

PRACTICES:

- Litigation
 - Business Disputes / Commercial
 - Class Action Defense
 - Law Firm Defense



David L. Balser

Partner - Atlanta
dbalser@mckennalong.com

303 Peachtree Street, NE
Suite 5300
Atlanta, GA 30308-3265

TEL: 404.527.4174
FAX: 404.527.4198

Experience

David Balser represents publicly traded corporations, privately held businesses, and corporate executives in trials, arbitrations and appeals in complex business litigation matters throughout the United States. Mr. Balser represents both plaintiffs and defendants, and many of the cases he handles involve matters of significant strategic importance to his clients.

A Fellow of the American College of Trial Lawyers, Mr. Balser has been identified as one of "America's Leading Lawyers" for Litigation by *Chambers USA*; by *Best Lawyers in America* in the practice areas of Bet-the-Company Litigation and Commercial Litigation; by *Georgia Trend* magazine as one of "Georgia's Most Effective Lawyers" for Business Litigation; and by *Atlanta Magazine* (2004-2010) as a "Georgia Super Lawyer" for Business Litigation and as a "Top 100" lawyer in Georgia (2009).

Mr. Balser handles cases involving:

- Contract disputes and business torts
- False advertising
- Corporate governance, shareholder and partnership disputes
- Consumer class actions
- Securities class actions
- Governmental disputes
- Professional liability matters

Mr. Balser is also General Counsel of the firm and Chairman of the firm's Ethics and Professional Responsibility Committee, and frequently writes and speaks on topics related to legal ethics, malpractice and professionalism. Mr. Balser clerked for The Honorable Charles A. Moyer Jr., U.S. District Court, Northern District of Georgia.

Notable Engagements

Commercial and Business Disputes

- Recently obtained complete defense victory for Fortune 100 company on a \$1.4 billion breach of contract/destruction of business claim and multi-million dollar award on counter-claims in breach of contract/business tort case in the Southern District of Mississippi
- Successfully represented AT&T Mobility in obtaining a preliminary injunction to stop NASCAR from interfering with AT&T's re-branding of its logo from Cingular to AT&T on its NASCAR sponsored race car, resulting in favorable settlement
- Representing supplier in \$650 million action for breach of long-term requirements contract

+ Publications:

- "The Class Action Fairness Act of 2005: Expanding Federal Jurisdiction and Increasing Scrutiny of Class Settlements," *The Corporate Counselor*, (May 2005).
- "Dixon Case Bound by Law's Constraints," *Atlanta Journal-Constitution*, (March 2004).
- "The 'Daubert' Challenge" Commercial Litigation, a Supplement to *The Recorder*, (October 2002).

+ Seminars And Presentations:

- "Decreasing Litigation Risks in the Current Economy," *Business Law Institute, ICLE Seminar*, (October 2009).
- Trial Practice Seminar for Lawyers in the Public Interest, *American College of Trial Lawyers*, (September 2009).
- "Developments in Ethics and Legal Malpractice," *Update on Georgia Law, ICLE Seminar*, (February 2007).
- "An Enron Case Study: Where Were the Lawyers?" *Seminar for the Association of Corporate Counsel of America*, (March 2006).
- "Ethics and Malpractice: Recent Decisions," *Update on Georgia Law, ICLE Seminar*, (February 2006).
- "Developments in Ethics and Legal Malpractice," *Recent Developments in Georgia Law, ICLE Seminar*, (December 2005).
- "Taking Your Case to the Court of Public Opinion: Strategic, Legal and Ethical Implications," *ICLE Seminar*, (November 2005).
- "Professionalism for Attorneys Practicing in the Electronic Age of Lawyering," *ICLE Seminar*, (March 2005).
- "Professionalism and Risks for In-House Counsel: The Lessons of Enron," *Seminar for Association of Corporate Counsel of America*, (March 2005).

- Obtained summary judgment in complex breach of contract and fraud case in which vendor sought in excess of \$500 million in damages
- Currently representing shareholder in hedge fund litigation involving a \$10 million loss
- Successfully represented wireless telecommunications provider in high stakes expedited false advertising case
- Recently obtained emergency temporary restraining orders on behalf of wireless telecommunications provider against "data brokers" who were improperly obtaining cell phone call records
- Recently obtained \$1.135 million judgment against "data broker" for improperly obtaining cell phone call records

Corporate Governance / Shareholder / Partnership Disputes

- Handled more than 30 shareholder/partnership disputes on behalf of both majority and minority shareholders
- Representing majority shareholder in closely held business squeeze-out merger litigation
- Representing minority shareholders in closely held business dispute involving three separate lawsuits
- Recently prevailed on behalf of minority shareholders in litigated action to inspect books and records of a large privately owned company
- Prevailed on behalf of corporation in shareholder litigation arising from statutory cash-out mergers, *Magner v. One Securities Corp.*, 574 S.E.2d 555 (2002)
- Recently prevailed on behalf of corporation in shareholders' litigation, permitting a corporation to amend by-laws to eliminate shareholder super-majority voting provisions
- Recently negotiated a confidential eight-figure settlement on behalf of a shareholder who had asserted various breach of contract and breach of fiduciary duty claims against a privately held corporation and its officers and directors
- Recently obtained, after a five-day trial, substantial recovery for a minority shareholder in a dissenters' rights judicial appraisal proceeding

Consumer Class Actions

- Obtained dismissal of damage claims based on voluntary payment doctrine defense in Georgia class action challenging internet service provider's early termination fees
- Obtained dismissal of California class action predatory lending claims asserted by leading non-profit organization against large financial institution
- Obtained dismissal of a California class action alleging sales tax violations
- Obtained dismissal of putative class action alleging anticipatory repudiation of lease agreement in federal district court in Ohio
- Representing wireless telecommunications provider in various putative class actions involving claims of false advertising; improper collection of federal excise taxes; improper collection of sales taxes; and billing issues
- Representing internet service provider in various putative class actions involving billing issues
- Representing national court reporting company in multi-district class action litigation
- Won dismissal of class action filed by consumers in California, alleging violations of California's Consumer Legal Remedies Act and Unfair Competition Laws
- Won partial summary judgment in consumer class action arising out of rebate offers, leading to a highly favorable "coupon" settlement
- Obtained dismissal of putative consumer class action in Miami against an internet service provider arising out of a rebate offer

- "Ethical Issues in Jury Trials," *Selecting a Winning Jury*, ICLE Seminar, (January 2005).
- "Emerging Ethical Issues in Corporate Litigation," *ICLE Corporate Litigation Seminar*, (November 2004).
- "Freeze-Out Mergers and Shareholder Buy-Outs: A Case Study," *ICLE Corporate Litigation Seminar*, (November 2002).
- "The Extraterritorial Application of California Business and Professions Code Section 17200: Is Any Corporation Safe?" *Unfair Competition Claims 2002: California Section 17200's Impact on Corporations Everywhere*, PLI Seminar, (August 2002).
- "Government Contract Disputes in Georgia," *CLE Government Contract Briefing*, (June 2002).
- "Getting an Expert Past the Daubert Gatekeeper: An Analysis and Discussion," *Federal Civil Litigation in Georgia Seminar*, (May 2001).
- "Duties of Disclosure and Ethical Problems in the Close Corporation Context," *ICLE Corporate Litigation Seminar*, (November 1998).

+ Civic Activities:

- Mr. Balsler and a team of MLA litigators successfully represented pro bono, on appeal, Marcus Dixon, an African-American scholar-athlete from Rome, Ga. who received a ten year prison sentence for having consensual sexual relations with a high school classmate. In a landmark 4-3 decision, the Supreme Court of Georgia reversed Mr. Dixon's conviction. *Dixon v. State*, 278 Ga. 4 (2004). Mr. Balsler's Supreme Court oral argument was broadcast live on the world-wide web, and the case was widely reported by national news media, including the *CBS Evening News*, *NBC Nightly News*, *CNN*, *Fox News*, *Nightline*, *The O'Reilly Factor*, *The Today Show*, *HBO Real Sports*, *The Oprah Winfrey Show*, *MSNBC*, *The Abrams Report*, *Court TV*, *The New York Times*, *The Washington Post*,

Securities Class Actions

- Successfully defended underwriters in securities class action in the Northern District of Georgia arising from \$50 million secondary offering
- Obtained dismissal in State Court of Fulton County of \$100 million suit against securities firm arising from failed IPO
- Successfully represented financial institution in action arising from the purchase and sale of \$60 million of asset backed securities
- Obtained dismissal, on behalf of officers and directors, of a federal securities fraud complaint in the Middle District of Georgia
- Has represented officers, directors, and Special Litigation Committees in various shareholder derivative actions

Governmental Litigation

- Obtained summary judgment on behalf of City of Atlanta in putative class action suit filed by employees seeking to block privatization of the City's Water Department, enabling City to proceed with \$400 million privatization contract. *Abedi v. City of Atlanta*, 244 Ga. App. 562 (2000)
- Obtained injunction from Georgia Supreme Court on behalf of bidder in \$50 million mainframe computer procurement and established law preventing state from relying on sovereign immunity defense in bid protests. *International Business Machines Corp. v. Evans*, 265 Ga. 215 (1995)
- In case with far-ranging implications for hospitals in Georgia, obtained summary judgment on behalf of newspaper declaring quasi-private hospitals to be subject to the Open Records Act and Open Meetings Act. *Northwest Georgia Health Systems, Inc. v. Times-Journal, Inc.*, 218 Ga. App. 336 (1995)
- Successfully defended a State Senator in litigated election contest alleging various voting and ballot improprieties
- Handled more than 20 state and local bid protests and procurement disputes on behalf of both winning and losing bidders
- Represented State political party and various elected officials in proceedings before the State Ethics Commission

Professional Liability

- Advises and defends law firms and attorneys concerning claims for malpractice, ethics violations, and breaches of duty

Education

- J.D., University of Michigan Law School, *cum laude*, 1987
- B.A., University of Pennsylvania, *magna cum laude*, 1984

Admitted

- Georgia
- U.S. Supreme Court
- U.S. Court of Appeals for the Fifth Circuit
- U.S. Court of Appeals for the Sixth Circuit
- U.S. Court of Appeals for the Seventh Circuit
- U.S. Court of Appeals for the Tenth Circuit
- U.S. Court of Appeals for the Eleventh Circuit
- U.S. District Court for the Northern District of Georgia

The Los Angeles Times, The Chicago Tribune, The Miami Herald, The National Law Journal, People Magazine, and National Public Radio.

- Mr. Balsler works closely with The Georgia Innocence Project, a non-profit organization that uses DNA testing to exonerate wrongfully convicted criminal defendants.
- In 2004, Mr. Balsler was selected to be a member of the Georgia Judicial Campaign Oversight Committee, a citizens' "watch-dog" committee established to monitor and resolve disputes regarding Georgia's statewide judicial elections.
- In 2002, Mr. Balsler was appointed by the Governor to the Judicial Nominating Commission (JNC). The JNC, comprised of judges, lawyers, and non-lawyers, interviews and sends a "short list" of nominees to the Governor for the State's judgeships.
- Mr. Balsler served on the State Elections Board from 1996 through 2002 and has served as general counsel to various federal candidates' campaign committees.

+ Professional Activities:

- American College of Trial Lawyers, Fellow
- American Bar Association, Litigation Section
- Atlanta Bar Association, Litigation Section

- U.S. District Court for the Middle District of Georgia

