

## **Brian J. Paul**

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### **Professional Experience**

Brian Paul's primary concentration is appellate work, ERISA and employee benefits litigation, insurance coverage litigation, and complex tort and commercial litigation matters in the federal courts.

He is admitted to practice in the U.S. Supreme Court; the Fifth, Sixth, and Seventh Circuit Courts of Appeals; the United States District Courts for the Northern and Southern Districts of Indiana; the United States District Court for the Central District of Illinois; and the Indiana state courts.

Paul interned for the Tennessee Supreme Court as well as the Nashville and Davidson County Metropolitan Legal Department in 1998. He then clerked at Ice Miller from May 1999 to May 2000. Paul rejoined Ice Miller in August 2000 and is now a partner in the litigation section.

He is originally from Carmel, Ind. He graduated with highest distinction, from Purdue University in 1995, where he received a Bachelor of Arts in history. In 1997 he earned a Master of Arts in American history from Purdue University. And finally, in May 2000, he obtained his juris doctorate from Vanderbilt Law School.

### **Education**

Bachelor of Arts in History, Purdue University (1995)  
Master of Arts in American History, Purdue University (1997)  
Vanderbilt University Law School (2000)

### **Admitted to Practice**

Indiana, The Supreme Court of the United States, United States Court of Appeals for the Fifth Circuit, United States Court of Appeals for the Sixth Circuit, United States Court of Appeals for the Seventh Circuit, United States District Court - Central District of Illinois, United States District

Court - Northern District of Indiana, United States District Court - Southern District of Indiana

### **Professional Associations**

Member, Federalist Society  
Member, Indiana State Bar Association  
Member, Indianapolis Bar Association  
Member, Seventh Circuit Bar Association  
Member, Supreme Court Historical Society

### **Awards and Recognitions**

Rising Star, Appellate Category, *Indiana Super Lawyers*, 2009 and 2010  
Pro Bono Hall of Fame, Indianapolis Bar Association, 2006  
Graduated from Purdue University, With Highest Distinction  
Phi Beta Kappa

### **Published In**

"Advice to Young Lawyers: Legal Writing for my Adversaries," *ABA Appellate Practice Journal*, Spring 2010  
"Q&A with the Newest Judge on the Seventh Circuit Court of Appeals, David F. Hamilton," *Circuit Rider*, April 2010  
"Navigating the Steep and Thorny Route of Federal Discretionary Interlocutory Appeals," *Circuit Rider*, April 2010  
"Some Advice on How Not to Write a Brief in the Seventh Circuit -- Unless . . . You're My Adversary," *Circuit Rider*, Nov. 2009  
"Toward a More Impure Writing Style: The Opinions of Judge Posner and Chief Judge Easterbrook and What the Bar Can Learn from Them," *Circuit Rider*, Jan. 2008 (Discussing Good Writing)  
"Establishing Diversity Jurisdiction: Or How to Keep Your Case in the Court of Appeals and Yourself Out of Trouble," *Circuit Rider*, May 2007 (Summarizing the Rules for Establishing Diversity Jurisdiction in the Seventh Circuit)  
"Roberts Court Reaches Toward Unanimity," *Indiana Lawyer*, June 28, 2006 (Discussing Some of the Challenges That Chief Justice Roberts Faces in Fostering Greater Agreement Among his Colleagues on the U.S. Supreme Court)  
"Rhetoric and Reform Sensationalism," *Indiana Lawyer*, July 27, 2005, (Exposing the Rhetoric of the Federal Tort Reform Debate)  
"Problems of a Philosopher King Court," *Indiana Lawyer*, June 29, 2005 (Discussing the Decreased Case Load of the U.S. Supreme Court under Chief Justice Rehnquist)  
"Being a Friend of The Court: Shaping The Law as It Affects Your Business Interests," *Indiana Manufacturers Association's Human Resources Memo*, May 2005 (Discussing the Use of Amicus Briefs to Influence the Course of the Law)

"Is Your Business Web Site Putting You at Risk for Out-of-State Litigation?" *The Inside Edge*, Jan. 18, 2005 (Sketching the Law of Personal Jurisdiction as it Relates to E-commerce)

"The New Civil Appeal: Judgment to Briefing," Lorman Federal Civil Litigation Seminar, 2004 (Outlining the Federal and Seventh Circuit Rules of Appellate Procedure Up to the Briefing Stage)

"A Word About The Last Word in Briefing," *Certworthy*, Winter 2003 (Discussing the Dos and Don'ts of Reply Briefs)

### **Speaking Engagements**

"A Discussion on Good Legal Writing," Seventh Circuit Bar Association, 2009 (The Other Panelists Were Chief Judge Frank Easterbrook, Judge Richard Posner, and Stephen Shapiro of Mayer Brown LLP)

"Welcome to the 21st Century: An Appellate Perspective," Indiana Continuing Legal Education Forum, 2008

E-Discovery Overview, Indianapolis Inn of Court, 2007

"Appellate Practice Survey," Indiana Continuing Legal Education, 2007

"Appellate Skills Institute," Indiana Continuing Legal Education Forum, 2006

"Ethics and Appellate Advocacy," Appellate Practice Section of the Indiana State Bar Association, 2006

"Tips and Opportunities for Handling Your First Appeal," Seventh Circuit Bar Association, 2006 (The Other Panelists Were District Court Judge Robert Dow [then with Mayer Brown LLP], Bankruptcy Judge Benjamin Goldgar and Donald Wall of the Seventh Circuit.)

"Current Indiana Appellate Topics: Civility, Sanctions, and Whether to Publish Opinions," Appellate Practice Section of the Indiana State Bar Association, 2005

"Seventh Circuit Practice," Lorman Federal Practice Seminar, 2003 and 2004

"Developing Appellate Skills," Indiana Continuing Legal Education Forum, 2003

### **Community Involvement**

Criminal Justice Act lawyer (appointed by the Seventh Circuit Court of Appeals to represent defendants convicted of federal crimes)

Committee Member, Hamilton County Chapter, Ducks Unlimited

Homeless Project, Indianapolis Bar Association

Moot Court Judge, Indiana University School of Law-Indianapolis

### **Reported Cases**

*Whittington v. Indianapolis Motor Speedway Found., Inc.*, 601 F.3d 728 (7th Cir. 2010) (on brief). Primary Issue: Whether the plaintiff was entitled to possession of a race car that he gave the Speedway Museum some two decades earlier.

*Turner v. Rockwell Automation Pension Plan*, No. 1:09-cv-0046-LJM-TAB, 2010 U.S. Dist. LEXIS 49125 (May 18, 2010). Primary Issue: Whether a pension plan properly denied the plaintiffs' requests for disability retirement benefits.

*Wells Fargo Bank, N.A. v. Tippecanoe Assocs., LLC*, 923 N.E.2d 423 (Ind. Ct. App. 2010). Primary Issue: Whether a receiver of mortgaged property could sell the property prior to the time for a sheriff's sale.

*Carlisle v. Deere & Co.*, 576 F.3d 649 (7th Cir. 2009). Primary Issue: Whether plaintiffs could recover under a product warranty.

*Richards v. Eli Lilly & Co.*, No. 09-2865, 2009 WL 4730397 (7th Cir. Dec. 11, 2009). Primary Issue: Whether plaintiff's product liability and warranty claims were barred by the applicable statutes of limitation.

*Laouini v. CLM Freight Lines, Inc.*, 586 F.3d 473 (7th Cir. 2009). Primary Issue: Whether plaintiff timely filed an EEOC charge.

*Trustees of Ind. Univ. v. Cohen*, 910 N.E.2d 251 (Ind. Ct. App. 2009). Primary Issue: Whether a written employment agreement permitted a university to terminate a professor's employment for his repeated violation of the university's ethics code.

*Lemon v. Wishard Health Servs.*, 902 N.E.2d 297 (Ind. Ct. App. 2009). Primary Issue: Whether putative members of a class action for wage claim violations must submit their individual claims to the Department of Labor before bringing suit.

*Cinergy Corp. v. St. Paul Surplus Lines Ins. Co.*, 915 N.E.2d 524 (Ind. Ct. App. 2009). Primary Issue: Whether there was insurance coverage for the insured's liabilities under the Clean Air Act.

*Abdalla v. Qadorh-Zidan*, 913 N.E.2d 280 (Ind. Ct. App. 2009). Primary Issue: Whether current members of LLCs and current shareholders of closely held corporations continue to owe duties in tort to former members and shareholders with respect to post-dissociation business decisions.

*Fitzpatrick v. Kenneth J. Allen & Assocs., P.C.*, 913 N.E.2d 255 (Ind. Ct. App. 2009). Primary Issue: Whether an attorney fee-sharing agreement could be enforced following a default.

*Daisy Farm L.P. v. Morrolf*, 915 N.E.2d 480 (Ind. Ct. App. 2009). Primary Issue: Whether there was sufficient evidence to demonstrate ownership of land by adverse possession.

*Crawfordsville Square, LLC v. Monroe Guar. Ins. Co.*, 906 N.E.2d 934 (Ind. Ct. App. 2009). Primary Issue: Whether the known loss doctrine precluded insurance coverage for environmental contamination.

*Bell v. DaimlerChrysler Corp.*, 547 F.3d 796 (7th Cir. 2008). Primary Issue: Whether workers had exhausted their intra-union remedies before bringing suit under section 301 of the Labor-Management Relations Act.

*Baude v. Heath*, 538 F.3d 608 (7th Cir. 2008) (on brief). Primary Issue: Whether Indiana's wine shipment laws violated the dormant commerce clause of the United States Constitution.

*French-Tex Cleaners, Inc. v. Cafaro Co.*, 893 N.E.2d 1156 (Ind. Ct. App. 2008). Primary Issue: Whether a lease required the tenant to pay a pro rata share of the gross property taxes imposed without deduction for a certain tax credit.

*Daisy Farm L.P. v. Morrolf*, 886 N.E.2d 604 (Ind. Ct. App. 2008). Primary issues: (1) whether property subject to a public easement could be adversely possessed; and (2) whether the riparian rights of two lakefront homeowners were properly determined by extending their onshore property boundaries straight out into the lake.

*Old Republic Ins. Co. v. RLI Ins. Co.*, 887 N.E.2d 1003 (Ind. Ct. App. 2008). Primary issue: whether a state statute operated to alter the normal priority of coverage between a primary insurer and three excess insurers.

*Allianz Ins. Co. v. Guidant Corp.*, 884 N.E.2d 405 (Ind. Ct. App. 2008). Primary issue: whether an insurance company had a duty to defend its insured against claims arising out of an allegedly defective medical device.

*Jones v. Womacks*, 852 N.E.2d 1035 (Ind. Ct. App. 2006), *trans. granted and appeal dismissed as moot* (Ind. May 21, 2007) (participated at rehearing and transfer stages). Primary issue: whether the petition and remonstrance process for certain tax-based financings violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

*Cinergy Corp. v. Associated Elec. & Gas Ins. Servs., Ltd.*, 865 N.E.2d 571 (Ind. 2007). Primary issue: whether an insurer was liable for defense costs as they were incurred for underlying environmental liability claims brought against the insured in a federal lawsuit.

*Citizens Gas & Coke Util. v. Local Union No. 1400, Int'l Bhd. of Elec. Workers*, 874 N.E.2d 391 (Ind. Ct. App. 2007). Primary issue: whether the arbitrator exceeded her powers by considering documents outside the scope of the arbitration agreement.

*Cinergy Corp. v. St. Paul Surplus Lines Ins. Co.*, 873 N.E.2d 105 (Ind. Ct. App. 2007). Primary issue: whether liability insurers owed coverage for claims that the insured violated the federal Clean Air Act.

*Glenn v. Dow AgroSciences, LLC*, 861 N.E.2d 1 (Ind. Ct. App. 2007), *trans. granted and appeal dismissed as moot* (Ind. June 15, 2007). Primary issue: whether a non-competition agreement was so broad as to violate public policy.

*Keenan v. Butler*, 869 N.E.2d 1284 (Ind. Ct. App. 2007). Primary issue: whether the probate court had exclusive jurisdiction over an action for breach of contract to make a will.

*Robert Lynn Co. v. Town of Clarksville Bd. of Zoning App.*, 867 N.E.2d 660 (Ind. Ct. App. 2007). Primary issue: whether a town planning commission could review the propriety of a variance from the local zoning ordinance.

*United States v. Sherrod*, 445 F.3d 980 (7th Cir. 2006). Primary issues: (1) whether the government proved beyond a reasonable doubt that a carjacked vehicle had moved in interstate commerce; and (2) whether the government had to prove that the defendant committed first-degree

murder beyond a reasonable doubt for the defendant to be sentenced for first-degree murder.

*Schultz v. Ford Motor Co.*, 857 N.E.2d 977 (Ind. 2006). Primary issue: whether a presumption is properly given "continuing effect" under Indiana Evidence Rule 301 by the trial court instructing the jury that when a basic fact is proven, the jury may infer the existence of a presumed fact.

*Bonney v. Ind. Fin. Auth.*, 849 N.E.2d 473 (Ind. 2006) (of record). Primary issue: whether legislation authorizing the lease of the Indiana Toll Road was constitutional.

*Americans for the Arts v. Ruth Lilly Charitable Remainder Annuity Trust No. 1 U/A January 18, 2002*, 855 N.E.2d 592 (Ind. Ct. App. 2006). Primary issue: whether a trustee's authority to retain assets as part of a trust's general powers clause excused – as a matter of law – the trustee's statutory duty to diversify.

*Williams v. Riverside Cmty. Corrections Corp.*, 846 N.E.2d 738 (Ind. Ct. App. 2006). Primary issue: whether an employee is entitled to accrued vacation and sick pay if she is terminated prior to the expiration of the vesting period for such pay.

*Mid-American Fire & Cas. Co. v. Shoney's Inc.*, 843 N.E.2d 548 (Ind. Ct. App. 2006) (on rehearing). Primary issue: whether an estate was entitled to insurance coverage under a homeowner's policy for liability arising out of petroleum contamination.

*Price v. Am. Cyanamid Co.*, No. 2:04-CV-242 PS, 2006 WL 694747 (N.D. Ind. Mar. 14, 2006), *aff'd with order to show cause sub nom. Price v. Wyeth Holdings Corp.*, 505 F.3d 624 (7th Cir. 2007). Primary issue: whether a case removed to federal court in 2004 alleging personal injuries suffered in 1991 had to be remanded to state court.

*Allgood v. Meridian Sec. Ins. Co.*, 836 N.E.2d 243 (Ind. 2005) (participated at intermediate appellate level only). Primary issue: whether a standard automobile insurance policy obligates an insurer to compensate for a vehicle's diminished value after the vehicle has been adequately repaired.

*Knightstown Banner, LLC v. Town of Knightstown*, 838 N.E.2d 1127 (Ind. Ct. App. 2005). Primary issue: whether a settlement agreement created, received, and retained by an attorney hired by a town's reciprocal insurer was subject to inspection under Indiana's Access to Public Records Act.

*Nickels v. Bryant*, 839 N.E.2d 1211 (Ind. Ct. App. 2005). Primary issue: whether a truck driver's exclusive remedy for personal injuries alleged to have been caused by an independent contractor was under the Indiana Worker's Compensation Act.

*U.S. Land Servs., Inc. v. U.S. Surveyor, Inc.*, 826 N.E.2d 49 (Ind. Ct. App. 2005). Primary issue: whether an injunction was over broad when it prohibited the defendants from engaging in the survey management business.

*Osler Institute, Inc. v. Forde*, 386 F.3d 816 (7th Cir. 2004) (on brief). Primary issue: whether an attorneys' fees provision in a covenant not to

compete agreement was enforceable when other, essential portions of the agreement had been previously invalidated.

*Jennings v. AC Hydraulic A/S*, 383 F.3d 546 (7th Cir. 2004). Primary issue: whether a Danish company could be sued in Indiana for an accident allegedly involving its product when the plaintiff had not proven that the defendant had engaged in deliberate, purposeful contact with the State.

*East Coast Fasteners & Closures, Inc. v. Employers Mut. Cas. Co.*, 93 Fed. Appx. 948 (7th Cir. 2004). Primary issue: whether a building manufacturer was entitled to insurance coverage for claims alleging that the metal screws used to construct the buildings were rusting.

*Butler Univ. v. In re Unsupervised Estate of Verdak*, 815 N.E.2d 185 (Ind. Ct. App. 2004). Primary issue: whether the probate court abused its discretion by reopening an estate that had been closed for nearly a decade.

*Ziliak v. AstraZeneca LP*, 324 F.3d 518 (7th Cir. 2003) (on brief). Primary issue: whether the warning accompanying an asthma drug was adequate as a matter of law.

*Caffey v. Mansur Group, Inc.*, 67 Fed.Appx. 370 (7th Cir. 2003). Primary issue: whether the doctrine of res judicata barred an employee's claims under ERISA against the administrator.

*Murray v. Conseco, Inc.*, 795 N.E.2d 454 (Ind. 2003). Primary issue: whether a director of a corporation elected by a voting group of shareholders could be removed without cause by the corporation's board under the Indiana business code.

*E & S Mem's, L.L.C. v. Eagen*, 795 N.E.2d 508 (Ind. Ct. App. 2003). Primary issue: whether the trial court had jurisdiction to enforce a settlement agreement when the underlying case had been dismissed with prejudice.

*St. Mary's Med. Ctr. v. Loomis*, 783 N.E.2d 274 (Ind. Ct. App. 2002). Primary issue: whether the evidence supported a \$16 million judgment against a hospital for negligently injuring a neurosurgeon.

*Huntington County Commun. Sch. Corp. v. State Bd. of Tax Comm'rs*, 757 N.E.2d 235 (Ind. Tax Ct. 2001). Primary issue: whether the statutory requirement that a taxpayer verify his petition to initiate a remonstrance process could be waived.

### **"Did You Know" Facts/Accolades**

Paul has Been Quoted in the Following Articles:

"Hamilton Confirmed," *Indiana Lawyer*, November 25-December 8, 2009

"SCOTUS denies Indiana wine case," *Indiana Lawyer Daily*, May 18, 2009

"E-filing in Indiana - Not Yet: Supreme Court Withdraws Rule, Continues Studying Issue," *Indiana Lawyer*, October 31 - November 13, 2007

"State Investing in E-Filing, Case Management," *Indiana Lawyer*, June 22 - July 10, 2007

"Voting Alignment Stays Consistent: Annual Review Shows Indiana Supreme Court Trends," *Indiana Lawyer*, June 13 - 26, 2007

### **Bar Committees**

Member, Planning Committee for the 58th Annual Meeting of the Seventh Circuit Bar Association and  
Judicial Conference of the Seventh Circuit, 2008-2009  
Secretary, Appellate Practice Section of the Indiana State Bar Association, 2007-Present  
Barrister, Indianapolis Inn of Court, 2007-Present  
Member, Steering Committee for the Indianapolis Bar Association's Bar Leader Series V, 2007-2008  
Treasurer, Appellate Practice Section of the Indiana State Bar Association, 2006-2007  
Board Member, Indianapolis Chapter of the Federalist Society for Law and Public Policy Studies, 2007-Present  
Indiana Chair, Seventh Circuit Bar Association's *Circuit Rider* Committee, 2005-Present  
Seventh Circuit American Jury Project Commission Facilitator, 2006  
Member, Nominating Committee for the Appellate Practice Section of the Indiana State Bar Association, 2006-Present  
Liaison, Indiana Appellate Courts' E-Filing Committee for the Appellate Practice Section of the Indiana State Bar Association, 2005-2006  
Graduate, Indianapolis Bar Association's Bar Leader Series III, 2006  
Member, Steering Committee for the Indianapolis Bar Association's Bar Leader Series IV, 2006-2007  
Second District Councilman, Appellate Practice Section of the Indiana State Bar Association, 2003-2005  
Chair, Indiana Appellate Rules Review Committee (Regarding Record Preparation), 2003

### **Internal Committees**

Audit Letter Committee, 2010-Present  
Litigation Business Development Committee, 2003-2005  
Professional Development Committee, 2004-2005  
Summer Clerk Team Leader, 2002 and 2004  
First-Year Associate Mentor, 2003, 2004, 2006-2007  
Summer Clerk Writing Mentor, 2003, 2004, 2007, 2008