BONDURANT
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# Benjamin E. Fox

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## Biography

Ben Fox represents clients in litigation and investigations involving allegations of fraud and white collar crime. His civil practice concentrates on actions brought under the False Claims Act, RICO Act, Sarbanes-Oxley Act, Computer Fraud and Abuse Act, and other fraud-based private causes of action. Ben also specializes in conducting internal investigations and representing organizations during government investigations involving health care fraud, securities fraud, bankruptcy fraud, and tax fraud.

While a majority of his practice involves defending corporations and executives accused of fraud, Ben also represents a small number of whistleblowers in federal and state False Claims Act cases.

He is also a frequent writer and speaker for various professional-interest organizations and publications, such as the Georgia Institute of Continuing Legal Education (ICLE), ABA books and periodicals, *Civil RICO Report*, and the *Atlanta Business Chronicle.*

## Representative Matters

- Successfully defended the nation’s largest medical service organization specializing in burn care against contract and tort claims brought by the client’s former COO and long-term billing services provider. Following a week-long jury trial, the case culminated in a multi-million dollar judgment in

the client's favor. *Medical Collection Systems, Inc. v. Burn and Reconstructive Centers of America, LLC*, 2022-CV-00263 (Richmond Cty. Sup. Ct.).

## Plaintiff cases

- Represented two whistleblowers in a False Claims Act case against a pharmaceutical company for illegal, off-label marketing of Nuedexta for unapproved uses in long-term care facilities and payment of kickbacks to high-prescribing physicians. The case resulted in a $166 million global civil/criminal settlement. *U.S. ex rel. Arnold, et al. v. Avanir Pharmaceuticals, Inc.*, 1:15-cv-1250 (N.D. Ga.).
- Represented two whistleblowers in a False Claims Act case against a global pharmaceutical company for illegal, off-label marketing of Botox for unapproved uses. The case resulted in a $600 million global civil/criminal settlement, the largest recovery in an FCA case in Georgia history and in the top 25 of all time when it was resolved. *U.S. ex rel. Lang, et al. v. Allergan, Inc.*, 1:07-cv-1288 (N.D. Ga.).
- Represented five whistleblowers in a False Claims Act case against a nationwide nursing home chain for systemic failure of care at a local facility. The case resulted in a $2.5 million settlement, the largest FCA recovery involving failure of care in a single skilled nursing facility at the time. *U.S. ex rel. Chadwick et al. v. Life Care Centers of America, Inc. et al.*, 02-cv-3177 (N.D. Ga.).
- Represented a whistleblower in a False Claims Act case against a medical billing company for altering diagnosis codes on Medicare and Medicaid claims to ensure their payment. The case resulted in a $1.95 million settlement. *U.S. ex rel. Vaughn v. Med. Bus. Serv.*, 1:10-cv-02953 (N.D. Ga.).

## Defense cases

- Successfully defended a nationwide broker of SBA-backed commercial loans in a False Claims Act action brought by a hedge fund challenging the broker's underwriting practices. Our client's motion to dismiss was granted because the action was based on publicly disclosed information, and the dismissal was upheld by the Eleventh Circuit Court of Appeals. *U.S. ex rel. Brickman and Greenlight Capital, Inc. v. Business Loan Express, LLC et al.*, 2007 WL 4553474 (N.D. Ga. 2007), aff'd, 310 Fed. Appx. 322 (11th Cir. 2009).
- Successfully defended a publicly traded durable medical equipment company in a False Claims Act action, obtaining dismissal of the action based on failure of the complaint to satisfy Fed. R. Civ. P. 9(b). The dismissal was upheld by the Eleventh Circuit Court of Appeals, and the U.S. Supreme Court denied the relator's petition for writ of certiorari. *U.S. ex rel. Corsello v. Lincare Inc.*, 2003 WL 25714876 (N.D. Ga. 2003), aff'd, 428 F.3d 1008 (11th Cir. 2005); cert. denied, 127 S.Ct. 42 (2006).
- Defended multiple occupational therapy and rehabilitation clinics in a False Claims Act action and

succeeded in disqualifying the plaintiff's counsel for professional misconduct. The case was subsequently dismissed for failure to prosecute, and the dismissal was upheld by the Eleventh Circuit Court of Appeals. *U.S. ex rel. Roberts-Cook v. Randall Kimball et al.*, No. 97-cv-847 (N.D. Ga.), aff'd, 275 F.3d 56 (11th Cir. 2001).

### Plaintiff cases

- Successfully defended a sizeable jury award secured by a chemical sales company in a civil RICO trial in two appeals to the Supreme Court of Georgia. In these cases, the Georgia Supreme Court recognized, for the first time, that corporations can be sued under the Georgia RICO Act and that the preponderance-of-the-evidence burden of proof applies to such claims. *Williams General Corp. v. Stone*, 280 Ga. 631, 632 S.E.2d 376 (2006); *Williams General Corp. v. Stone*, 279 Ga. 428, 614 S.E.2d 758 (2005).

## Professional Activities

- Emory University School of Law, Adjunct Professor, Teaching Advanced Pretrial Litigation, 2023 – Present
- Fulton County Board of Ethics, Chairman, 2015 - 2021; Member, 2011 – Present
- American Bar Association, Business Torts and Civil RICO Committee, Vice Chair, 2013 – 2015
- State Bar of Georgia, Long Range Planning & Bar Governance Standing Committee, Member, 2008 – 2013

## Honors & Awards

- Legal 500, Atlanta City Elite, 2026
- Best Lawyers, 2026 - 2027
- Benchmark Litigation, Litigation Star, 2025
- Georgia Super Lawyer, 2022 - 2026
- Georgia Rising Star, 2009; 2012 - 2013

## Credentials

### Education

- University of Virginia School of Law, J.D., 1999
    - Order of the Coif
    - Editor, Virginia Law Review
    - Associate Editor / Executive Editor, Virginia Law Weekly
- University of Texas, B.A., 1995

### Previous Experience

- Law Clerk, Judge Eugene Davis, United States Court of Appeals for the Fifth Circuit, 1999-2000

### Admissions

- State Bar of Georgia
- Supreme Court of Georgia
- Georgia Court of Appeals
- U.S. Court of Appeals for the Eleventh Circuit
- U.S. Supreme Court
- U.S. Court of Federal Claims
- U.S. District Court for the Middle District of Georgia
- U.S. District Court for the Northern District of Georgia

## Thought Leadership

- Speaker, "What is RICO and (Why) Is It Everywhere?" Georgia Association of Criminal Defense Lawyers' 2023 Spring Seminar
- Lecturer, "Negotiating and Drafting Physician Employment Agreements," Emory Medical School's Resident Education Department
- Guest Lecturer, Civil RICO Class Action, Emory Law School
- Speaker, "Digital Deceit & Online Advertising Fraud," 2018 Association of Corporate Counsel Georgia Chapter Value Challenge
- Panelist, "Preparing and Conducting Interviews," ICLE Georgia Corporate Internal Investigations Seminar
- Speaker, "Pretrial Proceedings: RICO Motions and Discovery Issues," ICLE Georgia RICO Seminar
- Author, "Identifying, Securing, and Maximizing Corporate Insurance Coverage for Legal Fees in White Collar Cases" – *American Bar Association, Section of Litigation, Committee on Criminal Litigation Section Newsletter, Volume 9, Number 2*
- Author, "Issues Related to Parallel Litigation" – *Chapter 14, Business Torts and Unfair Competition (2d ed. 2006)*