



## **Brian Boyle**

Partner

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Brian Boyle represents financial services companies, including banks, trust and mutual fund companies, health care payers, and health and life insurers, in connection with class or mass actions. Drawing on his detailed knowledge of the business models of financial services providers, and his significant experience working with experts in economics and finance, Brian is able to translate complex financial services products and services into concepts that courts can easily grasp.

Brian focuses his practice on high-stakes disputes under the ERISA statute. He represents the employer/sponsors of retirement plans, as well as product and service providers to such plans, when the plans' fiduciary committees are alleged to have caused the plans to pay excessive fees, select poor-quality investments, or engage in "prohibited transactions." On the welfare plan side, he also represents clients in actions for health benefits and in cases by health care providers who purport to have assignments of their patients' litigation rights under ERISA.

Brian also handles other consumer claims against banks and financial institutions, including claims by borrowers against mortgage originators and servicers and claims challenging fee structures under state consumer protection laws or the National Bank Act.

Brian formerly co-chaired the firm's Financial Services Practice. Brian also is active in the firm's Health Care and Life Sciences Practice as well as the Supreme Court and Appellate Practice. *Chambers USA* and *The Legal 500* have named him a leading practitioner in the ERISA litigation and health care areas.

### **Admissions**

#### *Bar Admissions*

District of Columbia, California

#### *Court Admissions*

US Supreme Court

US Courts of Appeals, First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Eleventh, and District of Columbia Circuits

US District Court, Central and Southern Districts of California, Colorado, District of Columbia, and Central District of Illinois

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### **Education**

Harvard University, J.D., 1986:  
*magna cum laude*; editor, *Harvard Law Review*

Georgetown University, A.B., 1982:  
*summa cum laude*

## Experience

- Represented a mutual fund complex in litigation challenging the presence of proprietary investment options in a 401(k) plan
- Obtained dismissal of a class action against retirement services providers in nationwide ERISA class action fiduciary litigation challenging the reasonableness of fee structures in thousands of separate 401(k) plan service arrangements
- Represented a directed trustee and mutual fund investment adviser in multiple, separate ERISA actions seeking to impose fiduciary and non-fiduciary liability for allegedly excessive administrative and investment management fees, and allegedly substandard investment performance
- Obtained a dismissal of a nationwide provider class action challenging the administration of "pre-approval" requirements in health insurance policies
- Obtained a denial of class certification and summary judgment on a named plaintiffs' claims in a nationwide ERISA class action challenging the method for coordinating private health plan secondary payments with Medicare benefits
- Obtained a denial of a class certification in a nationwide class action alleging nondisclosure of "death spiral" in closed book of individual health policies
- Obtained dismissal of federal RICO claims against mortgage servicer arising out of default mortgage servicing practices

## Investment and Retirement Plan Services

- Represents a mutual fund complex in nationwide ERISA class action litigation challenging procedures for distributing "float" earnings on retirement plan contributions and redemptions
- Represents a life insurer and its affiliates in nationwide ERISA class action litigation challenging fees collected on insurance separate account investment options
- Represented a plan sponsor in ERISA fiduciary litigation raising claims of imprudence and prohibited transactions in connection with the selection of mutual fund investment options

## Health Plan Services

- Represents a health insurer in a nationwide ERISA class action challenging the procedures used for recovery of claim overpayments
- Obtained, on appeal, a reversal of a trial court order certifying a class of 250 hospitals on claims that a managed care organization serving as a contractor to the military's TRICARE management activity had underpaid claims for outpatient claims over a 10-year period
- Obtained a dismissal of a nationwide ERISA class action claims over the administration of out-of-network health insurance benefits
- Obtained a dismissal of a nationwide class action consumer fraud claims concerning an insurer's marketing and administration of fixed indemnity health policies
- Obtained dismissal of multiple class actions challenging a health insurer's assertion of subrogation and reimbursement rights against tort recoveries by plan beneficiaries

- Obtained a dismissal, on jurisdiction and exhaustion grounds, of nationwide class action litigation against a large Medicare Advantage contractor over an alleged misclassification of Medicare Part B and Part D drugs
- Obtained a denial of class certification in a nationwide class action challenging a health insurers' alleged operation of "silent PPO"
- Served as lead counsel for a managed care company in a multi-defendant action alleging that managed care companies and full-service hospitals engaged in a group boycott of a new-entrant specialty hospital
- Served as lead counsel for a large managed care company in In re Managed Care Litigation (MDL No. 1334; S.D. Fla.), encompassing a series of nationwide class actions on behalf of health plan subscribers, and the physicians and other health care providers who serve them
- Served as national coordinating counsel for a large, investor-owned hospital system in actions challenging pricing practices with respect to uninsured patients
- Obtained summary judgment for a large managed care company in a statewide purported class action alleging a group boycott of the Medicare HMO program in California
- Sustained removal to federal court, and obtained a judgment of dismissal on Medicare preemption grounds, on behalf of a health maintenance organization in a purported class action by members of failed independent practice associations seeking direct recoveries against insurers

### Consumer Financial Services

- Obtained a dismissal of claims brought by municipalities against subprime mortgage lenders and servicers for the economic consequences of foreclosure
- Represented a large mortgage lender in a nationwide settlement of claims by state attorneys general over alleged consumer protection violations in the origination of subprime and pay-option mortgages

### Other Representations

- Obtained partial denial of certification, and elimination of portion of class period, in securities class action litigation against a large government-sponsored enterprise over the withdrawal of the enterprise's financial statements
- Obtained a denial of class certification on behalf of a series of property and casualty carriers in a purported RICO class action involving alleged pricing irregularities in commercial insurance policies
- Represented a property and casualty carrier in a purported nationwide class action involving alleged wrongful failure to pay policyholder dividends
- Obtained a denial of class certification and awards of summary judgment for an automobile manufacturer in a variety of consumer class actions raising purported claims of fraud surrounding the design and sale of sport-utility vehicles
- Represented an automobile manufacturer in a statewide certified class action involving alleged ignition system defects
- Obtained a denial of class certification for an automobile manufacturer in purported nationwide and statewide class actions raising across-the-board claims of race discrimination in employment, and obtained summary judgment against the class in the sole action in which certification was granted

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## Corporate & Government Experience

### Former Assistant to the General Counsel

- Office of the Secretary of the Army (1986-1991)

### Former Principal Deputy Associate Attorney General

- US Department of Justice (2003-2005); recipient of the Edmund J. Randolph Award for Outstanding Justice Department Service (April 2005)

## Professional Activities

### Clerkships

- Honorable Antonin Scalia, US Supreme Court
- Honorable Laurence H. Silberman, US Court of Appeals, District of Columbia Circuit

### Member

- American Bar Association
- American Health Lawyers Association
- American Law Institute

## Honors & Awards

- Recognized by *Best Lawyers*® (2020-2022) for Litigation - ERISA in Washington, DC; Brian has been listed in *Best Lawyers*® since 2020
- Named a Local Litigation Star in Energy and Natural Resources, FCPA and Enforcement, General Commercial, Insurance, and Product Liability by *Benchmark Litigation* (2019-2020)
- Recognized as “Band One” in ERISA Litigation, *Chambers USA* (2019-2021)
- Ranked in the "Hall of Fame for ERISA Litigation; Recommended for Healthcare and Financial Services Litigation by *The Legal 500 US*