

FORTUNE LAW OFFICES

Scott Fortune has been self-employed as an attorney since July 1, 1985, after working with a large law firm that defended corporate employers, and later with a law firm that represented clients of insurance companies. He has since represented more than 1,000 employees as plaintiffs in employment discrimination cases and many personal injury plaintiffs. While most of his clients are top-level and middle-level managers, he has also represented men and women from virtually every occupation in public and private industry.

Scott regularly assists persons with employment contracts, severance agreements, non-compete agreements, and other types of employment-related contracts. He has helped hundreds of executives and other employees negotiate satisfactory severance arrangements. He also has helped hundreds of employees receive significantly better severance packages than those initially offered by their employers.

During the past 27 years, Scott has tried employment and personal injury cases before state and federal juries throughout the State of Florida, and has resolved scores of cases in mediations and arbitrations involving personal injury and discrimination based on age, disability, health insurance issues, medical leave issues, employment benefits issues, race and gender issues, unlawful retaliation, adverse employer action in retaliation for an employee using company provided benefits, or to prevent the employee's future receipt of such benefits, as well as for "blowing the whistle" on illegal activities by the employer.

As set forth below, most employers/defendants have been large companies with more than 500 employees. In most of the following cases, the amount of the settlement is shown. In many cases, however, the true importance of the case is not necessarily reflected by the size of the verdict or settlement alone, as many of our clients are seeking vindication of their rights, as well as monetary compensation.

Virtually all employers require confidential settlement agreements if a case is settled without a trial or arbitration. Most of the confidential settlements listed below are identified by the initials of our actual clients, and we have indicated whether the case was filed in court and, if so, where it was filed. Where cases are a matter of public record, full identifying information is included. Cases listed here are chosen because of the unique issues involved, which have often presented very challenging circumstances for us and our clients.

(2009) Russell G. Newman v. Citicorp Credit Services, Inc. (Binding Arbitration, Jacksonville, Florida) **\$4.2 million** recovery for Russell G. Newman who was employed as a Senior Director with a division of Citigroup, Inc., in Jacksonville, Florida for more than seven years, until he was terminated in an alleged “reduction in force” in June 2007. Mr. Newman had been responsible for more than 1,000 employees and more than \$2 billion in annual revenues. In 2007, Mr. Newman was told that his job was being eliminated. This news was delivered to him by his boss, who stated that he was going to have two “young guns” reporting to him, rather than having Mr. Newman reporting to him. That same manager had two weeks earlier made a derogatory remark to several managers about an elderly employee, stating that he wasn’t a good candidate for promotion because “he doesn’t have enough runway left in front of him.” Mr. Newman was 59 when fired and the two “young guns” who replaced him were in their early 30's. Mr. Newman had a compensation package worth more than \$800,000.00 annually. The case was resolved in binding arbitration in March 2009. The arbitrators awarded Mr. Newman \$3.9 million in lost earnings and approximately \$300,000.00 to offset his attorneys’ fees and costs, for a total recovery of \$4.2 million paid by Citicorp Credit Services, Inc.

(2009) RW and GW, his wife, v. AC and RD (Pretrial settlement, Jacksonville, Florida) **\$1 million** recovery for RW and his wife, for personal injuries suffered by Mr W. as result of two separate automobile collisions in 2006. Mr. W suffered soft tissue neck injuries and recovered \$750,000.00 from the first tortfeasor (who was insured by Allstate with \$1 million of liability coverage) and he recovered liability policy limits of \$50,000.00 from the second tortfeasor, plus policy limits of \$100,000.00 from State Farm, Mr. W’s provider of Uninsured/Under-insured motorist protection, for each of the two collisions. Allstate denied that Mr. W’s injuries were physically caused by either collision.

(2008) AMK v. XYZ Utilities Company (South Florida) **\$575,000.00** settlement for 62-year-old manager terminated prior to fully vesting in company’s pension and subsidized health insurance programs, and less than 3 months after his wife required expensive hospitalization and medical treatment. Plaintiff had been earning approximately \$70,000.00 annually, received excellent reviews, and would have worked until age 65, had the employer not “eliminated” his job. Had he worked to age 65, Plaintiff would have been eligible to receive lifetime pension, plus employer subsidized health care benefits for he and his wife, who was covered under the employer’s health care plan. His early termination caused him to lose those benefits.

(2008) Michael J. Herkov, Ph.D. v. The Consolidated City of Jacksonville, Case No. 3:07-cv-113-J-25MCR, United States District Court, Middle District of Florida, Jacksonville Division. Religious freedom case. Dr. Herkov was cited and fined for feeding the homeless “without a permit,” in violation of a Jacksonville City Ordinance. Dr. Herkov and others regularly fed the homeless downtown, on weekends, as part of their religious faith, until he was cited by the Jacksonville Sheriff’s Office. Our office challenged the constitutionality of the ordinance, which had been written to prevent the feeding of homeless persons on public property, even if to do so was an exercise of religious beliefs. After more than a year of negotiations, the City agreed to settle the case, and agreed to amend the ordinance, to create an exception for bona fide religious beliefs. The ordinance was amended in 2008, and Dr. Herkov and his colleagues, and others, are now legally able to feed the homeless in downtown Jacksonville, in compliance with the ordinance. The City agreed to pay our attorneys’ fees and costs.

(2008) E.M.L. v. ABC Realty Agency \$135,000.00 settlement for female HR Manager earning approximately \$60,000.00, who was forced to quit after repeatedly being treated in a denigrating manner by her elderly boss who was the CEO of the company. Plaintiff was told such things as “You’re not good looking enough to be making those kinds of statements,” and “You sure are looking fat.” CEO also regularly talked openly in the office about his sexual activities.

(2008) Williams et. al. v. Consol. City of Jacksonville, 2008 U.S. Dist. LEXIS 33137 (M.D. Fla. Apr. 22, 2008) **\$600,000.00-plus** recovery, including lost wages, interest, attorneys' fees and costs. Four white firefighters/lieutenants were passed over for promotion to captain, by former Fire Chief/African American. Chief decided to not authorize creation of new positions because the next persons in line to be promoted (the plaintiffs) were Caucasian, rather than African American. Case was ultimately tried in federal court in Jacksonville, but only after several appeals by the City trying to have the case thrown out, including appeals to the Eleventh Circuit Court of Appeals, and to the United States Supreme Court. On the eighth day of trial, jury unanimously found in favor of firefighters. Plaintiffs were all promoted retroactively to 1999, with restored benefits, and retroactive pay raises. George Williams has since been promoted after passing the City’s competitive test for Fire Chief, a test he would not have been able to take had he not won this law suit after 7 years of litigation. Plaintiff Nolen Sauls died during the litigation and his widow received his back pay award and his enhanced monthly pension benefits. Plaintiff Michael Perryman is serving as a Captain. And Plaintiff Mike Price was able to retire as a Captain.

(2008) Our office settled numerous sexual harassment, gender discrimination and medical leave cases in 2008, including an \$18,000.00 settlement for an employee who was forced to quit her country club position as a server, after reporting an influential club member's inappropriate sexual comments directed at another female employee; a \$37,500.00 settlement for the employee of an insurance agency who was terminated after reporting that she had been "kissed" involuntarily (tongue forced into her mouth) by an elderly, influential customer while she was walking him to the door after a business transaction; another \$37,500.00 settlement for a woman who was fired after returning from an approved leave for female problems, using time under the Family and Medical Leave Act; and a \$75,000.00 settlement for a male employee who was forced to quit his retail position after being incessantly harassed, insulted and threatened by a young store manager who referred to our client, among other things, as "an old faggot." The store manager was fired before the case settled. We also helped terminated executives recover increased severance payments in 2008. Combined, we were able to add more than \$600,000.00 in value to the severance packages of our clients in 2008.

Prior to 2008:

LG v. ABC Financial Services Co., \$1,000,000.00 confidential settlement for employee who was falsely accused of same-sex sexual harassment (suggesting she was a lesbian) effectively destroying employee's opportunities for advancement within the corporation. Employer was totally unable to substantiate that genuine complaints had ever been made about the plaintiff. The settlement included a "bonus" of \$150,000, six weeks of severance pay, and stock options and other benefits, for a total settlement package in excess of \$1,000,000.00. Plaintiff had been offered no severance or settlement before retaining our firm.

JAR. v. XYZ Trucking Co., \$250,000.00 settlement for trucker earning approximately \$30,000.00 annually. Client was fired after insisting upon being seen by company's "workers' comp" doctor, for work related injury. Company thereafter claimed that client was guilty of misconduct, and fired him for "falsifying documents." Client's injuries were worsened because he had to keep working with his original on-the-job injury, without seeing a doctor. Even after seeing a doctor, employer required him to exceed his medical restrictions. Settlement was for lost wages and mental anguish, and attorneys' fees and costs.

\$3.55 million and \$1.1 million jury verdicts in U.S. District Court, Middle District of Florida, involving two trials, two appeals and an application for review to U.S. Supreme Court, **Vance v. Southern Bell Telephone and Telegraph Co., 672 F.**

Supp. 1408 (M.D. Fla. 1987); affirmed in part; reversed in part and remanded, 863 F.2d 1503 (11th Cir. 1989); reversed after second trial, 983 F.2d 1573 (11th Cir. 1993); cert. denied, 513 U.S. 1155 (1995). Female plaintiff was a long term employee with good work record who was incessantly harassed and provoked after moving to new location, until she had a nervous breakdown. Notably, in each trial, the jury consisted of eight Caucasian men and women.

\$504,900 jury verdict in U.S. District Court, Middle District of Florida (racially motivated sexual harassment and retaliation), in favor of "temporary agency" employee, assigned to CSX Transportation in Jacksonville, Florida, **Reynolds v. CSX Transportation, Inc. and Roger Widney**, (1995 U.S. Dist. LEXIS 9853) (July 17, 1995); reversed in part, affirmed in part, 115 F.3d 860 (11th Cir. 1997); cert. granted 118 S.Ct. 2364 (1998) (vacated and remanded).

TS v. ABC Financial Services Co., **\$300,000** confidential settlement for female manager with long-term employment with Defendant, including a performance track record of "far exceeds" evaluations, who was "downsized" shortly after becoming pregnant for the second time.

Donald G. Petteway v. U.S. Gypsum Company, **\$850,000** jury verdict in State Circuit Court, Jacksonville, Florida, for employee who was fired for phony reasons after receiving medical treatment for worker's compensation injury, thereby "ruining" employer's "safety record." He was injured because the employer was running the wall board manufacturing machine too fast, apparently trying to increase profits by engaging in unsafe practices.

NG v. XYZ Financial Brokerage Corp., United States District Court, Middle District of Florida, Jacksonville Division. **\$700,000.00** confidential settlement for financial brokerage employee diagnosed with breast cancer. Plaintiff had been an excellent employee of defendant, earning approximately \$50,000.00 annually. When defendant learned that Plaintiff had been treated for breast cancer, however, it began taking steps which appeared to be intended to force Plaintiff to quit her employment. Plaintiff's manager became openly hostile, stating, "I suggest you start looking for another job, and start looking now."

Robert Larry Kirkland v. Atlantic Marine, Inc. and Atlantic Dry Dock Corp., United States District Court, Middle District of Florida, Jacksonville Division, Case No.3:03-cv-00530-HLA-MMH, **\$900,00.00** recovery, including jury verdict for plaintiff, who was a crane operator, fired six days before his 63rd birthday. Mr. Kirkland worked for the employer for 10 years, and missed only one day due to sickness during that time. The employer gave many different reasons for the

termination, with the nature of the reasons changing over time. Ultimately, the employer alleged that Mr. Kirkland had been "laid off 'due to "lack of work" but claiming that he was chosen for termination due to alleged "union organizing." The jury in federal court rejected all of these reasons as false, finding that Mr. Kirkland's *age* was the reason for his termination. The award included \$300,000.00 for mental anguish, and \$150,000.00 for future lost earnings. The balance of the award is the amount of Mr. Kirkland's past lost earnings, an amount that was doubled, due to the "willful" violation by the Defendants, plus court awarded attorneys' fees and costs.

Evering v. Smithwick, 526 So. 2d 185 (Fla. 3d DCA, 1988), **\$235,000.00** verdict for plaintiff, who had been working as a dishwasher in a nursing home in the Keys, earning \$6 an hour. Mr. Evering was injured in rear-end automobile collision on Overseas Highway, in Marathon. Plaintiff's injuries were relatively minor, but driver who hit him was drinking from a fifth of vodka at the time of the collision, was taking Valium he had prescribed for himself, tried to escape from rescue workers on the way to the hospital, and was a prominent local physician in the Florida Keys. This was my first jury trial, which I tried on my own 20 years ago, in Marathon, Florida, and my client and I also won the case on appeal.

Federal Ins. Co. v. Norris, 543 So. 2d 776 (Fla. 1st DCA, 1989), **\$375,000.00** verdict for plaintiff injured in collision while driving employer's truck. The employer's insurer (Federal Ins. Co.) appealed, arguing that my client was not entitled to uninsured motorist protection, because the employer claimed it had never purchased UM coverage for his employees. But the employer had never *rejected* UM coverage *in writing*, as required in Florida to negate such coverage, so my client prevailed even after appeal.

James Hilderbrandt v. ABC Garbage Co, Inc., **\$475,000.00** settlement for plaintiff injured when he was rear-ended by garbage truck. Plaintiff's injuries were not severe, but we proved through discovery of employer's time records that driver had been operating large garbage truck for 12 hours without a break; that he was paid "per haul" for each trip to the dump, giving him incentive to drive as fast as possible; and that he was most likely sleeping when his truck rammed our client's car on 1-95 near downtown.

JW v. XYZ Newspaper, United States District Court, Middle District of Florida, Jacksonville Division, **\$195,000.00** confidential settlement for advertising salesman who was fired after his employer learned that he was suffering from bladder cancer. Mr. W had been employed for less than one year, and was earning approximately \$27,000.00 at the time he was terminated. He also had employer-provided health insurance, as well as long-term disability coverage. The employer claimed that Mr.

W had been "laid off" due to economic downturn. Mr. W proved that there had never been any employees laid off under similar circumstances (i.e., alleged economic downturn) and that the employer kept track of employees with significant medical expenses.

TER v. XYZ Lawn Care Corp., United States District Court, Middle District of Florida, Jacksonville Division, **\$348,000.00** confidential settlement. Our client had been a branch manager earning about \$60,000.00 who was fired for "blowing the whistle" on his employer's questionable billing practices (charging for work that had not been performed). The employer claimed our client had not been fired but only transferred, and argued that he had been offered an alternate position, with no cut in pay.

G.M. v. XYZ Shipping Corp., United States District Court, Middle District of Florida, Jacksonville Division, **\$680,000.00** confidential settlement on behalf of several African-American truck drivers and laborers who were wrongly denied union membership and excluded from more desirable assignments.

PH v. ABC Communications Co., **\$325,000.00** confidential settlement for our client who was demoted from her administrative position, earning about \$28,000.00, shortly after her employer learned that she had nasal cancer. Our client was thereafter written up on three occasions, and then terminated, losing not only her job and her income, but her health insurance coverage. Before settlement, the employer claimed that our client was guilty of misconduct that had justified her termination.

Thomas A. Brady vs. United States Postal Service, United States District Court, Middle District of Florida, Jacksonville Division, CaseNumber:99-1083-Civ-J-21 TIC, **\$273,000** jury verdict. Mr. Brady has an impairment of his right arm, believed to have been caused by his father's exposure to Agent Orange, in Vietnam. The Postal Service refused to let him become a permanent employee, for alleged "medical reasons," even though Mr. Brady had done an admittedly excellent job as a temporary employee for several months. The U.S. Attorneys' Office vigorously defended the case, making no offer to settle before trial. The jury awarded Mr. Brady \$230,000 (out of a possible \$300,000) for mental anguish, and \$43,000 for Mr. Brady's lost earnings.

TT v. XYZ State Bank, United States District Court in the Middle District of Florida, Jacksonville Division, and State Circuit Court (settled with "confidentiality provision" for **\$280,000**). TT was employed as the Vice President and Cashier of XYZ State Bank for more than seven years, earning approximately \$40,000.00. One morning TT noted that the President had made an unusual cash deposit into his account. The amount of money deposited was equal to the amount that had been reported "missing" from the window of another employee, a few days earlier. TT reported the incident to a member of the Board of Directors and provided him with the documents to substantiate her concerns. She was fired a couple of months later, after a "sham" investigation by the Bank. TT had never been disciplined for anything during her career with the Bank.

Additional Information

Scott is Board Certified by the Florida Bar in the area of Labor and Employment Law. Board Certification requires extensive trial and litigation experience, plus a rigorous day-long written test, in the field of Employment and Labor Law. In addition, Scott is rated as an "AV" lawyer by his peers, including his opponents, on cases he has handled during the past 27 years. An "AV" rating is the highest rating possible with regard to legal ability and ethics and is awarded by Martindale Hubbell, one of the oldest attorney rating organizations in the United States.

Teaching Experience:

1993 through present: Faculty member, National Institute for Trial Advocacy, Florida Deposition Program. Annually serve on faculty of ten lawyers from different parts of the United States to teach deposition techniques to practicing lawyers, during 3-day program held annually in Ft. Lauderdale, Florida.

Admission to Practice:

United States Supreme Court (1993); United States Court of Appeals, Eleventh Circuit (1982); United States District Court, Middle District of Florida (1982); Florida Supreme Court (1982)

Certifications:

In addition to his Board Certification in the area of Labor and Employment Law, Scott is Board Certified by the Florida Bar as a Civil Mediator and he has lectured at Local, State and National functions, and has frequently contributed to professional publications with regard to trial advocacy, insurance coverage issues and employment discrimination matters. He attends seminars several times each year in the field of employment discrimination law and personal injury law sponsored by the American Bar Association, the American Law Institute, the National Employment Lawyers Association, the National Institute for Trial Advocacy, the Florida Bar and the Jacksonville Bar Associations.

Philosophy About Litigation:

After practicing law for more than 27 years and having tried dozens of cases in State and Federal Court, and settling literally hundreds of other cases by informal settlement, arbitration or mediation, the most important decision I must make is to carefully determine, before accepting a case, if it has the necessary elements to be successful. If not, I am obliged to decline it. When we do accept a case, I always first attempt to resolve it by negotiation, without resorting to litigation. Litigation is time consuming, expensive and can have a significant impact on a client's life (and his or her family's life) at home and at work. Even cases that initially appear likely to succeed can turn out to be less "winnable" than expected. Sometimes, however, litigation is appropriate after all reasonable efforts at negotiation have proved to be futile. In such situations, our office will pursue your case by initiating litigation and advocating your cause with a driven determination to prevail at trial, and on appeal if necessary, while always practicing well within the ethical and legal bounds that apply to my profession.