

Brian P. Downey

Partner

Harrisburg

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Brian's trial experience provides an advantage to clients on a broad range of matters, including ERISA benefit disputes, commercial disputes, product liability claims, employment discrimination claims, and environmental litigation. Brian routinely tries cases in federal and state courts.

OVERVIEW

Brian has represented businesses, business owners, educational institutions and various government entities in a variety of disputes, including allegations of contract breaches, challenges to the actions of charitable organizations under Pennsylvania's Institutions of Purely Public Charity Act, challenges to the taxing authority of Pennsylvania counties, claims under the Employee Retirement Income Security Act (ERISA), claims under the False Claims Act, business torts, violations of federal and state securities laws, and violations of state consumer protection laws.

Brian's employment litigation experience has seen him successfully represented employers in a variety of wage-and-hour, employment discrimination, and sexual harassment claims. He has represented employers in administrative proceedings before the Pennsylvania Human Relations Commission (PHRC) and the Equal Employment Opportunity Commission (EEOC). He has counseled employers under the Family and Medical Leave Act (FMLA), the Fair Labor Standards Act (FLSA), and the Americans with Disabilities Act (ADA). Brian has successfully defended employers and landlords in federal and state court in suits alleging violations of the Pennsylvania Human Relations Act (PHRA), Title VII of the Civil Rights Act, the ADA, the Age Discrimination in Employment Act (ADEA), and the Employee Retirement Income Security Act of 1974 (ERISA).

Brian is active in pro bono matters, representing indigent clients in a variety of cases, including immigration claims and claims involving victims of child abuse.

Brian is a fellow of The Pepper Center for Public Service. The Pepper Center draws on the talents of the firm's retired partners and senior attorneys to wrestle with tough problems facing our communities. Through the Center, these attorneys study, analyze, and work to resolve problems that affect the lives of people in our communities.

REPRESENTATIVE MATTERS

Trial and Dispute Resolution

- Successfully defended 20 Pennsylvania counties against claim arising under federal False Claims Act involving approximately \$3 billion in Medicaid funds.

- Successfully represented an educational institution of higher learning in administrative proceeding before the Pennsylvania Department of State and in subsequent litigation with respect to challenges to projects it undertook pursuant to Pennsylvania's Institutions of Purely Public Charity Act.
- Successfully challenged applicability of New Jersey state insurance regulation to insurance policy that funds an employee welfare plan under ERISA.
- Successfully represented defendants in disputes regarding denials of long-term disability benefits involving plans governed by ERISA.
- Successfully represented insurers in disputes arising from allegedly wrongful denials of life insurance claims.
- Successfully represented life insurer against claim seeking to reinstate life insurance policy that lapsed shortly before death of insured.
- Successfully represented insurer of variable annuity producer against claims its product failed to comply with the requirements of Pennsylvania's Unfair Trade Practices and Consumer Protection law.
- Represented fiduciaries and employee stock ownership plan (ESOP) in a class action arising under ERISA brought by employee participants in the ESOP resulting in favorable settlement.
- Successfully represented defendants in securities claims arising from disputes regarding variable annuity products resulting in favorable settlement.
- Obtained summary judgment in favor of hospital system in antitrust claim arising from dispute regarding physician privileges.
- Obtained judgment in favor of insurance company on claim alleging improper refusal to pay benefits to a surviving spouse under the Pennsylvania Probate, Estates, and Fiduciaries Code.
- Obtained dismissal of claim of improper diversion of funds by the Pennsylvania State Treasurer brought against bank holding companies.
- Obtained partial summary judgment for manufacturers of prefabricated building against various claims arising out of alleged building failures which resulted in favorable settlement.
- Successfully represented county and its commissioners in defense of constitutionality of hotel tax imposed to finance construction of a convention center.
- Successfully represented vendor of construction equipment in multiple claims arising out of contractual disputes with lessees and purchasers.
- Obtained partial summary judgment in favor of cable television company in dispute with provider of weather-related services which resulted in favorable settlement.
- Obtained reversal of trial court decision by the U.S. Court of Appeals for the Third Circuit for a company engaged in the provision of aircraft repair services.
- Obtained dismissal of client from action challenging award of government contract in which client was named as an involuntary plaintiff.
- Successfully represented manufacturers of cutting and honing oils used extensively in heavy industry against claims that exposure to those lubricants causes cancer.

Employment Litigation

- Defended a nationwide retailer in collective actions and statewide class actions brought under the FLSA and related state wage-and-hour statutes in the Middle District of Pennsylvania.
- Obtained findings of no probable cause to credit allegations of race, age, sex, and disability discrimination in numerous proceedings before the PHRC, all of which have been adopted in dual-filed cases by the EEOC.
- Obtained summary judgment for employer in failure to accommodate and wrongful termination claims brought by former employee under the Americans with Disabilities Act.
- Obtained summary judgment for employer in case involving alleged failure to provide religious accommodation and constructive discharge claims based on race and religion.
- Obtained dismissal of claim of religious discrimination brought by former commercial tenant.

AWARDS

- *Best Lawyers in America*®: Commercial Litigation (2016-2026)

TOP AREAS OF FOCUS

- Business Litigation
- Class Action
- Governmental Audits, Benefit Claims + ERISA Litigation
- Labor + Employment

ALL AREAS OF FOCUS

- Business Litigation
- Class Action
- Educational Institutions
- Employment Practices Liability
- Environmental + Natural Resources
- Environmental Litigation + Enforcement Defense
- Financial Services Litigation
- Governmental Audits, Benefit Claims + ERISA Litigation
- Independent Contractor Misclassification + Compliance
- Insurance + Reinsurance
- Labor + Employment
- Litigation + Trial
- Noncompete + Trade Secrets
- Product Liability

PROFESSIONAL/COMMUNITY INVOLVEMENT

- President of the board of directors for Catholic Charities, Harrisburg
- Past president of the board of directors of Open Stage of Harrisburg, a professional nonprofit regional theatre dedicated to presenting thought-provoking plays and community-wide educational outreach programs
- Past vice president of the Mechanicsburg Soccer Club, where he coached youth soccer

EDUCATION AND CERTIFICATIONS

EDUCATION

- Penn State Dickinson Law, J.D., 1990
- Dartmouth College, B.A., 1987, English

BAR ADMISSIONS

- Pennsylvania

- Ohio

COURT ADMISSIONS

- Supreme Court of the United States
- U.S. Court of Appeals, Second Circuit
- U.S. Court of Appeals, Third Circuit
- U.S. Court of Appeals, Fourth Circuit
- U.S. Court of Appeals, Sixth Circuit
- U.S. Court of Appeals, District of Columbia Circuit
- U.S. District Court, District of Columbia
- U.S. District Court, Middle District of Pennsylvania
- U.S. District Court, Eastern District of Pennsylvania
- U.S. District Court, Western District of Pennsylvania
- U.S. District Court, Eastern District of Michigan
- U.S. District Court, Western District of Michigan
- U.S. District Court, Northern District of Ohio
- U.S. District Court, Southern District of Ohio
- U.S. District Court, Northern District of New York