



## JONATHAN A. BERKELHAMMER

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### OVERVIEW

Jon Berkelhammer is a trial lawyer with a nationally-renowned litigation practice. Over the years, he has successfully defended class action matters, catastrophic personal injury and product liability cases, trade secret cases and intellectual property matters. Jon also has handled a variety of commercial litigation matters, including disputes involving minority and majority shareholders and officer and director liability. He regularly appears in the state and federal trial and appellate courts in North Carolina and other jurisdictions.

Jon has handled disputes across a broad spectrum of industries, from the pharmaceutical industry to industrial manufacturing and more. The breadth of these experiences has afforded him unique insights into trial litigation. He leverages his understanding of legal conflict to maximize his clients' interests.

Jon is often described as fun-loving, self-deprecating, thoughtful, and loyal. These qualities are fundamental to his practice. In fact, his self-deprecating nature reflects his commitment to the client; the client is Jon's focus, and he does not have an internal need to prove himself a star. Jon has crafted a career as a leading litigator while sticking to his principles and striving to maximize the client's interests.

Of course, when the situation calls for Jon to "work his magic" as the center of attention in the courtroom, he shines in this role. It's important to Jon, however, that his clients understand that the aggressive litigator role is not meant to be played at all times. In most cases, the client's interests are best served by a dynamic litigator who can provide thoughtful guidance and persuasive advocacy over the course of a dispute.

Jon prides himself on being a good listener. He invests significant time and attention to each client and strives to understand their problems and ideal solutions. This approach ensures that he has the information he needs to act decisively in the client's best interests. Jon has handled hundreds of disputes and has the ability to see the "chessboard" of litigation. He understands that an effective litigator must be able to predict several moves in advance of the opponent and act accordingly.

Jon is an avid, lifelong sports fan and in his free time, he enjoys playing and watching sports. He is also active in the legal community as a member of the National Institute of Trial Advocacy and as an instructor at the Southeast Region Trial Skills Program, held annually at the University of North Carolina at Chapel Hill.

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### CREDENTIALS

#### EDUCATION

- ▶ J.D., University of North Carolina School of Law
  - ▶ Honors: with honors, Order of the Coif
  - ▶ Law Review: *North Carolina Law Review*
- ▶ B.S., University of North Carolina at Greensboro
  - ▶ Honors: *summa cum laude*

#### COURT ADMISSIONS

- ▶ North Carolina
- ▶ Eastern District of North Carolina
- ▶ Middle District of North Carolina
- ▶ Western District of North Carolina
- ▶ Fourth Circuit Court of Appeals
- ▶ Sixth Circuit Court of Appeals
- ▶ Eleventh Circuit Court of Appeals
- ▶ U.S. Supreme Court

#### PROFESSIONAL ASSOCIATIONS AND MEMBERSHIPS

- ▶ North Carolina Association of Defense Attorneys
  - ▶ Immediate Past-President (2014-2015)
  - ▶ President (2013-2014)
  - ▶ Member, Board of Directors (2008-2011)
  - ▶ Former Chair, Commercial Litigation Committee
- ▶ American Bar Association
  - ▶ Tort Trial & Insurance Practice Section
  - ▶ Transportation Committee
- ▶ DRI
  - ▶ Mid-Atlantic Regional Representative 2019-current
  - ▶ DRI DRI North Carolina State Representative 2016-2019
  - ▶ Drug and Medical Device Committee
  - ▶ Trucking Industry Defense Association
- ▶ International Association of Defense Counsel
- ▶ Product Liability Advisory Council (PLAC)

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## EXPERIENCE

- ▶ *Blue Ridge Investors II LP v. Ernst & Young LLP* – Represented the plaintiff in thirteen-day arbitration on a claim against the accountants for negligent misrepresentation. Plaintiff was an investor in a company for which defendant was the certified public account and provided audited financial statements for purposes of the investment. The case was arbitrated to judgment.
- ▶ *Regina Andrews v. Marilyn Breese and her husband William D. Breese* – Trial counsel for defendants in an action for breach of fiduciary duty claiming that the defendants had taken in excess of \$500,000 from the aunt of the plaintiff while she was living with the defendants. The case was tried to verdict.
- ▶ *Market America, Inc. v. Rossi*, 104 F. Supp. 2d 606 (M.D.N.C.), *aff'd*, 2000 WL 1699830 (4th Cir. 2000) – Trial counsel for defendants and counterclaimants in a suit against former independent distributors for, among other things, breach of contract requiring that material be held confidential and misappropriation of trade secrets and confidential information. The case was tried to verdict.
- ▶ *Medlin v. FYCO, Inc.*, 534 S.E.2d 622 (N.C. App. 2000), disc. review denied, 547 S.E.2d 12 (N.C. 2001) – Trial counsel for defendant on claims that the exterior insulation and finish system applied to the plaintiffs' new home was defective and that the defendant fraudulently represented the exterior as "stucco" when it was a synthetic product. Plaintiffs sought compensatory damages to repair the home, as well as punitive damages for the alleged fraud, and treble damages for the claim of unfair and deceptive trade practices. The case was tried to verdict.

## CATASTROPHIC PERSONAL INJURY AND MOTOR VEHICLE EXPERIENCE

- ▶ *Candie L. Willoughby and Jerome Willoughby v. Johnston Memorial Hospital Authority; Johnston Memorial Hospital Authority d/b/a Johnston Health; Johnston Memorial Hospital d/b/a Johnston Medical Center; Steris Corporation; and General Electric Company*, 2016 WL 4091370 (N.C. Ct. App. 2016) – Co-lead counsel for General Electric Company defending a claim that an operating room table malfunctioned during a hysterectomy.
- ▶ *Randy Earl Tripp, Administrator of the Estate of Barbara Moore Tripp v. Penske Truck Leasing Co. Limited Partnership and Tristan Devon Branch and Kevin Brann Administrator of the Estate of Crystal T. Brann v. Triston Devon Branch and Penske Truck Leasing Co., Limited Partnership* – Lead counsel for defendants in a double fatality motor-vehicle accident.
- ▶ *Dennis J. Scharf and Wife Cheryl H. Scharf v. Elevator Sales and Services, Inc., MWP Holdings, Inc., ThyssenKrupp Access Corp., Waupaca Elevator Company, Grove Gear Corporation, and Regal-Beloit* – Lead counsel for ThyssenKrupp Access defending a personal injury claim arising from the three-story fall of a residential elevator.
- ▶ *Henry Allen Tillman v. Janet Harper Wrights, et al.* – Lead counsel for defendants in a claim for personal injuries sustained when a 15-passenger van overturned. The driver of the van was attempting to pass a tractor-trailer when the tractor-trailer began to enter the same lane to pass a preceding motor vehicle. The van driver swerved to avoid the tractor-trailer and lost control. The van was carrying recruits for the armed forces shortly after September 11, 2001. The plaintiff suffered multiple injuries, including a closed head injury.
- ▶ *Puczylowski v. Superior Carriers, Inc.* – Lead counsel for defendants in a wrongful death case involving the death of a mother. The deceased had eleven grown children and a surviving spouse. The accident occurred when the car in which the plaintiff was a passenger stopped to render assistance and was struck from behind, at highway speeds, by the defendant trucking company's eighteen-wheeler.
- ▶ *Anderson v. Demolition Dynamics, Inc.*, 525 S.E.2d 471 (N.C. App. 2000) – Lead counsel for defendant in a wrongful death action arising out of a demolition accident. The deceased was in the process of rigging a scaffold for explosive demolition when the structure collapsed.

## INTELLECTUAL PROPERTY AND COMMERCIAL LITIGATION EXPERIENCE

- ▶ *Houston v. Portfolio Recovery Associates, LLC* – Lead counsel in defense of a consumer class under the Prohibited Practices of Collection Agencies Engaged in the Collection of Debts from Consumers Act involving in excess of 24,000 putative class members.
- ▶ *Pounds v. Portfolio Recovery Associates, LLC* – Lead counsel in defense of a consumer class under the Prohibited Practices of Collection Agencies Engaged in the Collection of Debts from Consumers Act involving in excess of 24,000 putative class members.
- ▶ *Analog Devices, Inc. v. Michalski, et al.*, 579 S.E.2d 449 (N.C. App. 2003) – Co-trial-counsel for defendants in a claim against two former employees and their present employer for misappropriation of trade secrets.
- ▶ *ViewCast v. Inlet Group* – Lead counsel for defendants in a claim alleging, among other things, misappropriation of trade secrets. Defendants were former employees of Osprey Technologies, a subsidiary of ViewCast. Defendants at different times left Osprey and ultimately started a small company to try to develop technology to distribute high definition television signals in real-time.
- ▶ *State v. McClure*, 2004 NCBC 8 (Dec. 14, 2004) – Represented a defendant in an antitrust action brought by the State of North Carolina in which the State alleged that all defendants had, among other things, engaged in a conspiracy either to rig bids for the provision of services involving the clean-up of underground storage tanks or to boycott the bidding process. Defendant was an officer in a non-profit trade association.

- ▶ *Neway Anchorlok International Inc. v. Longwood Industries, Inc.*, 107 F. Supp. 2d 810 (E.D. Mich. 1999) – Lead counsel for defendant in which plaintiff, a competitor, alleged that the defendant’s use of litigation to protect trade secret information from misappropriation by departing employees was an antitrust violation.

## PRODUCTS LIABILITY EXPERIENCE

- ▶ *Auto-Owners Insurance Company as subrogee of Carolina Hotel Investors – Crabtree LLC d/b/a Holiday Inn Raleigh v. Sharp Corporation and General Electric*– Defend Sharp Corporation and General Electric Company in a property damage claim involving a hotel fire emanating from a wall heating and air conditioning unit.
- ▶ *Tony Moore and Stephanie Moore v. Danaher Corporation, et al.* – Defendant product manufacturer in personal injury claim arising from an alleged failure of a wrench.
- ▶ *William E. Hassell v. Sears Roebuck & Co. and Campbell Oil Company of Whiteville* and Delores Rhodes, Administrator of the Estate of Vivian O. Smith – Lead counsel for defendant Sears Roebuck & Co. in a claim alleging personal injuries and death arising from the alleged explosion of a gas stove.
- ▶ *Green v. Miller Brewing Co.*, 589 S.E.2d 750, 2003 WL 23018273 (N.C. App. December 6, 2003) – Co-counsel for Miller Brewing Company defending a claim for personal injuries caused when a Miller employee allegedly became intoxicated and shot his roommate. Plaintiff alleged that Miller was negligent when, as a part of an employee benefit, Miller supplied alcohol for home consumption to its employees.
- ▶ *White v. Penske Truck Leasing Co., Inc.*, 256 F. Supp. 2d 440, 2003 WL 1900247 (M.D.N.C. April 10, 2003) – Lead counsel for defendant in a claim for negligent design of the hand-holds for rear of cab access to a Freightliner power unit and for negligent maintenance of the steps leading to the fifth wheel.
- ▶ *Marsh v. W.R. Grace & Co., Frit Industries, Inc., and Continental Casualty Co.*, 80 Fed. Appx. 883, 2003 WL 22718177 (4th Cir. 2003) – Lead counsel for defendant Frit Industries, Inc. in two wrongful death claims and one personal injury claim in which the plaintiffs alleged that their cancers were caused by exposure to the herbicide picloram.
- ▶ *St. Clair v. General Motors Corp.*, 10 F. Supp. 2d 523 (M.D.N.C. 1998) – Co-counsel for defendant in a case involving allegations that an airbag failed to deploy.

## OTHER

- ▶ *Mutual Service Casualty Ins. Co. v. Frit Industries, Inc., et al.*, 358 F.3d 1312, 2004 WL 225081 (11th Cir. 2004) – Counsel for Frit Industries, Inc. in an insurance dispute among its carriers to determine insurance coverage for personal injury claims arising allegedly from continuous exposure to a herbicide.

## PRIOR WORK EXPERIENCE

- ▶ Clerkship, Judge Franklin T. Dupree, Jr., U.S. District Court

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## PRESENTATIONS/PUBLICATIONS

- ▶ *Arguing the Complex Motion*, 2018 NCADA Annual Meeting, Hilton Head Island, South Carolina, June 15, 2018
- ▶ *Litigating Disputes Relating to Closely Held Corporations in the Business Court*, North Carolina Association of Defense Attorneys, Commercial Law Section, June 17-20, 2010

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## AWARDS/RECOGNITION

- ▶ *Chambers USA: America’s Leading Lawyers for Business*, “Leader in the Field” for Litigation (2007-2010; 2015-2021)
- ▶ *Benchmark Litigation*, North Carolina Litigation Star (2019-2021)
- ▶ *The Best Lawyers in America*®, Commercial Litigation; Personal Injury Litigation-Defendants; Product Liability Litigation-Defendants (2005-2022)
- ▶ Greensboro Product Liability Litigation “Lawyer of the Year” (2012, 2015, 2019)
- ▶ North Carolina *Super Lawyers* Magazine, Business Litigation, Personal Injury-Products, Intellectual Property Litigation (2006-2021)
- ▶ “Top 100” in NC (2006, 2008, 2009-2013, 2017-2018, 2020)
- ▶ *Business North Carolina*, Legal Elite, Litigation (2003, 2005, 2006, 2009, 2011-2020), Appellate (2021)
- ▶ *North Carolina Lawyers Weekly* “Leaders in the Law” Award Recipient (2014)
- ▶ Peer review rating of AV® in Martindale-Hubbell

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## UPDATES

### NEWS POSTS

- ▶ [Ellis & Winters Named to 2022 “Best Lawyers in America” List](#)
- ▶ [Eight Ellis & Winters Partners Recognized in Chambers, 2021](#)
- ▶ [Benchmark Litigation Again Awards Ellis & Winters its Highest Rating](#)
- ▶ [Ellis & Winters Attorneys Recognized as 2021 Super Lawyers®](#)
- ▶ [Business North Carolina Announces 2021 “Legal Elite”](#)