

# D. Brian Hufford

Partner

Described as “one of the leading ERISA litigators in the country and one of the sharpest legal minds in this area of law” by *Chambers USA*, D. Brian Hufford leads an innovative and nationally recognized practice representing patients and health care providers in high-stakes disputes with health insurance companies.

His efforts led to two of the largest recoveries ever obtained in ERISA-based health insurance class actions, and to a substantial collection of other precedent-setting decisions that have transformed the rights of patients and providers, including with regard to behavioral health care and the Mental Health Parity and Addiction Equity Act. Brian and his team were behind *Wit v. United Behavioral Health*, the landmark case that has been recognized as one of the most important litigations addressing the legal rights of patients seeking appropriate coverage for their behavioral health services.

Brian’s work on reimbursement rate-related litigation against UnitedHealthcare and Health Net, for example, led to settlements worth over \$600 million. Brian has served as co-lead counsel in other national health care litigation against UnitedHealthcare, Aetna, WellPoint, CIGNA, and various Blue Cross Blue Shield entities. Brian has successfully argued health care appeals before the U.S. Courts of Appeal for the Second, Third, Fourth, and Fifth Circuits, and was lead counsel in two trials against Blue Cross Blue Shield entities on behalf of providers and provider associations.

Brian is one of only 12 attorneys ranked by *Chambers USA* in the ERISA Litigation: Mainly Plaintiffs category and is a Law360 “MVP” for Benefits (2019 and 2021) and Health Care (2015, 2016, and 2017). He was named a Plaintiff’s Attorney “Trailblazer” in 2017 and 2021 by *The National Law Journal*, and has been recognized in industry rankings such as *Benchmark Litigation* and *Super Lawyers*. Under his leadership, the firm’s health care practice was named the 2022 Insurance Litigation Department of the Year by the *New York Law Journal*, 2017 Health Care Group of the Year and 2018 and 2019 Benefits Group of the Year by *Law360*. Brian was the recipient of the 2021 Rona and Ken Purdy Award to End Discrimination from the National Alliance on Mental Illness. He is a member of the Federal Bar Foundation and the Kennedy Forum Legal Workgroup and has published health law-related opinion pieces in *The Washington Post*, *CNBC.com* and many others.



## New York

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## Practice focus

- Commercial Health Insurance Disputes
- Business Litigation
- Health Care
- Insurance
- Plaintiffs and Class Actions

## Education

- Yale Law School, J.D., 1985
  - Notes and Topics Editor, *Yale Law and Policy Review*
  - Thomas I. Emerson Prize for Outstanding Legislative Services Project
- Wichita State University, M.U.A., 1982
- Wichita State University, B.A., 1980

## Languages



ZUCKERMAN  
SPAEDER

In addition to representing individual patients and health care providers, Brian has represented or pursued claims for a number of significant institutions, including medical associations such as the American Medical Association (AMA), the New York State Psychiatric Association, Medical Society of the State of New York, the Medical Society of New Jersey, the Society of New York Office Based Surgery Facilities, American Dental Association, American Chiropractic Association, Congress of Chiropractic State Associations, New York Chiropractic Council, and Pennsylvania Chiropractic Association.

Brian has written and lectured extensively in the area of health care litigation. He has spoken at conferences and seminars sponsored by organizations such as the National Association of Attorneys General, American Medical Association, American Corporate Counsel Association, American Chiropractic Association, and Congress of Chiropractic State Associations, and the American Conference Institute for the National Forum on ERISA Litigation, among others.

Prior to entering private practice, Brian spent two years as an honors attorney in the U.S. Department of the Treasury's Honors Law Program. Brian attended Yale Law School, where he was notes and topics editor for the Yale Law and Policy Review and was awarded the Thomas I. Emerson Prize for the Outstanding Legislative Services Project. He also holds a Bachelor of Arts and a Master of Urban Affairs from Wichita State University, home of the "Wheatshocker."

### **Community involvement**

- Board Member and Executive Committee Member, Psychotherapy Action Network

### **Recognitions**

- Chambers USA: America's Leading Lawyers for Business, ERISA Litigation: Mainly Plaintiffs (Nationwide)
- Benchmark Litigation, Local Litigation Star (New York)
- Super Lawyers (New York)
- Law360 Benefits MVP of the Year, 2021
- The National Law Journal, Plaintiffs' Lawyer Trailblazer, (2021, 2017)
- National Alliance on Mental Illness, Rona and Ken Purdy Award to End Discrimination, 2021
- Law360 Benefits MVP of the Year, (2019; 2017-2015)



## **Bar admissions**

- New York

## **Court admissions**

- U.S. Supreme Court
- U.S. Court of Appeals, First Circuit
- 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, Fifth Circuit
- U.S. Court of Appeals, Seventh Circuit
- U.S. Court of Appeals, Eighth Circuit
- U.S. Court of Appeals, Ninth Circuit
- U.S. District Court, District of Colorado
- U.S. District Court, Eastern District of New York
- U.S. District Court, Southern District of New York

## **Representative matters**

- Led the precedent-setting UnitedHealthcare case, which settled on behalf of a nationwide class of providers and subscribers for \$350 million in 2010, the largest settlement of an ERISA benefit class action in history. Retained by the American Medical Association and various other associations and individual plaintiffs, Brian challenged UnitedHealthcare's use of a flawed database to determine usual, customary, and reasonable (UCR) rates for out-of-network services. The case served as a catalyst for then-New York Attorney General Andrew Cuomo's investigation into the health insurance industry, leading to the creation of a new and independent database to provide UCR data. A New York Times article from October 27, 2010 states that "a breakthrough came when lawyers for the attorney general's office consulted" with Brian, leading to a "collaboration" between the Attorney General's Office and Brian that "brought results." In a similar action against Health Net, Brian obtained a certified class of ERISA-insured patients followed in 2008 by a settlement valued at \$249 million.



- Successfully argued before the U.S. Court of Appeals for the Second Circuit on behalf of the New York State Psychiatric Association and various individual mental health care providers and patients against United. In a precedent-setting decision, the Second Circuit confirmed in 2015 that United could be sued for benefits under ERISA and for violations of the Federal Parity Act, even with respect to self-funded plans, where United served solely as a claims administration. Amicus briefs were filed on behalf of Brian's clients by the U.S. Department of Labor, American Medical Association, American Psychiatric Association and Patrick Kennedy (the original sponsor of the Federal Mental Health Parity Act as a U.S. Representative from Rhode Island). HealthAffairs.org lauded the decision as a "landmark ruling" that has been "praised by patients and advocates."
- Delivered a winning argument before the Fourth Circuit in a lawsuit against a leading health insurer and its claims administrator challenging the administrator's approach to charging excessive fees to ERISA plans and their beneficiaries by mischaracterizing certain fees as legitimate medical expenses using "dummy codes."
- Successfully argued before the Third Circuit on behalf of providers and plaintiffs in his own case and, as amici curiae, on behalf of the American Medical Association and the Medical Society of New Jersey in a related case. Accepting Brian's argument, the Third Circuit issued a precedent-setting decision in 2015 confirming that providers who have been assigned the right to receive benefit payments from their ERISA-insured patients are legally entitled to assert legal claims under ERISA to challenge benefit denials.
- Pursued an appeal to the U.S. Court of Appeals for the Fifth Circuit in an action against UnitedHealthcare on behalf of one of the nation's largest surgical implant providers after the district court held that a provider's state court claims against UnitedHealthcare were preempted by ERISA. Successfully argued the appeal, resulting in the reversal of the decision by a 3-0 vote. Thereafter, UnitedHealthcare sought en banc review, after which Brian persuaded the Department of Labor to file an amicus brief in support of its position, and to participate in oral argument. Brian successfully argued the appeal before the en banc panel, which unanimously found our client's favor. UnitedHealthcare then filed a petition for writ of certiorari, which the U.S. Supreme Court denied on February 25, 2013, leaving the Fifth Circuit's decision intact.
- Represented a durable medical equipment provider



challenging repayment demands issued by Aetna for previously paid benefits in violation of ERISA. The complaint brought on behalf of the client was initially dismissed by the district court, and Brian successfully reversed the decision before the U.S. Court of Appeals for the Third Circuit, after again obtaining an amicus brief from the Department of Labor in favor of his position.

- Represented two health care providers who were sued for billing fraud. After successfully removing the case to federal court, with a finding that ERISA completely preempted the fraud claims, Brian was lead trial counsel in a 20-day ERISA bench trial. A complete judgment in favor of his clients was obtained, enjoining the insurer from seeking to recover previously paid benefits and ordering returning of improperly recouped funds, plus interest.
- Appointed by Judge Faith Hochberg to serve as Chair of the Plaintiffs' Executive Committee in *In re Aetna UCR Litigation*, an MDL action challenging how Aetna paid for out-of-network health care services. In appointing Brian, Judge Hochberg specifically addressed his work in a prior healthcare litigation, stating: "The Court similarly appointed [Brian's firm] to be Plaintiffs' spokesman to the Court in the Health Net litigation because the Court found D. Brian Hufford, Esq. to be the attorney most capable of presenting Plaintiffs' position in a clear and concise manner."
- Represented chiropractors and state chiropractic associations challenging Aetna's policy of making repayment demands and placing providers into prepayment review. He defeated Aetna's motion to dismiss, upholding ERISA claims on behalf of the providers.
- Represented the American Chiropractic Association, the Congress of State Chiropractic Associations, various state associations, and individual providers in an action challenging UnitedHealth Group's repayment demand policy and improper restrictions on coverage for chiropractic services. He defeated the defendant's motion to dismiss, upholding ERISA claims on behalf of providers. Therefore, he obtained class certification on behalf of a nationwide class of out-of-network providers, alleging that UnitedHealth's repayment demand practices violated ERISA.
- Represented patients who were subjected to the imposition of improper length-of-stay guidelines for hospitalization. The defendant's motion to dismiss was denied, and the decision was upheld on appeal by 5-0



vote.

- Represented insurance subscribers in action against Healthsource, Inc. for failing to disclose the financial incentives it paid to providers to encourage reductions in the level of care provided. He defeated the defendant's motion to dismiss, and the court upheld his clients' claims that the insurer had breached its fiduciary duties under ERISA.
- Representing individual patients and putative classes in actions against major insurance companies for their failure to cover an FDA-approved treatment for depression. The plaintiffs allege breaches of fiduciary duties and wrongful denial of benefits under ERISA. Brian led the team which settled one of those cases, with the insurer agreeing to cover the service going forward and making a monetary payment to the class, and in the other case the court granted certification of a nationwide class of patients who were denied coverage. While the case is proceeding, the insurer has changed its policy after being sued to cover the treatment.
- Representing a putative class of patients in an action against a major insurance company for allegedly discriminating against out-of-network psychiatrists and other mental health providers for mental health services. Plaintiffs allege that the insurer's policy of reimbursing mental health providers less than non-mental health specialists for providing the same services violates ERISA.
- Representing ambulatory surgery centers who were subjected to offsets of new claims by Aetna, Inc, based on Aetna's retroactive decision to alter its reimbursement policy for out-of-network services. Brian defeated Aetna's effort to dismiss the claims, which are now proceeding on the merits.
- Brian has been retained on an hourly basis to represent a number of providers and provider groups to consult with them concerning ongoing disputes with insurers, as well as to represent them in ongoing litigations.

