

BIRMINGHAM

Thomas W. Thagard, III

SHAREHOLDER



Tom's Profile

Over the past 30 years Tom has successfully tried cases, including intellectual property, breach of contract, torts, fraud and other complex commercial matters, in federal and state courts across the country. Regardless of where the case is, Tom is a go-to lawyer for some of the nation's top companies from California to Texas to the Carolinas.

Notable victories achieved for Tom's clients include a resounding jury verdict in 2021 on behalf of Clayton Homes -- one of the nation's largest homebuilders and a division of Berkshire Hathaway -- in a major trademark infringement suit in North Carolina federal court; a jury verdict in favor of Tyson Foods in a grower lawsuit alleging multiple tort claims; a successful jury verdict in favor of an individual defendant being sued for millions of dollars and punitive damages on allegations of fraud; and successful defense of a jury trial in south Texas alleging violations of RICO against a division of Berkshire Hathaway.

In 2015 Tom served as co-counsel defending McWane, Inc., a manufacturer of ductile iron pipe, in an enforcement proceeding before the FTC. The eight-week administrative trial involved over 2,000 exhibits and 53 witnesses, culminating in a 464-page decision - possibly the longest FTC decision in history. Ultimately, Maynard's team convinced the FTC to rule against its own complaint, something the FTC had not done in 20 years.

Tom's extensive courtroom experience includes leading numerous jury trials, bench trials, and arbitrations in various courts and venues in Alabama, North Carolina, Texas, and the District of Columbia. His appellate work includes handling appeals in the Third, Fourth, Fifth, Sixth, Eighth, and Eleventh Circuits, the Alabama Supreme Court, the Texas Supreme Court, The Texas Courts of Appeal and The Florida District Court of Appeals. The geographic breadth of Tom's experience includes representations of clients in matters pending in Alabama, Arkansas, California, the District of

Contact

T 205.254.1091
F 205.254.1999
C 205.541.9767
tthagard@maynardcooper.com

ASSISTANT

Brandy McCainey
bmccainey@maynardcooper.cc
205.488.3613

RELATED INDUSTRIES/SERVICES

[Consumer & Commercial
Finance Litigation
Alternative Dispute
Resolution
Class Action Litigation
Product Liability
Intellectual Property
Litigation
Financial Institutions
Litigation and Compliance
Antitrust and Trade
Regulation
Non-Competes, Unfair
Competition, and Trade
Secrets](#)

Columbia, Florida, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, New Jersey, North Carolina, Pennsylvania, Tennessee, Texas, Utah, and West Virginia.

Tom's reputation as a skilled trial and appellate lawyer and litigator has been widely recognized by numerous legal industry publications and organizations. He is distinguished by Chambers USA as a Leading Individual in the area of Commercial Litigation. Best Lawyers® named Tom "Lawyer of the Year" in 2014, 2016, 2017, 2020 and 2021. He has also been recognized in Mid-South Super Lawyers since 2011 in the area of Business Litigation, including as a "Top 50 Alabama Super Lawyer." Law360.com named Tom a "Legal Lion" in 2014.

Tom is also actively engaged in managing the firm as a member of Maynard's Board of Directors and as a former Co-Chair of the Firm's Litigation Practice. Tom's experience spans a range of complex litigation matters including: class actions; business litigation; financial services litigation; antitrust; intellectual property, trademark and trade secrets litigation; mergers & acquisitions litigation; and scientific research misconduct litigation. He also has extensive experience defending multi-district litigation, consolidated class actions, and mass tort litigation. He served as court-appointed Liaison Counsel for one of two defendant groups in the FEMA Formaldehyde MDL pending in the Eastern District of Louisiana.

Tom also serves on the editorial board and co-authors Chapter 21: "Arbitrations & Class Actions" for the American Bar Association's two-volume treatise A Practitioner's Guide to Class Actions.

Tom's Experience

Notable Trial Experience:

- Successfully defended trademark infringement case against a division of Berkshire-Hathaway. Result: Jury verdict for defense finding no likelihood of confusion. True Homes, LLC V. CMH Manufacturing, Inc., et al., case no. 3:18 cv 345-KDB-DCK, in the Western District of North Carolina. [Featured in Law360.](#)
- Successfully defended jury trial involving multi-million dollar claims for fraud, breach of contract, and punitive damages against an individual defendant.
- Successfully defended jury trial on behalf of Tyson Foods in case alleging breach of contract and multiple tort claims. Result: Defense verdict.
- Successfully defended eight-week trial against claims of illegal monopolization and price fixing brought by the Federal Trade Commission. Breaking a 20-year pattern, the FTC ruled in favor of our client and against Complaint Counsel on all primary counts. In the Matter of McWane, Inc., a corporation, and Star Pipe Products, Ltd., a limited partnership, 2014 WL 556261 (F.T.C. 2014). (Note: Case was named by Global Competition Review as the 2015 Behavioral Matter of the Year - Americas)

- Successfully defended RICO jury trial in Southern District of Texas and subsequent Fifth Circuit Appeal for a division of Berkshire-Hathaway. Vanderbilt Mortgage & Finance, Inc. v. Cesar Flores, et al., 692 F. 3d 358 (5th Cir. 2012).
- Obtained TRO and preliminary injunction on behalf of international paint manufacturer and against wholesaler for breach of non-compete agreement. Judgment affirmed by Eleventh Circuit Court of Appeals. Akzo Nobel Coatings, Inc. v. Color & Equipment, LLC, et al., 451 Fed. Appx. 823 (11th Cir. 2011).
- Successfully defended members of an Alabama limited liability company against claims involving breach of fiduciary duty and corporate governance. Result: Arbitration award in favor of respondents. Fees and costs awarded to respondents.
- Successfully defended multi-million dollar fraud claim against bank. Result: Arbitration award in favor of respondent. McDermott v. RBC Bank, 2008cv2056 (N.D. Al. 2010).
- Defended capital murder case, tried to a jury in Jefferson County, Alabama. State of Alabama v. McEwan.

Recent Litigation Results:

- Defended Hometown America against a class action filed in the District of Massachusetts alleging Deceptive Trade Practices under M.G.L Chapter 93. The District Court granted Defendants' Motion to Dismiss in its entirety. Alenci v. Hometown America Management, LLC, 2020 WL 2515872.
- Defended a division of Berkshire Hathaway against a putative nationwide class action alleging violations of the Equal Credit Opportunity Act, 15 U.S.C. 1961. The Eastern District of Michigan granted Defendant's Motion to Dismiss in its entirety. Trites v. 21st Mortg. Corp., 2020 WL 1531773 (E.D. Mich. Mar. 31, 2020).
- Defended national contract research organization in the Eastern District of North Carolina against claims of scientific research misconduct arising in the context of early-stage AIDS drug research. Result: Summary judgment as to all claims affirmed by Fourth Circuit Court of Appeals, 2014 WL 5460611 (E.D.N.C Oct. 27, 2014). 915 F.3d 249 (4th Cir. 2019).
- Defended Nestle Purina Petcare in the Eastern District of Michigan against Lanham Act claims related to the use of images on product packaging. Obtained summary dismissal of all claims, 266 F.Supp.3d 1058 (E.D.Mich. 2017). Sixth Circuit Court of Appeals affirmed dismissal at 889 f. 3d 267 (2018). Result was featured in Law360.
- Obtained dismissal of claims of scientific research misconduct against university hospital and lead researcher in the Northern District of California.
- Defended multiple Telephone Consumer Protection Act (TCPA) cases against a nationwide lender, including a putative class action filed in the Northern District of Illinois. Resulted in favorable settlement for client.
- Obtained summary judgment for Southern Research Institute defending claims for patent royalties. Successfully defended on appeal to Alabama Supreme Court.

- Defended a joint venture of The Carlyle Group in contract dispute related to a shopping center development and GO Zone Bonds. Resulted in favorable settlement for client.
- Prosecuted significant UCC/Contract/Tort action on behalf of small business owner. Results: Favorable settlement for Plaintiff. Alabama Dynamics, Inc. Sharp Industries, Inc., et al., CV-12-1929, (N.D. Ala. 2012).
- Successfully defended clients in multiple South Texas federal courts, state courts, state courts of appeal, Texas Supreme Court, and arbitrations for various consumer claims and class actions.
- Jefferson County Receivership Litigation: Successfully obtained dismissal of Regions Bank from significant litigation relating to defaults on Jefferson County Sewer Bonds.
- Successfully defended mortgage servicing fraud case. Result: Summary Judgment granted on all counts. Donald E. Mandy, et al. v. Select Portfolio Servicing, Inc., et al., 2006cv1854 (N.D. Al).
- Successfully defended Tyson Foods in defamation/malicious prosecution action. Result: Summary Judgment granted for Tyson. Judgment Awarded to Tyson on Counterclaim Against Plaintiff. Mickey Yancy v. Tyson Foods, Inc., 2001cv2007 (N.D. Al).
- Successfully defended BOC in a lawsuit arising from a terminated acquisition. Result: Summary Judgment granted for BOC. Sexton Welding Supply Co, Inc., et al. v. The BOC Group, Inc., 1999CV2116 (N.D. of Al).
- Successfully defended United Rentals in lawsuit related to terminated acquisition. Result: Favorable Settlement. Yukon Investments, LLC v. United Rentals (North America, Inc., APO3-80194 (U.S. Bankruptcy Court for the Northern District of Alabama).
- Successfully defended United Rentals in products liability lawsuit related to double fatality. Result: Favorable Settlement. Rebecca Myers, et al. v. United Rentals, Inc., et al., 2004cv887 (M.D. Al).
- Successfully defended against claims of fraud, breach of contract, Fair Debt Collection Practices Act, and Fair Credit Reporting Act. Result: Summary Judgment. Arthur Earl Clark, et al. v. AmSouth Bank & Dovenmuehle Mortgage, Inc., et al., 2005cv747 (M.D. Al).

Multi-District Litigation Experience:

- Represented several defendants as lead counsel and served as Liaison Counsel on behalf of the Manufactured Housing Defendant Group in In Re FEMA Trailer Formaldehyde Product Liability Litigation. That Hurricane Katrina related litigation involved over 100,000 plaintiffs, asserting personal injury claims arising from the use of formaldehyde-emitting building products. Our firm changed the course of the MDL by convincing the District Court to require Article III matching of plaintiffs and defendants. In re FEMA Trailer Formaldehyde Products Liability Litigation, 570 F. Supp. 2d 851 (E.D. La 2008). Tom also played a leadership role in the defense steering subcommittee opposing class certification which successfully defeated plaintiffs' class certification attempt. In re FEMA Trailer Formaldehyde Products Liability Litigation, MDL No. 07-1873, 2008 WL 5423488 (E.D. La. Dec. 29, 2008). Tom took a leadership role in

the defense steering group asserting the defense of preemption, which successfully resulted in dismissal of many of plaintiffs' primary claims. In re FEMA Trailer Formaldehyde Products Liability Litigation, 620 F. Supp. 2d 755; 2009 U.S. Dist. LEXIS 45179. Served as point person for negotiating, implementing and obtaining court approval of the class settlement for the Manufactured Housing Defendant Group. In re FEMA Trailer Formaldehyde Products Liability Litigation (Doc. 23565).

- Successfully defended McWane, Inc. in antitrust price-fixing MDL pending in the Eastern District of Tennessee as In Re Cast Iron Soil Pipe and Fittings Antitrust Litigation.

Representative Class Action Experience:

- Defending Hometown American in consumer class action filed in the District of New Jersey.
- Defending Clayton Homes, Inc. in nationwide class action originally filed in Louisiana state court alleging design defects.
- Defending Hometown America against class action proceedings in federal court in Boston, MA.
- Successfully defended a Berkshire Hathaway division in a nationwide class action pending in the Eastern District of Michigan asserting claims based on the Equal Credit Opportunity Act.
- Successfully defended McWane, Inc. in consolidated antitrust class actions proceedings pending in the District of New Jersey as In re Ductile Iron Pipe Fittings Direct Purchaser and Indirect Purchaser Antitrust Litigation.
- Successfully defended Hometown America, Inc. against a class action filled related to the 2017 northern California wildfires
- Successfully defended a Berkshire Hathaway division in a putative Telephone Consumer Protection Act class action pending in the Northern District of Illinois.
- Successfully defended Berkshire Hathaway companies in consumer finance and insurance related class actions pending in Arkansas. See, e.g., *Goodner v. Clayton Homes, Inc.*, 2013 WL 5194113 (8th Cir. Sept. 16, 2013) (vacating district court's CAFA remand order) and *CMH Homes, Inc. v. Goodner*, 729 F. 3d 832, 2013 WL 4749906 (8th Cir. Sept. 5, 2013) (vacating district court's order dismissing petition to compel arbitration for lack of subject matter jurisdiction).
- Defended Regions Bank and Morgan Keegan in a class action involving the Jefferson County, Alabama sewer/bankruptcy crisis. Result: Case dismissed. *Charles E. Wilson & Co., et al. v. JP Morgan Chase & Co., et al.*, 1100615 (S. Ct. Al).
- Obtained order compelling arbitration as to individual consumer fraud claims of named plaintiffs in purported class action. *Hafer v. Vanderbilt Mortgage and Finance, Inc.*, 793 F.Supp.2d 987 (S.D. Tex. June 24, 2011).
- Obtained dismissal of consumer fraud case subsequent to filing of Motion to Strike Class Allegations. *Vasquez v. Clayton Homes, Inc., et al.*, 2:12-CV-0018 (S.D. Tex. 2012).
- Defended RICO class action related to alleged employment of illegal aliens. District Court granted motion for more definite

statement/RICO statement. Case dismissed. *Cruz v. Cinram*, 574 F. Supp. 2d 1227 (N.D. Ala. 2008).

- Assisted with representation of one of the nation's largest manufacturers of vacuum cleaners in an alleged nationwide class action. The District Court granted defendants' motion to dismiss purported nationwide class action asserting breach of warranty claim, and the Eleventh Circuit affirmed. *Green v. Bissell Homecare, Inc.*, 476 F. Appx 238 (11th Cir. 2012).
- Successfully defended Regions Financial Corporation against class allegations of wrongful foreclosure practices and "reverse redlining." Result: Dismissal of suit. *City of Birmingham v. Argent Mortgage Company, LLC, et al.*, 2009cv467 (N.D. Al).
- Successfully defended state-wide Georgia class action related to mortgage satisfactions. Result: Dismissal of suit. *Waldrop v. Regions*, Case No. 4-07-CV-23 (M.D. Ga).
- Successfully defended client in a Hurricane Katrina-related class action in Louisiana federal court. Case settled on individual basis. *Richard Olivier, et al. v. Dovenmuehle Mortgage, Inc., et al.*, 2006cv2422 (E.D. La).
- Obtained Alabama Supreme Court order granting mandamus petition requiring an Alabama trial judge to stay a purported class action pending the certification decision in a previously-filed similar class action in a different forum. *Ex parte The BOC Group, Inc.*, 823 So. 2d 1270 (Ala. 2001).
- Defended and negotiated a Rule 23(b)(1)(B) limited fund class action settlement of consumer class action. *Arthur v. Pestco Exterminating Co.*, No. CV-97-098 (Circuit Court of Jefferson County, Ala. 2004).

Representative Appellate Experience:

- *Trana v. Southern Research Institute*, 915 F.3d 249 (4th Cir. 2019)
- *Wysong Corp. v. Nestle Purina Petcare Co.*, 889 F. 3d 267 (6th Cir. 2018) (Affirmed dismissal of Lanham Act claims).
- *Gilley v. Southern Research Institute*, 176 So. 3d 1214 (Ala. 2015) (Affirming summary judgment related to royalty payments).
- See, e.g., *Goodner v. Clayton Homes, Inc.*, 2013 WL 5194113 (8th Cir. Sept. 16, 2013) (vacating district court's CAFA remand order) and *CMH Homes, Inc. v. Goodner*, 729 F. 3d 832, 2013 WL 4749906 (8th Cir. Sept. 5, 2013) (vacating district court's order dismissing petition to compel arbitration for lack of subject matter jurisdiction).
- Successfully reversed primary part of South Texas jury verdict. *Vanderbilt Mortg. & Fin., Inc. v. Flores*, 692 F.3d 358; 2012 U.S. App.
- Successfully filed Amicus Brief on behalf of Business Council of Alabama at the request of the Supreme Court, addressing the policy implications of a proposed change to the statute of limitations governing all toxic exposure claims in Alabama. Supreme Court adopted BCA's position. *Cline v. Ashland, Inc.*, 970 So.2d 755 (Sup. Ct. Al.).
- Successfully filed petition for Writ of Mandamus in Alabama Supreme Court to Stay a second-filed State Court Class Action. Writ Granted. *Ex parte The BOC Group, Inc.*; (In re: *National Metals, Inc. v. The BOC Group, Inc., et al.*) 823 So.2d 1270; 2001 Ala. LEXIS 397.

- Successfully defended appeal in Eleventh Circuit Court of Appeals of Judgment obtained in Northern District. Tyson Farms, Inc. v. Micky Yancy, 99 Fed. Appx. 881; 2004 U.S. App.
- Successfully filed petition for Writ of Mandamus in Alabama Supreme Court regarding Applicability of Attorney/Client Privilege and Work-Product Doctrine. Settled on Appeal. Juan Mateo, et al v. Cooper Tire & Rubber Company, et al., Case No. 1022003 (Sup. Ct. Al.).

Tom's Awards

- BTI Client Service All-Stars (2020)
- Chambers USA, Leading Practitioner in Litigation: General Commercial (2015-Present)
- Best Lawyers® 2021 and 2016 "Lawyer of the Year" for Litigation: Intellectual Property
- Best Lawyers® 2020 "Lawyer of the Year" for Litigation: Banking and Finance
- Best Lawyers® 2022, 2017, and 2014 "Lawyer of the Year" for Litigation: Mergers and Acquisitions
- The Best Lawyers in America® for Commercial Litigation, Litigation: Banking and Finance, Litigation: Intellectual Property, Litigation: Mergers & Acquisitions, Mass Tort Litigation/Class Actions - Defendants, Product Liability Litigation - Defendants (2010-present)
- Mid-South Super Lawyers for Business Litigation (2011-present)
- Global Competition Review, 2015 Behavioral Matter of the Year - Americas
- Top Rated-AV Preeminent Lawyer in Mass Tort Litigation by The American Lawyer
- Law360.com, "Legal Lion", 2/14/14
- Martindale-Hubbell AV® Preeminent Rating
- American Bar Foundation, Life Fellow



Tom's Affiliations and Civic Involvement

Affiliations

- Alabama Center for Dispute Resolution, Registered Arbitrator and Mediator
- American Arbitrator Association, Certified National Commercial

Arbitrator

- American Bar Association, Tort & Insurance Practice Section: Chair of the ABA/TIPS Business Litigation Committee (2001); Long Range Planning Committee (2008-2009); Annual Meeting Program Committee (2004-2005); TIPS Membership Committee (2005-2006); TIPS Publications Editorial Board (2006-2007), National Trial Academy, Products General Liability
- Alabama State Bar Association: Character and Fitness Committee (2001)
- Birmingham Bar Association: Chair of the Long Range Planning Committee (2008); Chair of BBA CLE Committee (2009); Grievance Committee (1999-2001)

Civic Involvement

- Freshwater Land Trust, Board of Directors, Chairman (2021-2022)
- The Vulcans Community Awards "Game Changer" Honoree (2017)
- Kiwanis Club of Birmingham, President 2016-2017
- Saint Vincents Hospital, Former Foundation Board Member (2008-2013)
- St. Stephens Episcopal Church, Former Member Finance Committee
- St. Stephens Charitable Endowment, Past President of Endowment Board (2007-2010)

Bar Admissions

State Bar: Alabama

U.S. District Court: Alabama (Northern, Middle, Southern), Arkansas (Western, Western | pro hac), Florida (Northern | pro hac), Illinois (Northern), Kentucky (pro hac), Louisiana (Eastern | pro hac, Middle | pro hac), Massachusetts (pro hac), Michigan (Eastern), Minnesota (pro hac), New Jersey (pro hac), North Carolina (Western | pro hac), Tennessee (Western, Eastern | pro hac), Texas (Southern | pro hac), Utah (pro hac), West Virginia

U.S. Court of Appeals: Third Circuit, Fourth Circuit, Fifth Circuit, Sixth Circuit, Eighth Circuit, Eleventh Circuit, Federal Circuit

U.S. Supreme Court

Additional: Registered Arbitrator and Mediator with the Alabama Center for Dispute Resolution, American Arbitration Association National Commercial Arbitration Panel

Supreme Court of Alabama

Education

- University of Virginia School of Law
 - (1991, J.D., Raven Society)
- Washington and Lee University
 - (1987, B.A., magna cum laude; Phi Beta Kappa)

