



# 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 Court of Appeals.

## Experience

### Insurance Litigation

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

- *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).
- *Zarella v. Pacific Life Ins. Co.*, 755 F. Supp. 2d 1218 (S.D. Fla. 2010) (*Zarella 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).
- *Zarella v. Pacific Life Ins. Co.*, 755 F. Supp. 2d 1231 (S.D. Fla. 2011) (*Zarella 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).
- *Zarella v. Pacific Life Ins. Co.*, 809 F. Supp. 2d 1357 (S.D. Fla. 2011) (*Zarella 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).
- *Zarella v. Pacific Life Ins. Co.*, 820 F. Supp. 2d 1371 (S.D. Fla. 2011) (*Zarella 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).

- *Zarella 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)
- *Zarella 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**

- *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 curiam by Florida's Third District Court of Appeal).
- *Matheson v. Miami-Dade Cty.*, No. 3D17-2649 (Fla. 3d DCA) (appeal pending) (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) (pending) (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.) (pending) (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) (pending) (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).

### **All Insights**

09.08.2011 Trends in Privacy Class-Action Settlements

### **All News**

02.12.2019 10 Carlton Fields Attorneys Elected to Shareholder

### **Recognition**

- Recipient of the 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*
  - Dean's Fellow to Professor Anthony Alfieri (2007, 2008)
  - Dean's Fellow to Professor Mitchell Crusto (2008)
  - Dean's Fellow to Professor David Carlson (2009)
  - Roger Sorino Award (2009)
  - Partnership for Professionalism Outstanding Student Award (2009)
- University of Massachusetts (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, Southern District of Florida

### BAR ADMISSIONS

- Florida

## Areas of Focus

### PRACTICES

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