

ALABAMA / 2014

Super Lawyers[®]

SUPERLAWYERS.COM

MAGAZINE

THE ANNUAL LIST

The Top Attorneys
in Alabama

INCLUDING
RISING STARS

EVOLUTION OF A FIRM

How Birmingham's
Badham & Buck came
to be a major player
in regional and national
business litigation

ALSO

RHONDA CHAMBERS ON
THE ART OF THE APPEAL
AND HER BELIEF THAT
EVERY DECISION SHOULD
BE PUT IN WRITING



THOMSON REUTERS

and the
publishers of



Reprinted from the Alabama 2014 issue of *Super Lawyers Magazine*.
© 2014 Super Lawyers, a Thomson Reuters business. All rights reserved.

Leap of Faith

The evolution of Birmingham firm Badham & Buck

BY BRUCE BARCOTT
PHOTOGRAPHY BY STAN KAADY

THOUGH YOUNG, THE ROOTS OF THE Birmingham-based firm Badham & Buck run deep in Alabama history and culture.

All of the firm's four principals—Walker "Percy" Badham III, 56; Brannon Buck, 42; Brett Ialacci, 36; and Richard Dorman, 68—were raised in the state and earned their law degrees from the University of Alabama. In just six years, Badham & Buck has become known as one of the smartest, toughest, and most cordial business tort boutiques in the South. The firm's client list includes companies emblematic of both the Old South and the New: Alabama Farmers Cooperative, formed during the Great Depression and now owned by more than 30,000 rural farmers; and LiveOnTheNet, a leading webcasting company that grew out of the engineering and science community in Huntsville, home to NASA's Marshall Space Flight Center.

Those ties are personal and philosophical, too. Percy Badham, the firm's guiding hand, proudly recalls how his great-grandfather was best friends with Walker Percy, a Birmingham lawyer and uncle to Walker Percy, the revered Southern novelist (*The Last Gentleman*, *The Moviegoer*) and Birmingham native. Badham is also a distant cousin to Mary Badham, the actress known for playing Scout in the film version of *To Kill a Mockingbird*. Mary Badham, now in her 60s, often speaks about the author's messages of justice, tolerance, and compassion, which are the values Percy Badham strives to bring to life in the work of the firm. "I want us to be known as strong advocates," he says, "but also as good lawyers who know how to do the right thing."

If law firms were run like corporations, Badham & Buck would be a case study of a successful corporate spinoff. Over the course

BRANNON J. BUCK

- FOUNDED PARTNER, BADHAM & BUCK; BIRMINGHAM
- BUSINESS LITIGATION
- ALABAMA SUPER LAWYERS 2010-2014; TOP 10: 2014; TOP 50: 2012-2014

W. PERCY BADHAM III

- FOUNDED PARTNER, BADHAM & BUCK; BIRMINGHAM
- BUSINESS LITIGATION
- ALABAMA SUPER LAWYERS 2008-2014; TOP 10: 2012-2014; TOP 50: 2009-2014





of a rewarding 25-year career with Maynard Cooper & Gale, Birmingham's 225-attorney full-service firm, Percy Badham carved out a niche as the firm's business torts specialist. During the mid-2000s he often teamed up with Brannon Buck, a rising young Maynard Cooper associate.

"Brannon and I would handle lawsuits involving breach of contract, trade secrets, intellectual property, that sort of thing," Badham recalls. "We really enjoyed working on the plaintiff's side of it."

Over time, though, their cases began to conflict with other work in the firm. Maynard Cooper represented many of the region's large institutions and corporations. Being on the plaintiff's side meant potentially facing off against one of the firm's other clients, or at least against that client's long-term interest. Those considerations often required Badham and Buck to decline cases where interests clashed.

"Toward the end there we were being conflicted out of eight of every 10 looks we'd get," Badham says.

SO IN EARLY 2008 BADHAM AND BUCK

struck out on their own. The split with Maynard Cooper was amicable, and the principals remain on excellent terms. But the move didn't come without risk.

"At first it was just the two of us on a wing and a prayer," recalls Buck. "You don't know whether any clients will come with you, you don't know whether the phone will ring. You've just got to take a leap of faith."

That faith was rewarded with a steadily growing client list and a challenging caseload. They focused on commercial litigation from the start but also took in some work in personal injury claims and lender liability cases. "The subject matter can vary greatly, from 18-wheelers to computer software to banking," says Buck. "But we typically handle fewer cases than most lawyers in traditional circumstances."

One of their most complex cases was *LiveOnTheNet v. Digium*, a lawsuit that has become a kind of signature win for the firm. The case illustrates the firm's tenacity, courtroom savvy, and understanding of their clients' long-term interests.

The firm's client, LiveOnTheNet, made its reputation in the 1990s as a pioneer in event webcasting. The Huntsville-based company webcast Paul McCartney live

from Carnegie Hall, and gave NASCAR fans the opportunity to listen live to in-race conversations between drivers and their crew members. In 2005 the company contracted with Digium, a communications software developer also based in Huntsville, to help develop an online voice chat system that could be used in conjunction with concerts and sporting events. Digium would be responsible for writing the computer code for the system.

But the project bogged down. LiveOnTheNet officials were worried that Digium seemed to be reassigning key programmers away from the project.

A strained relationship finally broke in April 2008, when Digium announced that the company had partnered with U.K.-based Westhawk Ltd. to produce PhoneFromHere.com, a product that promoted itself as a way to give "Web users the opportunity to leverage person-to-person (or person-to-group) speech within the context of a website, increasing its traffic and stickiness by delivering worry-free, live voice chat opportunities."

To executives at LiveOnTheNet, it felt like they'd been taken. LiveOnTheNet had ordered next-gen custom VoIP (Voice over Internet Protocol) software from Digium, and now Digium had licensed a suspiciously similar VoIP package to a British competitor.

"The first problem was the software never worked as advertised," says Roger Schneider, chief executive officer of LiveOnTheNet, who went to Badham & Buck with his dilemma. "And then the fellows who developed it for us licensed it to our competitors in the U.K."

WORKING WITH BADHAM & BUCK AND

Huntsville-based co-counsel Larry Moore and Ian Berry, LiveOnTheNet filed suit against Digium in 2009. The company alleged breach of contract, fraud, concealment, and trade secret violations.

Buck's first challenge was to come up to speed on the technology at issue. "It was an extremely daunting task," says Schneider. "It's highly technical stuff."

The lawyer's second task was to present the technical issues to a jury with a non-technical background. "We were dealing with terminology most of the jurors had never heard of," Buck says. "So a big part of the case was education."

At the August 2011 trial, Buck's chief witness was Schneider. The LiveOnTheNet CEO is (he will readily admit) a technophile who loves to dive deep into the complex intricacies of communication software. Buck's work involved coaxing the full story, and the importance of the alleged wrong, from Schneider without losing the jury in the technical weeds. And work it was: Between direct and cross, Schneider spent five days on the witness stand.

"I tend to thrive on detail and I lobbied hard for that," says Schneider. "I worked up this stuff to the point where few people in the world could understand what I was talking about. Brannon talked me off the ledge. He reassured me that we had to present the information in a way that the jury could understand it. I had to hold my breath, but in the end he was right. The proof came in watching him explain all of this to the jury and watching them nod their heads. That was just masterful."

Digium argued that the software its engineers developed wasn't exclusively owned by LiveOnTheNet.

Members of the jury disagreed. They awarded LiveOnTheNet nearly \$8.7 million, including \$7 million in punitive damages. It was one of the largest awards ever handed down by a Madison County jury.

The verdict allowed LiveOnTheNet to survive the loss of that potentially lucrative VoIP enterprise and move on to new opportunities. "It gave us a new lease on life," says Schneider. The company continues to offer live sporting events and more than 50 radio stations broadcast over the Internet, and has expanded into emergency call services, which allow people to communicate when cell networks fail during natural disasters.

Schneider and his company are back on good terms with Digium, their former courtroom adversaries. "We know and like the people in the company," Schneider says. "This was just an incident of bad behavior, not indicative of how they operate." Those repaired relations were made possible in part by Badham & Buck's ability to carry the verdict without turning adversaries into long-term enemies. Clarity and cordiality go a long way. "I think if we'd had Brannon involved up front," says Schneider, "it would have been better for all involved."

WHEN THE TIME CAME, BADHAM TRAVELED

east to spend his undergraduate years at Davidson College, a small liberal arts school north of Charlotte, N.C. But he knew his destiny lay in the Steel City. He returned to his home state to attend law school at the University of Alabama, where he discovered an affinity for litigation.

"I thought the art of persuasion was kind of neat," he recalls. "I loved advocating for a client, persuading a jury to come around to your point of view."

During his quarter century with Maynard Cooper, Badham established a reputation as a smart, tough litigator with an abundance of generosity and warmth. "Percy has the biggest heart of anybody I've ever met," says Brett Ialacci, the firm's youngest partner. "His reputation in the profession is incredible. You can't go to lunch with him without 25 people coming by to greet him."

At 56, Badham has an easy smile and a boyish touse of silvering hair. He's old school in many ways. "I enjoy working on the Internet, but I don't type well, I still dictate, and to be honest with you I really enjoy the old-fashioned act of looking through documents," he says. "You can always find a wealth of information in discovery documents. People are too quick to put things in emails that they shouldn't."

Face-to-face contact is also important. If you're a new client, Badham wants to sit down and chat. "Tell me who you are, where you're from, how you got to this particular situation," he says. "I enjoy letting clients tell their story, and then talking with them about where we might go from there."

Badham's courtly charm sets the tone for the firm. In fact if there's a commonality among the three other partners, it's a desire to work Badham's way: advocating fiercely for their clients, but never allowing the rough-and-tumble of the courtroom to undermine their personal and community relationships. "Percy uses his charm and his ability to connect with people to practice law," observes Buck. "But one of his greatest strengths is his ability to focus on the big picture."

Six years into the firm's existence, Badham & Buck are now twice the size they were at their founding. But that's still only four lawyers. Ialacci joined in May 2008, just a few months into the

new venture. He'd been a member of the corporate, securities and tax group practice at Maynard Cooper, but yearned to move into litigation. "I enjoyed the adversarial side of litigation, making an argument and building a case," he says.

It was the opportunity to work with Badham and Buck, though, that convinced Ialacci to make the leap. "They're a big reason I wanted to join the firm," he says.

The fourth member of the quartet joined in a more roundabout way. Richard Dorman enjoyed a full career in Mobile, where he specialized in class action cases involving consumer fraud and product liability before retiring in 2009. After a move to Birmingham to be near his children and grandchildren, Dorman grew a little restless. "I wanted a little more structure in my life," he says, and felt an itch to get back to clients and the courtroom. Through a mutual friend, Dorman met Badham, Buck, and Ialacci. The four hit it off and Dorman was invited to join the firm in an of counsel relationship. "They're extremely pleasant to work with, and the lawyers have impeccable credentials and reputations," says Dorman. He's currently working on a statewide class-action lawsuit brought against a California roofing tile manufacturer.

The addition of Dorman added a tremendous amount of experience and class-action expertise to the firm. It also served as a testament to Badham, Buck, and Ialacci's ability to cross bridges without burning them. The mutual friend who encouraged Dorman to consider Badham & Buck was none other than Fournier J. Gale III, name partner at the trio's old firm, Maynard Cooper & Gale.

IF THERE'S A RECURRING THEME IN

Badham & Buck's work, it's the firm's ability to hammer its adversaries in the courtroom without creating enemies. And the former is just as important as the latter. Tommy Paulk, the past CEO of the Alabama Farmers Cooperative, a diversified agricultural co-op that represents more than 30,000 farmers, saw firsthand the leadership and attention to detail that the firm brings to a case.

The Farmers Cooperative retained Badham & Buck after the discovery that an official at the Cooperative had taken kickbacks and forged documents to deliver

a lucrative contract to an equipment maker. The Cooperative sued. "We had a team of lawyers and a number of employees who had to work together on this case," recalls Paulk. "There was a general consensus that everyone wanted Percy to be lead counsel. He had a real leadership quality that both the lay people and the lawyers seemed to appreciate."

Badham didn't just direct the team. He laid out strategy down to the last detail. At an early meeting Badham delivered custom-made binders to every member of the team, with their delegated tasks, timelines, and contact numbers. "Never saw a lawyer with a more professional attitude, and a kinder and more understanding touch with a businessman like myself," says Paulk.

That case resulted in a "90 percent win" for the Cooperative, says Paulk, and Badham & Buck have represented the group ever since. Paulk chuckles when he recalls a more recent case. "We'd entered into a joint venture with another company, and at a certain point one of their principals had joined forces with a competitor and decided they'd found some technicalities that would enable them to complete a hostile takeover of our part of the company."

Enter Badham & Buck. The hostile takeover bid was short-lived. "Percy kicked him up one side and down the other," recalls Paulk.

Paulk has since retired, but he's made sure his successors know the value of Badham & Buck. "That's a relationship that's friendly and personal between myself and Percy, but it's long since grown into an institutional relationship as well. They will be representing us long after I'm gone." [SL](#)

Reprinted from the Alabama 2014 issue of *Super Lawyers Magazine*. © 2014 Super Lawyers, a Thomson Reuters business. All rights reserved.

ALABAMA THE TOP 50

An alphabetical listing of the lawyers who ranked top of the list in the 2014 Alabama Super Lawyers nomination, research and blue ribbon review process

Ashford, D. Leon, Hare Wynn Newell & Newton, Birmingham

Badham, III, W. Percy, Badham & Buck, Birmingham

Baugh, Robert R., Sirote & Permutt, Birmingham

Bloomston, Brett M., Bloomston and Basgier, Birmingham

Brown, Stephen E., Bressler Amery & Ross, Birmingham

Brown, T. Michael, Bradley Arant Boulton Cummings, Birmingham

Buck, Brannon J., Badham & Buck, Birmingham

Chambers, Rhonda P., Taylor & Taylor, Birmingham

Dana, John G., Gordon Dana Gilmore & Maner, Birmingham

DeGaris, Annesley H., Cory Watson Crowder & DeGaris, Birmingham

Denaburg, Charles L., Najjar Denaburg, Birmingham

Ermert, Michael D., Hare Wynn Newell & Newton, Birmingham

Evans, III, Jesse P., Rumberger Kirk & Caldwell, Birmingham

Franklin, Samuel H., Lightfoot Franklin & White, Birmingham

Gordon, Bruce L., Gordon Dana Gilmore & Maner, Birmingham

Hartley, Jeffery J., Helmsing Leach Herlong Newman & Rouse, Mobile

Heninger, Stephen D., Heninger Garrison Davis, Birmingham

Hodge, David J., Morris King and Hodge, Huntsville

Jaffe, Richard S., Jaffe & Drennan, Birmingham

Joseph, Anthony A., Maynard Cooper & Gale, Birmingham

King, Lawrence T., King Simmons, Birmingham

Knight, Sam David, Badham & Buck, Birmingham

Lehr, Richard I., Lehr Middlebrooks & Vreeland, Birmingham

Lembke, Matthew H., Bradley Arant Boulton Cummings, Birmingham

Lentine, John A., Sheffield & Lentine, Birmingham

Leonard, Heather, Heather Leonard, Birmingham

Marsh, David H., Marsh Rickard & Bryan, Birmingham

McCarthy, Brian P., McDowell Knight Roedder & Sledge, Mobile

Meyerson, Edward P., Baker Donelson Bearman Caldwell & Berkowitz, Birmingham

Middlebrooks, David J., Lehr Middlebrooks & Vreeland, Birmingham

Newsom, Kevin, Bradley Arant Boulton Cummings, Birmingham

Porter, Maibeth J., Maynard Cooper & Gale, Birmingham

Powell, Scott A., Hare Wynn Newell & Newton, Birmingham

Pratt, III, James R., Hare Wynn Newell & Newton, Birmingham

Pruitt, Eric L., Baker Donelson Bearman Caldwell & Berkowitz, Birmingham

Rogers, Bruce F., Bainbridge Mims Rogers & Smith, Birmingham

Saxon, John D., John D. Saxon, Birmingham

Shreve, Jr., William E., Phelps Dunbar, Mobile

Singer, Fern H., Watterson & Singer, Birmingham

Sledge, IV, Edward S., Maynard Cooper & Gale, Birmingham

Smith, Jr., Alfred F. (Buddy), Bainbridge Mims Rogers & Smith, Birmingham

Smith, Deborah Alley, Christian & Small, Birmingham

Smyth, John, Maynard Cooper & Gale, Birmingham

Sparks, Daniel D., Christian & Small, Birmingham

Spotswood, Robert K., Spotswood Sansom & Sansbury, Birmingham

Stiles, Matthew W., Maynard Cooper & Gale, Birmingham

Thurber, Cooper C., Phelps Dunbar, Mobile

Upchurch, Michael E., Frazer Greene Upchurch & Baker, Mobile

Vreeland, II, Albert L., Lehr Middlebrooks & Vreeland, Birmingham

Watson, Leila H., Cory Watson Crowder & DeGaris, Birmingham

THE TOP 10

ASHFORD, D. LEON
• Ranked Number Three •
Hare Wynn Newell & Newton, Birmingham

BADHAM, III, W. PERCY
Badham & Buck, Birmingham

BUCK, BRANNON J.
Badham & Buck, Birmingham

FRANKLIN, SAMUEL H.
• Ranked Number One •
Lightfoot Franklin & White, Birmingham

HENINGER, STEPHEN D.
Heninger Garrison Davis, Birmingham

JAFFE, RICHARD S.
Jaffe & Drennan, Birmingham

MARSH, DAVID H.
• Ranked Number Two •
Marsh Rickard & Bryan, Birmingham

MCCARTHY, BRIAN P.
McDowell Knight Roedder & Sledge, Mobile

MIDDLEBROOKS, DAVID J.
Lehr Middlebrooks & Vreeland, Birmingham

SINGER, FERN H.
Watterson & Singer, Birmingham

ALABAMA THE TOP 25 WOMEN

An alphabetical listing of the women lawyers who ranked top of the list in the 2014 Alabama Super Lawyers nomination, research and blue ribbon review process

Ahnert, Janell M., Bressler Amery & Ross, Birmingham

Baker, Tammy L., Jackson Lewis, Birmingham

Beaube, Elizabeth G., Maynard Cooper & Gale, Birmingham

Bonds, Emily Sides, Jones Walker, Birmingham

Chambers, Rhonda P., Taylor & Taylor, Birmingham

Clotfelter, Patricia, Baker Donelson Bearman Caldwell & Berkowitz, Birmingham

Doss, L. Susan, Bradley Arant Boulton Cummings, Birmingham

Doughton, Susan Dominick, Dominick Feld Hyde, Birmingham

Dowd, Augusta S., White Arnold & Dowd, Birmingham

Hattaway, Ashley H., Burr & Forman, Birmingham

Haynes, Alicia K., Haynes & Haynes, Birmingham

Lamar, Jayna Partain, Maynard Cooper & Gale, Birmingham

Lamar-Hart, Cynthia G., Maynard Cooper & Gale, Birmingham

Leonard, Heather, Heather Leonard, Birmingham

Martin, Kimberly Bessiere, Bradley Arant Boulton Cummings, Huntsville

McCarthy, Caroline C., Attorney at Law, Mobile

McKinney, Rebekah Keith, Watson McKinney, Huntsville

Miller, Carole G., Bressler Amery & Ross, Birmingham

Porter, Maibeth J., Maynard Cooper & Gale, Birmingham

Singer, Fern H., Watterson & Singer, Birmingham

Smith, Deborah Alley, Christian & Small, Birmingham

Stuart, Sharon Donaldson, Christian & Small, Birmingham

Taylor, Leah O., Taylor & Taylor, Birmingham

Watson, Leila H., Cory Watson Crowder & DeGaris, Birmingham

Weber, Katharine A., Maynard Cooper & Gale, Birmingham