



## Matthew S. Mulqueen

Shareholder

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Matt Mulqueen represents clients in complex business litigation, with a particular focus on the financial and health care industries.

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Matt strives to provide creative solutions to clients at every stage of litigation, including early resolution and dismissal of actions, complex motion practice, the collection and review of electronically-stored information, and trial in state and federal courts. At the appellate level, Matt has represented clients in proceedings before the Tennessee Court of Appeals, the Tennessee Supreme Court, and the Court of Appeals for the Sixth Circuit.

Matt has significant experience defending clients in class actions in state and federal court. His recent class action experience includes:

- Defending a cheerleading event and apparel company, its affiliates, and private equity sponsors in three putative class actions alleging violation of federal and state antitrust laws.
- Defending federal and state banks in proposed class actions alleging claims related to "authorize positive, settle negative" overdraft fees.
- Defending state-chartered bank in proposed class action alleging claims related to the assessment of multiple return item fees on so-called single items.
- Defending a national banking association in a proposed class action in state court involving tort and contract claims relating to the posting order of debit transactions.
- Defending a bank holding company, its state-chartered bank, and members of the holding company's board of directors in a proposed class action in state court alleging fraud, breach of contract and violation of the Tennessee Securities Act.
- Defending a regional hospital system in a proposed class action in federal court asserting a claim for respondeat superior liability relating to alleged violations of the Employee Retirement Income Security Act (ERISA). The district court dismissed the plaintiff's complaint against the hospital system after holding, as a matter of first impression, that the doctrine of respondeat superior is not available under ERISA as a matter of law.
- Defending a regional hospital system in a proposed class action in state and federal court alleging tort and contract claims relating to third-party liability billing.
- Defending a national lawn care provider in a proposed class action in federal court alleging violations of the Telephone Consumer Protection Act (TCPA), including a successful motion to compel arbitration that resulted in the provider's dismissal from the class action.

Matt also has substantial experience representing clients in the financial services and health care industries:

### Financial Services

- Representing investors and general partners in Low Income Housing Tax Credit (LIHTC) litigation.
- Defending a national banking association in a suit relating to allegedly fraudulent wire transfer.
- Defending a national banking association in class action involving claims of breach of contract, breach of the covenant of good faith and fair dealing, conversion, unjust enrichment and constructive trust in connection with the assessment of banking fees.

- Defending a national banking association in state court action involving claims of fraud, conspiracy, negligence, conversion and violations of the Uniform Commercial Code.
- Prevailing on a motion to dismiss on behalf of national banking association, its capital markets division, and affiliated broker-dealer in state court action involving institutional customer's claims of securities fraud, common law fraud, negligent misrepresentation.
- Representing a national banking association and its capital markets division and affiliated broker-dealer in federal court action alleging violations of federal and state securities laws, commercial bribery, and aiding and abetting breach of fiduciary duties.
- Defending a national bank in AAA arbitration involving breach of contract claims relating to transfer of home equity lines of credit under a purchase and assumption agreement.

## Health Care

- Representing a pharmacy in dispute with national pharmacy benefit manager regarding allegedly improper recoupments following an audit.
- Successfully assisting a pharmacy seeking reentry into national pharmacy benefit manager's network following dispute regarding allegedly improper network termination.
- Representing a pharmacy seeking the return of money wrongfully recouped by a pharmacy benefit manager following a purchase verification audit.
- Representing a group of specialty pharmacies in administrative proceedings and a state court lawsuit challenging a Medicaid agency's reimbursement methodology for clotting factor replacement therapy.
- Representing a Complex Rehab Technology provider in an unfair competition lawsuit brought against former employees and a competitor.

In addition to his civil litigation practice, Matt serves as the Memphis office representative on the Firm's Pro Bono Committee and maintains an active pro bono practice. Recent pro bono work includes obtaining guardianships, filing petitions for special immigrant juvenile status, and representing clients in removal proceedings before the Executive Office for Immigration Review.

Before joining Baker Donelson, Matt clerked for the Honorable Loretta A. Preska, Chief Judge of the United States District Court for the Southern District of New York. Matt is a shareholder in the Memphis office.

## Representative Matters

- Obtained dismissal of a complaint in federal court alleging that a joint venture Physician Hospital Organization (PHO) violated various antitrust laws by engaging in anticompetitive conduct. The dismissal was with prejudice and terminated proceedings against the PHO in the district court before the commencement of discovery.
- Obtained injunctive relief for global logistics company in state court action involving claims for misappropriation of trade secrets, unfair competition, tortious interference and breach of fiduciary duty.
- Defended a global orthopedics device manufacturer in state court litigation involving claims of breach of separation pay agreements, retaliatory discharge, violations of the Tennessee Public Protection Act and defamation.
- Advised global manufacturer on application of indemnity provision in sales agreement to a vendor's employees, agents and independent contractors.
- Represented shareholder in state court action seeking restraining order and preliminary and permanent injunctions based on claims of breach of a shareholders' agreement and civil conspiracy.
- Successfully defended a physician hospital organization against claims that it conspired to boycott a surgery center and two of its physician investors from the outpatient surgery market in the Memphis

area in violation of the Sherman Act, as well as state law unfair competition and tortious interference claims in the United States District Court for the Eastern District of Arkansas.

- Defended a complex breach of contract complaint filed against an individual related to an employment agreement that included non-competition, non-solicitation, and confidentiality provisions. Reached a favorable settlement for the client.
- Successfully defended a health care provider group in a putative class action lawsuit by a state municipal association alleging violations of the federal RICO Act. Won a motion to dismiss the entire complaint on Article III standing grounds.
- Successfully defended a health care provider in a class action complaint alleging violations of patent privacy rights. Obtained dismissal of the entire complaint.
- Won a motion to dismiss on behalf of a large regional bank in a lawsuit alleging the bank committed fraud by representing that its customers had enough funds to repay a loan to the plaintiff.



## Professional Honors & Activities

- Listed in *The Best Lawyers in America*<sup>®</sup> for Commercial Litigation (2020 – 2025)
- Selected to Mid-South Rising Stars by *Mid-South Super Lawyers* (2014 – 2023)
- Member – American Bar Association (Young Lawyers Division)
- Contributing Editor – ABA Section of Litigation's Litigation News
- Member – Tennessee Bar Association
  - Member – Tennessee Bar Association Limited Partnership Act Drafting Committee
- Member – Memphis Bar Association
- Member – Federal Bar Association, Memphis Mid-South Chapter
- Named an Attorney for Justice by the Tennessee Supreme Court (2018)
- Member – Leo Bearman, Sr. American Inn of Court (2013 – 2015)
- Member – GiVE 365, Community Foundation of Greater Memphis
- Past President – Board of Directors, Community Legal Center
- Chair – Pro Bono Committee, Memphis Office
- Recipient – Memphis Bar Association, Access to Justice - Champion of Justice Award (2017, 2021)
- Recipient – Memphis office Pro Bono Award (2016, 2022)
- Recipient – Memphis office Clients First Award (2014)
- Recipient – Memphis Associate of the Year (2013)
- Co-Chair – St. John's Public Interest Law Committee (2009)
- Dean Mary C. Daly Memorial Prize (2009)
- Ned D. Frank Award (2009)
- International Academy of Trial Lawyers Award (2009)



## Publications

- "General Contract Clauses: Alternative Dispute Resolution (Multi-Tiered) (TN)," Thomson Reuters Practical Law (February 2023)
- "As Digital Assets Infiltrate The Banking Industry, New Risks Abound," CNA article (December 2022)
- "Tennessee Banks Face Uptick in Fee Class Actions," *TNBankers.org* (May/June 2021)
- "The Supreme Court Answers a Call for Clarity Under the TCPA" (December 2020)
- "Businesses Face Coming Tidal Wave of COVID-19 Litigation," *Daily Business Review* (April 30, 2020)
- "Tidal Wave of COVID-19 Lawsuits on the Way" (April 21, 2020)
- "Using Experts to Prove Damages," *Trial Evidence*, ABA Section of Litigation Newsletter (Winter 2020)
- "Data Privacy Class Actions," *Tennessee Bankers Magazine* (March/April 2019)

- "Access to Counsel in Immigration Proceedings," *Litigation News*, ABA Section of Litigation newsletter (February 2019)
- "ABA Working Group Tackles Mental Health and Substance Use Crisis," *Litigation News*, ABA Section of Litigation newsletter (December 2018)
- "Failure to File Surreply Leads to Waiver on Appeal," *Litigation News*, ABA Section of Litigation newsletter (August 2018)
- "Joint Client May Compel Disclosure of Privileged Documents," *Litigation News*, ABA Section of Litigation newsletter (June 2018)
- "General Contract Clauses: Alternative Dispute Resolution (Multi-Tiered) (TN)," Thomson Reuters Practical Law (February 2018)
- "New Test for Forum Selection Clauses," *Litigation News*, ABA Section of Litigation newsletter (January 2018)
- "Client Intake Call Does Not Disqualify Conflicted Counsel," *Litigation News*, ABA Section of Litigation newsletter (January 2018)
- "ABA Provides Ethical Advice to Protect Electronic Communication," *Litigation News*, ABA Section of Litigation newsletter (August 2017)
- "Post-Judgment Tender Cannot Trigger Unaccepted Rule 68 Offer," *Litigation News*, ABA Section of Litigation newsletter (May 2017)
- "Courts May Consider Foreign Law Declarations on Motions to Dismiss," *Litigation News*, ABA Section of Litigation newsletter (January 2017)
- "Deletion of Emails Leads to Sanctions," *Litigation News*, ABA Section of Litigation newsletter (November 2016)
- "Head E-filing Ineptitude Results in Suspension and Censure," *Litigation News*, ABA Section of Litigation newsletter (August 2016)
- "New Practice Considerations under Federal Rule 26 Amendments," *Litigation News*, ABA Section of Litigation newsletter (May 2016)
- "Independent Counsel Required for Insurers to Avoid Conflicts," *Litigation News*, ABA Section of Litigation newsletter (February 2016)



## Speaking Engagements

- "Bank Fee Class Action Litigation Including Current Trends, What to Expect as a Result of Those Trends, and Vendor and Insurance Considerations," Tennessee Bankers Association (March 2021)



## Webinars

- Coronavirus and Financial Institutions: What Banks and Lenders Need to Know (March 2020)



## Education

- St. John's University School of Law, J.D., 2009, summa cum laude
  - Senior Articles Editor, *St. John's Law Review*
- Wesleyan University, B.A., Government, 2006



## Admissions

- Tennessee, 2009
- New York, 2010
- U.S. District Court for the Eastern District of Tennessee
- U.S. District Court for the Western District of Tennessee
- U.S. District Court for the Middle District of Tennessee
- U.S. District Court for the Southern District of New York
- U.S. District Court for the Northern District of New York

- U.S. District Court for the Eastern District of Arkansas
- U.S. Court of Appeals for the Sixth Circuit