



→ Brian M. Daucher

Partner

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Brian Daucher specializes in business litigation with emphasis on contract, healthcare, and intellectual property disputes. Brian has represented clients in a wide range of industries including healthcare, technology, consumer products, fiduciary and banking services, food and alcohol, sports and energy. He is also a member of the firm's Compensation Committee.

Key Experience

- Won \$16 million arbitration award against Dentsply international for willful trademark infringement.
- Defeated \$66 million earn-out claim by seller brought against major sports clothing and equipment manufacturer.
- Won \$8 million arbitration award against Avaya for termination of longstanding reseller.
- Defeated claim of constructive trust over undeveloped land valued in excess of \$20 million.
- Won \$6.4 million jury verdict against Cisco Systems for breach of deal registration and wrongful termination of reseller, including judicial invalidation of key Cisco reseller agreement clauses.
- Defeated trustee petition to confirm extraordinary compensation of \$45 million to trustee and affiliates.
- Won \$16 million jury verdict against commercial institution for fraud.
- Successfully invalidated hospice cap regulation, with set aside of cap repayment demands in excess of \$75 million.

Honors

Martindale Hubbell AV-Preeminent Rated

Best Lawyers in America, Litigation, *Best Lawyers*, 2018-2024

Recipient, American Health Lawyers Association, 2016

Southern California Super Lawyer, 2010-2024

RAVES (Recognizing AHLA Volunteer Engagement and Success)

Articles

- "Elect that Proportional Method," *Caring*, September 2011
- "Who Protects the Intellectual Property of your Business?" April 10, 2006

- "Bankruptcy Considerations In Intellectual Property Licensing - Concerning The Unthinkable," March 4, 2005

Hospice Law Blog Posts

- "MEDPAC Reviews Hospice; Proposes Quadrupling Cap Recoveries," December 9, 2020
- "CMS Sending Hospice Cap Demands Ahead of Schedule," March 30, 2020

- "CARES Act: Telehealth Allowed for Hospice Recertification/Face to Face," March 27, 2020
- "Coronavirus: Hospices Can Help," March 18, 2020
- "Annual DDE Recertification Due 9/30 (And Other DDE Pitfalls)," September 23, 2019
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"Hospice False Claims: AseraCare Lost A Battle But Has Helped Win The War," September 17, 2019

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"CMS Finalizes 2020 Hospice Rule: Big Changes Coming," August 12, 2019

- "CMS Proposes To Shift Hospice Funding From Routine To Enhanced Care Days," May 2, 2019
- "CMS Proposes To Force Hospices to Specify Unrelated Treatments," April 29, 2019
- "PRRB Sides With CMS On Hospice Cap Sequestration – Federal Court Next," March 5, 2019
- "Hospice Short Film *End Game* Up For Academy Award," February 4, 2019
- "Can AI Help Solve The Hospice Eligibility Question?," June 19, 2018
- "CMS Rolls Out Provider Appeals Settlement Efforts," April 12, 2018
- "Hospice Live Discharges: Some Perspective," August 23, 2017
- "CMS Publishes 2016 Hospice Data, Indicating Further Scrutiny/Changes," May 11, 2017
- "Hospice Cap Calculation Changes," January 9, 2017
- "CMS Issues Suggested Notice Of Election Statement," January 2, 2017

- "ZPICs Terrorize, Close Hospices; CMS Blesses Approach," November 22, 2016
- "OIG Issues Report On Hospice Election Statements," September 26, 2016
- "CMS Proposes ALJ Hearing Changes," July 15, 2016
- "Hospice Cap Determination – 2015 Self Reporting Window Opening," January 25, 2016
- "Hospice Notice of Election / Direct Data Entry Perils," January 12, 2015
- "Hospice Payment Changes Take Effect," January 5, 2016
- "Hospice False Claims Case Helps Clarify Law," November 20, 2015
- "Hospice Cap Sequestration Update," November 3, 2015
- "CMS Proposes Payment Reform/Cap Adjustments," May 6, 2015
- "ALJ Now Dismissing Hospice Appeals For Allegedly Insufficient Service On Beneficiary," April 28, 2015
- "Sequestration Adjustments To Hospice Cap – See Examples," April 14, 2015
- "MACs Issue FY 2013 Hospice Cap Demands With Sequestration; Group Appeal Now Open," March 25, 2015
- "Hospices To Self-Report Cap Without Sequestration; MACs To Capture Sequestration Later," March 5, 2015
- "CMS Plans To Add Sequestration Dollars To Hospice Cap," November 17, 2014
- "2014 Cap Year Mandatory Hospice Cap Calculation – Be Ready," November 4, 2014
- "New CMS Hospice Item Set Reporting Invades Privacy Rights," June 18, 2014
- "CMS Proposes: Calculate Your Own Cap (CYOC)," June 3, 2014
- "Notes from AHLA Presentation on Post Payment Audits," March 12, 2014
- "Notes On Increasing Acute and Post-Acute Integration," March 5, 2014
- "MEDPac's View of the Hospice Benefit: December Meeting Update," January 10, 2014
- "Hospice to Provide "Virtually All" Care – First Up, Prescription Drugs," December 19, 2013
- "'Tis The Season for Hospice Probe Edits – Be Ready," November 7, 2013
- "Hospice Face 2 Face Audit Update," October 14, 2013
- "A Review of CMS' Approach to \$125 Million Recoupment of Payments to Providers for Services to Incarcerated / Unlawfully Present Beneficiaries," August 5, 2013
- "Hospice Cap Calculation Update," August 2, 2013
- "Hospice Cap: Past, Present, and Future," May 10, 2013
- "ZPIC/RAC Audits – What You Need To Know," February 26, 2013

Healthcare Law Blog Posts

- "Health Plans and Pharmacy Benefit Managers – Past and Future," April 13, 2018

Speaking Engagements

Presenter: ZPIC Audits, given before the American Health Lawyers Association Annual Meeting for Long Term Care and the Law Conference, (2013 and 2014)

Presenter: Hospice and Home Health Litigation, given before the American Health Lawyers Association Annual Meeting for Long Term Care and the Law Conference, Phoenix, Arizona (2012)

Speaker: Recent Development in Hospice Litigation, given to American Health Lawyers Association (2011)

Speaker: Mitigating Operating Risk In Channel, given to Channel Focus Working Group (2010)

Panelist: Deconstructing the Agent Agreement, given at the Channel Partners Conference & Expo in Las Vegas (2009)

Presenter: Litigation E-Discovery: What You Need To Know Before Litigation, given before the Dartmouth Lawyers Association (2006)

Panelist: Bankruptcy Considerations in Intellectual Property Licensing: Concerning The Unthinkable, before the Orange County Patent Law Association (2005)

Panelist: Advertising in the Outfield: Sweepstakes, Contests and Promotions, given before the American Corporate Counsel Association, Southern California Chapter (2003)

Events

What Happens if You Get Sued? Litigation Basics
Third Thursday Emerging Company Webinar Series
via WebEx, 07.17.2014

What Happens If You Get Sued - Litigation Basics
Third Thursday Emerging Company Webinar
WebEx, 12.15.2011

Memberships

President, Project Youth Orange County Bar Foundation (2018)

Orange County Bar Association Judiciary Committee (2006-2011, Chair (2011))

Vice President, Dartmouth Lawyers Association

Board Member, Intervention Center for Early Childhood

Practices

Litigation

Healthcare

Intellectual Property

Industries

Financial Services

Healthcare

Education

J.D., Duke University, 1994

A.B., Dartmouth College, 1991

Admissions

California

U.S. Supreme Court

U.S. Court of Appeals for the Fifth Circuit

U.S. Court for the Ninth Circuit

U.S. Court of Appeals for the Tenth Circuit