



# James Michael Walls

OF COUNSEL

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## Overview

Mike Walls' practice includes representing general contractors in litigation in both state and federal courts. Mike's practice also includes representing electric utilities in litigation in both state and federal courts and in regulatory proceedings before the Florida Public Service Commission. Mike has also represented companies in contractual and consumer-related disputes, including class actions, in both state and federal courts and arbitrations.

Mike has been included in the 2008–2024 editions of *The Best Lawyers in America* for energy law.

## Experience

### Construction

- Defended general contractors in multiple state court litigation cases involving alleged construction defects with respect to the building envelope in multi-family communities.
- Defended general contractor in federal court class action involving alleged construction defects in the installation of stucco in a subdivision community.
- Trial in Florida state court on behalf of general contractor in action against site subcontractor involving claims for unperformed site work and counterclaims.
- Represented general contractor in action to enforce judgements against Chinese companies in Chinese Drywall cases.

## **Class Actions**

- Denial of class certification in federal court in Florida in construction defect litigation involving stucco installation on homes in subdivision community.
- Defended class action privacy claims under the Driver's Privacy Protection Act in federal court in Florida and Texas against a commercial data company that were settled in a nationwide class action settlement. The nationwide class action settlement involved injunctive relief in the form of the implementation of industry best practices with publication notice to the class that was approved by the district court after an evidentiary hearing.
- Dismissal with prejudice of class action privacy claims under the Driver's Privacy Protection Act against a check services company in federal court in Texas that was affirmed on appeal by the Fifth Circuit Court of Appeals.
- Dismissal of class action privacy claims under the Driver's Privacy Protection Act against a commercial data company in federal court in Missouri.
- Dismissal with prejudice of a consumer class action filed against a marketing company for violation of Florida's Deceptive and Unfair Trade Practices Act.
- Dismissal of a consumer class action against an electric utility company for customer billing issues.
- Defended claims against an individual officer in a securities fraud class action in federal court in Illinois that were settled at mediation following motions to dismiss.
- Dismissal of class action warranty claims arising from allegedly defective PVC piping against a chemical manufacturer in federal court in Florida following briefing on summary judgment and class certification.
- Defended class action warranty claims against an automobile manufacturer in state court in Florida that were settled.
- Defended consumer class actions against a communications company that were dismissed.
- Settlement of class action securities fraud claims against a national bank as individual claims in federal court in Florida after favorable rulings on class certification and summary judgment.

## **Energy Litigation (Courts and Arbitrations)**

- Defended electric utility company in state court proceedings in Florida regarding franchise disputes with municipalities that were settled.
- Represented electric utility company in a three-week arbitration to determine the value of the company's distribution system pursuant to a purchase option in the company's franchise agreement with the municipality resulting in an award for the electric utility company in excess of \$30 million.

- Represented electric utility company in a two-week arbitration to determine the value of the company's distribution system pursuant to a purchase option in the company's franchise agreement with the municipality resulting in an award for the electric utility company in excess of \$20 million.
- Represented electric utility company in a one-week arbitration to determine the value of the company's distribution system pursuant to a purchase option in the company's franchise agreement with the municipality resulting in an award for the electric utility company in excess of \$8 million.
- Defended local county government against claims for breach of contract under a management agreement for a waste-to-energy facility in federal court in Florida that were settled after summary judgment briefing.
- Represented trustee on bond indenture with respect to contractual and operational disputes between a local county government and the operator of a waste-to-energy facility.
- Defended electric utility company on claim of breach of gas supply contract in Florida state court.
- Defended electric utility company against breach of contract claims for purchased power from cogeneration facilities in Florida state courts that were settled.

### **Energy Litigation (Administrative)**

- Represented electric utility company in two-week evidentiary hearing in a base rate proceeding for \$500 million increase in base rates.
- Represented an electric utility company in petitions for limited base rate relief and deferrals of expenses that resulted in base rate relief following an evidentiary hearing.
- Represented electric utility company in annual evidentiary hearings to determine the prudence of costs incurred in the development of new nuclear power plants and in a project to uprate the power production at an existing nuclear power plant.
- Represented electric utility company in proceeding to determine the need for two nuclear power plants that was approved following a weeklong evidentiary hearing.
- Defended an electric utility in a weeklong evidentiary hearing to review the prudence of costs incurred by the utility for coal for a 10-year period that resulted in the rejection of the petition for refund of \$143 million.
- Represented an electric utility in need determination proceedings for the construction of natural gas-fired, combined cycle generation units that resulted in approval of the need for the units.
- Represented an electric utility in proceedings to increase base rates that were settled by the utility.

### **Business Litigation**

- Settlement at mediation of alleged breach of warranty claims on behalf of a commercial gas supplier.

- Settlement at mediation of product liability claim against tile machine manufacturer.
- Settlement at mediations of sick building claims against chemical manufacturer in several state and federal court proceedings.
- Settlement at mediation of claims brought by strawberry farmers for product defect and breach of warranty against chemical manufacturer.

## Representative Cases

- *KB Home Fort Myers LLC v. Taishan Gypsum Co., Ltd.*, 336 So. 3d 841 (Fla. 2d DCA 2022).
- *EHC, Inc. v. KB Home Tampa LLC, KB Home Ft. Myers, LLC, and Liberty Mutual Ins. Co.*, Case No. 2D20-2097 (Fla. 2d DCA March 4, 2022) (per curiam affirmed).
- *Adams, et. al., v. Boeneman, et. al.*, 2019 WL 7423542 (M.D. Fla. September 26, 2019) (order denying plaintiff motion for class certification in action involving alleged construction defects with stucco installation on homes in subdivision community).
- *Taylor v. Acxiom Corp.*, 612 F.3d 325 (5th Cir. 2010), *cert. denied*, 562 U.S. 1169 (2011) (affirming dismissal with prejudice of privacy class action claims under the Driver's Privacy Protection Act).
- *Fresco v. Auto. Directions, Inc.*, No. 03-CIV-61063 (S.D. Fla. 2009), and *Taylor v. Acxiom Corp.*, No. 2:07-cv-00001 (E.D. Tex. 2009) (nationwide class action settlements and dismissals of class action privacy claims under the Driver's Privacy Protection Act).
- *Roberts. v. ChexSystems Collection Agency, Inc.*, No. 1:09-cv-04150 (W.D. Mo. 2009) (dismissal of privacy class action claims against check service company).
- *Panda Energy Int'l v. Jacobs*, 813 So. 2d 46 (Fla. 2002) (affirming on appeal the determination of need for a combined cycle generation plant granted by the Florida Public Service Commission).
- *Tampa Elec. Co. v. Garcia*, 767 So. 2d 428 (Fla. 2000) (reversing Florida Public Service Commission determination of need for a merchant power plant on grounds the commission exceeded statutory authority).
- *Fla. Power Corp. v. Town of Belleair*, 830 So. 2d. 852 (Fla. 2d DCA 2002) (affirming partial summary judgment and reversing mandatory injunction for town against utility on grounds the court cannot extend the terms of a franchise agreement after its expiration), reversed by *Town of Belleair v. Fla. Power Corp.*, 897 So. 2d 1261 (Fla. 2005).
- *In re Petition for Determination of Need for Citrus Cty. Combined Cycle Power Plant*, Order No. PSC-14-0557-FOF-EI, Docket No. 140110-EI (Oct. 10, 2014) (order approving need for \$1.5 billion new power plant following evidentiary hearing on need for and cost effectiveness of the plant).
- *In re Nuclear Cost Recovery Clause*, Order Nos. PSC-14-0617-FOF-EI, Docket No. 140009-EI (Oct. 27, 2014); PSC-13-0493-FOF-EI, Docket No. 130009-EI (Oct. 18, 2013); PSC-0650-FOF-EI, Docket No. 120009-EI (Dec. 11, 2012); PSC-11-0547-FOF-EI, Docket No. 110009-EI (Nov. 23, 2011); Order No. PSC-11-0095-FOF-EI, Docket No. 100009-EI (Feb. 2, 2011); Order No. PSC-09-0783-FOF-EI, Docket No. 090009-EI (Nov. 19, 2009) (orders in annual evidentiary hearings authorizing cost recovery for nuclear power plants and nuclear power plant power uprate).

- *In re Petition for Increase in Rates by Progress Energy Fla., Inc.*, Order No. PSC-10-0131-FOF-EI, Docket No. 090079-EI, Docket No. 090144-EI, and Docket No. 090145-EI (June 12, 2009, and Mar. 18, 2010) (orders addressing base rate and other rate relief on behalf of electric utility).
- *In re Progress Energy Fla., Inc.*, Order No. PSC-08-0518-FOF-EI, Docket No. 080148-EI, 2008 WL 3918006 (Fla. P.S.C. Aug. 12, 2008) (granting petition for determination of need for proposed nuclear power plants).
- *In re Progress Energy Fla., Inc.*, Order No. PSC-07-0816-FOF-EI, Docket No. 060658-EI, 200 P.U.R. 4th 306, 2007 WL 2980912 (Fla. P.S.C. Oct. 10, 2007) (rejecting petition to require utility to refund customers \$143 million for imprudent coal purchases, limiting refund to \$12 million).
- *In re Progress Energy Fla., Inc.*, Order No. PSC-07-0119-FOF-EI, Docket No. 060642-EI, 255 P.U.R. 4th 422, 2007 WL 517088 (Fla. P.S.C. Feb. 8, 2007) (granting utility petition for determination of need for proposed expansion of nuclear power plant).
- *In re Progress Energy Fla., Inc.*, Order No. PSC-05-0748-FOF-EI, Docket No. 041272-EI, 242 P.U.R. 4th 260, 2005 WL 1708339 (Fla. P.S.C. July 14, 2005) (order authorizing utility to implement surcharge to recover more than \$230 million in extraordinary expenditures related to post-hurricane repair and restoration activities).

## Areas of Focus

### Practices

- Construction
- Energy and Utilities
- Government Law & Consulting
- Litigation and Trials
- Class Actions

### Industries

- Construction

## Insights

01.01.2016

2016 Annual Report of the Electricity Committee

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04.19.2013

Rule 23(b)(3) and the Superiority of Class Actions for Statutory Damage Claims Involving Technical

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02.08.2013

Rule 23(b)(3) and the Superiority of Class Actions for Statutory Damage Claims Involving Technical Violations Resulting in No Actual Damages

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01.01.2013

2013 Annual Report of the Electricity Committee

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11.16.2012

Rule 23(b)(3) and the Superiority of Class Actions for Statutory Damage Claims Involving Technical Violations Resulting in No Actual Damages

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01.01.2012

2012 Report of the Electricity Committee in Recent Developments in Public Utility, Communications, and Transportation Law

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01.01.2011

2011 Report of the Electricity Committee in Recent Developments in Public Utility, Communications, and Transportation Law

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05.01.2005

Revisiting Garner and the "Fiduciary" Exception to the Attorney-Client Privilege on Shareholder Litigation

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06.01.1994

Avoiding the Tower of Babel

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## News

08.15.2017

78 Carlton Fields Attorneys Named "Best Lawyers in America"

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## Recognition

- AV Rated by Martindale-Hubbell
- *The Best Lawyers in America*, Energy Law (2008–2024)

## Professional & Community Involvement

- American Bar Association
- The Florida Bar
- Ferguson-White American Inn of Court (2004–2014)
  - Master (2008)
- Hillsborough County Bar Association

## Credentials

### Education

- University of Virginia School of Law (J.D., 1987)
- University of Kentucky (B.A., with high honors, 1984)

### Bar Admissions

- Florida

### Court Admissions

- U.S. Supreme Court
- U.S. Court of Appeals, Fifth Circuit
- U.S. Court of Appeals, Eleventh Circuit
- U.S. District Court, Middle District of Florida
- U.S. District Court, Northern District of Florida
- U.S. District Court, Southern District of Florida