



## Emil Hirsch

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## Overview

Emil Hirsch is a litigator with more than 45 years of trial and appellate experience. His national practice focuses on complex commercial litigation related to the health care, real estate, financial services, and utility industries. He represents financial institutions, real estate industry participants, health care providers (including hospitals), public utilities, other public bodies and nonprofit entities. His trial and appellate experience includes cases involving business torts, breach of contract, civil RICO, securities fraud, breach of fiduciary duty claims, directors and officers liability, receivership, fraud, international law, bankruptcy, and numerous administrative law issues. He has extensive experience representing clients in bet-the-company litigation and business divorce cases, including numerous business disputes between family members.

## Experience

- Defense of Virginia action involving claims of common law and statutory conspiracy to injure the business of a competitor medical practice.
- Counsel in the successful defense of an action seeking the dissolution of a state of New York charitable foundation based on director deadlock.
- Represented owners of strategically situated commercial real estate in the District of Columbia in successful U.S. district court and D.C. circuit specific performance litigation.

- Counsel for Tennessee bank in successful inter-creditor federal litigation over the priority of distribution among three banks in a bankruptcy case in the Eastern District of Virginia. This bankruptcy case arose out of a scheme by an individual debtor to defraud multiple banks by using forged insurance policy collateral.
- Represented a full-service and government-owned hospital in a federal court action brought by a discharged former employee. The original complaint included qui tam and retaliation claims for violation of the federal False Claims Act. Following its dismissal by the court, the False Claims Act claim was abandoned.
- Lead counsel for U.S. federal court judgment creditor in pursuing judgment enforcement in a Canadian province.
- Representation of five separate families of U.S. citizen victims of state-sponsored terrorism in obtaining multimillion-dollar judgments in the U.S. District Court for the District of Columbia against state sponsors of terrorism.
- Represented financial institution in federal court appellate litigation involving the transfer of valuable real property to a revocable spousal trust and whether an individual transferor can file for bankruptcy and successfully exempt the property from creditors.
- Prepared legal analysis of the availability of set-off in international arbitration and in related judicial action to confirm an international arbitration award.
- Counsel for a hospital in four successful rounds of physician discipline and recredentialing litigation involving the permanent suspension of a surgeon's privileges.
- Represented permanent lender on Class A suburban Maryland office building in seeking the appointment of a federal court receiver over the entire collateral, including rent collection. Also represented lender in now-completed state court foreclosure action.
- Represented a Tennessee bank in federal district court litigation filed by the United States to obtain forfeiture of property owners' multiple pieces of commercial property, which were encumbered by deeds of trust securing the bank. Obtained a court order authorizing a state law foreclosure of the collateral and the payment of the client's secured claim from the proceeds.
- Counsel for District of Columbia corporation in two separate federal district court and D.C. Circuit cases in which the client was sued on various successor liability in contract and quantum meruit theories. Succeeded in winning one case by summary judgment. The D.C. Circuit dismissed the appeal. In the other case, the dispute was settled at mediation. In three similar state court cases, succeeded in defeating such claims at the motion to dismiss stage.
- Successful representation of a full-service and government-owned hospital in bet-the-company litigation involving specific performance and lost profits damages of more than \$100 million. The trial court granted summary judgment for the client and was affirmed on appeal.
- Counsel in New York state court appellate litigation aimed at breaking a corporate deadlock which has persisted for five years.

- Defendant's counsel in a real property action brought in the Superior Court of the District of Columbia and subsequently removed to the U.S. District Court for the District of Columbia. The plaintiff was a development entity seeking specific performance of certain agreements it entered into with the client's predecessor entities, as well as substantial damages for inverse condemnation by the District of Columbia, which was one of four named defendants. The case was ultimately dismissed with prejudice following litigation in three different courts.
- Counsel for a candidate for office in a national membership organization. Secured a temporary restraining order requiring that the client be placed on the election ballot following the organization's rejection of her qualifications for office. The temporary restraining order was obtained following testimony at an evidentiary hearing and over the vigorous opposition of the national organization.
- Represented an internationally prominent religious figure in his capacity as a material witness in high-profile litigation between a religious organization and a discharged clergyman.
- Trial counsel for emergency remediation contractor in obtaining maximum jury verdict plus prejudgment interest award in a quantum meruit action against Gallaudet University. The case also involved multiple counterclaims for fraud filed against the client. The counterclaims made this case into a bet-the-company case. The jury returned a verdict for the client on each of the multimillion-dollar counterclaims.
- Represented Tennessee bank as a secured creditor in the Chapter 11 bankruptcy of a business borrower.
- Representation of D.C.-area hospital as a creditor in the Chapter 11 bankruptcy cases of two other area hospitals. This representation included the assumption of the client's executory contract with the debtor hospitals and the resolution of objections filed by the client to the sale, free and clear of liens, of the assets of the two debtors.
- Lead counsel in protracted effort to domesticate and enforce a large U.S. federal court judgment in a Middle Eastern country.
- Lead attorney in conducting a number of separate internal investigations for a government-owned health care provider on issues involving data breach, improper procurement, pharmacy shortages, as well as nurse and physician misconduct.
- Representation of two separate groups of section 1031 exchangers in protracted litigation arising from the Chapter 11 bankruptcy of LandAmerica Financial Services and LandAmerica 1031 Exchange Services in Richmond, Virginia. The representation of the first group was in litigation over whether the funds advanced by this group to the section 1031 qualified intermediary debtor, who conducted a Ponzi-like operation became "property of the estate," and in connection with the clients' objections to the debtor's plan of reorganization.

- Counsel for a national retailer and a construction contractor in Maryland state court litigation instituted by a subcontractor. The subcontractor obtained an order imposing a mechanic's lien on valuable commercial property on which the construction activity occurred. The order also authorized the sale of the property. Succeeded in obtaining a temporary restraining order and a preliminary injunction to prevent the sale from going forward. The order imposing the lien was vacated.
- Served as counsel for three section 1031 exchangers in connection with claims against the officers and directors of a defunct national qualified intermediary company. The claims involved breach of fiduciary duty, gross negligence, waste of corporate assets and constructive fraud. The claims were settled at mediation before filing suit.
- Represented an international power plant company in the successful defense of a mechanic's lien action in Maryland state court. The lien sought involved the entire power plant. Represented the power plant in a related federal court action in which multimillion-dollar lost profits damages claims were asserted against the mechanic's lien plaintiff.
- Served as counsel for GMAC affiliate in two state court actions. The first action was a contested foreclosure on the deed of trust securing the client on valuable waterfront property in Annapolis, Maryland. The second action involved setting aside a judgment foreclosing the right of redemption from a tax sale conducted as to the collateral. The client prevailed twice in obtaining a judgment upholding its right to redeem from the tax sale. The judgment was affirmed on appeal and certiorari was denied by Maryland's highest court.
- Prevailed on behalf of public utility in disallowing in its entirety the U.S. Department of Agriculture's claim to eliminate in its entirety the government's obligation to pay impervious area Clean Rivers Act charges on a 444-acre federal site in the District of Columbia.
- Representation of District of Columbia public utility in refund claims litigation. Succeeded in having a commercial customer's refund claims for 40 years completely disallowed following a full trial before a hearing officer. The decision was affirmed in its totality by the D.C. Court of Appeals.
- Represented a real estate industry executive named as a defendant in a libel action, which arose out of a prior business relationship.
- Counsel for Maryland real estate development entity in vigorously contested specific performance action seeking to compel the client to sell a 50% member interest in a deadlocked limited liability company.
- Representation of a Public Service Commission in appellate litigation involving a rate increase proceeding.
- Counsel for utility in a pending administrative law dispute over whether railroad ballast is an impervious surface.
- Representation of institutional client in administrative litigation involving the assessment of penalties for clean air environmental violations.
- Appellate counsel in litigation involving the statutory standing of a public advocacy organization to file appeals in its own name from adverse administrative agency decisions.

- Counsel for large utility in appellate and administrative agency litigation involving the statutory authorization to charge a certain unbundled rate component.
- Counsel for Maryland property management company in litigation brought by another property management company involving claims of fraud, misappropriation of trade secrets and business conspiracy.
- Attorney for plaintiffs in federal court trial in complex action involving a real estate Ponzi scheme. The claims included civil RICO, common law fraud, breach of fiduciary duty, and securities fraud.
- Attorney for corporate plaintiff in federal court action against a financial institution that failed to preserve the client's cash collateral from a third-party intruder who was able to abscond with the funds.
- At the height of the first COVID-19 wave, represented a plastic surgeon in a pandemic-related dispute with his practice group, which was resolved in two stages without resorting to litigation.
- Selected by the public integrity section of a state attorney general to serve as a testimonial expert in a pending state court action in which successor liability in contract is in dispute.
- Represented a D.C.-area nonprofit executive in an intra-family dispute over the sale of real property in Georgia.
- Negotiated a successful resolution of a major dispute between a New York City retail space landlord and a *Fortune* 500 corporate tenant caused by the tenant's refusal to pay rent during the state-imposed lockdown at the height of the COVID-19 pandemic.
- Counsel for licensed aesthetician in dispute with her former plastic surgeon employer involving allegations of breach of restrictive and nonsolicitation of patients covenants.
- Represented a public sector hospital client in the defense of multimillion-dollar claims for *quantum meruit* recovery brought by a physician group. Formulated both jurisdictional and merits-based grounds for seeking dismissal of the action, which was resolved at mediation.
- Counsel for health care provider entity in a District of Columbia Contract Appeals Board bid protest filed by a losing bidder. The protest involved the client's award of a multimillion-dollar management contract pursuant to an RFP process. The bid protest was dismissed.
- Counsel in federal court professional liability action involved extensive expert evidence on the structure of the Iranian government.
- Representation of U.S. businessman in successfully defusing an international impasse over the detention of an executive jet by an East African government.
- Retained to represent U.S. citizen in severing her ownership interest in a Middle Eastern hotel property from joint ownership with the client's sibling.
- In lieu of a litigation strategy, succeeded in obtaining a legislative exemption from uniform combined reporting of District of Columbia corporate income taxes on behalf of corporations headquartered abroad in countries with bilateral tax treaties with the United States.
- Counsel for Hungarian businesswoman in an international custody dispute which was dismissed by a Florida court, so as to allow the Hungarian court system to adjudicate the dispute.

# Areas of Focus

## Practices

- Litigation and Trials
- Distressed Health Care
- Banking, Commercial, and Consumer Finance
- Real Estate
- Health Care
- Construction
- Securities Litigation and Enforcement
- Appellate & Trial Support
- International
- Government Law & Consulting
- Real Property Litigation
- Development
- International: Europe
- Energy and Utilities
- False Claims Act, Qui Tam, and Whistleblower Defense
- Eminent Domain

## Industries

- Banking, Commercial, and Consumer Finance
- Real Estate
- Health Care
- Construction

## News

04.19.2019

Washington, D.C. Super Lawyers Honors Carlton Fields Attorneys on 2019 List

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06.29.2018

Emil Hirsch Featured in Law360's Health Hires

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06.28.2018

Emil Hirsch Joins Carlton Fields in Washington, D.C.

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05.21.2018

Tampa Law Firm Expands Health Care Practice With a Managed Care Legal Expert from WellCare

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## Recognition

- AV Rated by Martindale-Hubbell
- *The Best Lawyers in America*, Real Estate Litigation (2024)
- Washington, D.C., Super Lawyers, Business Litigation, *Super Lawyers Magazine* (2013–present)

## Speaking Engagements

- "Chevron Doctrine/Its Use In Litigation And Its Future Prospects," D.C. Public Service Commission Legal Department (October 20, 2022)
- "Distressed Hotels Post-COVID: The Option of Receivership Instead of Bankruptcy," American University Washington College of Law (March 17, 2021)

## Credentials

### Education

- University of Maryland School of Law (J.D., 1976)
- University of Maryland (B.S., 1973)

### Bar Admissions

- District of Columbia
- Maryland

### Languages

- German
- Hebrew
- Hungarian
- Romanian

### Court Admissions

- U.S. Court of Appeals, Third Circuit
- U.S. Court of Appeals, Fourth Circuit
- U.S. Court of Appeals, D.C. Circuit
- U.S. District Court, District of Columbia