



Brian J. Malcom

Shareholder

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Brian Malcom is an experienced litigator who focuses his practice on financial services and health care litigation.

For nearly 15 years, Brian Malcom has advised and defended banks, lenders, and other financial services institutions in a broad range of litigation matters in state and federal courts. He also has considerable experience representing health care providers and other organizations in the health care industry in complex litigation.

Mr. Malcom routinely represents and advises receivers in receivership proceedings involving senior living facilities and long-term care facilities. He has successfully sought the appointment of receivers over waste water utilities, a pharmacy, health care facilities, and senior living facilities.

Mr. Malcom also counsels global advisory and brokerage companies in contract disputes with brokers and competitors, in commercial disputes, and in ERISA litigation. In representing his clients, he proactively seeks to minimize his clients' liability and prevent future disputes. If a dispute moves forward and a trial is necessary, he works closely with his clients to achieve the best outcome in a cost-effective and timely manner.

In addition to his financial services and health care litigation, Mr. Malcom has extensive experience defending clients in product liability and commercial litigation disputes. He has successfully defended clients in claims asserting violations of the Fair Credit Reporting Act (FCRA) and Truth in Lending Act (TILA). Other experience includes antitrust claims; bond and warrant claims; municipal bankruptcies and collection of obligations owed by government entities; and lien claims.

While attending law school, Mr. Malcom served as a law clerk in the U.S. Senate for Senator Jeff Sessions (R-Ala.) on the Subcommittee on Administrative Oversight and the Courts.



Representative Matters

- Represented a hospital and health care services management firm in its capacity as receiver over a skilled nursing and specialty care facility located in Alabama, in litigation and health care regulatory matters.
- Represented a training facility company against a default judgment that was entered against the company and its parent company under a lease for a medical office building space.
- Represented a regional bank in litigation and receivership where a pharmacy and guarantor defaulted on a commercial loan agreement and guaranty.
- Represented a receiver, who was a turnaround and consulting expert with specialized experience in assisting health care organizations, in pursuing claims against an accounting firm related to issuance of bonds. The receiver obtained a settlement on behalf of current and previous bondholders.
- Served as counsel to a receiver appointed to administer and operate multiple southern assisted living facilities; assisted the receiver in its administration and operation of the facilities during the marketing of the facilities for sale; and aided in nine court-approved stalking horse auctions.
- Represented employees of a pharmacy chain in connection with a grand jury investigation conducted by the U.S. Attorney's Office for the Northern District of Alabama regarding the alleged unlawful distribution of Schedule II controlled substances.

- Represented a medical group in the restructuring of a joint venture between the client and a group of medical oncologists.
- Successfully obtained a dismissal of an antitrust claim against a hospital alleging monopolization of the northwest Alabama market.
- Represented the indenture trustee for the approximately \$5.3 billion water and sewer bonds connected to the city of Detroit's Chapter 9 bankruptcy proceeding.
- Represented a client charged with conspiracy, wire fraud, and health care fraud in the Eastern District of Louisiana.
- Defended outside directors of a bank and its sole shareholder following the bank's failure against multiple lawsuits including securities fraud, suits against the directors, and shareholder derivative lawsuits. Obtained dismissals and successfully settled the remaining claims within the officers' D&O insurance.
- Represented an appointed indenture trustee in connection with litigation that arose from a county in Alabama defaulting on approximately \$3.2 billion in pledged revenue bonds.
- Assisted an environmental services contractor in enforcing its employment agreement and nonsolicitation provision on a key salesman who was leaving to form a competing company.
- Acted as trial and appellate counsel for a receiver and achieved an Alabama Supreme Court reversal of a trial court order against a hotel receiver that sought to require the receiver to pay more than \$1 million in pre-receivership expenses incurred by a borrower in default, including the borrower's legal fees. This decision reinforced the priority of secured creditors and established a significant legal precedent for receivers and lenders throughout Alabama relating to pre-receivership expenses.



Professional Honors & Activities

- Listed in *The Best Lawyers in America*® for Litigation - Banking and Finance (2023 – 2026)
- Selected to Mid-South Rising Stars in Business Litigation (2014 – 2023)
- Named a Birmingham Top Attorney in Banking Law by *Birmingham Magazine* (2018)
- Profiled in *Birmingham Business Journal* as one of Birmingham's Rising Stars of Law (2017)
- Member – Alabama Bankers Association
- Member – Birmingham Bar Association



Community Activities

- Member – United Way of Central Alabama
 - Young Philanthropists Society
 - Birmingham Office Chair for Fundraising (former firm) (2017 – 2022)
- Member – Monday Morning Quarterback Club
- Coach and Assistant Coach – Vestavia Hills Youth Baseball (2019 – present)
- Assistant Coach – Vestavia Hills Youth Football



Education

- Samford University, Cumberland School of Law, J.D., 2008, cum laude
 - Editor, *Cumberland Law Review*
- University of Georgia, B.A. and B.S., 2005, magna cum laude



Admissions

- Alabama, 2008
- Georgia, 2014
- Tennessee, 2024
- U.S. District Court for the Northern, Middle, and Southern Districts of Alabama
- U.S. District Court for the Northern, Middle, and Southern Districts of Georgia

- U.S. District Court for the Eastern, Middle, and Western Districts of Tennessee
- U.S. Court of Appeals for the Eleventh Circuit