



# SCOTT ATHERTON

## MANAGING PARTNER

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Scott Atherton has a broad-based complex commercial litigation practice, which includes representing public and private companies in shareholder disputes, fraud litigation, deceptive trade practices actions, and employment law-related claims. Scott also represents attorneys, accountants, and other fiduciaries in professional liability cases and litigates a broad range of e-discovery sanctions disputes.

Although Scott's practice is concentrated in federal and state courts in Florida, he has also represented clients in courts, arbitrations, and administrative forums across the country, including in California, Delaware, Illinois, Iowa, Minnesota, New York, Oklahoma, Pennsylvania, Texas, Virginia, and West Virginia.

## Areas of Practice

- *Business Litigation*
- *Shareholder and Securities Disputes Employment Claims*
- *Contract Actions*
- *Deceptive Trade Practices Litigation*
- *Noncompete and Trade Secret Claims*
- *Professional Liability Disputes*
- *Healthcare Fraud*
- *Electronic Discovery*

## Representative Experience

**Corporate Governance Litigation** – Trial counsel in a dispute over corporate board appointment powers which ultimately determined control of a \$100,000,000 fund. Following a full trial on the merits, the court determined that the firm's client had the power to appoint a majority of the corporation's board of directors and maintained control of the fund. The opposing party was represented at trial by an Am Law 100 firm and the trial witnesses included a former Florida Lieutenant Governor and two former Florida Senate Presidents, one of which previously served as Florida's elected Chief Financial Officer.

**Drug Royalty Litigation** – Trial counsel for pharmaceutical company in a high-stakes drug royalty dispute in a cross-designated Delaware Chancery Court/Complex Commercial Litigation Division case. The case concerned both BX and AB-rated generic versions of the ADHD drug Concerta®. With respect to the BX-rated drug, the Delaware court granted summary judgment, ruling that the defendant had to pay the firm's client 50% of past profits, plus 50% of all future profits in perpetuity, plus attorneys' fees, prejudgment interest, and costs. With respect to the AB-rated drug, the firm took their client's claim to trial and sought an additional \$9,411,000 in damages. After 4 days of trial, the parties agreed to a confidential settlement.

**Business Litigation** – Defense of a Chicago-based international law firm in breach of fiduciary duty action where the plaintiff, the former CEO of an oil and gas company, sought over \$1 billion in economic damages. The Court struck the former CEO's claims as a sanction after a five day federal court trial and entered judgment against the former CEO. See *Leor Exploration & Production, LLC v. Aguiar*, 2010 WL

3782195 (S.D. Fla. Sept. 8, 2010). The CEO's trial counsel included Harvard Law Professor Alan Dershowitz, a former U.S. Attorney for the Southern District of Florida, and several large international law firms.

**Shareholder and Securities Disputes** – Represented publicly registered alternative fuel company in defense of hostile takeover attempt by the company's largest unit holder. After the unit holder refused to close on a \$30,000,000 agreement for the repurchase of his interest in the company, the unit holder attempted to take control of the board of directors and filed a variety of claims against the company, members of its board, and the company's management, including state and federal securities fraud claims, breach of fiduciary duty claims, claims to enjoin investor votes, and claims alleging certain proxy statements were misleading. See *Retterath v. Homeland Energy Solutions, LLC et al*, 2014 WL 7776705 (S.D. Iowa Dec. 24, 2014).

**Multidistrict and Class Action Litigation** – Lead counsel for key inventor defendants in multidistrict litigation involving patent and trademark infringement claims arising from the multi-state sale of medical rehabilitation devices which sought damages of approximately \$20,000,000. See *In Re: ERMI LLC* ('289 Patent Litig.), Case No. 0:19-MD-02914-RKA (S.D. Fla. 2019).

**Employment Claims** – Represented international video game and entertainment company in defense of race discrimination claims asserted by the Civil Rights Division of a large municipality on behalf of patrons. The claims asserted involved, among other allegations, racial profiling, use of excessive force by security personnel, and racially biased dress code rules.

**Contract Actions** – Trial counsel for seller in a stock purchase dispute resulting in an \$867,854 damage award for seller (exclusive of attorneys' fees and costs). See *Petlev c. Monitor Outlet, Inc.*, Case No. 2007CA017348XXXXMBAG (Fla. 15th Jud. Cir. 2007).

**Deceptive Trade Practices Litigation** – Defended national consumer service provider against Lanham Act false advertising/unfair competition and deceptive trade practice claims asserted by its largest competitor. The competitor sought a permanent injunction and damages in excess of \$21,000,000.00, alleging that certain sales personnel employed by companies which transact with our client had made misrepresentations to at least 150 consumers across the country.

**Noncompete and Trade Secret Cases** – Trial counsel for international security company in a noncompete action against two former area managers resulting in the entry of a final injunction following a four day trial. Court also awarded security company client approximately \$240,000 in prevailing party attorneys' fees and costs. See *Wackenhut Corp. v. Schira*, Case No. 502008CA005466XXXXMBAA (Fla. 15th Jud. Cir. 2008).

**Professional Liability Disputes** – Defense of malpractice claims, and prosecution of counterclaim for unpaid legal services, on behalf of national law firm. After obtaining partial summary judgment determining that the plaintiff was obligated to pay the firm approximately \$415,000, the plaintiff attempted to voluntarily dismiss his malpractice complaint. The Court determined that it maintained jurisdiction to enforce certain sanctions against the plaintiff, even after his voluntary dismissal of the malpractice claims, and the Court further ruled that the firm was entitled to prevailing party attorneys' fees for its counterclaim. See *White v. Buckingham Doolittle & Burroughs, LLP*, 2010 WL 3823479 (Fla. 15th Jud. Cir. Apr. 16, 2010).

**Healthcare Fraud** – Prosecuted RICO, fraud, and deceptive trade practice claims, including action on behalf of auto insurance carriers seeking in excess of \$35 million in damages against physicians, surgery centers, and medical practice managers relating to certain spinal procedures performed on personal injury claimants. See *State Farm Mut. Auto. Ins. Co. v. Kugler et al*, 2011 WL 4389915 (S.D. Fla. Sept 21, 2011).

**Electronic Discovery** – Trial counsel for attorney in connection with cross fraud-on-the-court motions relating to manipulated email evidence in a large commercial case. The main issue tried was whether the attorney we represented, or his opposing counsel, manipulated certain email evidence which had been presented at a summary judgment hearing by opposing counsel in support of economic damage claims in excess of \$40 million. Following a four day trial, the court found, “by clear and convincing evidence, that either [the opposing party] or [opposing counsel] ... fraudulently doctored the email.” See *Palm Beach Florida Hotel v. Nantucket Enterprises, Inc.*, 2013 WL 686433 (Fla. Jud. Cir. Feb. 25, 2013). The court struck certain of the opposing counsel's pleadings, and also awarded attorneys' fees to our client.

## Community Involvement

- U.S. Magistrate Judge Merit Selection and Reappointment Panel, Southern District of Florida, Former Member and Chairman
- Duke Law School's Bolch Judicial Institute, Leadership Council Member
- Fifteenth Judicial Circuit Grievance Committee "D," Former Member and Chairman
- Chamber of Commerce of the Palm Beaches, Former Board Member
- Nova Southeastern University Law Alumni Association, Former Board Member and Past President of Palm Beach County Chapter

## Awards and Recognitions

- 2011 Adjunct Professor of the Year Award, Nova Southeastern University, Shepard Broad Law Center
- Martindale-Hubbell® Judicial Edition AV Preeminent Rating (based on perfect legal ability and ethics ratings by reviewing judges)
- The Best Lawyers in America®, Commercial Litigation
- Top Lawyer, Bet-the-Company Litigation, Palm Beach Illustrated
- Florida Legal Elite, Florida Trends Magazine
- Florida Super Lawyer, Super Lawyers Magazine

## Prior Professional Experience

- Akerman Senterfitt
- Adjunct Professor, Nova Southeastern University, Shepard Broad Law Center
- Judicial Clerk to the Honorable Robert M. Gross, Former Chief Judge of the Fourth District Court of Appeals

## Education

- J.D., Nova Southeastern University, Shepard Broad Law Center, 2004
- Summa cum laude (Top 1% of graduating class)
- Michael L. Richmond Award for Academic Excellence
- Recipient of the Dean's Merit Scholarship
- Nova Law Review, Associate Editor
- Nova Southeastern University High Grade Awards for Employment Discrimination, Contracts, Civil Procedure, Evidence, Constitutional Law, and Wills, Trusts & Estates
- Fredrick J. Damski Memorial Book Award for Outstanding Achievement in Constitutional Law
- B.S., Florida Atlantic University, 2001; Management and Marketing, Dean's List, Minor: Advertising

## Bar Admissions

- Florida Bar
- Southern District of Florida
- Middle District of Florida
- 11th Circuit Court of Appeals