



Brian J. Butler

Member

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Profile

Brian represents clients in complex business and commercial litigation in federal and state courts as well as in arbitration.

He also represents clients in the banking, communications, construction, insurance and securities industries and also regularly represents governmental and educational institutions. Brian handles a variety of matters for clients including contract disputes, securities fraud litigation, intellectual property claims, employment discrimination claims, litigation relating to non-compete agreements and unfair competition, claims under ERISA, insurance coverage disputes and construction disputes. He represents clients in a variety of contexts in bankruptcy adversary proceedings. Brian also frequently conducts arbitrations before FINRA, the American Arbitration Association and JAMS.

Brian also chairs the firm's litigation department, which includes 48 attorneys located throughout the firm's nine offices in New York State and its Naples, Florida office. The department's deep bench of litigation attorneys prepares each case for a successful resolution regardless of whether it is tried to a verdict before a jury or judge, won on a dispositive motion, arbitrated or mediated.

Prior to joining the firm, Brian clerked for the Hon. Frederick J. Scullin, Jr., U.S. District Court for the Northern District of New York.

Representative Matters

- *Spindler v. North American Transmission Forum, et al.*, 5:15-cv-00779 (2018) - obtained jury verdict for trade secret misappropriation, unfair competition and breach of contract and an award of compensatory and punitive damages in the amount of \$2.65 million.
- *Hernandez v. State of New York* (Sup. Ct., Albany County 2017) – represented intervenor defendant New York Farm Bureau and obtained dismissal of action by plaintiffs, represented by the NY Civil Liberties Union, seeking to invalidate the farm laborer exemption in New York's State Labor Relations Act ("SLRA").
- *U.S. D.I.D. Corp. v. Windstream Communications, Inc.*, 2014 U.S. App. LEXIS 24133 (2nd Cir. 2014) - successfully defended appeal of award of costs and damages from security posted by a plaintiff in obtaining a temporary restraining order ("TRO"), even though the plaintiff later filed a notice of voluntary dismissal without prejudice after the District Court vacated TRO
- *The Trustees of the Masonic Hall and Asylum Fund v. Advest, Inc., and Merrill Lynch*

Education

- Syracuse University College of Law (J.D. 1996)
- Syracuse University (B.A. 1991)

Bar/Court Admissions

- New York
- U.S. Courts of Appeals for the Fifth Circuit
- U.S. Court of Appeals for the Second Circuit
- U.S. Court of Appeals for the Sixth Circuit
- U.S. District Court for the Eastern District of New York
- U.S. District Court for the Northern District of New York
- U.S. District Court for the Southern District of New York
- U.S. District Court for the Western District of New York

Practices

- School Districts
- Securities
- Litigation
- Cybersecurity and Data Privacy

- , FINRA Arbitration Case No. 08-00568 (March 2009) -- Obtained a \$39.8 million award, reportedly one of the single largest securities arbitration awards.
- *Davidson v. Grossman*, 268 Fed. Appx. 343; 2008 U.S. App. LEXIS 4821 (5th Cir. 2008) and *Davidson v. Vivra Inc.*, Fed. Appx. 923; 2005 U.S. App. LEXIS 5520 (9th Cir. 2005) -- Obtained dismissal of claims against medical college in RICO action.
 - *DiFillippo v. Special Metals Corp.*, 2016 U.S. Dist. LEXIS 119711 (N.D.N.Y. 2016) - secured dismissal of gender and disability discrimination claims against specialty metals manufacturer.
 - *Hamilton v. Board of Educ.*, 145 A.D. 3d 1622 (4th Dept. 2016) - successfully defended board of education from claims of wrongful termination.
 - *DS Parent, Inc.; and Davis-Standard, LLC, Plaintiffs, v. Teich and SAM North America, LLC*, 2014 U.S. Dist. LEXIS 16116 (N.D.N.Y. 2014) -- Successfully defended solution coating and printing machine manufacturer from claims of trade secret misappropriation, unfair competition and breach of non-compete agreements.
 - *Center State Sec. Consultants, Inc. v. Syracuse Housing Authority*, 104 A.D. 3d 1334 (4th Dept. 2013) – obtained dismissal of claims against the housing authority for breach of a long-term security agreement.
 - *U.S. D.I.D. Corp. v. Windstream Communications, Inc.*, 2012 U.S. Dist. LEXIS 97867 (S.D.N.Y. 2012) -- Defense of telecommunications carrier against claims under the Communications Act.
 - *CoActiv Capital Partners, Inc. v. Hudson Converting, Inc.*, 2011 U.S. Dist. LEXIS 97795 (N.D.N.Y. 2011) -- Obtained \$5.7 million judgment for Plaintiff in RICO and fraud action.
 - *McBride v. Unum Provident*, 2010 U.S. Dist. LEXIS 136064 (N.D.N.Y. 2010) -- Obtained dismissal of ERISA claims.
 - *CoActiv Capital Partners, Inc. v. Hudson Converting, Inc.*, 2010 U.S. Dist. LEXIS 114265 (N.D.N.Y. 2010) -- Obtained summary judgment for Plaintiff in RICO and fraud action.
 - *Cont'l Ins. Co. v. Coyne Int'l Enter. Corp.*, 700 F. Supp. 2d 207; 2010 U.S. Dist. LEXIS 49868 (N.D.N.Y. 2010); *Cont'l Ins. Co. v. Coyne Int'l Enter. Corp.*, 700 F. Supp. 2d 207; 2010 U.S. Dist. LEXIS 30540 (N.D.N.Y. 2010) -- Obtained dismissal of Plaintiff's breach of contract claims in case involving retrospective workers' compensation insurance premiums.
 - *Rice v. Hartford Life & Accident Ins. Co.*, 2009 U.S. Dist. LEXIS 31182 (N.D.N.Y. 2009) -- Obtained dismissal of ERISA claims.
 - *Davidson v. Grossman*, 2007 U.S. Dist. LEXIS 48544 (S.D. Tx. 2007) -- Obtained dismissal of Plaintiff's RICO claims.
 - *O'Connell v. OpticTrek.com, Inc.*, 2006 U.S. Dist. LEXIS 65206 (N.D.N.Y. 2006) -- Obtained dismissal of action for breach of contract.
 - *Souter v. Tatro*, 2004 U.S. Dist. LEXIS 13743 (W.D.N.Y. 2004) -- Obtained dismissal of class action complaint alleging violations Section 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5.
 - *Spoto v. Herkimer County Trust*, 2000 U.S. Dist. LEXIS 6057 (N.D.N.Y. 2000) -- Obtained dismissal of Plaintiff's RICO claims.
 - *Wende C. v. United Methodist Church*, 4 N.Y.3d 293; 827 N.E.2d 265; 794

N.Y.S.2d 282; 2005 N.Y. LEXIS 238 (Ct. App. 2005), US Supreme Court certiorari denied by *Wende C. v. United Methodist Church*, 124 S. Ct. 346, 163 L. Ed. 2d 57, 2005 U.S. LEXIS 5597 (2005) -- Obtained dismissal of claims against church for sexual battery and breach of fiduciary duty.

- *Matter of Troutman v. Syracuse Hous. Auth.*, 35 A.D.3d 1252; 827 N.Y.S.2d 796; 2006 N.Y. App. Div. LEXIS 15559 (4th Dept. 2006) -- Obtained dismissal of action against housing authority asserting toxic tort claims of infant plaintiff.
- *Guerra Press, Inc. v. Campbell & Parlato, LLP*, 17 A.D.3d 1031; 794 N.Y.S.2d 189; 2005 N.Y. App. Div. LEXIS 4597 (4th Dept. 2005) -- Obtained dismissal of action for legal malpractice.

Honors & Affiliations

- Listed in:
 - *The Best Lawyers in America*® 2019, Commercial Litigation
 - *New York Super Lawyers 2018*®, Business Litigation
- New York State Bar Association, Past Member Executive Committee, Trial Lawyers Section; Federal and Commercial Litigation Section
- Onondaga County Bar Association, Past Member, Board of Directors
- Trustee Northern District of New York Federal Court Bar Association and CLE Co-Chair
- Mediator, ADR Mandatory Mediation Program, Northern District of New York

Representative Presentations

- Basic Lessons on Ethics & Civility CLE, New York State Bar Association, 2018
- Remedies and Damages in Commercial Litigation CLE, Northern District of New York Federal Court Bar Association, 2017
- Representing Your Client in the Northern District of New York CLE, Northern District of New York Federal Court Bar Association, 2015
- Bond, Schoeneck & King's In-House Counsel CLE Series: Defensibly Downsizing Your Data, February 27, 2014

Representative Publications

- Brian J. Butler, Suzanne M. Messer and Clifford G. Tsan, "E-Discovery and Information Management - Can Clicking "Like" Make or Break a Lawsuit?," *Intellectual Property & Technology Law Journal*, April 2016

Other Activities

- Trustee, Northern District of New York Federal Court Bar Association
- Co-Chair, CLE Committee, Northern District of New York Federal Court Bar Association