

HENKEL LAW, P.A.

Produce Business Law/PACA ♦ Business and Commercial Litigation ♦ General Corporate, Contracts, and Business Law

Miami, Florida ♦ (305) 389-6745

Timothy Henkel

Partner



Timothy “Tim” Henkel is the founding partner of Henkel Law, P.A. and has practiced law for 34 years. Tim concentrates his practice in representation of marketing companies, growers, and traders in the U.S. fresh produce (fruit and vegetable) industry, including administrative complaints before the U.S. Department of Agriculture (“USDA”) pursuant to the Perishable Agricultural Marketing Act (“PACA”) and Federal lawsuits

involving enforcement of the PACA Trust. Tim also represents plaintiffs and defendants in commercial disputes to be resolved through litigation, mediation, and arbitrations in Florida state courts and in Federal courts around the U.S. Tim also provides legal advice and representation on general corporate, business, and contract matters. Tim has litigated cases in Florida’s state and Federal trial courts in Miami-Dade, Broward, and Palm Beach Counties as well as in Federal district courts in Tampa, Philadelphia, New York, Los Angeles, Rochester, Cincinnati, Terre Haute, Chicago, Houston, and Minneapolis. He has prosecuted appeals of civil cases in Florida’s Third and Fourth District Courts of Appeal and in the U.S. Court of Appeals for the Eleventh Circuit. He has arbitrated disputes before the American Arbitration Association and the Society of Maritime Arbitrators as well as participating in numerous mediations of business disputes.

Tim served as a Federal law clerk to Jose A. Gonzalez, Jr., U.S. District Judge, in the Ft. Lauderdale division of the Southern District of Florida from 1988 through 1990 and was one of two judicial clerks assigned approximately 150 civil actions. For four years after the clerkship, he was an associate attorney with the Miami law firm of Gilbride, Heller & Brown, P.A. where he worked on a variety of civil litigation matters including lender liability, accountant liability, business torts, and contract disputes. Between 1994 and 2010, Tim was employed first as an associate and then as a partner of the law firm of Silver, Garvett & Henkel, P.A. From 2011 until 2021, he practiced law at Henkel & Cohen, P.A. with his law partner, Ira Cohen. Tim formed Henkel Law, P.A. in 2022 to continue existing client relationships and to represent new clients primarily in the fresh produce industry. He also serves as an arbitrator in resolving U.S. produce industry disputes involving the trading, sale, distribution, warehousing, and transportation of fresh fruits and vegetables.

Tim obtained his law degree with honors from George Mason University School of Law (1988) in Arlington, Virginia, graduating tenth in his class. He was an Editor of the *George Mason University Law Review* and was awarded Best Oralist and Best Team distinctions in the law school’s Moot Court competition in 1988. Tim worked during his last two years of law school (1986-88) as a law clerk for Robert E. Miller, Esq. in a personal injury and plaintiff’s practice. He obtained his Bachelor of Arts degree from the University of Virginia (1985), double majoring in rhetoric and communications as well as history.



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Tim grew up in Virginia. In high school, he won various speaking and team awards on the debate team, was the Vice President of his senior class, and graduated tenth in his class. He is happily married, resides in Miami, is the proud father of two adult sons, and his personal interests include the U.S. stock market, reading, traveling, and pursuing happiness.

Practice Areas

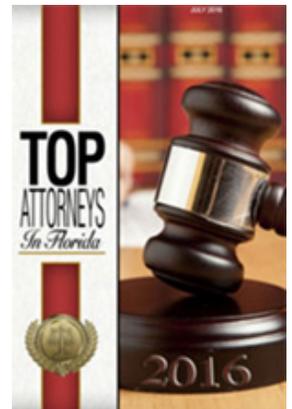
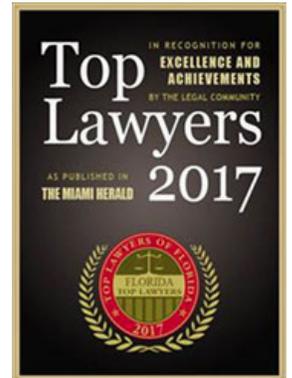
- Commercial litigation (including multi-party and other complex cases) in Florida state courts and Federal district courts nationwide involving any type of business dispute, such as cases involving breach of contract, torts such as breach of fiduciary duty and fraud, violations of statutes and regulations, insurance disputes, and commercial landlord/tenant disputes.
- Representation of U.S. fresh produce industry traders and participants and produce business disputes, including in reparation complaint proceedings before the USDA under the PACA and Federal court actions involving enforcement of the PACA Trust.
- Contract negotiation and drafting including agreements for the sale of businesses and the purchase of goods and provision of services.
- General business law and corporate/LLC law advice to individuals and companies.
- Corporate divorces arising from disputes between shareholders, LLC members, partners and other business owners; and dissolution of businesses.
- Judgment collection for creditors; asset protection advice and judgment collection protection for debtors.
- Serving as general counsel for a large fresh produce company.
- Serving as local counsel in Florida State and Federal Courts for non-Florida attorneys with Florida clients or business litigation/produce industry cases in the State.

Admissions

- The Florida Bar, 1989.
- The California Bar, 2016.
- The Virginia Bar, 1988.
- U.S. Supreme Court.
- U.S. Court of Appeals for the Fourth, Ninth, and Eleventh Circuits.
- United States District Courts for the Southern, Middle, and Northern Districts of Florida; the Eastern and Western Districts of Virginia; and the Southern, Central, Eastern, and Northern Districts of California.

Education

- *Juris Doctor*, with honors (graduated 10th in law school class), George Mason University School of Law, Arlington, Virginia, 1988.
- Bachelor of Arts, University of Virginia, Charlottesville, Virginia 1985 (double major in history, and rhetoric and communications); Dean's List all semesters in junior and senior years.



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Judicial Clerkships

- Honorable Jose A. Gonzalez, Jr., U.S. District Court, Southern District of Florida, Fort Lauderdale Division, 1988-90.

Arbitrator

- Florida Supreme Court Qualified Arbitrator

Certifications

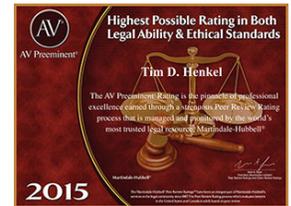
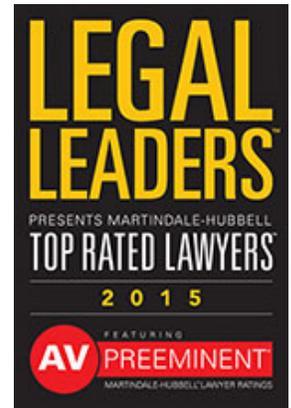
- Successfully completed Foreign Supplier Verification Program sponsored by Food Safety Preventive Controls Alliance, January 2020.
- Certified in Internal Investigations by HRcertification.com, April 2021.

Honors and Selections

- Martindale Hubbell's AV Preeminent 5.0 out of 5 Peer Review Rating, 1999-2022.
- Martindale Hubbell's "Platinum Client Champion" award, 2021 & 2022 (recognizing attorneys for their commitment to the best client service).
- Board of Editors, Law Review, George Mason University School of Law (1987-88).
- Best Oralist and Best Team, Moot Court competition, George Mason University School of Law (1988).
- Graduated 10th in both law school and high school classes
- Selected for publication in Florida Trend's Legal Elite, 2009, 2014 & 2016.
- Listed by Avvo.com, 2011-22, as "Superb" (10 out of 10 rating).
- Selected for publication by Super Lawyers, 2013-2022.
- Selected for publication in 2015 South Florida's Top AV Rated Lawyers.

Speaking Engagements

- Speaker, "Business Contracts A to Z" seminar sponsored by National Business Institute, Miami, December 5, 2012 and West Palm Beach, April 16, 2015. Presented on the following topics concerning business contracts: essential legal elements; master agreements; choice of forum and law; statutes of limitation; and drafting of business terms and conditions including representations and warranties, indemnification, dispute resolution provisions, and boilerplate; and drafting considerations for shareholder, partnership, and operating agreements.
- Speaker, "The Perishable Agricultural Commodities Act: What It Is and Why You Need to Know" webinar sponsored by the Knowledge Group, September 24, 2018. Presented on topics concerning the PACA including: application, sources, and purpose of the law; USDA trading assistance to the industry; PACA licenses and USDA discipline; reparation complaints; Unfair Conduct; and the PACA Trust.



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- Speaker, “Lender Liability in Commercial and Residential Foreclosures and under the Perishable Agricultural Commodities Act (PACA)” webinar sponsored by the Knowledge Group, October 16, 2019. Presented on topics concerning the lender liability under the PACA Trust including: background of the PACA and the PACA Trust, application of PACA law, general trust law as the basis for the PACA trust, transferee liability for lenders, the bona fide purchaser defenses, and practical suggestions for lenders in dealing with the PACA Trust.

Client Testimonials and Endorsements

- Client Testimonials may be found on the websites for the following attorney ratings services: Martindale Hubbell, Avvo; and also on Google Reviews. Testimonials and Endorsement do not constitute a guarantee, warranty, or prediction regarding the outcome of your legal matter. You, as a prospective client, may not receive the same or a similar result.

Prior Representations

- *Southern Specialties, Inc. v. Atlas Mega Steel, LLC*, Case No. 2019-016734 CA-01(04) (Miami-Dade Circuit Court, Florida) (Sued to recover refund of initial installment of purchase price paid for defective rack shelving system in cold storage warehouse; defended against seller’s counterclaims for balance of contract price plus interest, costs, and attorneys’ fees; case settled in 2021 with Seller taking nothing on its counterclaim and paying a full refund of the purchase price paid)
- *In re Country Fresh Holding Co. Inc.*, Bankruptcy Case No. 21-30574 (S.D. Tex. 2021) (In approximately \$89 million Chapter 11 bankruptcy of fresh cut produce company, represented five PACA Trust beneficiaries owed approximately \$2.39 million in unpaid produce bills, and led group of PACA Trust creditors owed over \$19 million; achieved favorable outcome whereby all PACA Trust beneficiaries were paid their outstanding produce bills for U.S. sales plus interest and contractual attorneys’ fees).
- *Mullins v. Butler America, LLC*, Case No. 1:19-cv-22616-JEM (S.D. Fla. 2021) (Tim’s client defeated challenges to enforcement of an arbitration award and obtained final judgment for \$1.12 million; the case settled in 2021 after Tim’s client was able to collect the full amount of the judgment via 31 writs of garnishment, with the court denying the debtor’s motion to dissolve the garnishments of debts owed by non-Florida companies doing business within Florida).
- *Produce Pay, Inc. v. Agrosale, Inc.*, Case No. 20-22585-CIV-Scola, 2021 WL 1309742 (Apr. 8, 2021) (granting motion to dismiss third party complaint and denying motion for leave to amend as futile based on defendant’s failure to properly implead Tim’s clients)

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- *Eller Maritime Co. and Eller & Company, Inc. v. Charles S. Dale, as Personal Representative, and William Benson, as Successor Trustee*, Case No. PRC 19-0001758 (Broward County Circuit Court, Florida 2021) (ending two decades of legal disputes and after 3 mediations including one lasting 21 hours, all disputes settled in 2021 by Tim's client, the personal representative of an estate, with the estate receiving payment of a confidential amount and the multi-million dollar claims against the estate being dismissed).
- *Global Export Assocs., LLC v. U.S. Melon, LLC*, Case No. 2020-003360-CA-01 (March 2, 2021, Miami-Dade Circuit Court, FL) (Court granted the motion of Tim's clients to dismiss all claims against company and individual principal for breach of fiduciary duty, conversion, and statutory civil theft claim for treble damages).
- *Buy Right Produce, LLC v. Genaro Produce Incorporated*, 2018 WL 6040092 (S.D. Fla. 2018) (in PACA Trust enforcement action by PACA Trust beneficiary against 19 defendants, including a bank, court granted Tim's client an ex parte Temporary Restraining Order to stop dissipation of PACA Trust Assets; the case was settled after 6 weeks of litigation).
- *Evergreen Farms & Produce, LLC v. ABL Farms, Inc.*, Case No. 1:15-CV-03171-AT (2015-2018) (Working with a group of PACA Trust counsel in a case against two insolvent produce companies and other defendants, Tim's client recovered the full principal amount of the debt owed for unpaid produce sales).
- *Epic Fresh Produce, LLC v. Olympic Wholesale Produce, Inc.*, 2017 WL 6059971 (N.D. Ill. Dec. 7, 2017), 2018 WL 1311994 (N.D. Ill. Mar. 7, 2018), 2018 WL 1311995 (N.D. Ill. Mar. 7, 2018) (Court granted Temporary Restraining Order and then a Preliminary Injunction in favor of Tim's client to stop dissipation of PACA Trust assets and to require accounting of the PACA Trust assets; the Court also established a PACA Claims Procedure to determine the eligibility and amount of all PACA Trust claims; case subsequently settled).
- *Lindner v. BiscayneAmericas Advisors, L.L.C.*, case no. 16-23153-CIV, 2016 WL 5800258 (U.S. District Court, S.D. Fla. 2016) (Altonaga, J.) (court granted motion of Tim's client to dismiss Federal lawsuit based upon mandatory, exclusive forum-selection clause in promissory note and settlement agreement).
- *BB&T v. Collins Avenue Plaza, LLC, et al.*, case no. 1:13-cv-21397-KMW (U.S. District Court, S.D. Fla. 2015) (Williams, J.) (In Federal litigation by bank against borrower and guarantors for alleged breach of \$1.85 million loan involving South Beach commercial property, Tim negotiated a settlement resulting in the bank dismissing all claims against Tim's clients with prejudice).
- *Valenzuela v. Sol Group Marketing Company*, case no. 2:14-cv-09478-R-VBK, 2015 WL 653086 (U.S. District Court, C.D. Cal. 2015) (Real, J.) (Federal court granted the motion of Tim's client to dismiss employment discrimination action and transfer suit to the district in which Tim's client was located; case was subsequently settled by the plaintiff employee dismissing all claims against Tim's client with prejudice, and paying a small sum to Tim's client as well).

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- *Fresh Quest, Inc. v. Sol Group Marketing Company, et al.*, case no.12-24848 (Complex Business Litigation Section, Miami-Dade County, Florida 2014) (successfully defended complex business claims for \$14 million in damages against company and executive involving alleged international misappropriation of trade secrets, breach of contract, civil conspiracy, breach of fiduciary duty, FDUTPA violations, and civil conspiracy; opposing party dismissed case with prejudice, each party to bear their own costs and attorneys' fees, with no monies paid by Tim's clients).
- *Southern Specialties, Inc. v. IXE Agro USA, LLC*, case no. CACE 14-001391 (Broward Circuit Court, Florida 2014) (obtained injunction and recovered damages for produce company enforcing non-competition agreement as to former employee and prohibiting competitor's solicitation of employees).
- *Sol Group Marketing Company v. Producers Choice, LLC, et al.*, case no. 2:13-cv-02898-DSF-PLA, 2013 WL 5502798 (U.S. District Court, C.D. Cal. Sept. 30, 2013) (obtained summary judgment of \$185,000 against produce company insiders to remedy dissipation of PACA trust assets).
- *Estoril Inc. v. Mayfield Condominium Association*, 104 So. 3d 701 (Fla. 3d DCA 2013) (Complex Business Litigation Section) (obtained appellate reversal of summary judgment granted by trial court in favor of residential condominium association and remand for a trial of parking charges involving downtown Miami, mixed-use office tower; case subsequently settled).
- *Espirito Santo Bank v. Arrillaga, Miami-Dade Circuit Court*, case no. 11-06753 CA 06, and Third District Court of Appeal, 100 So. 3d 701 (Fla. 3d DCA 2012) (obtained final judgment in residential mortgage foreclosure action, defeated post-judgment motion to set aside judgment and subsequent appeal; obtained and collected in full deficiency judgment for in excess of \$150,000, with full recovery to client for principal balance of loan, interest, costs, and all attorneys' fees).
- *Espirito Santo Bank v. Debbouze*, No. 10-34829 CA 23 (Miami-Dade Circuit Court, Florida 2012) (overcame reinstatement and notice defenses to obtain final judgment of \$1.57 million to foreclose on luxury condominium; case settled with bank recovering all monies owed, including all costs, default interest, and attorneys' fees).
- *Espirito Santo Bank v. Terninck*, No. 10-27012 CA 20 (Miami-Dade Circuit Court, Florida 2011) (defeated notice of default defense to obtain final judgment of \$1.38 million in mortgage foreclosure on luxury home; case settled with bank recovering all principal, default interest, and costs owed as well as portion of attorneys' fees incurred).
- *Espirito Santo Bank v. Key Mariner Properties, Inc.*, No. 09-06308 CA 27 (Miami-Dade Circuit Court, Florida 2009) (overcame challenge to service of process on instate agent and secured final judgment of \$2.99 million to foreclose on luxury home).

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- *FW Supply, LLC v. Sun-Sun International, Inc.*, AAA Case No. 32-155-637-09, Miami-Dade Circuit Court Case No. 09-15764 CA 05 (2010) (after one week arbitration hearing, three arbitrator panel awarded Tim's client \$2.936 million in compensatory damages for breach of fiduciary duty and other misconduct, and \$1.5 million in punitive damages, rejecting multi-million dollar cross claims by Chinese company against Tim's client, and awarding other relief, including arbitration costs, in favor of Tim's client; state trial court subsequently rejected challenge to arbitration and affirmed award in full, resulting in subsequent settlement in favor of Tim's client).
- *Probinsky v. Beckham*, No. 07-24719, 15 Fla. L. Weekly Supp. 150 (Complex Business Litigation Section, Fla. Cir. Ct. Dec. 13, 2007) (based upon the Revised Uniform Partnership Act, denying motion to dismiss claim by Tim's client for reasonable compensation for legal services provided after partnership dissolution).
- *Espirito Santo Bank v. Rego*, 2007 WL 1062521 (Fla. 3d DCA 2007) (reversing trial court's decision to allow punitive damages claim against Tim's client).
- *Ravin v. Hockman*, 2007 WL 29248 (U.S. District Court, S.D. Fla. 2007) (granting motion by Tim's clients to dismiss lawsuit by a large group of investors against condominium developer).
- *Paradise Farms, S.A. v. Chiquita Frupac, Inc.*, 2006 WL 640501 (U.S. District Court, S.D. Ohio 2006) (granting in part and denying in part motions for summary judgment in case by Tim's clients against Chiquita arising from a produce marketing agreement).
- *Genecco Produce, Inc. v. Sol Group Marketing Co.*, 2006 WL 328385 (U.S. District Court, W.D.N.Y. 2006) (ruling that claims of Tim's client against produce marketing company would go to trial; case was settled favorably to Tim's client during trial).
- *Kendall v. Gilmore*, 915 So. 2d 681 (Fla. 3d DCA 2005) (affirming the trial court's dismissal of a third-party complaint against Tim's client).
- *Penn City Investments, Inc. v. Soltech, Inc.*, 2003 WL 22844210, 2003 WL 23162410, 2003 WL 23162413 (U.S. District Court, E.D. Pa. 2003) (granting partial summary judgment in favor of Tim's client against warehouse operator).
- *Braswell v. A. Glenn Braswell*, No. 99-17994, 2003 WL 354509 (Fla. Cir. Ct. Jan. 30, 2003) (rejecting a judgment debtor's challenges to the levying on the contents of the debtor's residence by Tim as creditor's counsel).
- *Easton-Babcock & Assocs., Inc. v. Fernandez*, 706 So. 2d 916 (Fla. 3d DCA 1998) (obtained appellate ruling reversing trial court's judgment and affirming jury verdict for real estate brokerage commission in favor of Tim's client).
- *Global Access Ltd. v. AT&T Corp.*, 978 F. Supp. 1068 (U.S. District Court, S.D. Fla. 1997) (granting summary judgment in favor of Tim's client against AT&T for breach of Contract Tariff for provision of telecommunications service).