  
 Miranda Adams  
 Tory De'Monte Walker  
 Jalen Randolph  
 Mayson Stroud  
 Mia Crenshaw  
 Savannah Smith  
 Jalia Pennington  
 Tarone Boggan  
 Joshua Hooks  
 Frank Crenshaw  
 Kendall Long  
 CleAndrea Walker  
 Amyia Powell  
 Charles Donovan  
 Whittington  
 Caleb Benson  
 Jamarquis Pate  
 Jonathan Sheffield  
 Tyecka Eddins  
 Natavia Smith  
 Victor Gomez  
 Rodney Lamar Stamps  
 Ashanti Lewis  
 Mykel Cheateam  
 Hunter Smith  
 Sydnie Ward  
 Martavius Paytoon  
 Thalia Bonilla  
 Joey Asbell  
 De'Corae Peterson  
 Aaliyah Studstill  
 Johnathan Countryman  
 Laflora Mixon  
 Kentrell Pugh  
 Bryce Croley  
 Kiara Posey  
 Lillie Dickerson  
 Beanna Epperson  
 Saylor Richard  
 Sierra Weekley  
 Brooklyn Moore  
 Seth Moody  
 Joey Miller  
 Kristin Schmidt  
 Akayla Isbell

Mya Richardson  
 Jared Jackson  
 Tamera Watkins  
 Paige Hooks  
 Shania Ward  
 Jamarie Rutledge  
 Rayshad Robinson  
 Robert Linell Green, Jr.  
 Claudia Dates  
 Savastin Tubbs  
 Osiris Oni Smith  
 Maleka Cox  
 Talitha Wilcher  
 Dej Shanequah Borden  
 Trey Anthony Howard  
 Isis Marizette  
 Kejuangela Williams  
 Tyler Smith  
 Carlos Allen  
 Jamarris Davis  
 Daviote Williams  
 Anthony Johnson  
 Kalix Rhodes  
 Antwan Johnson  
 Jaxon Cox  
 Charles Houts  
 Logan Watts  
 Justin Isbell  
 Cade Bryant  
 Autumn Vincent  
 Kaleb Driskill  
 Zachary Mitchell  
 Brooklyn Lee  
 Makinzie Crawford  
 Grace Terry  
 Marisa Bond  
 Kalista Ferrell  
 Danielle Parramore  
 Parker Holmes  
 Joseph Anglin  
 Brennan Cardenas  
 Emily Adcox  
 Mason Batchelor  
 Diamond Stewarty  
 Bradley Sasser  
 Landon Smith  
 Grayson Willis  
 Meghan Storey  
 Alexia Thomas  
 Kyle Kaplan  
 Kirston LaBombard  
 Malachi Moye  
 Katlin Boudreau  
 Sarah Warren  
 Parker Lardy  
 Swayne Lee  
 Cannon Harmon  
 Emily Grace McIntosh  
 Harrison Fausnaugh  
 Brianna Farris  
 Jenifer Andrews  
 Emma Green  
 Olivia DeMent  
 Sarah Rogers  
 Kaylee Scott  
 Aleesha Gabrielle Allen  
 Kaiden Roe  
 Lillie Dickerson  
 Beanna Epperson  
 Saylor Richard  
 Sierra Weekley  
 Brooklyn Moore  
 Seth Moody  
 Joey Miller  
 Kristin Schmidt  
 Zoe Kay

Lauren Hibbs  
 Cody Golden  
 Alston Funderburg  
 Aslan Foster  
 Madison Patteron  
 Maddie Foote  
 Averi Durbin  
 Taylor Dowdy  
 Christian Clark  
 Nick Chapman  
 Brooklyn Black  
 Lawson Bowman  
 Conner Pike  
 Madison Carter  
 Shao Qiang Chen  
 Andrew McElhane  
 Arturo Rodriguez-Lopez  
 Sarah Jones  
 Troy McCormick  
 Ashvi Patel  
 Javier Hidrogo-Cruz  
 Maggie Crow  
 Dawson Garrett  
 Caroline Pendergrass  
 Maggie Grout  
 Estefany Agustin-Lopez  
 Isabelle Wright  
 Isabelle Goggins  
 Micah Simpson  
 Kensley Brewis  
 Will Phillips  
 Bryan Chavez  
 Will Abbott  
 Taylor Theakston  
 Harleigh Sullivan  
 Logan Fields  
 Anna Breed  
 Oscar DeLeon  
 Allie Bannister  
 Logan Beard  
 Reagan Ashley  
 Nelly Contreras  
 Wes Everett  
 Taleah Sadler  
 Liam Hulsey  
 Kaelan Shankles  
 Carter Pridmore  
 Margaret Allen Camp  
 Harrison Davis  
 Emily Wheat  
 Giles Roberts  
 Angelina Miguel-Martin  
 Harper Moses  
 Emily H.  
 Tatum Harris  
 Taylor Camp  
 Ta'Nala Welch

## Essays (7-9)

Lana Marie Johnson  
 Katelin Waldrep  
 Mikey Jones  
 Chloe Franks  
 Chloe Cosby  
 Alyssa Wallace  
 Darby Kennedy  
 Sabastian Nail  
 Andrew Carney  
 Sean Buntin  
 Chelsea Ledbetter  
 Reana Baught  
 Ja'Len Davis  
 Xavier Dye  
 Aiko Del Toro  
 Zachary Belohlavek

Julie Chain  
 Matthew Kelly  
 Kiana Palmer  
 Banks Stamp  
 Angelie Bailey

## Essays (10-12)

Ryan Garmeson  
 Duncan Brittain  
 Tyler Reid  
 Leslie Holmes  
 Madalyn Weaver  
 Hannah Weaver  
 Dillan Simmons  
 Jaden Chandler  
 Jashawn Leach  
 Tiana Stallworth  
 Dylan Harris  
 Lauren Mayfield  
 Krista Tidwell  
 Dustin Kelly  
 Win Chandler  
 Dylan Hood  
 Madeline Munroe  
 Madison Dobbs  
 Emily Leopard  
 John Butler  
 Brady Unzicker  
 Mayson McManus  
 Aaron Stiles  
 Joshua Stephens  
 Briar Patterson  
 Elisabeth Evans  
 Evan Downey  
 Marilu Domingo  
 Stephanie Velazquez  
 Taylor Smith  
 Emilee Harris  
 Cristian Lopez

## Twitter (7-12)

Ethan Calhoun  
 Corey Gibbs  
 Mary Jenkins  
 Nick Jackson  
 James Daniels  
 Joshua Dow  
 Shalanda Gilchrist  
 Michelle Gibbs  
 Mahmud Diab  
 Robert Lewis  
 Shunkeria Nixon  
 Timothy Fielder  
 Cordell Thomas  
 Shateria Hartwell  
 An Biu  
 Jaylon Davis  
 Jaiilyn Cleveland  
 Rebecca Phillips  
 Sarah Russell  
 Briana Washington  
 Shardei Thomas  
 Deana Riley  
 Farha Rozainy  
 Zoya Robinson  
 Naanlop Kromtit  
 Taye Alexander  
 Kelsie Morris  
 Keith Williams  
 Tehani Harris  
 Cesar Sarmiento  
 Jordynn Robinson  
 Trey Roach  
 Courtney Jones  
 John Treat  
 Courtney Robinson

Corey Johnson  
 Jack Hudson  
 Ava Cochran  
 Jackson Curtis  
 Courtney Schmidt

## Facebook (7-12)

Dewayne Stringer  
 Jaden Manning  
 Julie Bae  
 Diamond Alexander  
 Luis Ricardo  
 Sydney Williams  
 Tatiana Thomas  
 Alex Knapp  
 Journey McWilliams  
 Olivia Saunders  
 Nicole Calhoun  
 Madison Graham  
 Anisha Mim  
 Malisa Ray  
 Jakobie Davis  
 Bryan Davis  
 Glenda Davis  
 Jaycee Robinson  
 Phylcia McCoy  
 Marquis D  
 Lina Moor-EI  
 Gage Bradley  
 Abigail Boyd  
 Brittany Blackmon  
 Jonathan Marks  
 Pamila Norris  
 Zyria McGhee  
 Wesley James  
 Blayke Adkinson  
 Michael Quattlebaum II  
 Jordan Loudermilk  
 Daniel Allen  
 Jayla Thomas  
 Justala Simpson  
 Lauren Taylor  
 Joshua Stovall  
 Sydney Pecoul  
 Shamal Hornbuckle  
 Kyle Moore  
 Justin Wilson  
 Anna Russell  
 Charlise Wellington  
 Ty Stroud  
 Cameryn Jones  
 Kara Wooke  
 Kiara Peters  
 Kiona Coats  
 John Paluch  
 Jacob McCall  
 Prajwal Arya  
 Dalton Green  
 Janea Carter  
 Troy Alves  
 Ja Shaudria Morris  
 Joseph Conte  
 Daniel Jones  
 Zacoya Pride-Robinson  
 Katherine Carothers  
 Da'Juan Hickbottom  
 Jackson Morgan  
 Zion Close  
 Amber Bannister  
 Coleman Barton



# THE LEADERSHIP FORUM Delivers What It Promises

*By Edward M. Patterson, Alabama State Bar assistant executive director*

**T**he Leadership Forum is celebrating its tenth year! In May, **ASB President Anthony Joseph** presented certificates and gifts to the 25 graduates of Class 10. The guest speaker at the graduation dinner was J. Michael Allen, managing director of Beacon Global Strategies LLC in Washington, D.C. Serving in the White House in various national security roles, and recently as the majority staff director of the House Permanent Select Committee on Intelligence, Allen, a 2001 cum laude graduate of the University of Alabama School of Law and a Mobile native, challenged the graduates to expand their perspectives in an increasingly global business and legal environment.

Class 10 statistics show the average age was 34 (oldest 39, youngest 31); 62 percent male and 38 percent female; 11.5 percent black and 88.5 percent white; and from 11 different cities and 12 different counties with 42 percent being from Birmingham, and 58 percent from the rest of the state. Three broad practice areas included private practice (72 percent), government/agency (19 percent) and corporate (19 percent). Seventeen percent of Class 10 previously applied for admission. Total composition of the forum always equals or exceeds the diversity statistics of



the bar as a whole. In the past 10 years, the forum has received 671 applications, accepted 296 attorneys and graduated 287 attorneys. Approximately 44 percent of those who apply have been chosen.

In awarding the Leadership Forum the 2013 E. Smythe Gambrell Professionalism Award, the nation's highest award for professionalism programs, the American Bar Association commended the forum for its innovative, thoughtful and exceptional content, for its powerful and positive impact on emerging leaders and for the extraordinary example it has established

that others might emulate. The program delivers what it promises: an opportunity to cultivate leadership skills moving from theory to practice, participation in self-discovery, forcing participants to be contemplative and learn from the inside out, professionalism is caught rather than taught and an opportunity to debate and discuss issues concerning their practice and the profession.

In response to demand for skills on “how to lead,” the core curriculum was changed. The legal profession has been slow to teach leadership skills, thinking it is a “soft skill.” Such skills, however, are the foundation of true professionalism. This year’s faculty included Professors Steve Walton and Michael Sacks of the Goizueta Business School at Emory University, teaching strategic thinking and alignment, self-awareness and how others perceive you, delivering internal and external value, influence without authority and leading organizational change.

The forum is designed to aid participants’ development into innovative, critical thinkers. One constant is access to servant-minded judges, policy-makers, legal practitioners, business leaders, and scholars and historians at the community, state and national level who use a variety of teaching methods.



Highlights of 2014 include seven days of intense training at Air University's Officer Training School at Maxwell AFB on a challenging reaction course designed to test participants' skills under pressure, hands-on training at the Alabama State House where the class debated current bills under consideration in the 2014 legislature and lessons in servant leadership by Anthony Joseph, Dr. David G. Bronner, Hon. Joel F. Dubina, attorney William Thuston and J. Scott Sparks, chief engineer, NASA's Marshall Space Flight Center.

Stephen Black, director for Ethics and Social Responsibility at the University of Alabama, challenged with a conversation on *"The Future of Progressive Action in Alabama: Why You Must Lead."*

Class 11 begins January 2015. Applications will be available at [www.alabar.org](http://www.alabar.org) by July 1 and class 2015 will be selected October 31.

The forum's passion is to continue to find and develop talented, mid-level attorneys into better leaders with a generous heart to serve their profession, their clients and their communities. If you qualify, consider submitting an application. If you know someone who is qualified, encourage them to apply. If you applied and were not accepted, apply again, as prior application to the forum is one consideration in the selection process. | [AL](#)



# 2014 Leadership Forum P A R T I C I P A N T S

- L. Conrad Anderson, IV, Balch & Bingham LLP, Birmingham
- Emily L. Baggett, City Attorney's Office, Decatur
- J. Evans Bailey, Rushton Stakely Johnson & Garrett PA, Montgomery
- Damon J. Boiles, III, Drummond Company Inc., Birmingham
- Bonnie L. Branum, Protective Life Corporation, Birmingham
- John P. Browning, Burr & Forman LLP, Mobile
- Craig A. Cargile, Cargile & Hodnett LLC, Centreville
- Jaime W. Conger, Smith & Staggs LLP, Tuscaloosa
- Bess P. Creswell, Burr & Forman LLP, Mobile
- Nathan A. Dickson, II, Jinks Crow & Dickson PC, Union Springs
- Anita Kay Head, Univ. of Alabama School of Law, Tuscaloosa
- Brandon D. Hughey, Armbrecht Jackson LLP, Mobile
- Stephanie H. Mays, Maynard Cooper & Gale PC, Birmingham
- Latasha L. McCrary, Law Office of Latasha McCrary, Huntsville
- Jeremy W. McIntire, Alabama State Bar, Montgomery
- Heath E. Meherg, Cullman County Commission, Cullman
- C. Randall Minor, Maynard Cooper & Gale PC, Birmingham
- S. Hughston Nichols, Hare Wynn Newell & Newton LLP, Birmingham
- Zachary J. Peagler, Lakeman, Peagler, Hollett & Alsobrook LLC, Birmingham
- Katherine T. Powell, Butler Snow PLLC, Birmingham
- Oscar M. Price, IV, Christian & Small LLP, Birmingham
- Michael A. Vercher, Christian & Small LLP, Birmingham
- John E. Vickers, III, Alabama State Bar, Montgomery
- Denise G. Welch, Legal Services Alabama, Anniston
- Ellenann B. Yelverton, Raycom Media Inc., Montgomery

### **Rigrish Named President of Birmingham School of Law**

### **Thomas Goode Jones School of Law Names Vega New Dean**

### **University of Alabama School of Law Chooses Brandon as New Dean**

## Rigrish Named President of Birmingham School of Law

The Birmingham School of Law recently announced the appointment of John P. Rigrish as president, a new position for the school. As president, Rigrish reports to the board and serves as the chief executive officer of the school with broad delegated responsibility for its operations.



“Having someone with John Rigrish’s qualifications join our leadership team is a great moment for Birmingham School of Law. John has broad expertise in all aspects of business operations, including property development and management. His addition comes at a particularly good time as our school builds upon our almost-100-year history of service to the community with the purchase of a newly renovated building in downtown Birmingham,” said John Donaldson, board member, Birmingham School of Law.

Rigrish previously served for 15 years as the chief administrative officer of Colonial Properties Trust.

He is past chair of the American Red Cross Board of Directors-Alabama Chapter and serves on the City of Hoover Veterans Committee, the John Carroll Educational Foundation Board of Directors, the Edward Lee Norton Board of Advisors at Birmingham-Southern College and the Finance Committee of the Birmingham Diocese. He holds a bachelor’s degree from Samford University and has done postgraduate study at Birmingham-Southern College.

Founded in 1915 by Judge Hugh A. Locke, the Birmingham School of Law is a four-year law school with classes taught by practicing attorneys on weeknights and Saturdays. For more information, see [www.bsol.com](http://www.bsol.com).

## Thomas Goode Jones School of Law Names Vega New Dean

Faulkner University has named the new dean of the Thomas Goode Jones School of Law, Matt A. Vega. This announcement came after a national search and the retirement of Charles I. Nelson after 10 years of service to the school.



Vega joined the faculty of Faulkner’s Jones School of Law in 2007, and is a graduate of the Yale Law School where he earned his J.D. degree in 1993. While there, he served as the executive editor of the

*Yale Journal of Regulation* and as a member of the Yale Moot Court Board. He earned his B.A. degree from Freed-Hardeman University in 1990.

"Matt Vega has a great vision for the future of Jones Law School and will work collaboratively with the faculty there to develop and implement a strategic plan for continued growth and success," said Faulkner University's president, Billy D. Hilyer. "Matt is a proven and experienced attorney, and an accomplished legal scholar and teacher. I have no doubt that the law school will continue to excel in preparing its graduates to contribute to the legal profession under his leadership."

Hilyer also expressed gratitude to Nelson for his outstanding contributions to Jones School of Law.

"The law school has accomplished so much during Nelson's tenure and we thank him for his service," Hilyer said. "Dean Nelson led the way to ABA accreditation, the expansion of the law school's facilities, attracting a highly qualified and diverse faculty and staff, consistently high bar passage rates, development of a nationally recognized and award-winning advocacy program and development of service-oriented clinical opportunities for Faulkner's students."

Vega is a member of the Alabama State Bar.

## University of Alabama School of Law Chooses Brandon as New Dean

A constitutional law expert with experience in both academia and private and public law practice will soon return to his alma mater to lead the University of Alabama School of Law.

Dr. Mark E. Brandon, a professor of law at Vanderbilt University since 2001, has been named dean of the school of law, said Dr. Joe Benson, UA's interim provost. Brandon's appointment was effective July 1. He will succeed William Brewbaker, the William Alfred Rose Professor of Law at UA, who has served as interim dean since July 2013.

"Dr. Brandon has gained a wealth of experience from many of the top universities in our nation, and we're pleased to welcome him back to lead the University of Alabama School of



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Law," said Benson. "He has a remarkable vision and outstanding leadership qualities honed over his 30-plus years of service. We look forward to the new heights our law school faculty, staff and students will attain with his guidance."

While on the faculty of the Vanderbilt University Law School, Brandon served as the director of the school's program in constitutional law and theory and co-director of its program in law and government. He was the FedEx Research Professor of Law in 2005-06. Since 2004, he also held a secondary appointment in the department of political science at Vanderbilt.

"I couldn't be happier to be coming home to Alabama to serve as dean of the law school," said Brandon. "I'm grateful to everyone involved—from the president and provost of the university, to the faculty, staff and students at the law school.

Brandon, who grew up in Birmingham, earned his undergraduate degree in history from the University of Montevallo, a law degree from the UA School of Law, a master of arts in political science from the University of Michigan and a doctorate in politics from Princeton University.

Brandon served as an Alabama assistant attorney general from 1978-1980 and then was a staff attorney and consumer unit coordinator for Legal Services Corp. before going into private practice.

He served on the faculties of both the University of Oklahoma and the University of Michigan before accepting the position with Vanderbilt.

He is a member of the Alabama State Bar and the State Bar of Michigan. | [AL](#)



**Wilson F. Green**

### By Wilson F. Green

*Wilson F. Green is a partner in Fleenor & Green LLP in Tuscaloosa. He is a summa cum laude graduate of the University of Alabama School of Law and a former law clerk to the Hon. Robert B. Propst, United States District Court for the Northern District of Alabama. From 2000-09, Green served as adjunct professor at the law school, where he taught courses in class actions and complex litigation. He represents consumers and businesses in consumer and commercial litigation.*

### By Marc A. Starrett

*Marc A. Starrett is an assistant attorney general for the State of Alabama and represents the state in criminal appeals and habeas corpus in all state and federal courts. He is a graduate of the University of Alabama School of Law. Starrett served as staff attorney to Justice Kenneth Ingram and Justice Mark Kennedy on the Alabama Supreme Court, and was engaged in civil and criminal practice in Montgomery before appointment to the Office of the Attorney General. Among other cases for the office, Starrett successfully prosecuted Bobby Frank Cherry on appeal from his murder convictions for the 1963 bombing of Birmingham's Sixteenth Street Baptist Church.*



**Marc A. Starrett**

## RECENT CIVIL DECISIONS

### From the Alabama Supreme Court

#### Personal Jurisdiction

##### ***Ex parte Merches*, No. 1120965 (Ala. Mar. 14, 2014)**

Out-of-state employee's contacts with Alabama, even though related to the events giving rise to the case, were not instigated by her and were insufficient to subject her to personal jurisdiction in Alabama

#### Bail Bonds; Standing and Immunity

##### ***Poiroux v. Rich*, No. 1120734 (Ala. Mar. 14, 2014)**

Under *Patterson v. Gladwin Corp.*, 835 So. 2d 137 (Ala. 2002), section 14 immunity barred plaintiffs' claims, brought on behalf of a class of persons, for refunds of purportedly unconstitutional bail-bonds fees.

#### Municipal Liability; Caps

##### ***Morrow v. Caldwell*, \_\_\_ So.3d \_\_\_, No. 1111359 (Ala. March 14, 2014)**

In a unanimous *per curiam* opinion, the court held that the \$100,000 cap on cities and counties does not apply to city and county employees sued in their individual capacities.

#### Venue; Forum Non Conveniens

##### ***Ex parte J&W Enterprises, LLC*, No. 1121423 (Ala. March 28, 2014)**

Texas plaintiff brought action in Clarke County against Clarke County driver and Clarke County trucking company, arising from accident occurring in Mobile County and investigated by Mobile police officer. Defendants filed forum non conveniens motion, seeking transfer to Mobile County. Trial court denied transfer, and defendants petitioned for mandamus solely on the "interests of justice" issue. The supreme court denied the writ.

## Indemnity; Contracts

### ***Nationwide Retirement Solutions, Inc. v. PEBCO, Inc., No. 1120806 (Ala. March 28, 2014)***

Claims in the underlying litigation arose from a purported fulfillment of the putative indemnitor's payment obligations under a contract, not its failure to comply with the contract, and thus no indemnity was owed.

## "Own Work" Exclusions; CGL Policies

### ***Owners Ins. Co. v. Jim Carr Homebuilder LLC, No. 1120764 (Ala. March 28, 2014)***

Damages for mental anguish and repair costs associated with faulty workmanship claims, asserted against a general contractor who built the entire house, were covered by a CGL policy despite the "own work" exclusions. Moreover, the "products completed operations hazard" provision, standard in CGL policies, provided coverage because the insured in this case purchased supplemental coverage to extend coverage to completed operations.

## Condominium Associations

### ***Ex parte Ross, No. 1120636 (Ala. April 4, 2014)***

Association's power to foreclose judicially by an action under *Ala. Code* § 35-8-17 does not include the power to foreclose by sale under § 35-8A-31

## Attorneys' Fees

### ***Regions Bank v. Lowery, No. 1120612 (Ala. April 11, 2014)***

Held: (1) attorneys' fees incurred in handling 27 multiple potential experts were not unreasonable simply due to the fact that the potential experts were not used as witnesses, (2) trustee was entitled to recover fees incurred in litigating its right to reimbursement for fees and (3) trustee was entitled to interest on the fees under the terms of the trust itself.

## Emotional Distress Damages

### ***Laurel v. Prince, No. 1121412 (Ala. April 11, 2014)***

Alabama law does not permit recovery for fear of a future injury where plaintiff has not suffered any physical injury and there is no medical basis for concluding that plaintiff has a risk of developing any future disease

## Arbitration; Post-Arbitral Review

### ***Guardian Builders, LLC v. Uselton, No. 1121534 (Ala. April 11, 2014)***

BBB arbitration clause did not empower the arbitrator to award fees, and general language in BBB rules conferring upon the arbitrator power to enter an award providing for a

"fair resolution" did not give arbitrator power to award fees when applicable law would not allow for it

## Attorneys' Liens

### ***Ex parte Lambert Law Firm, LLC, No. 1121010 (Ala. May 2, 2014)***

Because the attorneys' lien was superior to all other claims under *Ala. Code* § 34-3-61, including the claim of the client to the monies, attorneys had a clear legal right to vacatur of trial court's order mandating distribution to the client

## Little Miller Act

### ***Johnson Controls, Inc. v. Liberty Mutual Insurance Co., No. 1121288 (Ala. May 9, 2014)***

Even though the terms of a performance bond did not cover the goods, moreover, a bond issued to satisfy the requirements of the Little Miller Act are subject to the terms of the statute, and the terms of the statute are therefore read into the bond.

## Service of Process

### ***Volcano Enterprises, Inc. v. Rush, No. 1121185 (Ala. May 9, 2014)***

Affidavit of process server supporting service by publication was insufficient to establish the culpable "avoidance" of service required to permit service by publication

## Probate Courts

### ***Russell v. Fuqua, No. 1120957 (Ala. May 9, 2014)***

Suit to change child's name in connected with contested proceedings between parents fell within general equity jurisdiction of circuit court, and thus probate court lacked jurisdiction

## "Duty to Read" Extended

### ***Alfa Life Insurance Corporation and Brandon Morris v. Colza, No. 1111415 (Ala. May 9, 2014)***

Failure to read an insurance application or policy can constitute contributory negligence in a negligent failure-to-procure case brought against agent

## Fraud; Statute of Limitations; Real Estate Appraisals

### ***Bryant Bank v. Talmage Kirkland & Company, Inc., No. 1130080 (Ala. May 23, 2014)***

Held: (1) whether statute of limitations barred negligent misrepresentation claim by bank against appraiser was not appropriate for summary judgment, because despite the potential for inquiry by bank, there was no evidence that any bank employee had actual knowledge of inflated valuation, which would be required for summary judgment; and (2)

appraiser's statement of valuation can serve as basis of negligent misrepresentation claim even though it could be characterized as an opinion

## Trusts

### **Schaeffer v. Poellnitz, No. 1110353 (Ala. May 30, 2014)**

Under both Texas and Alabama law, "gross negligence" of trustee requires proof of the intentional failure to perform a manifested duty in reckless disregard of the consequences as affecting the life and property of another

# From the Court of Civil Appeals

## Workers' Compensation; "Employee" Status

### **Brown v. Dixie Contracting Co., No. 2120655 (Ala. Civ. App. Mar. 14, 2014)**

Factors used to determine whether one is an employee or independent contractor are (1) direct evidence demonstrating a right or an exercise of control, (2) the method of payment for services, (3) whether equipment is furnished and (4) whether the other party has the right to terminate the employment.

## Summary Judgment Procedure

### **Jackson v. Wells Fargo Home Mortgage, LLC, No. 2120513 (Ala. Civ. App. March 21, 2014)**

"Law of the case" did not bar consideration of additional evidence in connection with a renewed motion for summary judgment regarding an issue which had not been definitively decided on initial submission.

## Summary Judgment; Contradictory Testimony

### **Hines v. Trinity Contractors, Inc., No. 2120295 (Ala. Civ. App. March 28, 2014)**

Plaintiff's 2009 affidavit, given in support of receipt of insurance benefits resulting from "phantom vehicle" accident, was contradicted without adequate explanation by her 2010 deposition testimony, used to support her claims against defendant regarding cause of same accident. The 2010 testimony could not be used to defeat summary judgment motion for defendant because of 2009 affidavit

## Zoning; Variances

### **Brown v. Jefferson, No. 22120412 (Ala. Civ. App. April 4, 2014)**

In considering an action for variance from zoning in order to legalize a nonconforming existing use, a trial court has the power to impose conditions on the grant of a variance in order to mitigate adverse effects of the variance.

## Workers' Compensation

### **ACIPCO v. Blackmon, No. 2120509 (Ala. Civ. App. April 11, 2014)**

Trial court erred in directing a second treating physician for ankle injury. Since the original diagnosis did not recommend surgery, no panel of four surgeons was required pursuant to the second sentence of *Ala. Code* § 25-5-77(a), and plaintiff did not ask the court to appoint a neutral physician pursuant to § 25-5-77(b).

## Personal Representatives; Compensation

### **Rodgers v. McElroy, No. 2121039 (Ala. Civ. App. April 18, 2014)**

Court presiding over estate did not have the authority to award personal representative a fee from wrongful-death proceeds, since those proceeds pass outside the estate

## Landlord Tenant; Actions and Remedies

### **Jackson v. Davis, No. 2120518 (Ala. Civ. App. April 25, 2014)**

So long as unlawful detainer procedures are not employed, circuit court had jurisdiction over ejectment action which might seek similar relief as in unlawful detainer. The court explained at length the distinction between unlawful detainer and ejectment, and noted that circuit courts possess general equity powers in ejectment which overlaps with the statutory remedy of unlawful detainer.

## Non-Competition Agreements; "Professionals"

### **G.L.S. & Associates, Inc., and G.L. Smith & Associates, Inc. v. Rogers, No. 2130322 (Ala. Civ. App. May 16, 2014)**

*This case bears watching on remand.* Securities firm sought enforcement of non-solicit agreement; broker defended and moved to dismiss under Rule 12(b)(6), contending that agreement was unenforceable because a licensed broker is a "professional" against whom such an agreement cannot be enforced. The trial court granted the motion to dismiss. The court of civil appeals reversed, holding that on a Rule 12 motion, given the lack of evidence as to the factors establishing "professional" status, there could potentially be a set of facts which would lead to enforcement.



# From the United States Supreme Court

## Standing

### ***Lexmark International, Inc. v. Static Control Components, Inc.*, No. 12-873 (U.S. March 25, 2014)**

Held: 1) a cause of action under the Lanham Act extends to plaintiffs who fall within the zone of interests protected by that statute and whose injury was proximately caused by a violation of that statute and 2) defendant comes within the class of plaintiffs authorized to sue under the Lanham Act because its alleged injuries, lost sales and damage to its business reputation, fall within the zone of interests protected by the Act, and defendant sufficiently alleged that its injuries were proximately caused by plaintiff's misrepresentations

## Campaign Finance

### ***McCutcheon v. Federal Election Commission*, No. 12-536 (U.S. April 2, 2014)**

The Court held unconstitutional the aggregate limits restricting how much money a donor may contribute in total to all candidates or committees contained in the Bipartisan Campaign Reform Act of 2002.

## Transportation

### ***Northwest, Inc. v. Ginsberg*, No. 12-462 (U.S. April 2, 2014)**

Plaintiff's suit in implied contract, arising from his being terminated from frequent-flyer program, was preempted by the Airline Deregulation Act

## Constitutional Law; Affirmative Action

### ***Schuette v. BAMN*, No. 12-682 (U.S. April 22, 2014)**

The Court sustained an amendment to the constitution of the State of Michigan, approved and enacted by its voters, which prohibits the use of race-based preferences as part of the admissions process for state universities.

## Attorneys' Fees; Patents

### ***Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, No. 12-1184 (U.S. April 29, 2014)**

Patent Act's fee-shifting provision, allowing attorneys' fees to prevailing parties in "exceptional cases," is determined on a case-by-case basis, in exercise of the district court's discretion, considering the totality of the circumstances

## Establishment Clause

### ***Town of Greece v. Galloway*, No. 12-696 (U.S. May 5, 2014)**

Defendant-town's practice of beginning the monthly town board meetings with a prayer by clergy selected from the congregations listed in a local directory did not violate the First Amendment's Establishment Clause. The Court reasoned: 1) legislative prayer is not required to be nonsectarian, 2) absent a pattern of prayers that over time denigrate, proselytize or betray an impermissible government purpose, a challenge based solely on the content of a particular prayer will not likely establish a constitutional violation and 3) so long as the town maintains a policy of nondiscrimination, the Constitution does not require it to search beyond its borders for non-Christian prayer givers in an effort to achieve religious balancing.

## Copyright

### ***Petrella v. Metro-Goldwyn-Mayer, Inc.*, No. 12-1315 (U.S. May 19, 2014)**

Although plaintiff's suit was brought 18 years after her renewal of the copyright, laches cannot be invoked as a bar to plaintiff's pursuit of a claim for damages brought within the Copyright Act's three-year window, i.e. after 2006; but 2) in extraordinary circumstances, laches may curtail the relief equitably awarded.

## First Amendment; Qualified Immunity

### ***Wood v. Moss*, No. 13-115 (U.S. May 27, 2014)**

Secret Service agents were entitled to qualified immunity on claims by plaintiff-protesters for viewpoint discrimination, when they moved plaintiff-protesters away from the inn where President George W. Bush was dining on the outside patio, but allowed the supporters to remain in their original location; one could not infer viewpoint-driven conduct merely from the absence of a legitimate security rationale for the different treatment accorded the two groups of demonstrators.

## Qualified Immunity

### ***Plumhoff v. Rickard*, No. 12-1117 (U.S. May 27, 2014)**

Officers were entitled to qualified immunity in section 1983 claims for excessive force when they shot the driver of a fleeing vehicle to put an end to a dangerous car chase.

## Indian Law

### ***Michigan v. Bay Mills Indian Community*, No. 12-515 (U.S. May 27, 2014)**

Tribal sovereign immunity barred claim by State of Michigan alleging that defendant-tribe had violated their compact pursuant to the Indian Gaming Regulatory Act (IGRA)

## From the Eleventh Circuit

### FMLA

**Hurley v. Kent of Naples, Inc., No. 13-10298 (11th Cir. March 20, 2014)**

Plaintiff's requested leave did not qualify for FMLA protection because his depression was not a "chronic serious health condition" leading to a period of incapacity. The FMLA protects only leave for "[a]ny period of incapacity or treatment for such incapacity due to a chronic serious health condition." 29 C.F.R. § 825.115(c).

### Arbitration

**Walthor v. Chipio Windshield Repair LLC, No. 13-11309 (11th Cir. March 21, 2014)**

FLSA collective-action claim was subject to mandatory arbitration, where plaintiff argued that enforcement of arbitration would interfere with his exercise of substantive FLSA rights

### ADA

**Samson v. Federal Express Corp., No. 12-14145 (11th Cir. March 26, 2014)**

Evidence was in conflict as to whether test-driving of vehicles, which FedEx claimed was an essential function of the position and which required medical testing, was in fact an essential function of the job to be performed by plaintiff (who failed the testing)

### TCPA

**Osorio v. State Farm Bank, FSB, No. 13-10951 (11th Cir. March 28, 2014)**

The Court reversed the district court's grant of summary judgment to SF in TCPA case, based on SF's use of auto-dialer to Osorio's cell phone to attempt collection of SF credit card issued to Osorio's roommate, Betancourt. Facts were in dispute as to whether Betancourt had authority to consent to Osorio's receiving phone calls, and that consent under the TCPA can be revoked orally

### ADA

**Mazzeo v. Color Int'l., Inc., No. 12-10250 (11th Cir. March 31, 2014)**

ADA Amendments of 2008 loosen the standard for determining disability under the ADA and undermined the "conclusory affidavit" standard of *Hilburn v. Murata Elecs. N. Am., Inc.*, 181 F.3d 1220, 1228 (11th Cir. 1999)

### Qualified Immunity

**Gennusa v. Cannova, No. 12-13871 (11th Cir. April 8, 2014)**

Denial of qualified immunity affirmed on claims against officers for warrantless interception of private calls; it has long been "clearly established" that the warrantless interception of private conversations violates the Fourth Amendment

### Investment Advisers

**Lamm v. State Street, No. 12-15061 (11th Cir. April 14, 2014)**

Under New York and Florida law, custodian bank had no duty to protect a customer from fraudulent transactions carried out by the customer's investment advisor

### Insurance; TCPA

**Interline Brands, Inc. v. Chartis Specialty Ins. Co., No. 13-10025 (11th Cir. April 15, 2014)**

CGL policies contained a clear and unambiguous exclusion from coverage for actions relating to transmissions of communications involved in underlying TCPA litigation against insured

### Futures Trading; Dodd-Frank

**CFTC v. Hunter Wise Commodities, Inc., No. 13-10993 (11th Cir. April 15, 2014)**

In a case of first impression concerning certain futures transactions, the Dodd-Frank Act's amendments expand the CFTC's enforcement authority, conferring authority to regulate the transactions alleged in this case.

### Fair Housing; Disability

**Harding v. Orlando Apartments, LLC, No. 13-11805 (11th Cir. April 15, 2014)**

FHA's design-and-construction guidelines do not provide a standard for determining whether discrimination under subsections (f)(1) and (f)(2) exists outside of the design and construction contexts

### Eleventh Amendment

**Seminole Tribe of Florida v. State of Florida Dept. of Revenue, No. 13-10566 (11th Cir. May 5, 2014)**

Eleventh Amendment barred a complaint by an Indian tribe against the Florida Department of Revenue and its executive director for a declaratory judgment that the tribe is exempt from paying a Florida tax on fuel and for an injunction requiring a refund of taxes paid

## Qualified Immunity

***Williams v. Town of Lexington*, No. 13-10434 (11th Cir. May 21, 2014)**

No qualified immunity attached for officers' entering the owner's residence without a warrant, but qualified immunity applied to owner's claim for unlawful arrest arising from owner's resistance after officers' entry

## Employment

***Barthelus v. G4S Government Solutions, Inc.*, No. 13-14121 (11th Cir. May 27, 2014)**

Evidence of pretext was sufficient to create a jury question since this was allegedly "status-based" category of discrimination prohibited by Title VII, which allows for mixed-motive cases

## RECENT CRIMINAL DECISIONS

### From the United States Supreme Court

#### Death Penalty

***Hall v. Florida*, No. 12-10882 (U.S. May 27, 2014)**

Florida's statute that prohibited further inquiry into a defendant's intellectual functioning if the defendant's IQ tested at 70 or higher invalidated; the statute "disregards medical practice"

#### Double Jeopardy

***Martinez v. Illinois*, No. 13-5967 (U.S. May 27, 2014)**

Double Jeopardy prohibited retrial after the trial court empanelled jury and directed prosecution to present evidence, then denied prosecution's motion to continue (prosecution being unprepared) and directed a verdict for the defendant

#### Terry Stop

***Navarette v. California*, 134 S. Ct. 1683 (U.S. 2014):**

Anonymous motorist's 911 call describing a vehicle that had forced her from the road was sufficiently reliable and thus provided reasonable suspicion to support a traffic stop of that vehicle several minutes later

### From the Alabama Supreme Court

#### Rule 404(b)

***Ex parte State (v. R.C.W.)*, No. 1120562 (Ala. May 30, 2014)**

Trial court erred in instructing jury to consider state's collateral acts evidence for issues not in dispute, but error was harmless

#### Appellate Jurisdiction

***Ex parte Sheffield*, No. 1121172 (Ala. May 30, 2014)**

Court of criminal appeals possessed jurisdiction to consider the defendant's appeal from a new sentence imposed following the court's remand for entry of a conviction on a lesser-included offense and a resulting new sentence

#### Pretrial Publicity; Investigation of Mitigation

***Luong v. State*, No. 1121097 (Ala. May 23, 2014)**

Trial court had discretion to deny transfer due to presumed prejudice of the community against him, or in denying individual voir dire regarding the impact of pretrial publicity. It also found no error in the trial court's denial of funds to support defense counsel's travel to Vietnam to investigate mitigation evidence, noting that the trial court considered the reasonableness of the request and suggested video-conferencing as a means to develop mitigation evidence. Finally, there was also no error in the trial court's admission of an experiment intended to show the speed at which the defendant's children struck water after he threw them from a bridge.

### From the Court of Criminal Appeals

#### Search

***State v. Knox*, CR-12-2019 (Ala. Crim. App. May 2, 2014)**

After traffic stop was concluded and defendant was free to leave, his continued discussion with the police officer was consensual. No reasonable suspicion was required to support a canine search of the vehicle at the roadside, and, after that search indicated the presence of drugs, probable cause existed to support the warrantless search of the vehicle's interior. | [AL](#)



**Wayman Gray Sherrer**

## Wayman Gray Sherrer



Wayman G. Sherrer, 86, of Oneonta, died at his home March 12. Mr. Sherrer is survived by his wife, Betty Rogers Sherrer and two children. A daughter, Elizabeth Sherrer McKee, and Elizabeth's husband, Barry McKee, live in Raleigh, NC, with their children, Margaret Estelle McKee and Benjamin Sherrer McKee. A son, William Jefferson Sherrer, and his wife, Holland White Sherrer, live in Birmingham with their sons, William Jefferson Sherrer, Jr. and Gray Holland Sherrer. Other survivors include his sister, Ruth Sherrer Veasey of Birmingham, and a host of nieces, nephews and cousins.

Mr. Sherrer is a graduate of Woodlawn High School, class of 1946; Howard College (Samford University), class of 1952; and the University of Alabama School of Law, class of 1956.

While at Howard College, Wayman was a member and commander of Sigma Nu fraternity, a charter member of the Howard College chapter of Omicron Delta Kappa and president of his senior class.

Mr. Sherrer served his country as a member of the United States Marine Corps as a member of the military police prior to attending college.

After graduating from law school, Wayman served for six years as a special agent of the Federal Bureau of Investigation in Los Angeles and Washington, DC.

In 1962, Mr. Sherrer joined the firm of Johnson & Randall in Oneonta. In 1964, he was elected county solicitor (district attorney) of Blount County for a four-year term.

In 1969, Wayman was appointed United States Attorney for the Northern District of Alabama in Birmingham. He served in that position until 1977.

Wayman returned to the private practice of law in Oneonta and in 2001 he was joined in the practice by his son. In all, Mr. Sherrer served the legal profession in Alabama for over 50 years.

Mr. Sherrer was a faithful member of Lester Memorial United Methodist Church.

Honorary pallbearers were members of the Blount County Bar Association.

In lieu of flowers the family requests that donations be made to Lester Memorial United Methodist Church in care of the retired Methodist ministers' housing fund. | [AL](#)

**Bailey, Hon. Joe S.**

Auburn  
Admitted: 1979  
Died: April 5, 2014

**Blackburn, Barry Christopher, Sr.**

Olive Branch, MS  
Admitted: 1996  
Died: March 21, 2014

**Bridgeman, Lester Morton**

Montrose  
Admitted: 1987  
Died: March 6, 2014

**Bridges, Hon. Walter Glenn, Sr.**

Hueytown  
Admitted: 1951  
Died: March 6, 2014

**Cleveland, Clifford Wayne**

Prattville  
Admitted: 1975  
Died: March 28, 2014

**Foster, William Scott**

Mary Esther, FL  
Admitted: 1975  
Died: February 12, 2014

**Friedlander, Maury**

Mobile  
Admitted: 1958  
Died: March 6, 2014

**Gargis, Hartwell Alan**

Muscle Shoals  
Admitted: 1981  
Died: March 19, 2014

**Gilliland, Hon. Joseph Franklin**

Russellville  
Admitted: 1972  
Died: March 23, 2014

**Hamilton, John Alfred, Jr.**

Brierfield  
Admitted: 1997  
Died: October 23, 2013

**Hood, Patrick Joseph**

Scottsboro  
Admitted: 2003  
Died: March 23, 2014

**Shoemaker, John Richard**

Birmingham  
Admitted: 1983  
Died: April 21, 2014

**Stewart, Chad Edward**

Pike Road  
Admitted: 1999  
Died: April 26, 2014

**Tucker, Chalice Elaine**

Hoover  
Admitted: 1991  
Died: February 4, 2014

**Wallis, John Richard**

Birmingham  
Admitted: 1999  
Died: March 29, 2014

**Ward, Robert Charles, Jr.**

Prattville  
Admitted: 1991  
Died: April 8, 2014

**Whittelsey, Hon. Cornelius Sheldon, III**

Opelika  
Admitted: 1955  
Died: April 16, 2014

### Notices

### Reinstatement

### Suspensions

### Public Reprimand

## Notices

- **Asim Griggs Masood**, whose whereabouts are unknown, must answer the Alabama State Bar's formal disciplinary charges within 28 days of July 15, 2014 or, thereafter, the charges contained therein shall be deemed admitted and appropriate discipline shall be imposed against him in ASB nos. 2013-1060, 2013-1491, 2013-1513, 2013-1644, 2013-1685, 2013-1749, 2013-1942, 2013-1958, 2013-1981, 2013-2007 and 2013-2120, before the Disciplinary Board of the Alabama State Bar.
- The Office of General Counsel of the Alabama State Bar has filed a notice for reciprocal discipline against **Lance William Parr** and has attached to said notice a certified copy of the order of the Supreme Court of Tennessee, which disbarred Parr from the practice of law for violations of the *Tennessee Rules of Professional Conduct*. Parr, whose whereabouts are unknown, must answer the Alabama State Bar's order to show cause within 28 days of July 15, 2014 and show why identical and reciprocal discipline should not likewise be imposed upon him by the Alabama State Bar, pursuant to Rule 25 of the *Alabama Rules of Disciplinary Procedure*. A failure to answer shall result in identical and reciprocal discipline being imposed against him in Rule 25(a), Pet. No. 2014-154 before the Disciplinary Board of the Alabama State Bar.

## Reinstatement

- Mobile attorney **Ralph Edward Massey, III** was reinstated to the practice of law by order of the Supreme Court of Alabama, effective January 9, 2014, subject to the terms and conditions imposed by the order entered by the Disciplinary Board, Panel I, on January 9, 2014. [Rule 28, Pet. No. 2013-1036]

## Suspensions

- Phenix City attorney **Cecil Kerry Curtis** was summarily suspended from the practice of law in Alabama by order of the Supreme Court of Alabama, effective February 6, 2014. The supreme court entered its order based upon the Disciplinary Commission's order finding that Curtis had failed to respond to a request for information concerning a disciplinary matter. [Rule 20(a), Pet. No. 2014-229]
- Birmingham attorney **Douglas Barron Lakeman** was suspended from the practice of law in Alabama for 90 days by order of the Disciplinary Commission of the Alabama State Bar, effective February 20, 2014. The suspension was ordered held in abeyance and Lakeman was placed on probation for two years and ordered to obtain six hours of additional CLE in ethics and professionalism by December 31, 2014. Lakeman was also ordered to receive a public reprimand with general publication. The order of the Disciplinary Commission was based

upon Lakeman's conditional guilty plea to violations of rules 1.1, 1.3, 1.4(b), 7.1(b) and (c), 7.2(e), 7.5(a) and 8.4(c), *Ala. R. Prof. C.* Lakeman was retained by a seller's agent to conduct a real estate closing. At closing, Lakeman failed to obtain an executed acknowledgement of non-representation from either the seller or the buyer, and failed to discover a second mortgage on the property. Therefore, the sellers were given excess funds at closing, the second mortgage was not paid off and title insurance could not be issued. Lakeman failed to disclose to the purchaser the failure to satisfy the second mortgage. It was also discovered during the investigation that Lakeman had violated other rules regarding advertising and firm names and letterheads. [ASB No. 2011-2022]

- Florence attorney **Mollie Hunter McCutchen** was summarily suspended from the practice of law in Alabama by order of the Disciplinary Commission of the Alabama State Bar, pursuant to rules 8(e) and 20(a), *Ala. R. Disc. P.*, effective

February 20, 2014. The Disciplinary Commission's order was based on a petition filed by the Office of General Counsel evidencing that McCutchen failed or refused to respond to requests for information during the course of disciplinary investigations. [Rule 20(a), Pet. No. 2014-307]

- Daphne attorney **Sonya Ogletree-Bailey** was suspended from the practice of law in Alabama for 91 days, by order of the Supreme Court of Alabama, effective December 17, 2013. The supreme court entered its order based upon the Disciplinary Commission's acceptance of Ogletree-Bailey's conditional guilty plea, wherein Ogletree-Bailey pled guilty to violations of rules 1.15(a), 1.15(b), 1.15(c), 1.16(d), 8.4(a) and 8.4(g), *Ala. R. Prof. C.* In ASB No. 2012-519, Ogletree-Bailey was hired to represent the complainant in a divorce, for a flat fee of \$1,500 plus filing fees and costs. On the day of trial, Ogletree-Bailey informed the complainant that an additional fee of \$1,000 would be required. At the completion of trial, the court awarded the



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complainant a \$6,500 property settlement, and \$1,163 in attorney's fees and court costs. The complainant returned to Ogletree-Bailey's office to pursue collection of the \$6,500 property settlement. Ogletree-Bailey had already received two \$100 payments from the husband, but did not inform the complainant of receipt of the payments and failed to place the money into trust. Ogletree-Bailey agreed to represent the complainant in pursuing collection of the judgment for a flat fee of \$1,500, plus a \$266 filing fee, at which time the complainant paid \$766 of the fee. The written employment agreement indicated no work would be performed until the entire fee had been paid; however, Ogletree-Bailey failed to place the funds in her trust account. In February 2012, the complainant became upset after learning that Ogletree-Bailey had not filed a contempt motion on her behalf, and confronted Ogletree-Bailey about this at Ogletree-Bailey's office. The two engaged in a shouting match, and Ogletree-Bailey retrieved a knife and forced

the complainant out of her office. In ASB No. 2012-1327, Ogletree-Bailey was hired to represent the complainant regarding an immigration matter for a flat fee of \$6,425. On February 15, 2011, the complainant paid Ogletree-Bailey \$3,925. At this time, Ogletree-Bailey had not earned the funds, and failed to place the funds into her trust account. In ASB No. 2012-1656, the complainant hired Ogletree-Bailey in October 2011 to represent him in a post-judgment divorce matter for a flat fee of \$1,000, plus a \$266 filing fee. The complainant paid Ogletree-Bailey \$1,266, at which time Ogletree-Bailey had not earned the funds and failed to place the funds into her trust account as required. In March 2012, after not being able to contact Ogletree-Bailey, the complainant terminated her services prior to anything being filed on his behalf. Upon termination, Ogletree-Bailey failed to refund the unused filing fee or any portion of the \$1,000 flat fee. In addition to a 91-day suspension, Ogletree-Bailey was ordered to make restitution of

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\$766 to the client in ASB No. 2012-519, and \$766 to the client in ASB No. 2012-1656. As a condition to the plea agreement, ASB No. 2013-983 was dismissed. [ASB nos. 2012-519, 2012-1327, 2012-1656 and 2013-983]

- Tuscaloosa attorney **Andrew Jackson Smithart, III** was summarily suspended from the practice of law in Alabama by order of the Supreme Court of Alabama, effective February 6, 2014. The supreme court entered its order based upon the Disciplinary Commission's order finding that Smithart had failed to respond to a request for information concerning a disciplinary matter. [Rule 20(a), Pet. No. 2014-228]

general publication for violating rules 1.3, 1.4(a), 1.4(b), 8.1(b), 8.4(a) and 8.4(g), *Ala. R. Prof. C.* In March 2013, a complaint was filed against Boone for failing to timely file uncontested divorce papers with the court. Boone was advised that a bar complaint had been filed against her, and was requested to submit a written response to the complaint within 14 days of the date of the letter. Despite numerous attempts to contact Boone, a written response was not received. As a result, a petition for summary suspension was filed June 13, 2013 and granted by the Disciplinary Commission on June 14, 2013. On July 29, 2013, Boone submitted a written response to the bar complaint and a petition to dissolve summary suspension, which was granted by the Disciplinary Commission on July 31, 2013. In her response to the complaint, Boone admitted to failing to timely file the paperwork for the uncontested divorce, resulting in a delay in the proceedings. [ASB No. 2013-472] | [AL](#)

## Public Reprimand

- On March 14, 2014, Montgomery attorney **Heather Leigh Friday Boone** received a public reprimand without

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# The State Budgeting Process

Over the past few years, there has been more focus and inquiry into the budgeting process for state government. While our state government has always been fairly lean, the recent economic downturn made our budgets and the way in which they are formulated even more newsworthy. I rarely talk to a group of lawyers about the legislature or legislative process without being asked a number of questions about the state budget. Therefore, I thought it worthwhile to shed some light on that process.

Any discussion about our budgets to an audience of lawyers must include first noting the tremendous leadership in this arena by a few members of the Alabama State Bar. **Senator Arthur Orr** of Decatur and **Representative Bill Poole** of Tuscaloosa chair the Senate Finance and Taxation General Fund and House Ways and Means Education Committees respectively.<sup>1</sup> These lawyer-legislators bring tremendous dedication and skill to what are often very thankless jobs and, as citizens, we are fortunate that they are willing to serve. Additionally, **Norris Green** serves as director of the Legislative Fiscal Office. The Legislative Fiscal Office is comprised of non-partisan professionals, many of whom are lawyers, who assist the legislature with all aspects of budgetary, revenue and fiscal inquiries and staff the budget committees. He has graciously agreed to share insight and analysis of the process.



Green

## Alabama's Budgeting Process

Discussion of the budgeting process in Alabama should begin with a recap of how we predetermine or earmark state tax revenues that are appropriated by the legislature.

### ■ Earmarking of State Funds

Alabama earmarks approximately 86 percent of its revenues for specific purposes, which is more than any other state. According to the National Conference of State Legislatures, the average of earmarked state funds in other states is around 24 percent.<sup>2</sup>

Over 52 percent of state funds (approximately \$6 billion) for FY 2014 are earmarked either by the Alabama Constitution or state law for educational purposes. The legislature decides how to allocate these funds but all must be used for education. About 32 percent of state funds (approximately \$3.5 billion) for FY 2014 are earmarked for a variety of other state programs. For example, gasoline taxes are distributed to the Public Road and Bridge Fund to be used for roadways and traffic enforcement. Cigarette taxes are distributed to several health-related programs such as the departments of Public Health, Mental Health and Human Resources. Certain provider taxes paid by health care providers are dedicated for

the Medicaid program to be used to match federal funds. Other agency-generated revenues, such as license fees and publication sales, are retained by the respective agency. The remaining state funds are considered general revenues that may be appropriated by the legislature for any lawful purpose and comprise 16 percent of state funds for FY 2014 (approximately \$1.75 billion).<sup>3</sup>

A primary focus of the legislature each year is the budgetary process. The above-mentioned appropriations to education are contained in a single bill and the appropriations from the State General Fund for other functions of government are made in the General Appropriations Act, also a single bill. Although all funds must be appropriated in order to be expended, there is usually less attention paid to the appropriation of the other earmarked funds since state law dictates how those funds are to be expended. These funds are also appropriated in the General Appropriations Act. When federal and local funds are added, the appropriation of funds by the legislature for FY 2014 totaled over \$28 billion in the two budget acts.<sup>4</sup>

## The Budget Process Cycle

### ■ Budget Requests

The budget process for the legislature begins the first of November each year when agencies are required to submit budget requests to the governor and the legislature, some 11 months prior to the beginning of the fiscal year that starts October 1. These requests are reviewed by the governor through the Executive Budget Office (EBO) and by the legislature through the Legislative Fiscal Office (LFO) prior to the convening of the next regular session during which the budgets are to be considered.

### ■ Revenue Estimates

The EBO provides estimates of state revenue to be appropriated to the governor while the LFO provides independent estimates for the legislature. Typically, the governor relies on the EBO estimates for his recommendations and the legislature then decides to use those estimates, the estimates of the LFO or some amount in between the two when considering the appropriation bills. Again, the focus is on the estimates of the Education Trust Fund (for educational entities) and the State General Fund for all entities, which either do not have sufficient earmarked revenue or have no other source of funding.

The EBO and the LFO must each certify revenue projections to the legislature prior to the third legislative day of each regular session.<sup>5</sup> These revenue projections are for the fiscal year which begins on the next October 1 and ends the following September 30—some 18 months after the revenue projections are certified. Most states have fiscal years that run from July 1–June 30. Alabama is one of only two states

which have an October–September fiscal year. This time frame has been mentioned as one of the factors which results in Alabama budget projections being somewhat volatile since there is a longer time between the certification of the estimates and the beginning of the fiscal year for which the estimates are made.

## State General Fund

The General Appropriations Act is one of two major budget bills enacted by the legislature. As mentioned, the funds in the State General Fund (SGF) may be appropriated for any lawful purpose. While many agencies receive all of their appropriation from the SGF, the appropriation may also be used to supplement funding for agencies that have dedicated (earmarked) funds.

The State General Fund is mostly comprised of an assortment of taxes, license fees, etc. that generally do not experience much growth; however, there are a few sources that respond to swings in the economy.<sup>6</sup> One of the major problems facing the legislature is that some of the programs that receive SGF appropriations are experiencing needs that grow at a much faster rate than the growth of the fund. For example, the Department of Corrections and the Alabama Medicaid Agency are the two largest recipients of funds from the SGF. In 1981, these programs received approximately 34 percent of the general fund. For FY 2014, these amounts equaled 57 percent of the general fund. Both of these programs will continue to grow at a faster pace than the fund that supports them. The SGF also supports the legislative and judicial functions. The latest budget (FY 2015) enacted appropriated approximately \$1.8 billion from the general fund.<sup>7</sup>

## Education Trust Fund

The Education Appropriation bill is the other major budget bill considered by the legislature each year. Appropriations from the Education Trust Fund (ETF) go to K-12 schools (Foundation Program), the two-year college system and the four-year universities. These funds also support the State Department of Education, the Commission on Higher Education and other entities that administer educational programs in the state. This fund is the largest earmarked fund and is comprised of just a few (but large) tax sources. The state income, sales and use taxes as well as utility taxes make up most of this fund.<sup>8</sup> These sources respond directly to the state of the economy—in times of economic growth this fund experiences healthy growth and when the economy slows the fund growth does as well. During the period from 2000-2010, Alabama, along with the nation, saw two different recessionary periods. This had a huge impact on Alabama's ETF and the programs it supports. The legislature is dealing with ETF funding levels that are still approximately \$1 billion below appropriations made in FY 2008. For FY

2015, appropriations from the Education Trust Fund were about \$5.9 billion.<sup>9</sup>

## The Budget Management Act

The legislature appropriates funds to entities through programs set up in the state accounting system pursuant to the Budget Management Act enacted in 1976.<sup>10</sup> Some programs are funded in more than one agency. Each program has stated goals and objectives. Once the appropriation is enacted, the executive branch, through the department of finance, is charged with approving operations plans to accomplish the goals and objectives of the program to which the funds are appropriated. This gives the executive branch extensive control of how the funds are expended. Occasionally, the legislature will specify (earmark) funds for a specific purpose, but the vast majority of expenditures are controlled by the executive branch as mentioned above. There are a number of reports required to be submitted to the department of finance as the year progresses in order to effectively manage the funds. Many states appropriate funds specifically salaries, travel, benefits, etc. Alabama utilized this method prior to 1976. The Budget Management Act program budgeting methodology provides the executive branch much more flexibility on how the funds are expended.

## Proration

Alabama, unlike the federal government, cannot expend more revenue than is actually collected in a given year. Since revenue estimates are made about 18 months before the end of the fiscal year for which appropriations are made, there are times where appropriations have exceeded actual revenue. When this happens, the Alabama Constitutional mandates that spending must be reduced to equal actual revenue.<sup>11</sup> The reductions are proportionate to the appropriations and are made after the governor declares proration. When this funding reduction is necessary, it affects every entity by the same percentage reduction but can have an impact on different entities in different ways. Salaries and fringe benefits and debt-service payments, as well as some essential functions of government, are not subject to proration. When funds appropriated to local boards of education are prorated, the reductions have an effect on the classroom expenditures, and salaries and benefits are not reduced.

The Education Trust Fund was prorated six times from 2001 to 2011.<sup>12</sup> As mentioned earlier, Alabama experienced two recessions during this period and these economic downturns greatly affected the revenue sources that make up the ETF. The State General Fund was prorated in fiscal years 2010, 2011 and 2012.

## Rainy Day Accounts

In order to offset the funding reductions necessitated by proration, the legislature and the voters approved a constitutional amendment establishing a rainy day fund for both the State General Fund and the Education Trust Fund.<sup>13</sup> The source of these funds is the Alabama Trust Fund. The Alabama Trust Fund holds the assets received by the state from oil and gas leases and royalties. The state invests these funds and utilizes a portion of the income and assets to fund several governmental functions. In times of proration, funds may be borrowed from the Alabama Trust Fund. Any such "loan" must be repaid. Withdrawals for the ETF must be repaid within six years while withdrawals for the SGF must be repaid within 10 years. Currently, there are funds owed from both the ETF and the SGF to repay withdrawals made during the last recession (2009-2010).

## Rolling Reserve Act (Budget Stabilization Act)

On the heels of the Education Trust Fund having been in proration six times from FY 2001 to FY 2011, one of the first acts passed by the legislature in the present quadrennium was a bill to limit the amount of funds which may be appropriated from the ETF.<sup>14</sup> Rather than basing appropriations on estimates for the ensuing year, the act limits appropriations to the most recently completed fiscal year revenue plus growth which equals the average of the past 15 years' growth. Funds which exceed the amount that may be appropriated are used to repay any outstanding balance owed the rainy day account and build up a Budget Stabilization Fund to utilize in the event of future proration. The Budget Stabilization Fund will receive excess ETF funds until the balance reaches 20 percent of the previous year's ETF budget. At that point, excess funds will be deposited into a capital account to be used for future capital costs for education.

Currently, the ETF rainy day account is being repaid with direct appropriations as well as excess funds and there are no funds in the Budget Stabilization Fund. As the rainy day account will be completely repaid by July 2015, there should be deposits into the Stabilization Account at the end of FY 2015.

There is no similar stabilization program for the State General Fund. The composition of the revenue sources to that fund would not allow such a program to be feasible.

## Conclusion

As you can see, the budgetary process is more complicated than is often explained in the press coverage each year.

There are a number of excellent resources available to provide you with more information on both state revenue and budgets at [www.lfo.state.al.us](http://www.lfo.state.al.us). | [AL](#)

## Endnotes

1. Senator Trip Pittman of Montrose and Representative Steve Clouse of Ozark also do a tremendous job as chairs of the Senate Finance and Taxation Education Trust Fund and House Ways and Means General committees.
2. National Conference of State Legislatures, *Earmarking State Taxes*, 2008.
3. Legislative Fiscal Office, *Presentation to the Alabama Legislature on Alabama's Financial Condition*, 2014, <http://www.lfo.state.al.us/pdfs/Presentations/Legislative%20Presentation%2001-13-14.pdf>.
4. Act 2013-263 and Act 2013-264.
5. Amendment 803 to the Constitution of Alabama of 1901 appearing as Section 260.02 of the Official Recompilation of the Constitution of Alabama of 1901.
6. For listing of state General Fund revenue sources, see Executive Budget document at [http://budget.alabama.gov/pdf/fundrec/GF\\_Receipts.pdf](http://budget.alabama.gov/pdf/fundrec/GF_Receipts.pdf).
7. Act 2014-284.
8. For listing of Education Trust Fund revenue sources, see Executive Budget document at [http://budget.alabama.gov/pdf/fundrec/ETF\\_Receipts.pdf](http://budget.alabama.gov/pdf/fundrec/ETF_Receipts.pdf).
9. Act 2014-456.
10. *Ala. Code* §41-19-1 to -12 (1975).
11. Amendment 26 to the Constitution of Alabama of 1901 appearing as Section 213 of the Official Recompilation of the Constitution of Alabama of 1901.
12. Legislative Fiscal Office, *Budget Fact Book 2014*, 2014, <http://www.lfo.state.al.us/pdfs/Budget%20Fact%20Book%2014%20Budget%20Fact%20Book.pdf>.
13. Amendment 803 to the Constitution of Alabama of 1901 appearing as Section 260.02 of the Official Recompilation of the Constitution of Alabama of 1901.
14. *Ala. Code* §29-9-1 to -6 (1975).

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### About Members

This section announces the opening of new solo firms.

### Among Firms

This section announces the opening of a new firm, a firm's name change, the new employment of an attorney or the promotion of an attorney within that firm.

## About Members

**Lauren A. Craig** announces the opening of the **Law Office of Lauren Craig LLC** at 459 Main St., Ste. 101-385, Trussville 35173. Phone (205) 693-9975.

**C. Michael Quinn**, formerly with Wiggins, Childs, Quinn & Pantazis LLC, announces the opening of **The Law Offices of C. Michael Quinn** at 2501 Aspen Cove Dr., Birmingham 35243. Phone (205) 706-8153.

**Mark Tindal** announces the opening of the **Tindal Law Firm** at 85 Bagby Dr., Ste. 352, Birmingham 35209. Phone (205) 835-2165.

## Among Firms

**Armbrecht Jackson LLP** announces that **Mark A. Newell** joined the firm as a partner.

**Badham & Buck LLC** announces that **Sam David Knight** joined the firm as a partner.

**Baker Donelson** announces that **Natalie R. Bolling** joined the Birmingham office as a shareholder.

**Bradley Arant Boulton Cummings LLP** announces that **H. Eli Lightner, II** has joined the Birmingham office as an associate.

**Burgess Roberts LLC** announces that **Scott Holmes** joined the firm as an associate.

**Sydney Cook** announces the opening of **Sydney Cook & Associates LLC** and that **Steven M. Wyatt** and **R. Kevin Davis** joined as associates. Offices are located at 535 Jack Warner Parkway NE, Ste. F, Tuscaloosa 35404 (P.O. Box 1877, 35403). Phone (205) 561-5400.

**Hill, Hill, Carter, Franco, Cole & Black PC** announces that **Felicia Long** joined as a shareholder.

**Marvin Clifford Hill, Jr.** and **Brent H. Jordan** announce the formation of **Hill & Jordan PC** at 929 Merchants Walk, Huntsville 35801. Phone (356) 543-4503.

**McCallum, Methvin & Terrell PC** of Birmingham announces that **Patrick C. Marshall** joined as an associate.

**Siniard, Timberlake & League PC** announces that **Christopher M. Wooten** and **Heath Brooks** became partners and **Bart Siniard** joined the firm as an associate.

**Stone & Britt LLC** announces that **James C. Webb** joined as an associate.

**Vincent Swiney** and **Alan Bellenger** announce the formation of **Swiney & Bellenger LLC** at 2910 Linden Ave., Ste. 201, Homewood 35209. Phone (205) 588-4652.

**Threaded Fasteners, Inc.** announces that **Brian Thomas Pugh** recently was named corporate counsel. His address is P.O. Box 2644, Mobile 36652-2644. Phone (251) 432-0107.

**TyreeHyche Legal LLC** announces a name change to **Tyree Hyche & Dixon LLC** with offices at 1820 Seventh Ave., N., Ste. 105, Birmingham.

The **Vance Law Firm** announces that **Kyle D. Weidman** became a partner.

**Waller Lansden Dortch & Davis LLP** announces that **Zachary D. Trotter** joined as an associate in Birmingham.

**Lee B. Williams, Robert D. Keahey** and **Robert D. Keahey, Jr.** announce the opening of **Williams & Keahey LLC** at 131 Cobb St., P.O. Box 610, Grove Hill 36451. Phone (251) 275-3155. | [AL](#)

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