



Brian A. Berkley

Partner

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Brian is a trial lawyer whose practice centers on complex commercial litigation, with an emphasis on disputes over trade secrets and non-competes.

His broad experience includes litigation related to complex financial services and matters involving software and technology. He routinely litigates substantial cases with many millions of dollars at stake.

Brian has more than a decade of experience representing clients in trials and injunction proceedings before the state and federal courts, and in arbitration forums in the United States and abroad. He represents *Fortune* 500 and midsize companies as well as startups in lawsuits spanning a wide range of industries – commercial real estate, financial services, gaming, health care, higher education, insurance, manufacturing, mortgage banking and software technology.

With experience in arbitrations before the International Centre for Dispute Resolution, American Arbitration Association and the London Court of International Arbitration, Brian maintains a particular interest in arbitration law. He teaches arbitration law as an adjunct professor at Rutgers School of Law and is a prolific writer on arbitration issues, with articles published by the *New York Law Journal*, *New Jersey Law Journal*, *Law360* and the American Bar Association.

Representative Matters

Business Torts and Non-Compete Litigation

- Defended a **manufacturer** in four-week federal jury trial, the first jury trial under the Defend Trade Secrets Act. Won a jury verdict that completely rejected non-compete claims.
- Defended large international generic **pharmaceutical** company against claims under the Defend Trade Secrets Act and the Computer Fraud and Abuse Act. Secured a cost-of-defense settlement.
- Currently prosecuting trademark infringement, dilution, and unfair trade practices claims on behalf of large **greeting card company**. Secured a preliminary injunction within one week of filing that stopped further infringement.
- Served as lead counsel to a large **insurance** company, successfully enforcing a non-solicitation agreement and favorably prosecuting a tortious interference claim against a former broker and his new employer, resulting in a favorable settlement securing a stipulated injunction enforcing the agreement's terms and obtaining a monetary payment.



- Served as lead counsel in the successful defense against the enforcement of a non-solicitation agreement, tortious interference claim and fraud claims against a large **insurance** company and broker, resulting in a favorable settlement.
- Pursued a preliminary injunction on behalf of a *Fortune 500* **manufacturer** against former employees to enforce non-compete and nonsolicitation agreements, obtaining favorable settlement.

Arbitration and Complex Commercial Litigation

- Obtained an eight-figure award on behalf of a client after a one-week international arbitration hearing before the London Court of International Arbitration relating to a failed international **real estate joint venture**, developing a winning argument based on market evidence in India.
- Led the representation of a **foreign software provider** in an international arbitration concerning a software implementation, turning a \$1 million claim against the client into a settlement payment for the client.
- In *Bevan v. DaVita, Inc.*, (10th Cir.), won affirmance of confirmation of an underlying arbitration award after successfully defending against breach of non-compete, breach of fiduciary duty and fraud claims.
- Defended and prosecuted two arbitrations on behalf of a **medical device manufacturer**, turning an initial multimillion-dollar claim against the client into a multimillion-dollar settlement for the client.
- Prepared for an arbitration hearing within 60 days from first filing in a \$100 million dispute concerning an underlying patent litigation settlement on behalf of a **cable provider**, leading to a favorable settlement.
- Prosecuted a breach of exclusive supplier contract claim in an AAA arbitration on behalf of a **major bottling company**, leading to a favorable monetary settlement.
- Currently defending a **casino** against antitrust claims, successfully employed strategy limiting defense costs.
- Defended **university** against fiduciary duty claims brought by current and former students.
- In *Princeton Football Partners LLC v. Football Association of Ireland* (D.N.J.), on behalf of the **premier Irish soccer association**, obtained dismissal of a complaint alleging RICO, breach of contract and tort claims.

Securities, Financial Services and M&A-Related Litigation

- In *Hamilton Partners, L.P. v. Highland Capital Mgmt., L.P.*, (Del. Ch.), won dismissal of a complaint alleging breach of fiduciary duty claims against a director in a stockholder class action.
- In *Alliance Industries, Inc. v. Longyear Holdings, Inc.*, (W.D.N.Y.), won summary judgment on behalf of large **mining exploration company**, defeating breach of contract and tort claims while obtaining an award for breach of representations and warranties in an asset acquisition agreement and an award for attorneys' fees.
- Currently defending a **mortgage company** against a collective action and a separate class action alleging failure to pay overtime.
- Led the defense of a **mortgage company** relating to mortgage servicing claims in federal court, leading to favorable settlement.
- Defended a **mortgage company** in a trading desk dispute, leading to an early cost-saving settlement.

Software and Technology Disputes

- Represented a *Fortune 500* **technology** company in a \$25 million fraud dispute relating to a Medicaid Management Information Systems software implementation project.
- Defended a **large regional bank** in a breach of contract litigation involving a failed software project in federal court, leading to a favorable monetary settlement.



- Currently prosecuting trademark infringement claims and defending against breach of contract claims on behalf of **university** in connection with services from a software provider.

Pro Bono

- In *Startzell v. City of Philadelphia*, (E.D. Pa.) (affirmed by Third Circuit), obtained summary judgment on behalf of **parade organizers** against protestors who claimed the organizers conspired with the City of Philadelphia to restrict their First Amendment rights. The protest received national media attention.
- Represented **homeless veterans**, helping them to secure benefits from the Veterans Administration.
- Represented **Elton John's AIDS Foundation** in intellectual property disputes.
- Represented **Disability Rights of New Jersey** to ensure protection of the constitutional rights of disabled New Jersey residents.

Before Fox Rothschild

Prior to joining Fox, Brian was an attorney at a national law firm based in Philadelphia, where he co-founded the firm's Veterans' Rights Pro Bono Practice Group and helped to organize the International and Domestic Arbitration Group. He also previously served as a law clerk to U.S. District Judge James F. McClure of the Middle District of Pennsylvania.

While in law school, Brian was a member of the *Washington and Lee Law Review*. He earned the distinctions of best oralist and best brief finalist at the John W. Davis Moot Court Competition. As a Burks Scholar, he taught research and writing skills to first-year students. He was also inducted into the Omicron Delta Kappa Leadership Honor Society.

In college, Brian spent a semester abroad at the National University of Ireland Galway.

Beyond Fox Rothschild

Brian is active in the American Bar Association. He serves as Co-Chair of the ABA Section of Litigation's Business Torts and Unfair Competition Committee for the 2017-18 bar year. In 2014, he co-chaired the ABA Corporate Counsel CLE Seminar. He is also active in the Irish American Business Chamber and Network and the Bucknell Professional Network.

Brian was invited to join The Fellows of the American Bar Foundation, an honorary organization of attorneys, judges, law faculty and legal scholars whose public and private careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession.

In his pro bono practice work, Brian represents homeless veterans before the Veteran's Administration. He has previously litigated pro bono cases on behalf of disabled New Jersey residents and gay rights advocates.

Honors & Awards

- Named to the "Lawyers on the Fast Track" list by *The Legal Intelligencer* (2019)*
- Named to the "Under 40 Hot List" by *Benchmark Litigation* (2018, 2020)*
- Selected to the "Super Lawyers - Rising Stars" list for Business Litigation in Pennsylvania (2013-2019)*
- Recipient of Homeless Advocacy Project Award (2013)
- Recipient of the Pride Day Award for Pro Bono Legal Work on behalf of Philly Pride Presents
- Recipient of the New Adjunct Professor of the Year at Rutgers School of Law – Camden (2014-2015)
- Member, *Washington and Lee Law Review*
- Recognized as "Best Brief" and "Best Oralist Finalist" by the John W. Davis Moot Court Competition



- Omicron Delta Kappa Leadership Honor Society

[*Awards Methodology](#)

Practice Areas

- Litigation
- Class Actions
- Emerging Companies & Venture Capital
- Financial Services Industry
- Gaming
- Higher Education
- Insurance
- International Arbitration
- IP Litigation
- Life Sciences
- Manufacturing
- Trade Secrets
- Trademarks
- Antitrust

Bar Admissions

- Pennsylvania
- New Jersey

Court Admissions

- U.S. Court of Appeals, Tenth Circuit
- U.S. Court of Appeals, Third Circuit
- U.S. District Court, Eastern District of Pennsylvania
- U.S. District Court, Middle District of Pennsylvania
- U.S. District Court, Western District of Pennsylvania
- U.S. District Court, District of New Jersey
- U.S. District Court, Eastern District of Texas

Education

- Washington and Lee University School of Law (J.D., *cum laude*, 2005)
 - Law Review, member
- Bucknell University (B.A., 2001)

Memberships

- American Bar Association
 - Business Torts and Unfair Competition Committee (Co-Chair)
 - Corporate Counsel Committee



- Judicial Internship Opportunity Program
- Irish American Business Chamber and Network
- The Fellows of the American Bar Foundation
- Brehon Society
- Bucknell Professional Network
- Greater Philadelphia Rugby Business Network

Judicial Clerkship

- U.S. District Judge James F. McClure, Middle District of Pennsylvania