

## Clay Massey

Partner

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Clay Massey is a trial attorney in Alston & Bird’s Environment, Land Use & Natural Resources Group. He focuses his practice on complex litigation in the areas of environmental torts, toxic torts, and land use. He has tried several cases to verdict and has litigated a broad range of matters for domestic and international clients at the trial and appellate levels. His experience as trial counsel for clients includes matters in California, Georgia, Florida, Illinois, Louisiana, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, South Carolina, Ohio, Oklahoma, Pennsylvania, Texas, and Washington. He also has argued multiple matters in state and federal appellate courts concerning significant toxic tort and land use issues.

Clay received his J.D., *summa cum laude*, from the University of Tennessee, where he was elected to the Order of the Coif and was managing editor of the *Tennessee Law Review*.

He is co-chair of the American Bar Association’s Mass Torts/Toxic Torts Subcommittee. Clay is recognized by *The Best Lawyers in America*® and was named a “Lawyer of the Year” in Mass Tort Litigation / Class Actions – Defendants. He has served on LexisNexis’s National Advisory Board and as a committee chairman for the Atlanta Bar Association. He is a recipient of the Atlanta Bar Association’s Distinguished Service Award.

### **Representative Experience**

#### **Toxic Tort/Environmental Litigation**

- Defending a major medical products sterilization company in hundreds of cases claiming injuries from alleged to exposure to ethylene oxide emissions.
- Defending a major medical products sterilization company against a public nuisance lawsuit brought by the New Mexico attorney general related to ethylene oxide emissions.
- Obtained a full defense verdict for a major chemical company in a toxic tort action after a two-week jury trial in Georgia.
- Obtained a full defense verdict for a major chemical company in a toxic tort action after a three-week jury trial in Georgia.
- Obtained a partial directed verdict and favorable settlement for a major chemical company after a three-week jury trial in a toxic tort action in Miami.
- Trial counsel for a major chemical company in a three-week Ohio jury trial resulting in a verdict that was a fraction of the amount the plaintiff asked the jury to award.
- Obtained a favorable settlement as trial counsel for an international automotive parts distributor and manufacturer during a four-week jury trial of a toxic tort matter in New Orleans.
- Obtained a favorable settlement as trial counsel to a major chemical company at the trial of a toxic tort action in New Orleans.

- Obtained full dismissal of 146 plaintiffs' air and groundwater contamination claims as trial counsel to the owner of the fifth-largest power plant in the country.
- Obtained a full dismissal of property damage claims brought against a national petroleum pipeline company allegedly related to a ~300,000 petroleum release in Alabama federal court.
- Representing a major pet foods technology company against property damage claims allegedly related to the company's agricultural waste disposal on a land applicator's property.
- Obtained a favorable settlement after excluding multiple opposing experts as trial counsel to an international automotive parts distributor and manufacturer in a two-week jury trial of a toxic tort matter in Philadelphia.
- Obtained summary judgment on behalf of a global shipping and logistics company against environmental trespass claims allegedly arising from operations on its property.
- Counsel to a carbon black manufacturer against claims of personal injury and property damage based on alleged facility emissions.
- National trial counsel for a Fortune 50 company in litigation arising from former asbestos operations.

## ***Land Use/Development***

- Representing a major medical products sterilization company in an action to declare a county government's closure of its facility unlawful and unconstitutional, obtaining a preliminary injunction of the county's actions.
- Representing a major construction aggregates company in an action challenging a county government's denial of permits to expand a major granite quarry.
- Obtained summary judgment and injunctive relief for an interstate natural gas pipeline company to construct a 115-mile natural gas pipeline under the Natural Gas Act in a federal court eminent domain action.
- Lead appellate counsel in a case in which the Eleventh Circuit unanimously held that district courts are authorized to grant pipeline companies injunctive relief to immediately access properties for Natural Gas Act pipeline constructions upon FERC's approval. *Transcontinental Gas Pipe Line Co. v. 6.04 Acres*, No. 16-17503 (11th Cir.).
- Lead appellate counsel in a case in which the Eleventh Circuit unanimously held that district courts have substantial federal question jurisdiction over state tort claims necessarily challenging a condemner's authority under the Natural Gas Act. *Handy Land & Timber, LLLP v. Transcontinental Gas Pipe Line Co., LLC*, No. 17-12322 (11th Cir.).
- Lead trial counsel for an international products manufacturer in the prosecution of a constitutional challenge to a zoning condition encumbering the client's property.
- Lead trial counsel for an international appliance manufacturer in litigation in Michigan challenging a local government's application of a historic district ordinance to preclude factory demolition.
- Obtained final judgment as lead trial counsel for a developer against an action to enjoin its proposed housing development on zoning and permitting grounds.
- Trial counsel for the nation's largest construction materials producer in litigation to overcome zoning and land use restrictions prohibiting expansion of the client's mining operations.
- Lead trial and appellate counsel in the prosecution of a \$35 million action against an international hotel operator concerning the use and condition of a European client's 25-story hotel property.

- Obtained summary judgment as lead counsel for a major travel center operator against an action by a national competitor asserting restrictive covenants to enjoin operations on the client's property.
- Prosecuted a multimillion-dollar arbitration on behalf of an investor in a premier private golf club development and other commercial real estate developments based on claims of fraud, breach of contract, and breach of fiduciary duty.
- Advised a Saudi company in connection with efforts to establish land use regulations in Jeddah, Saudi Arabia.
- Obtained full dismissal and summary judgment for an Am Law 100 law firm in defense of fraud and malpractice claims arising from its prosecution of a zoning appeal.
- Represented residential, commercial, and industrial developers in land use administrative proceedings.
- Represented and advised various companies on land use diligence matters involved in major residential, commercial, and industrial land development projects.

### ***Other Civil Matters***

- Obtained summary judgment as lead counsel for an international investment fund against an action by a German GmbH seeking status and rights as a member of the fund.
- Obtained a final judgment for a major municipal electric authority in litigation concerning the validation of funding for the construction of additional nuclear power units.
- Obtained summary judgment in favor of a national bank and its CEO against defamation claims arising out of an independent internal investigation and a restatement of earnings.
- Lead counsel for a national tax preparation services company in the defense against an action by a competitor to enjoin the client's operations based on claims of unfair trade practices.
- Obtained summary judgment on behalf of a national health care provider to collect over \$1 million in a breach of contract action.
- Obtained full dismissal, summary judgment, and affirmance on appeal for an Am Law 100 law firm in the defense of fraud and malpractice claims arising from its representation of a developer in an industrial real estate transaction.
- Obtained full dismissal and affirmance on appeal for an Am Law 100 law firm in the defense of fraud and malpractice claims arising from its representation of a real estate developer in connection with a large residential development.
- Obtained a six-figure judgment for an investor in an Off-Broadway production against a production company based on claims of fraud, breach of contract, and breach of fiduciary duty.
- Member of the interdisciplinary team of lawyers that represented the court-appointed independent Examiner in the Enron Corporation bankruptcy.

### ***Publications & Presentations***

#### ***Publications***

- "Georgia Court of Appeals Confirms That Illegality of Use is Essential to a Nuisance Claim," *American Bar Association*, January 21, 2022.
- "For Effective Written Advocacy, Remember to Properly Frame Your Issue," *American Bar Association*, June 2, 2020.

- “Are Public Health Agency Positions on Pathogenicity Relevant in Toxic Tort Litigation?” American Bar Association, July 23, 2019.
- “Constitutional Challenges to Pipeline Takings Face Obstacles,” *Law360*, January 14, 2019.
- “Taking Effective Expert Depositions in Toxic Tort Cases,” *Practice Points*, American Bar Association Mass Torts Litigation Committee, December 19, 2018.
- “The Supreme Court Enters the Fray on ‘Bare Metal’ Liability in Maritime Actions,” *Practice Points*, American Bar Association Mass Torts Litigation Committee, May 31, 2018.
- “Will the 2017 Agricultural Health Study Shut the Rule 702 Gate on the Monsanto Roundup Litigation?” *Practice Points*, American Bar Association Mass Torts Litigation Committee, November 28, 2017.
- “Eleventh Circuit: Alabama Law Applies Minority Rule in Toxic Tort Take-Home Exposure Cases Against Employers,” *Practice Points*, American Bar Association Mass Torts Litigation Committee, May 31, 2017.
- “California Adopts the Sophisticated Intermediary Doctrine but Refuses to Apply It,” *Practice Points*, American Bar Association Mass Torts Litigation Committee, September 21, 2016.

### ***Professional & Community Engagement***

- *Lawdragon*, “500 Leading Lawyers in America” (2023)

### ***Education***

- University of Tennessee (J.D., 2002)
- University of Tennessee (B.S.B.A., 1999)

### ***Admitted to Practice***

- Georgia

### ***Related Services***

Environment, Land Use & Natural Resources | Environmental Litigation | Litigation | Toxic Torts | Commercial  
| Land Use | Oil & Gas | Appellate | Oil & Gas Litigation