



# Ellen Koehler Lyons

SHAREHOLDER

TAMPA

**P** : 813.229.4327

**F** : 813.229.4133

CONNECT

[elyons@carltonfields.com](mailto:elyons@carltonfields.com)

[LinkedIn](#)

## Overview

Ellen Lyons focuses her practice on accountants' liability, banking and lending, consumer finance matters, representing online businesses, and consulting regarding offers of judgment. She has particular experience with offers of judgment and proposals for settlement made under Florida or federal law.

Ellen has tried breach of contract, negligence, unfair and deceptive trade practices, trade secret, embezzlement, and fraud cases. She has arbitrated rescission, breach of contract, and fraud cases. She litigates cases involving regulations such as the AICPA Code of Professional Conduct, GAAS, GAAP, and banking laws including FDCPA, TCPA, UDAAP, FCRA, TILA, and RESPA. She recently litigated extensive issues regarding Regulation X of RESPA. Ellen has also handled hedge fund litigation and securities matters.

She has more than two decades of experience helping businesses achieve their goals. Her efforts range from proactive needs assessment to strategic litigation. Ellen handles matters from inception to resolution, and efficiently manages teams in large, bet-the-company cases.

Ellen recently represented an online company facing a manufacturer's Lanham Act claim. The client's counterclaim for tortious interference with advantageous business relationships resulted in discovery to substantiate the client's claim, and a negotiated deal that reinstated the client's ability to sell genuine manufactured goods with favored status and pricing.

She has written numerous articles on offers of judgment, proposals for settlement, and banking regulations and practices. As general counsel of Alpha House of Tampa, a safe home for homeless pregnant women and mothers with young children, Ellen works closely with the board to achieve fast, cost-efficient results.

### **Ellen Lyons Unlocks a Successful Resolution**

When a major manufacturer of gate openers and accessories cut off sales to an online reseller without warning, the reseller turned to Carlton Fields for relief. The

manufacturer not only refused to sell its electric gate openers to our reseller client but also altered its products' warranties so it could claim the products our client sold were not genuine, even though they were, in fact, made by the manufacturer. The manufacturer instructed other companies to stop selling to our client as well, forcing them to buy from others to continue representing that they sold all major brands.

The manufacturer then brought a Lanham Act claim against our client. The client counterclaimed for tortious interference with advantageous business relationships. Ellen pursued discovery to substantiate the client's claim that the products they sold were indeed genuine. Attempts to initiate an early mediation were rebuffed until the discovery of a smoking gun document, an email from the manufacturer to one of its distributors, that also is a retailer, demanding they refuse to sell to our client.

This case had the potential to harm the client significantly, with estimated loss of revenue in the millions. A judgment of no liability was not enough — our client needed a business solution. Ellen negotiated a deal that not only allowed the client to sell genuine manufactured goods but also gave the client favored status as a reseller of the products, with favorable pricing.

## Experience

### Banking and Real Estate

- Represented real estate developers in arbitrations involving allegations of fraud and negligent misrepresentation, and involving claims of rescission.
- Represented national banks in TILA, rescission, collections practices, and other federal and state causes of action.
- Represented national bank in connection with litigation involving mortgages and home equity lines, including "straw man" borrower cases.

### Accountants Liability

- Represented auditors in multiple matters involving litigation resulting from failed acquisitions and earnouts.
- Represented auditors in shareholder litigation involving side agreements and impairment charges.
- Represented auditors in cases of alleged failure to discover fraud or embezzlement.
- Represented financial adviser in deepening insolvency claim arising out of alleged looting and self-dealing by corporate officers at a large bondholder financed company.
- Represented accredited business accountant in RICO action.
- Represented multiple CPAs in administrative complaints before the Florida Board of Accountancy.

### General Litigation

- Represented corporation accused of theft of trade secrets, fraud, and breach of

fiduciary duty in two-week jury trial.

- Defended state agency in federal court for alleged due process, equal protection, and state law conspiracy violations.
- Represented publicly held utility in three-week trial arising out of administration of \$60 million power purchase agreement.
- Represented independent contractor during two-week jury trial in a cause of action for bad faith breach of contract.

### **Representative Cases**

- *NCP Lake Power v. Fla. Power Corp.*, 781 So. 2d 531 (Fla. 5th DCA 2001).
- *O'Halloran v. PricewaterhouseCoopers LLP*, 969 So. 2d 1039 (Fla. 2d DCA 2007).

### **All Insights**

06.30.2016	CFPB Sanctions Law Firm and Debt Buyer For Failing to Review Account Documentation
12.23.2015	CFPB Continues to Focus on Reforming Consumer Collection Practices
08.04.2015	Trial & Litigation Section: Two Recent Decisions Invalidate Certain Types of Offers of Judgment
03.25.2015	CFPB to Regulate Prepaid Debit Cards
09.16.2014	Collection Practices Plaintiffs Try End Run Around Florida Punitive Damages Laws
01.10.2013	Florida Supreme Court Issues New Offer of Judgment Decision
12.17.2012	Proposals for Settlement: How to draft ones that will stick and how to deal with them when they land on your desk
03.08.2012	Florida Offers of Judgment: A New Trend To Uphold
10.06.2008	Offer of Judgment Options in Federal Court
09.02.2007	Strict Construction of Civil Procedure Governing Settlement Proposals
07.01.2006	Understanding Offers of Judgment
03.01.2005	The Nuts and Bolts of Offers of Judgment

01.01.2005 Trends in Auditor Liability

## All News

06.29.2018 Carlton Fields Ranked Top Firm and Attorneys Named Legal Leaders in Florida Trend Magazine's 2018 "Legal Elite"

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06.21.2017 Carlton Fields Ranked Top Firm and Attorneys Named Legal Leaders in Florida Trend Magazine's 2017 "Legal Elite"

## Recognition

- AV Rated by Martindale-Hubbell
- Selected for inclusion in *Florida Trend's* Florida Legal Elite (2016-2019)
- Tampa Bay's Best Lawyers (2010)
- Rotary International Scholar
- Savant Leadership Organization

## Professional & Community Involvement

- Alpha House of Tampa, General Counsel
- University of Tampa
  - Board of Trustees (2006-2007)
  - Board of Counselors, Chairman (2006-2007)
  - Board of Trustees, Educational Affairs Committee (2001-2008)
- Tampa Museum of Science and Industry
  - MOSI CIRQLE Council
- United Way of Tampa Bay
  - Keel Club
  - UW Women's Leadership
- American Bar Association
- The Florida Bar
  - Thirteenth Circuit Grievance Committee (2003-2006)
- Leadership Tampa, Class of 2006
- Tampa Connection

## Speaking Engagements

- "Controlling Litigation and Encouraging Settlement: Offers of Judgment in State Court," Hillsborough County Bar Association Bench Bar Conference, Tampa, FL (October 3, 2019).
- "Bankruptcy and Beyond: Offers of Judgment in State and Federal Courts," Tampa Bay Bankruptcy Bar Association, Tampa, FL (October 17, 2017)

- "Offers of Judgment in State and Federal Courts," Tampa Bay Bankruptcy Bar Association (September 9, 2008).
- "Offers of Judgment in State and Federal Courts," Bankruptcy and UCC Committee, The Florida Bar Business Law Section (January 17, 2008).
- "Proposals for Settlement – How to Draft Ones That Stick and How to Deal With Them When They Land on Your Desk," FDLA 10th Annual Florida Liability Claims Conference (June 1, 2006).
- "Trends in Auditor Liability" (September 2004).
- "Understanding Offers of Judgment," CLE Program (March 2005).

## Credentials

### EDUCATION

- University of Florida College of Law (J.D., with honors, 1995)
  - University of Florida Outstanding Student
  - American Legion Oratorical Scholar
- University of Wales (MBA, 1992)
- University of Florida (B.A., 1991)

### COURT ADMISSIONS

- United States Supreme Court
- U.S. District Court, Middle District of Florida
- U.S. District Court, Northern District of Florida
- U.S. District Court, Southern District of Florida
- Florida State Courts

### BAR ADMISSIONS

- Florida

## Areas of Focus

### PRACTICES

- Class Actions
- Development
- Environmental, Land Use and Development Approvals and Litigation
- Life, Annuity, and Retirement Litigation
- Life, Annuity, and Retirement Solutions
- Litigation and Trials
- Mass Tort and Product Liability
- Real Property Litigation
- Securities Transactions and Compliance

### INDUSTRIES

- Banking, Commercial, and Consumer Finance

## Videos

In this video, Ellen discusses the Florida Supreme Court's decision concerning offers of judgment and contractual choice-of-law provisions in *Southeast Floating Docks, Inc. v. Auto-Owners Insurance Co.*, 82 So. 3d 73 (Fla. 2012).  
<http://www.youtube.com/watch/1swqBUYGPfY>