

Matthew W. Buttrick



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OVERVIEW

Matthew Buttrick, a Shareholder, practices in both the Litigation and Intellectual Property Departments. Mr. Buttrick has significant experience representing public and private companies in complex commercial disputes involving a wide range of subjects, including contract rights, insurance coverage, patent and other intellectual property rights, transportation law, fraudulent transfers, fiduciary duties, legal malpractice, construction and land use law, antitrust law, and tort law. He has also represented clients in a variety of federal and state administrative proceedings, including proceedings before the Florida Division of Administrative Hearings and other state agencies.

Mr. Buttrick serves as de facto outside general counsel to multiple entities and routinely advises clients on matters relating to cybersecurity, website accessibility, privacy policies, and gift/loyalty cards. He has also successfully prosecuted and defended numerous appeals, in both federal and state courts.

Mr. Buttrick has an undergraduate degree in Electrical Engineering, with a specialization in Computer Engineering. Prior to joining the Firm, he served as Law Clerk to the Honorable Jesse E. Eschbach, United States Court of Appeals for the Seventh Circuit, 1998-99.

REPRESENTATIVE EXPERIENCE

Class action against CBRE, Inc. (U.S. District Court for the Southern District of Florida). Buttrick was one of the lead lawyers on the litigation team that achieved a \$100 million settlement on behalf of a Class consisting of 179 real estate investors. The settlement resolved claims that one of the largest commercial real estate firms in the world, and one of its employees, concealed and failed to alert our clients to an on-going multi-million dollar embezzlement scheme.

Federal administrative proceeding (U.S. District Court for the District of Columbia, U.S. Court of Appeals for the C. Circuit). Mr. Buttrick is one of the lead lawyers representing All Aboard Florida in a federal action challenging the U.S.

Department of Transportation's allocation of tax-exempt private activity bond authority to the All Aboard Florida Project – an express passenger rail system which will soon connect the four largest urban population centers in Southern and Central Florida, namely, Miami, Ft. Lauderdale, West Palm Beach, and Orlando. The action also challenged the Final Environmental Impact Statement and corresponding Record of Decision for the portion of the All Aboard Florida Project between West Palm Beach and Orlando. Following extensive briefing and oral argument, the District Court entered a lengthy Memorandum Opinion and Order granting summary judgment in favor of the U.S. Department of Transportation and All Aboard Florida on all claims asserted. Mr. Buttrick was one of the principal drafters of All Aboard Florida's briefs in the District Court and the subsequent appeal to the D.C. Circuit, which resulted in a unanimous opinion affirming the grant of summary judgment in all respects. On October 5th 2020, the U.S. Supreme Court denied Indian River County's Petition for Writ of Certiorari, bringing to an end the six-year effort to derail the passenger rail service from West Palm Beach to Orlando.

Contract dispute between U.S. Global, LLC and Progress Energy (Florida Circuit Court and Fourth District Court of Appeal). Mr. Buttrick was one of the lead lawyers representing U.S. Global, a Fort Lauderdale-based energy company, against Progress Energy, Inc., a large public utility. The dispute arose out of the sale of facilities that produced a synthetic fuel from coal which qualified for federal tax credits. Mr. Buttrick ran the day-to-day operations of the case, took more than 20 fact and expert depositions, argued several pre-trial hearings, and played an active role in trying the case. The trial resulted in a favorable jury verdict which, with prejudgment interest, exceeded \$132 million. An appeal to the Fourth District Court of Appeal, in which Mr. Buttrick was the principal author on the briefs, resulted in an affirmance of the judgment on one of the contract claims, which translated to a recovery of more than \$90 million. The balance of the case was remanded for further proceedings, and was later resolved favorably, by agreement, for an additional \$13.5 million, bringing the total recovery in the case to more than \$103.5 million.

State administrative proceeding (Florida Division of Administrative Hearings). Buttrick was one of the lead lawyers representing All Aboard Florida in an administrative hearing challenging an Environmental Resource Permit Modification issued by the South Florida Water Management District. Following a lengthy proceeding, including a two-week hearing, the presiding Administrative Law Judge issued a Recommended Order which found for All Aboard Florida on all issues and endorsed the permit under review. The permit was for a portion of the aforementioned express passenger rail system which will soon connect the four largest urban population centers in Southern and Central Florida. The Recommended Order, which was adopted by the South Florida Water Management District in its Final Order, contains the most thorough analysis to date on the issue of whether the first element of the public interest test permits consideration of non-environmental factors and provides more predictability and clarity as to the application of the public interest criteria.

Receiver-filed action against Peninsula Bank (U.S. District Court for the Eastern District of Pennsylvania, and U.S. Court of Appeals for the Third Circuit). The Firm was engaged after the Receiver for a Ponzi entity obtained a \$14 million jury verdict against Peninsula Bank. Mr. Buttrick co-authored the briefs filed with the Third Circuit, which issued a unanimous opinion reversing the jury verdict and remanding for entry of judgment in favor of Peninsula Bank and the other defendants. Mr. Buttrick also later secured a judgment in favor of Peninsula Bank taxing more than \$500,000 in litigation and appellate costs against the Receiver.

Lawsuit against relating to the construction of All Aboard Florida's Miami-Central Station (Florida Circuit Court). Buttrick was co-lead counsel for All Aboard Florida in a case brought by the principal steel subcontractor for the Miami-Central Station. The subcontractor alleged that the general contractor and architect for the Station committed numerous errors and omissions, which delayed the subcontractor's work and increased the amount it was entitled to be paid. Following extensive pre-trial proceedings and two weeks of trial, the case settled on favorable terms, with the subcontractor receiving less than half of what it was seeing to recover.

Bankruptcy adversary proceeding involving claims of fraudulent transfer and breaches of fiduciary duty (U.S. Bankruptcy Court for the Southern District of Florida). Mr. Buttrick was employed, with Court approval, as Special Litigation Counsel to a Chapter 7 Trustee responsible for administering the estates of bankrupt developer entities, to prosecute claims against the debtors' equity sponsors, including Edward R. "Bobby" Ginn III, Lubert-Adler Management Partners, L.P., and related persons and entities. The claims arose out of a complex \$675 million loan secured by debtor transfers of guaranties and liens. Following extensive litigation, the claims were resolved favorably, by agreement, for \$25 million.

Miscellaneous actions against All Aboard Florida entities (U.S. District Court for the District of Columbia, Florida Circuit Courts, the Florida Fourth District Court of Appeal, and the Florida Division of Administrative Hearings). Mr. Buttrick was and is one of the lead lawyers defending All Aboard Florida in a variety of administrative proceedings and other lawsuits relating to All Aboard Florida's proposed express passenger train service from Miami to Orlando. Most of those proceedings have been resolved favorably through litigation or agreement. Others remain pending.

Lawsuit alleging violation of state unfair trade practices act and misappropriation of intellectual property (Connecticut Superior Court and Connecticut Appellate Court). Mr. Buttrick represented Independent Purchasing Cooperative, Inc., the purchasing cooperative for the Subway® line of restaurants in North America, against claims relating to the supply of a heat plate used in Subway® restaurants to prepare a particular product. The claimant alleged that the Subway® franchisor entity, its operating agent, and our client, had conspired to misappropriate the design of the aforementioned heat plate, in violation of various state laws. Mr. Buttrick was the principal drafter of the motion and related briefs which resulted in a summary judgment in favor of our client, and an affirmance on appeal. He also argued the motion and the appeal.

Insurance coverage dispute (Pre-Suit). Mr. Buttrick represented the developer of a high-rise condominium building in the pursuit of recovery under builders-risk and property damage insurance policies for losses incurred as a result of a boiler room explosion during the closing stages of construction. Following initial efforts by the insurers to deny or limit coverage, the issues relating to both hard and soft costs were resolved with the insurers making substantial payments.

Dispute between purchaser and developer of luxury ski home in the Yellowstone Club (Montana District Court and Montana Supreme Court). Prior to the Firm's involvement in the case, the purchaser obtained a \$2.5 million judgment against the developer, on claims of negligent misrepresentation and violation of the Montana Consumer Protection Act. Following trial, Mr. Buttrick was retained by the developer to review the trial record and participate in its continued defense, including appeals. Mr. Buttrick worked with local appellate counsel to develop an effective appellate strategy and was the principal drafter of the briefs filed with the Montana Supreme Court, which unanimously reversed the judgment and remanded for entry of judgment in favor of the developer.

Insurance coverage dispute (U.S. District Court for the Southern District of Florida and Florida Circuit Court). Mr. Buttrick represented a family of shipping companies in the pursuit of recovery under a maritime insurance policy following the sinking of a shipping barge. He also represented those companies in the pursuit of claims against their insurance broker for breach of fiduciary duty, breach of contract, and negligent misrepresentation in the procurement of the maritime insurance policy. Following extensive proceedings in both federal and state courts, the insurance carrier agreed to pay its policy limit, and the claims against the insurance broker were resolved through mediation, with the broker making a substantial payment.

Dispute concerning right to use service marks and trademarks (U.S. District Court for the Middle District of Florida). Mr. Buttrick was asked to defend Independent Purchasing Cooperative, Inc. against claims that it violated the Lanham Act and related Florida laws in connection with the termination of a vendor. Mr. Buttrick authored and argued a motion to compel arbitration pursuant to an agreement between the SUBWAY® franchisor and the terminated vendor. Following extensive briefing and a lengthy hearing, the District Court granted that motion and directed that the claims against IPC

could only be pursued through arbitration in Connecticut. The vendor subsequently abandoned its claims against IPC, with prejudice.

Insurance coverage dispute (Pre-Suit Mediation). Mr. Buttrick represented the developer of a high-rise office building in the pursuit of recovery under a builders-risk insurance policy for losses incurred as a result of uneven building settlement. Following an initial denial of coverage and pre-suit discovery, the matter was resolved through mediation, with the insurer making a substantial payment.

Suit for temporary injunctive relief pending the outcome of a foreign arbitration proceeding (U.S. District Court for the Southern District of Florida). Mr. Buttrick was hired by a Singapore company to file a lawsuit seeking to temporarily enjoin a Spanish company from selling or otherwise disposing of shares of stock subject to a written call option agreement, to preserve the status quo pending the outcome of a foreign arbitration proceeding concerning the agreement. Following intensive motion practice and preparation for an evidentiary hearing, the case was resolved favorably, by agreement, with the Spanish company agreeing to comply with the call option agreement.

Insurance coverage dispute (Florida Circuit Court). Mr. Buttrick was one of the lead lawyers representing a developer in a suit seeking recovery under a builders-risk insurance policy, following a catastrophic fire. After two weeks of trial, the insurer settled for \$27 million, which represented the entire amount sought in the litigation, plus attorneys' fees, as well as a sum to settle the insurer's exposure for bad faith liability. By agreement, the names of the parties cannot be disclosed.

Representation of generic drug maker in efforts to get generic version of anti-cancer drug to market (Various venues). Mr. Buttrick was part of a team of lawyers representing IVAX Corporation in several actions brought by Bristol Myers and others, which sought to bar IVAX from marketing a generic version of the anti-cancer drug Taxol. The suits were resolved favorably, by agreement, resulting in IVAX's marketing of a generic version of Taxol to the public.

Legal malpractice action arising from dismissal of a claim involving alleged patent infringement (Florida Circuit Court). Mr. Buttrick was hired by the defendants' malpractice insurance carrier on the eve of trial, to "shadow" the trial and assist in developing trial strategy. The case resulted in a jury verdict awarding damages totaling approximately half of the amount sought, and the case was settled while on appeal.

State administrative proceeding (Florida Division of Administrative Hearings). Mr. Buttrick represented the holder of a permit issued by the Florida Department of Environmental Protection for a consolidated multi-slip residential docking facility. The permit was the subject of a contentious challenge by neighboring landowners. Following extensive motion practice and discovery, the permit challenge was abandoned.

Suits against developer involving construction and land use issues (Florida Circuit Court, and Second District Court of Appeal). Mr. Buttrick defended WCI Communities, Inc., the developer of luxury hi-rise condominium residences, in multiple actions and appeals brought by neighboring property owners, involving construction and land use issues. Following favorable rulings by the Circuit Court, the suits were resolved favorably, by agreement, while on appeal.

Suits against developer involving environmental issues (Florida Circuit Court). Mr. Buttrick defended WCI Communities, Inc. in multiple actions arising out of the construction of luxury residences, involving allegations of construction defects and mold contamination. Following motion practice and discovery, the suits were all resolved favorably, by agreement.

Suit by manufacturer and distributor of nursery pots for violation of antitrust laws (U.S. District Court for the Middle District of Florida). Mr. Buttrick represented Florikan, a manufacturer and distributor of nursery pots and other nursery supplies, in antitrust action against larger manufacturer and distributor of nursery supplies. Following extensive discovery and motions for summary judgment, the suit was resolved favorably, by agreement.

Mr. Buttrick has also prosecuted and defended a number of other state and federal appeals involving a variety of subjects, ranging from jurisdictional issues to commercial banking issues.

PROFESSIONAL & COMMUNITY INVOLVEMENT

New World Symphony

Board of Trustees, 2007-Present

Executive Committee, 2011-Present

Nominating and Governance Committee, 2011-Present

Finance Committee, 2014-Present

American Jewish Committee, Miami Chapter, Board of Directors, 2003-2005

PUBLICATIONS & PRESENTATIONS

Land Development News Update, Publications: [DOAH Recommended Order Clarifies ERP Public Interest Criteria](#)
Stearns Weaver Miller News Update | October 2017

Publications: [Recovering from Hurricanes Irma and Maria | How can we help?](#)
Stearns Weaver Miller News Update | September 2017

NEWSROOM

In the Media: [CBRE To Pay \\$100M To End Class Action By Realty Investors](#)
Law360 | | August 2018

In the Media: [Cabot Investors Win Class Cert. In \\$157M Fraud Suit](#)
Law360 | | March 2018

In the Media: [The Miami Foundation Asked "What's Your Story?"](#)
The Miami Foundation | | November 2017

EDUCATION

J.D., University of Chicago Law School, 1998

B.S., *magna cum laude*, University of Rochester, 1995

ADMISSIONS

Florida

United States District Courts for the Middle and Southern Districts of Florida

United States Court of Appeals for the Ninth, Eleventh, and D.C. Circuits

The Supreme Court of the United States