



Scott E. Byers

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Overview

Scott Byers focuses on the defense of financial services companies in complex federal and state court litigation, including class actions and multidistrict litigation proceedings throughout the United States.

Scott has experience in cases alleging fraud, misrepresentation, breach of contract, breach of fiduciary duty, deceptive trade practices, violations of ERISA, and numerous other industry-specific issues involving elevated exposure risks. He has also practiced complex commercial, constitutional, local government, environmental, and land use litigation in state and federal courts, including particularly First Amendment, defamation, trademark and copyright litigation, litigation regarding access to government-held information, and privacy, as well as antitrust and trade secret claims.

He is regularly involved in motion practice and written appellate advocacy, having briefed issues for courts throughout the country, including the Fifth and Eleventh Circuit Courts of Appeals.

Experience

Insurance Litigation

- *Madigan v. Prudential Annuities Life Assurance Corp.*, No. 2014-CA-005458-NC (Fla. Cir. Ct.) (granting summary judgment in favor of Prudential in a suit alleging fraud, breach of contract, and Florida RICO claims relating to a variable life insurance policy and several variable annuities) (appeal pending).

- *Madigan v. Prudential Annuities Life Assurance Corp.*, No. 2014-CA-005458-NC (Fla. Cir. Ct.) (obtaining a judgment for attorneys' fees and costs after an evidentiary hearing based on the use of Florida's proposal for settlement statute) (appeal pending).
- *Cantor Group Law P.A. v. Pruco Life Ins. Co.*, No. 2018-000596-CA-01 (Fla. Cir. Ct.) (granting summary judgment in favor of Pruco under Florida's facility of payment statute in a suit alleging negligence, reformation, and wrongful distribution of policy proceeds).
- *Apparisio v. Pruco Life Ins. Co.*, No. 1:19-cv-20823 (S.D. Fla.) (dismissing Pruco from the action alleging breach of contract arising from a \$5 million life insurance policy and granting Pruco's motion for interpleader).
- *Cole v. Prudential Annuities Distrib., Inc.*, No. 21-01061 (dismissal of all claims against Prudential in FINRA action alleging negligence, breach of contract, breach of fiduciary duty, fraud and negligent misrepresentation, and securities fraud relating to annuity policies).
- *Prudential Ret. Ins. & Annuity Co.* (2020) (successful resolution and settlement of a pre-suit action in California relating to an employee benefit annuity policy).
- *Wolfe v. Prudential Ins. Co. of Am.*, No. 1:21-cv-22664 (S.D. Fla.) (successful resolution of an action alleging fraud, negligent misrepresentation, unfair and deceptive trade practices, declaratory relief, and anticipatory breach of contract).
- *Capital Wealth Advisors, LLC v. Pruco Life Ins. Co.*, No. 2018-CA-0682 (Fla. Cir. Ct.) (granting motion to dismiss in favor of Pruco with prejudice in an action seeking declaratory and injunctive relief relating to commissions paid for the sale of insurance contracts).
- *Doherty v. Allianz Life Ins. Co. of N. Am.*, No. 2:18-cv-00377 (M.D. Fla.) (jury trial verdict in favor of the insurer as to one plaintiff and successful post-trial settlement as to other plaintiff in an action alleging negligence and breach of fiduciary duty).
- *Fleming v. Allianz Life Ins. Co. of N. Am.*, No. 2018-CA-001140 (Fla. Cir. Ct.) (dismissal of Allianz in an action alleging negligence and breach of fiduciary duty regarding an annuity policy).
- *Russell v. Allianz Ins. Co. of N. Am.*, No. 3:13-cv-00030 (N.D. Miss.) (successful resolution of a suit by agent of Allianz Life alleging breach of fiduciary duty, breach of covenant of good faith and fair dealing, and breach of contract).
- *Breslow v. Prudential Ret. Ins. & Annuity Co.*, No. 0:16-cv-61821 (S.D. Fla.) (successful resolution of an ERISA breach of fiduciary duty claim).
- *Todorovic v. Hartford Life & Annuity Ins. Co.*, No. 5:17-cv-00157 (M.D. Fla.) (successful resolution of a breach of contract suit arising out of the rescission of a life insurance policy).
- *Lasky v. Stonebridge Life Ins. Co.*, No. 1:12-cv-20599 (S.D. Fla.) (successful resolution of a breach of contract suit arising out of the rescission of a life insurance policy).

- Represented life insurance and annuity company in defamation and tortious interference action brought by former agent. *Hill v. Allianz Life Ins. Co. of N. Am.*, No. 6:14-cv-00950, 2019 WL 932264 (M.D. Fla. Feb. 26, 2019) (awarding attorneys' fees to insurer); 2016 WL 872936 (M.D. Fla. Feb. 17, 2016), *aff'd*, 693 F. App'x 855 (11th Cir. 2017) (affirming summary judgment in favor of insurer); 51 F. Supp. 3d 1277 (M.D. Fla. 2014) (denying motion to remand).
- *Epstein v. Transamerica Life Ins. Co.*, No. 2010-015515 (Fla. Cir. Ct. Mar. 6, 2017) (partially dismissing complaint alleging underpayment of benefits under health insurance policy).
- *Aegon USA "actual charges" litigation*. Involved in the defense of approximately 22 cases, some national class actions, others state class actions, and still others individual actions, asserting claims that the Life Investors Insurance Co. must pay its insureds under supplemental cancer policies the health care providers' "list prices" instead of much lower fees actually paid to them by primary health care insurers.
- *In re Indianapolis Life Ins. Co. I.R.S. § 412(i) and § 419 Plans Life Ins. Mktg. Litig.*, 581 F. Supp. 2d 1364 (J.P.M.L. 2008) (successfully petitioned the MDL Panel to establish this MDL proceeding in the Northern District of Texas for claims against Indianapolis Life relating to the design, sale, and marketing of Indianapolis Life insurance policies used to fund employee benefit plans under Sections 412(i) and 419 of the Internal Revenue Code).
- *Berry v. Indianapolis Life Ins. Co.*, 600 F. Supp. 2d 805 (N.D. Tex. 2009) (*Berry I*) (granting motion to dismiss putative nationwide class action asserting claims against insurers and insurance consultants relating to the design, sale, marketing, and administration of specially designed insurance policies used to fund defined benefit pension plans under Section 412(i) of the Internal Revenue Code, and marketed as a proposed tax shelter. The essence of the complaint was that the insurers and consultants committed fraud by opining in the early 2000s that the Section 412(i) plans and insurance policies would be valid and provide favorable future tax advantages, and failed to disclose the possibility that the IRS would issue guidance suggesting that the plan's contemplated tax advantages were invalid).
- *Berry v. Indianapolis Life Ins. Co.*, 638 F. Supp. 2d 732 (N.D. Tex. 2009) (*Berry II*) (granting dismissal with prejudice of putative nationwide class action relating to the design, sale, marketing, and administration of specially designed insurance policies used to fund tax-advantaged defined benefit pension plans under Section 412(i) of the Internal Revenue Code).
- *Berry v. Indianapolis Life Ins. Co.*, No. 3:08-cv-00248, 2009 WL 10677870 (N.D. Tex. Dec. 22, 2009) (*Berry III*) (granting Indianapolis Life's motion for reconsideration and dismissing plaintiffs' remaining claim against Indianapolis Life with prejudice).
- *Paul v. Aviva Life & Annuity Co.*, No. 3:09-cv-00149, 2010 WL 5105925 (N.D. Tex. Dec. 14, 2010) (*Paul I*) (granting motion to dismiss putative nationwide class action asserting RICO and fraud-based claims relating to the design, sale, and marketing of specially designed life insurance policies used to fund employee benefit plans under Section 419 of the Internal Revenue Code).

- *Paul v. Aviva Life & Annuity Co.*, No. 3:09-cv-00149, 2011 WL 2713649 (N.D. Tex. July 12, 2011) (*Paul I*) (dismissing with prejudice mass action asserting claims relating to the design, sale, and marketing of certain specially designed life insurance policies used to fund employee benefit plans under Section 419 of the Internal Revenue Code).
- *Paul v. Aviva Life & Annuity Co.*, 487 F. App'x 924 (5th Cir. 2012) (affirming district court's dismissal with prejudice of putative nationwide class action asserting RICO and common law fraud claims based on the design, sale, and marketing of life insurance policies used to fund employee benefit plans under Sections 419A(f)(6) and 419(e) of the Internal Revenue Code).
- *Chau v. Aviva Life & Annuity Co.*, No. 3:09-cv-02305, 2011 WL 1990446 (N.D. Tex. May 20, 2011) (*Chau I*) (granting motion to dismiss mass action asserting claims relating to the design, sale, and marketing of specially designed life insurance policies used to fund employee benefit plans under Section 419 of the Internal Revenue Code).
- *Chau v. Aviva Life & Annuity Co.*, No. 3:09-cv-02305, 2011 WL 3156702 (N.D. Tex. July 25, 2011) (*Chau II*) (dismissing with prejudice mass action asserting claims relating to the design, sale, and marketing of certain specially designed life insurance policies used to fund employee benefit plans under Section 419 of the Internal Revenue Code).
- *Chau v. Aviva Life & Annuity Co.*, No. 3:09-cv-02305, 2012 WL 6522150 (N.D. Tex. Dec. 14, 2012) (granting motion to dismiss plaintiffs' third amended mass action complaint with prejudice in action relating to the design, sale, and marketing of certain specially designed life insurance policies used to fund employee benefit plans under Section 419 of the Internal Revenue Code).
- *Bhatia v. Indianapolis Life Ins. Co.*, No. 3:09-cv-01086, 2011 WL 3820825 (N.D. Tex. Aug. 29, 2011) (granting summary judgment in putative nationwide class action asserting breach of contract and California consumer protection claims against insurer relating to the validity and future tax consequences associated with certain life insurance policies used to fund plaintiffs' Section 412(i) benefit plan).
- *Ricupito v. Indianapolis Life Ins. Co.*, No. 3:09-cv-02389, 2011 WL 3820970 (N.D. Tex. Aug. 30, 2011) (granting summary judgment in putative nationwide class action asserting breach of contract and California consumer protection claims against insurer relating to the validity and future tax consequences associated with certain life insurance policies used to fund plaintiffs' Section 412(i) benefit plan).
- *Zarrella v. Pacific Life Ins. Co.*, 755 F. Supp. 2d 1218 (S.D. Fla. 2010) (*Zarrella I*) (granting motion to dismiss putative nationwide class action asserting fraud-based claims against insurer relating to alleged misrepresentations and omissions regarding the validity and future tax consequences of certain life insurance policies used in plaintiffs' Section 412(i) benefit plan).
- *Zarrella v. Pacific Life Ins. Co.*, 755 F. Supp. 2d 1231 (S.D. Fla. 2011) (*Zarrella II*) (dismissing amended putative nationwide class action asserting fraud-based claims against insurer relating to alleged misrepresentations and omissions regarding the validity and future tax consequences of certain life insurance policies used in plaintiffs' Section 412(i) benefit plan).

- *Zarrella v. Pacific Life Ins. Co.*, 809 F. Supp. 2d 1357 (S.D. Fla. 2011) (*Zarrella III*) (granting motion to dismiss second amended putative nationwide class action asserting fraud-based claims against insurer relating to alleged misrepresentations and omissions regarding the validity and future tax consequences of certain life insurance policies used in plaintiffs' Section 412(i) benefit plan).
- *Zarrella v. Pacific Life Ins. Co.*, 820 F. Supp. 2d 1371 (S.D. Fla. 2011) (*Zarrella IV*) (granting summary judgment in putative nationwide class action asserting breach of contract and California consumer protection claims against insurer relating to the validity and future tax consequences associated with certain life insurance policies used to fund plaintiffs' Section 412(i) benefit plan).
- *Zarrella v. Pacific Life Ins. Co.*, 498 F. App'x 945 (11th Cir. 2012) (affirming district court's summary judgment in putative nationwide class action asserting breach of contract and California consumer protection law claims against insurer relating to the validity and future tax consequences associated with certain life insurance policies used to fund plaintiffs' employee benefit plan under Section 412(i) of the Internal Revenue Code)
- *Zarrella v. Pacific Life Ins. Co.* (S.D. Fla.) (favorable resolution of plaintiffs' ERISA-based complaint in Section 412(i) action).
- *Drilling Consultants, Inc. v. Pacific Life Ins. Co.*, 806 F. Supp. 2d 1228 (M.D. Fla. 2011) (granting motion to dismiss claims for breach of contract, breach of fiduciary duty, and violations of California consumer protection laws in action relating to the design, sale, and marketing of specially designed life insurance policies used to fund plaintiffs' Section 412(i) benefit plan).
- *Drilling Consultants, Inc. v. Pacific Life Ins. Co.*, No. 8:10-cv-02873, 2012 WL 3522607 (M.D. Fla. Aug. 14, 2012) (granting summary judgment with respect to breach of contract and negligent misrepresentation claims in action against insurer relating to alleged misrepresentations regarding the validity and future tax consequences associated with life insurance policies used to fund plaintiffs' Section 412(i) benefit plan).
- *Sawaged v. Indianapolis Life Ins. Co.* (N.J. Super. Ct.) (favorable resolution of Section 412(i) action).
- *Elemuren v. Pacific Life Ins. Co.* (District Court of Dallas County, Texas) (favorable resolution of Section 412(i) action).
- *Alonso v. Pacific Life Ins. Co.* (District Court of Dallas County, Texas) (favorable resolution of Section 412(i) action).
- *Patel v. Pruco Life Ins. Co.* (192nd Judicial District of Dallas County, Texas) (successful resolution of Section 419 action).
- *Patel v. Pruco Life Ins. Co.* (298th Judicial District of Dallas County, Texas) (successful resolution of Section 419 action).
- *Genesis Specialty Tile & Accessories v. Aviva Life & Annuity Co.* (Cal. Super. Ct.) (successful resolution of Section 419 action).
- *Narayan v. Pruco Life Ins. Co.* (Cal. Super. Ct.) (successful resolution of Section 419 action).
- *Getman v. Indianapolis Life Ins. Co.* (Chancery Court for Davidson County, Tennessee) (favorable resolution of Section 419(e) action).

- *Muse v. Aviva Life & Annuity Co.* (District Court of Oklahoma County, Oklahoma) (favorable resolution of Section 412(i) action).

Local Government

- *Conti v. City of Miami Beach*, No. 2020-024684-CA-01 (Fla. Cir. Ct.) (pending) (representing the city of Miami Beach to defend against a putative class action asserting equal protection, excessive punishment, and preemption claims relating to the city's ordinances regarding short-term rentals).
- *Mirmelli v. City of Miami Beach*, No. 2018-026112-CA-01 (Fla. Cir. Ct.) (pending) (representing the city of Miami Beach to defend against a putative class action asserting equal protection, excessive punishment, and preemption claims relating to the city's ordinances regarding short-term rentals).
- *Beach Blitz Co. v. City of Miami Beach*, No. 1:17-cv-23958 (S.D. Fla.) (denial of plaintiff's motion for preliminary injunction after an evidentiary hearing and dismissal of the action against the city of Miami Beach and 10 city officials asserting claims of procedural and substantive due process, First Amendment retaliation, vagueness, and Florida statutes relating to the closure of a business for failure to have an active business tax receipt license).
- *Góngora v. City of Miami Beach*, No. 2021-016925-CA-01 (Fla. Cir. Ct.) (summary judgment in favor of the city of Miami Beach in an expedited action filed by a city commissioner seeking declaratory and injunctive relief alleging violations of Florida election statutes, the Miami-Dade Home Rule Charter, and due process under the Florida Constitution).
- *Club Madonna, Inc. v. City of Miami Beach*, No. 1:16-cv-25378 (S.D. Fla.) (dismissing claims alleging violations of the First Amendment, violations of substantive and procedural due process, unconstitutional tax on speech, violation of equal protection, unconstitutional vagueness, violation of the contract clause, violation of the Eighth Amendment, preemption under the Fair Labor Standards Act, and state law preemption, and granting summary judgment as to claims alleging unconstitutional burden on speech and violation of the Fourth Amendment) (appeal of summary judgment order pending).
- *Chalks Airline, Inc. v. City of Miami*, No. 2017-023207-CA-01 (Fla. Cir. Ct.) (granting declaratory relief in favor of Chalks Airline in a declaratory action relating to the ownership of a Florida Department of Transportation airport license for a seaplane base on Watson Island).
- *Chalks Airline, Inc. v. Miami Sports & Exhibition Auth.*, No. 2018-030887-CA-01 (Fla. Cir. Ct.) (pending) (summary judgment as to liability in favor of Chalks Airline in a breach of contract case arising from a commercial lease).
- *Advanced Booting Servs., Inc. v. City of Miami*, No. 2018-023422-CA-01 (Fla. Cir. Ct.) (pending) (representing plaintiffs in an action seeking declaratory and injunctive relief and return of funds charged by the city of Miami under an ordinance regarding the immobilization of motor vehicles on private property).

- *Int'l Players Championship v. Matheson* (Fla. Cir. Ct.) (granted summary judgment on professional tennis center developer's challenge to "public park purpose only" deed restrictions on Crandon Park. Decision later affirmed per curium by Florida's Third District Court of Appeal).
- *Matheson v. Miami-Dade Cty.*, No. 3D17-2649 (Fla. 3d DCA) (dispute over sale of government real property to private soccer stadium developer).
- *Nichols v. City of Miami Beach* (Fla. Cir. Ct.) (pending) (representing city of Miami Beach to defend against challenge to constitutionality of ordinance regarding short-term rentals).
- *Herbits v. City of Miami* (Fla. Cir. Ct., Fla. 3d DCA) (successful resolution of a dispute alleging city of Miami charter violations regarding Watson Island development project).
- *Regalado v. City of Miami* (Fla. Cir. Ct.) (defeated dismissal and partial summary judgment motions in lawsuit asserting city misled voters by seeking voter approval of a purportedly "privately funded" skyscraper complex when development would be subsidized with millions in government funding. Negotiated settlement whereby developers agreed never to accept public money for project and to pay \$400,000 in attorneys' fees to plaintiffs).

Defamation

- *Root v. C. Steven McMillan, John A. Youmans, New Country Motor Cars of Palm Beach, LLC d/b/a Ferrari of Palm Beach & New Country Motor Car Group, Inc.*, No. 50-2016-CA-008921 (Fla. Cir. Ct.) (counsel to Ferrari defendants in suit brought by employee for defamation, conspiracy to defame, violation of Florida's Whistleblower Act, and implied duty of good faith and fair dealing).
- *Zoological Wildlife Found., Inc. v. Humane Soc'y of the United States, Inc.*, No. 1:15-cv-23529 (S.D. Fla. 2017) (successful defense of Humane Society in libel suit brought by founder of zoo who was also convicted of multiple felony crimes).

Complex Commercial Litigation

- *Beresford v. Phil Rosen, Laurie Berger, Fred Fischer, David Doll, Brian Sattar, New Country Motor Car Group, Inc. & New Country Motor Cars of Palm Beach, LLC d/b/a Mercedes-Benz of Palm Beach*, No. 2018-CA-000074 (Fla. Cir. Ct. 2018) (defense counsel to all seven defendants in suit brought by former employee claiming civil RICO, Florida Whistleblower Act, and FDUTPA violations, breach of fiduciary duty, and negligent misrepresentation).

Intellectual Property

- *New Country Motor Cars of Palm Beach, LLC d/b/a Mercedes-Benz of Palm Beach & New Country Motor Car Group, Inc. v. Beresford* (S.D. Fla. 2017) (pending) (counsel for Mercedes-Benz dealership and entity that manages dealerships in suit against former employee for theft of trade secrets).

Commercial Real Estate

- CIM Group/Family Dollar Store (Tampa) (successful resolution of outstanding fines and violations and removal of liens for commercial property owner/landlord and successful settlement with tenant regarding the same).
- CIM Group/Family Dollar Store (Fort Lauderdale) (successful resolution of outstanding fines and violations and removal of liens for commercial property owner/landlord and successful settlement with tenant regarding the same).

Areas of Focus

Practices

- Life, Annuity, and Retirement Litigation
- Appellate & Trial Support
- Litigation and Trials
- Insurance
- Class Actions

Industries

- Insurance
- Life, Annuity, and Retirement Solutions
- Property & Casualty Insurance

Insights

09.08.2011

Trends in Privacy Class-Action Settlements

News

10.19.2022

Carlton Fields Shareholders Prevail in Litigation Over Outdoor Dining in Miami Beach, Popularized During Pandemic

08.24.2022

Carlton Fields Wins Constitutional Victory for City of Miami Beach

02.12.2019

10 Carlton Fields Attorneys Elected to Shareholder

Recognition

- Daniel E. Murray Distinguished Service Award, presented by the *University of Miami Law Review*, recognizing distinguished achievement in the field of law and continued dedication (2012)

Professional & Community Involvement

- American Bar Association
- Alumni Board Member, University of Miami Law Review

Credentials

Education

- University of Miami School of Law (J.D., summa cum laude, 2009)
 - Order of the Coif
 - Society of Bar & Gavel
 - Articles & Comments Editor, *University of Miami Law Review*
 - Roger Sorino Award
 - Partnership for Professionalism Outstanding Student Award
- University of Massachusetts Amherst (B.A., cum laude, 2004)
 - Phi Beta Kappa

Court Admissions

- 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

Bar Admissions

- Florida