

# BB REVIEW

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### BIRMINGHAM ATTORNEYS PREVAIL IN DEFENSE OF FRAUD LAWSUIT

Birmingham attorneys Greg Cook, John Smith and Neah Mitchell recently obtained summary judgment for a banking client and two of its officers in a fraud lawsuit pending in Montgomery County Circuit Court.

In 2007, the plaintiffs borrowed from the Firm's bank client approximately \$2.3 million in several mortgage loans to fund the development and building of a residence on Lake Martin in Autauga County. The plaintiffs defaulted on the loans in 2008 and the bank foreclosed the mortgages. Even after being given credit for the sums received at the foreclosure sales, the plaintiffs owed the bank in excess of \$900,000. The plaintiffs did not dispute these facts. Instead of attempting to resolve the arrearages, however, the plaintiffs filed a jury-demand lawsuit alleging that the defendants had orally agreed to release some property from the mortgages that the plaintiffs could then sell to pay current past-due interest (without a reduction in the principal amount of the loan) so that the loans could be renewed and extended for an indefinite period of time.

The trial court rejected the plaintiff's arguments and granted the bank's motion for summary judgment on the counterclaims, determining that the plaintiffs had no defense to owing the \$900,000 plus arrearage. Judgment was then entered for the bank for the sums owed.

### H&R BLOCK VICTORY AT ELEVENTH CIRCUIT

Atlanta partner Matt Maguire (working with the attorneys from Spencer Fane Britt & Brown in Kansas City) filed suit in the Northern District of Georgia on behalf of H&R Block against a former employee who had violated her non-compete and non-solicitation covenants. Identical covenants were executed by all H&R Block tax professionals in Georgia. The district court judge granted H&R Block's request for preliminary injunction enforcing the covenants but later changed his mind, ruling on summary judgment that the non-compete covenant was overly broad. Because the non-compete and non-solicitation covenants were not severable, the court struck them both down as unenforceable. The Eleventh Circuit reversed, holding that both the non-compete and non-solicitation covenants are reasonable and therefore enforceable under Georgia law. The appeals court remanded for a determination of damages owed to H&R Block for those violations of the covenants. The case is styled H&R Block Eastern Enters. v. Morris, 11th Cir. Case No. 09-11184, 2010 U.S. App. LEXIS 9989 (dec'd May 17, 2010).

### MISSISSIPPI STATE PORT AUTHORITY WINS \$57,033,510 AGAINST FEMA

The Mississippi State Port Authority ("MSPA") was devastated by Hurricane Katrina in August of 2005. FEMA and the MSPA were able to agree to a majority of the restoration work to be

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completed following Hurricane Katrina, with the exception of four large freezer/refrigerated buildings.

Prior to arbitration, FEMA offered to settle with the MSPA for approximately \$44,000,000. The MSPA requested approximately \$63,000,000 during arbitration.

Jonathan Dyal and Paul Delcambre, with the assistance of Angie Groves, paralegal, tried a two-day arbitration hearing against FEMA in Washington, DC in January of 2010. This was the third arbitration ever tried against FEMA before the Civilian Board of Contractor Appeals in Washington.

In April 2010, the arbitration panel agreed on all of the points presented by the MSPA and awarded the MSPA \$57,033,510 as the reasonable replacement of the four buildings following the hurricane. This resulted in an increase of over \$13,000,000 in replacement funding to the MSPA.

### **FAILURE-TO-WARN CASE VICTORY**

Steven F. Casey, Chris Heinss and Lindsey Reese obtained a defense verdict in Jefferson County Circuit Court in Birmingham, Alabama, in what is believed to be the first metoclopramide case to go to trial. In this failure to warn case against a generic manufacturer of the drug (brand name Reglan), a nine year old child with autism spectrum disorder experienced the symptoms of a known side effect, tardive dyskinesia--a serious movement disorder--after taking the drug for over six months in 2004. Plaintiffs claimed that the drug also caused widespread cognitive regression, which required full time care for the rest of the child's life. The verdict for the Firm's client came in the face of the trial court admitting evidence of a 2009 FDA-mandated black box warning--five years after the plaintiff took the drug. After two full weeks of trial, the jury returned a verdict for Balch & Bingham's client, a generic manufacturer of the drug, on April 30, 2010, after only an hour-and-a-half of deliberation.

### **DYAL AND PETTIS SUCCESSFUL IN BUSINESS DISPUTE**

Jonathan Dyal and Brant Pettis represented two general practitioners seeking an injunction and damages against a former business partner for the misappropriation of investment funds. A bench trial was held in Harrison County Chancery Court over the course of several days. The Court granted the Firm's clients an injunction and awarded them damages and attorneys' fees by finding that the Defendant used the proceeds of their business venture for his own personal benefit.

### **MAGUIRE AND MOORE WIN INJUNCTION HALTING FORECLOSURE**

Atlanta partner Matt Maguire and associate Josh Moore successfully obtained a preliminary injunction on behalf of Legacy Mountain Properties, LLC preventing the foreclosure of their property under a deed to secure debt. The deed holder had fabricated the basis for foreclosure on the property, and Maguire and Moore won a ruling in the Superior Court of Pickens County indefinitely barring the deed holder from exercising its purported foreclosure rights. Obtaining an injunction to prevent a foreclosure is exceedingly rare in Georgia because creditors have broad power to foreclose, even with defective notice the property owner. Litigation for damages stemming from the wrongful foreclosure is ongoing.

### **ATLANTA PARTNER, DART MEADOWS ADMITTED INTO FDCC**

James "Dart" Meadows of the Firm's Atlanta office has been selected for membership in the Federation of Defense & Corporate Counsel. Dart specializes in product liability and general business litigation matters. Founded in 1936 as the Federation of Insurance Counsel, the membership consists of defense counsel in private practice, in-house corporate and insurance counsel, and non-attorney claims executives, both internationally and in the US. The organization is



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