



## Clay Massey

Partner

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### *Related Services*

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

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Clay Massey is a trial attorney and chair of the Toxic Torts Group. He focuses his practice on complex trial litigation in the areas of environmental and toxic torts. His experience as trial counsel covers many states, including trials in some of the most hostile venues for defendants.

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 2022 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***

- Lead trial counsel for Sterigenics in hundreds of cases claiming injuries or property devaluations from alleged to exposure to ethylene oxide emissions.
- Lead trial counsel for Sterigenics against a public nuisance lawsuit brought by the New Mexico attorney general related to ethylene oxide emissions. Obtained a partial summary judgment on most of the attorney general's claims (including the attorney general's principal damages claims) and continue to litigate the attorney general's limited remaining claims.
- Lead counsel for Sterigenics in an action against the Cobb County Board of Tax Assessors claiming that its 10 percent devaluation of approximately 6,000 properties within a two-mile radius of Sterigenics' facility was arbitrary and violative of Georgia's tax laws, resulting in the Board of Tax Assessors' removal of the devaluation for the following year.
- Obtained a full defense verdict for a Fortune 50 chemical company in a toxic tort action after a two-week jury trial in Georgia.
- Obtained a full defense verdict for a Fortune 50 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 Fortune 50 chemical company after a three-week jury trial in a toxic tort action in Miami.
- Trial counsel for a Fortune 50 chemical company in a three-week Ohio toxic tort jury trial resulting in a verdict that was a fraction of the amount the plaintiff asked the jury to award.

- Obtained a full dismissal of toxic tort claims against a Fortune 50 chemical company during trial.
- Obtained a favorable settlement as trial counsel for a Fortune 500 automotive parts distributor and remanufacturer as lead trial counsel during a four-week jury trial of a toxic tort matter in New Orleans.
- Obtained a favorable settlement as trial counsel to a Fortune 50 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 lead trial counsel to Fortune 500 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 and coordinating counsel for a Fortune 50 chemical company in toxic tort litigation arising from former asbestos operations.

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

- Lead trial counsel for Sterigenics in an action to declare a county government's closure of its medical products sterilization facility because of its use of ethylene oxide was unlawful and unconstitutional. Obtained a preliminary injunction of the county's actions. and ultimately a summary judgment declaring the county had no authority to close the facility.
- Lead trial counsel for a major construction aggregates company in an action challenging a county government's denial of permits to expand a major granite quarry, resulting in the client obtaining the full approval necessary for the quarry expansion.
- Lead trial counsel for an interstate natural gas pipeline company in hundreds of federal condemnation actions under the Natural Gas Act for the construction of a 115-mile natural gas pipeline. Obtained summary judgment and injunctive relief authorizing construction of the pipeline while the claims for compensation are litigated.
- 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, resulting in favorable settlement for the client.
- 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***

- Lead counsel for Union Carbide Corporation in defense of a federal court breach of contract and unjust enrichment lawsuit brought by Camden County, GA, over a former option agreement for the county's purchase of approximately 4,000 acres of land from Union Carbide for a commercial spaceport. Obtained full dismissal with prejudice of the county's claims on a motion to dismiss.
- 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.
- Lead counsel for a Fortune 500 automotive parts distributor and remanufacturer in defense of a supplier's multimillion-dollar federal court breach of contract action, resulting in a favorable settlement for the client.
- 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 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**

- “Don’t Overlook the Opportunity in Plaintiff’s Deposition of Defense Witnesses,” *American Bar Association*, January 19, 2024.
- “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.
- “Taking Effective Expert Depositions in Toxic Tort Cases,” *American Bar Association*, December 9, 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.
- “The Learned Intermediary Doctrine in Georgia,” *Toxic Torts*, Georgia Practice & Trial Law Section, State Bar of Georgia, Institute of Continuing Legal Education in Georgia, March 2014.

### **Professional & Community Engagement**

- *Lawdragon*, “500 Leading Lawyers in America” (2023–2024)
- *The Best Lawyers in America*®, Environmental Law (2024), Litigation – Environmental (2019–2024), Mass Tort Litigation/Class Actions – Defendants (2020–2024), Litigation – Land Use and Zoning (2023)
- *The Best Lawyers in America*®, Lawyer of the Year, Mass Tort Litigation/Class Actions- Defendants – Atlanta (2022)

### **Education**

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

## *Admitted to Practice*

- Georgia