

## THOMAS "TOM" D. MYRICK

*Member, Litigation*

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Tom Myrick has a wide range of civil trial experience, including frequent appearances in both state and federal trial and appellate courts, with particular experience in business related litigation.

Tom has been first chair trial counsel through verdict in dozens of civil jury trials, including trials that lasted up to four months. Recently, he has been focused on handling significant commercial cases involving sophisticated damage theories.

He also counsels clients engaged in complex business combinations on methods to minimize their exposure to litigation. He speaks regularly to groups of trial attorneys around the country about ongoing developments in the law.

Tom handles a wide range of matters including business torts, contract disputes, corporate governance issues, franchise class action claims, product liability claims and recalls, securities fraud, shareholder derivative claims, tax disputes, and unfair business practices.

### Notable

- *Chambers USA* - North Carolina, Litigation: General Commercial, 2014-2022
- *Best Lawyers in America*, Commercial Litigation, 2011-2022; Litigation - Real Estate, 2011-2022; Litigation - Trusts and Estates, 2022
- *North Carolina Super Lawyers*, Business Litigation, 2007, 2016-2019
- *Benchmark Litigation* "Local Litigation Star," Commercial Litigation and General Commercial, 2010-2019; General Commercial, 2020-2022
- AV peer rated in Martindale-Hubbell legal directory
- Former Member, Board of Directors, and Chair, Justice Initiatives, Inc., an IRC 501(c)(3) charity whose mission is to educate, advocate, support,

### Capabilities

Business Court Litigation  
Civil Litigation  
Class Actions  
Consumer Disputes  
Trust, Estate, Tax & Fiduciary Disputes

### Education

J.D., University of North Carolina at Chapel Hill, 1983  
B.S.B.A., Kenan-Flagler Business School at the University of North Carolina at Chapel Hill, 1978

### Admissions

North Carolina, 1984  
All Federal District Courts in North Carolina  
U.S. Court of Appeals for the Fourth Circuit  
U.S. Court of Federal Claims  
U.S. Supreme Court  
U.S. Tax Court

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and advance the court system

- North Carolina Real Estate Broker, 1978-present
- Certified Public Accountant for more than 20 years (currently inactive in N.C.)
- Trustee since 1997 for several charitable remainder trusts with multi-million-dollar portfolios
- Handled numerous product recalls in concert with the U.S. Consumer Product Safety Commission
- Member, Board of Directors, Our Military Kids, Inc., an IRC 501(c)(3) charity whose mission is to empower children of our military deployed overseas

### Affiliations

- American Bar Association: Sections of Litigation and Business
- North Carolina Bar Association

### Representative Experience

- **Mid-Atlantic Emergency Medical Associates, PLLC; *et al.* v. Health Management Associates, LLC; *et al.*** Serving as lead counsel representing a group of emergency room physicians for two hospitals in North Carolina owned by a national for-profit entity which pressured the clients to admit patients and perform diagnostic tests without medical necessity for the sole purpose of increasing revenues. When the clients refused to commit healthcare fraud, their contracts were terminated, and they are now pursuing wrongful termination and related claims.
- ***Carolina Panthers Stadium, LLC v. N.C. Department of Revenue.*** Served as lead counsel representing the NFL franchise Carolina Panthers in an ad valorem tax dispute over the assessed value of their stadium successfully reducing the valuation by \$257 million.
- ***Kazden v. Isaacs.*** Served as lead litigation counsel for a trustee and several corporate entities in connection with claims to void the trust and distribute assets held by the trust and the corporate entities. The trust was organized under the laws of the Cook Islands and the corporate entities, which were held entirely within the trust, received royalty payments for medical technology invented by the settlor. Successfully avoided significant discovery, obtained dismissal of several parties, and ultimately obtained a favorable settlement that allowed the trust to retain all its assets.
- ***The Kimberly Rice Kaestner Trust v. N.C. Department of Revenue.*** Won summary judgment for a trust client in the N.C. Complex Business Court, and successfully defended that judgment before the N.C. Court of Appeals, the N.C. Supreme Court, and the Supreme Court of the United States. The key issue in the case was whether the State of North Carolina could tax the out-of-state sourced income of a trust solely on the basis that the trust's beneficiary became a resident of North Carolina when the trust was administered out-of-state and the trustee resided in another state. The Court held the tax unconstitutional as a violation of the Due Process Clause of the 14<sup>th</sup> Amendment to the United States Constitution.
- ***South Mississippi Electric Power Association v. Plum Point Energy Associates, LLC.*** Successfully defended the owners of a 665-megawatt pulverized coal fired electricity generation plant located in Arkansas against a \$25.5 million claim for liquidated damages brought by one of the facility's off-takers.

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- ***Environmentalee, et al. v. N.C. Department of Environment and Natural Resources and Charah, Inc., et al.*** Successfully defended a contractor hired to beneficially reuse coal combustion residual against challenges to its environmental permits.
- ***Co-Executors of the Estate of Henry J. Faison v. FEI, et al.*** Represented co-executors in a lawsuit involving the distribution of more than \$80 million in estate assets. The Attorney General of North Carolina intervened in the case because the co-executors sought to have the estate's assets go to a charitable trust. The case was on the front page of the Charlotte Observer and was picked up by the Associated Press which published the article across the country. It was also featured in the Charlotte Business Journal.
- ***Tommy Knox; et al. v. First Southern Cash Advance; et al.*** Obtained decertification of \$150 million class action involving violation of N.C. Consumer Finance Act and Unfair and Deceptive Trade Practices Act and sustained the trial court's ruling before the N.C. Court of Appeals. This case was featured on the front page of North Carolina Lawyers Weekly in an article entitled "READ THE FINE PRINT: NC Court bows to U.S. Supreme Court, OKs Arbitration Clauses in Consumer Contracts."
- ***Bank of America v. AFH LLC et al.*** Obtained \$160 million damages award in favor of bank and finding of no liability on \$354 million in counterclaims following week-long arbitration hearing in New York City over commercial loans and valuation of real estate collateral.
- ***Estate of Louis DeWolff, et al. v. Commissioner of Internal Revenue.*** Represented estate before the U.S. Tax Court in dispute with the IRS involving a business valuation discrepancy of over \$30 million.
- ***RCG, LLC v. American Broadband Communications, LLC and American Broadband Communications, LLC v. Redwood County Telephone Company, et al.*** Represented owner of rural local telephone exchange carriers throughout the country on breach of contract claims before the U.S. District Courts in Minnesota and Southern District of New York.
- ***Avista Turbine Power, Inc. v. Rathdrum Power, LLC.*** Obtained a \$68 million arbitration award for owners of a combined cycle natural gas-powered electricity generation facility located in Idaho and successfully defended against claims for breach of a natural gas tolling agreement. The evidence included thousands of documents created over an 11-year period together with testimony from a dozen witnesses with expert testimony ranging from thermodynamics and fuel heat content to gas and electrical engineering and metering.
- ***MSC Controls and Integration, LLC v. Coastal Carolina Clean Power, LLC et al.*** Represented a natural gas-fueled electricity generating plant in a dispute involving its conversion to biofuel.
- ***Yamauchi (USA) Corp. v. Cox.*** Represented a U.S. subsidiary of a Japanese corporation in obtaining restraining order, injunction, attachment, and expedited discovery against employee for embezzlement of over one million dollars from the company.
- ***Baskin-Robbins Franchises Shops, LLC; Dunkin Donuts Franchises, LLC; et al. v. Bullwinkle Donuts, LLC; et al.*** Defended claims of breach of franchise agreement including intellectual property rights and cannibalization issues.
- ***John Price, et al. v. American Partners Federal Credit Union; Dorinda M. Simpson; and Ann Boone.*** Defended officers of credit union against claims of securities fraud in 13 separate actions brought by members of the credit union.

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- ***American Roller Company, LLC v. Foster-Adams Leasing, LLP; et al.*** Successfully defended sellers of a manufacturing company against claims of fraud and breach of representations and warranties in U.S. District Court for the Northern District of Illinois involving over 50 thousand documents and 22 depositions in five states.
- ***Precision Converters, Inc. v. Polymer Group, Inc.*** Successfully defended publicly traded company against multi-million-dollar breach of UCC contract claims.
- ***INVISTA S.a'r.l. v. Ticona GmbH, et al.*** Successfully defended a textile manufacturer against claims in excess of \$30 million for breach of utilities agreement during a weeklong arbitration.
- ***Merrill Lynch v. Harding; et al.*** Represented securities brokers in defending against trade secret and non-compete claims brought by their former employer.
- ***DuPont v. Unifi, Inc.*** Successfully defended world's largest manufacturer of textured polyester yarn in multi-week arbitration against claims in excess of \$300 million for breach of contract.
- ***Indiana Chair Frame Company and Warvel Products, Inc. v. United States of America and Nightingale, Inc.*** Prosecuted protest of government contract award before the U.S. General Accounting Office and related appeal to the U.S. Court of Federal Claims.
- ***Custom Expressions Royalty, Inc.; et al. v. American Greetings Corp.*** Successfully defended an international greeting card company against claims in excess of \$200 million for breach of contract, unfair and deceptive trade practices, breach of fiduciary duties, and negligent misrepresentation arising from its acquisition of the CreaCard intellectual property rights.
- ***Broussard v. Meineke Discount Muffler Shops, Inc.*** Successfully defended a franchisor of aftermarket automotive services and its multi-billion-dollar British parent corporation in a two-month long class action jury trial and on appeal to the Fourth Circuit Court of Appeals against claims for fraud, unfair and deceptive trade practices, and breach of franchise agreement. Resulted in a \$1.5 million judgment against the named plaintiffs.
- ***Cara's Notions, Inc. v. Hallmark Cards, Inc.*** Successfully defended an international greeting card company in motion to dismiss and on appeal to the Fourth Circuit Court of Appeals against claims for breach of franchise agreement, fraud, unfair, deceptive trade practices, and negligent misrepresentation.
- ***Harlow v. Voyager Communications.*** Recovered compensatory and punitive damages for a minority shareholder against FCC regulated corporation and its board of directors on direct and derivative claims for securities fraud under the North Carolina Securities Act (N.C. Gen. Stat. § 78A, *et. seq.*). Argued appeal before the N.C. Court of Appeals and the N.C. Supreme Court, both of which unanimously affirmed the trial court's findings in a case of first impression in North Carolina.
- ***Aerial Devices, Inc. v. Parker-Hannifin Corp.*** Successfully defended a multi-billion-dollar manufacturing company in a four-month long jury trial against claims in excess of \$100 million for product liability, fraud, unfair and deceptive trade practices, breach of contract, breach of warranty, and negligent misrepresentation arising out of defective hydraulic equipment.
- ***Shipp v. American Rehabilitation, Inc.*** Successfully defended a corporation and its board of directors in a multi-week jury trial against direct and derivative claims by minority shareholder for breach of fiduciary duties, fraud, unfair and deceptive trade practices, and breach of contract.

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- *Eckerd Corp. v. Jenkins*. Recovered compensatory and treble damages, together with attorney's fees, for a national retail drug store chain against pharmacist employees on RICO claims arising out of theft and resale of controlled substances.