



Matthew H. Lembke Partner



Birmingham

P: 205.521.8560

F: 205.488.6560

mlembke@bradley.com

Practices

Appellate

Class Action & Complex Litigation

Litigation

Environmental Law

Education

University of Virginia School of Law, 1991, Law School Alumni Association Award, 1991; Raven Society, 1991; Thomas Marshall Miller Prize, 1991; Articles Development Editor, *Virginia Law Review*, J.D.

Rhodes College, 1988, *summa cum laude*; Peyton Nalle Rhodes Phi Beta Kappa Prize, 1988; Rhodes Student Hall of Fame, 1988; Omicron Delta Kappa; Phi Beta Kappa, B.A.

Licensed In

Alabama

Admitted In

Supreme Court of the United States
United States Court of Appeals, 2nd Circuit

United States Court of Appeals, 3rd Circuit

Matt Lembke, one of four Bradley lawyers to have clerked for the Supreme Court of the United States, has the broad range of skills necessary to be effective in representing clients at both the trial and appellate levels. He has applied those skills for more than 25 years in dozens of high-stakes cases.

Matt has extensive experience in handling appeals pending in both state and federal courts, including arguing cases in the Alabama Supreme Court, the Alabama Court of Civil Appeals, and the D.C., Fifth, and Eleventh Circuits. Matt's accomplishments as an appellate lawyer have been recognized by his election as a Fellow in the prestigious American Academy of Appellate Lawyers (AAAL), and he served as president of the AAAL in 2019.

At the trial level, Matt has tried cases to verdict in both state and federal courts. In recent years, he has been heavily involved in cases involving toxic torts, environmental contamination, the False Claims Act, and complex commercial and securities litigation.

Matt works closely with each client to formulate a creative, cost-effective strategy to achieve his client's objectives.

Matt has extensive experience in handling high-profile, challenging cases for clients in Alabama and across the region. His experience includes:

- Served as lead trial counsel for a national hospice company in a 10-week False Claims Act trial that ended with judgment as a matter of law being entered in the client's favor.
- Representation of a major healthcare provider in the appellate reversal of a \$20 million wrongful death judgment in a medical malpractice case handled at trial by another firm.
- Representation of a national chemicals company in connection with toxic tort litigation brought by former plant workers.
- Defense of Monsanto Company in hundreds of personal injury and property damage cases arising from alleged environmental contamination.
- Represented the State of Alabama for over a decade in litigation with Georgia and Florida concerning interstate water rights.

Outside his law practice, Matt closely follows developing legal issues, and the press often seeks his comments on them. Recently, he has been interviewed on Fox News and MSNBC, as well as by the *New York Times*, *Law360*, and *Bloomberg Law*.

Experience

Matt's experience as an appellate advocate involves briefing and oral argument in dozens of appeals as well as serving on trial teams in major litigation to ensure that appellate issues are properly preserved. Matt has often been called

United States Court of Appeals, 4th Circuit
United States Court of Appeals, 5th Circuit
United States Court of Appeals, 10th Circuit
United States Court of Appeals, 11th Circuit
United States Court of Appeals, District of Columbia Circuit
United States District Court, Middle District of Alabama
United States District Court, Northern District of Alabama
United States District Court, Southern District of Alabama

Clerkships

Supreme Court of the United States, Honorable Anthony M. Kennedy, 1992-1993
United States Court of Appeals, 4th Circuit, Honorable J. Harvie Wilkinson III, 1991-1992

on to serve as appellate counsel in matters where other lawyers handled the trial, including cases with large punitive damages verdicts.

Matt also has extensive experience in handling all aspects of complex trial-level litigation.

Featured Cases



Bradley Lawyers Win Dismissal of \$200 Million
FCA Lawsuit Against Hospice Provider
LITIGATION

HealthSouth Rehabilitation Hospital of Gadsden, LLC v. Honts, --- So. 3d ---, 2018 WL 4656609 (Ala. Sept. 28, 2018)

In a case handled by another firm at trial, successfully obtained the reversal of an adverse jury verdict of \$20 million in a medical malpractice case, based on a ruling that the case had to be remanded for a new trial due to a jury instruction error.

Ex parte Caremark Rx, LLC, 229 So. 3d 751 (Ala. 2017)

Successfully obtained a writ of mandamus holding that trial court lacked residual jurisdiction under a prior settlement agreement to require production of documents

United States v. AseraCare, Inc., 176 F. Supp. 3d 1282 (N.D. Ala. 2016)

Obtained entry of summary judgment in False Claims Act case brought by U.S. Government against a national hospice provider.

Ex parte Hill, 225 So. 3d 56 (Ala. 2016)

In a case handled by another firm in the trial court, successfully obtained a ruling that the trial court failed to adhere to fee contract in awarding opposing counsel \$13.25 million in attorneys' fees.

Hinrichs v. General Motors of Canada, Ltd., 222 So. 3d 1114 (Ala. 2016)

Successfully obtained affirmance of trial court's dismissal due to lack of personal jurisdiction.

GE Capital Aviation Services Inc. v. Pemco World Air Services, Inc., 92 So. 3d 749 (Ala. 2012)

In a case handled by another firm at trial, successfully obtained the reversal of an adverse jury verdict of \$9.6 million, based on a ruling that judgment as a matter of law should have been entered on fraud claim and that case had to be remanded due to a jury-instruction error on contract claim.

Ex parte Callan Associates, Inc., 87 So. 3d 1161 (Ala. 2012)

Successfully obtained a writ of mandamus directing the trial court to dismiss an action involving a claim brought against an investment advisor in connection with a controversy concerning Alabama's prepaid tuition program.

City of Birmingham v. Orbitz, 93 So. 3d 932 (Ala 2012)

Successfully upheld a summary judgment for an online travel company in a tax dispute

City of Prichard v. Balzer, 95 So. 3d 1 (Ala. 2012)

Submitted a successful amicus brief on behalf of Jefferson County, Alabama, in support of a key point of state law concerning ability of Alabama counties to seek bankruptcy protection.

Southeastern Federal Power Customers, Inc. v. Geren, 514 F.3d 1316 (D.C. Cir. 2008)

In a case arising out of long-running "water war" between Alabama, Georgia, and Florida, successfully overturned district court's approval of a settlement agreement entered into by the Corps of Engineers.

Ex parte Cooper Tire & Rubber Co., 987 So. 2d 1090 (Ala. 2007)

Initial case establishing e-discovery requirements in Alabama.

Barber v. Jefferson County Racing Association, 960 So. 2d 599 (Ala. 2006)

Successfully overturned trial court's ruling that "sweepstakes" machines at local race track did not constitute "gambling" under Alabama law

Pharmacia Corp. v. Suggs, 932 So. 2d 95 (Ala. 2005)

Successfully defeated attempt to revive a settled class action in an environmental contamination case.

BT Securities Corp. v. W.R. Huff Asset Management Co., 891 So. 2d 310 (Ala. 2004)

Successfully overturned trial court's denial of a motion to dismiss based upon federal preemption in a securities fraud case.

Russell Corp. v. American Home Assurance Co., 264 F.3d 1040 (11th Cir. 2001)

Obtained affirmance of federal district court decision remanding insurance coverage action to state court.

Russell Corp. v. Sullivan, 790 So. 2d 940 (Ala. 2001)

Defended textile manufacturer in an environmental action alleging trespass and nuisance claims relating to discharge of textile wastewater into a public lake. On appeal from a jury verdict in favor of the plaintiffs, the Alabama Supreme Court reversed the judgment in favor of the plaintiffs and rendered judgment in favor of the defendant textile manufacturer.

Atlanta Casualty Co. v. Russell, 790 So. 2d 664 (Ala. 2001)

Obtained appellate decertification of insurance class action in the Alabama Supreme Court's first published opinion applying the state's class certification statutes.

Accolades

- Listed in *Chambers USA*, Litigation: Appellate, 2015-2021
- Listed in *The Best Lawyers in America*[®]
 - Appellate Practice, 2007-2022
 - Bet-the-Company Litigation, 2019-2022
 - Commercial Litigation, 2006-2022
 - Litigation – Environmental, 2011-2022
 - Water Law, 2010-2022
 - "Lawyer of the Year," Birmingham, Appellate Practice, 2013
- Listed in *Mid-South Super Lawyers*
 - "Top 50," Alabama, 2016-2020
 - "Top 50," Birmingham, 2019-2020
 - Appellate, 2016-2020
- Listed in *Alabama Super Lawyers*
 - "Top 50," Appellate, 2015
 - Appellate, 2013-2015
- Listed in *Benchmark Litigation*, "Local Litigation Star," Alabama, 2010-2021
- American Law Institute, Member
- Alabama Constitutional Reform Commission, Member
- Listed in *Birmingham Magazine*, "Top Attorneys," 2014, Appellate
- Listed in *B-Metro*, "Top Lawyers," 2019-2020

Professional & Community Activities

American Academy of Appellate Lawyers

President, 2019

President-elect, 2018

ABA Council of Appellate Lawyers, Chair, 2011-2012

Eleventh Circuit Lawyers Advisory Committee

Alabama Standing Committee on Rules of Conduct and Canons of Judicial Ethics, Chair

Standing Committee on Alabama Rules of Appellate Procedure

United States District Court for the Northern District of Alabama, Advisory
Committee on the Rules of Civil Practice and Procedure

The Federalist Society

Kiwanis Club of Birmingham, Past President

Vulcan Park Foundation Board of Directors, Past Chairman

Birmingham Salvation Army, Advisory Board