



# Emil Hirsch

SHAREHOLDER

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## Overview

Emil Hirsch is a litigator with more than 40 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 experience includes cases involving business torts, breach of contract, civil RICO, securities, breach of fiduciary duty claims, directors and officers liability, fraud, bankruptcy, and administrative law issues. He has extensive experience representing clients in bet-the-company litigation and business divorce cases, including disputes between family members.

## Experience

- Counsel in the successful defense of an action seeking the dissolution of a state of New York charitable foundation based on director deadlock.
- Counsel for hospital entity in pending federal court litigation brought by a physician. The suit alleged False Claims Act violations and several other whistleblower-based claims. A decision on the client's motion to dismiss is pending. The case involves a novel issue under the so-called arm of the state doctrine.
- Counsel in pending New York state court litigation aimed at breaking a corporate deadlock, which has persisted for four years.
- Counsel for corporate plaintiff in pending 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.
- Counsel for a hospital in physician discipline and recredentialing matter involving the suspension of a surgeon's privileges. This dispute is currently in a fourth round of administrative litigation and is likely to end up in subsequent federal district court litigation.
- 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.
- Successful representation of a full-service hospital in "bet the company" litigation involving specific performance and lost profits damages above \$100

million. The trial court granted summary judgment for the client and was affirmed on appeal.

- 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* 200 tenant caused by the tenant's refusal to pay rent during the state-imposed lockdown at the height of the COVID-19 pandemic.
- Represents a licensed aesthetician in dispute with her former plastic surgeon employer involving allegations of breach of a restrictive covenant and nonsolicitation of patient's covenant.
- Recently selected to represent Hungarian businesswoman in an international custody dispute in which dismissal is sought, to allow the Hungarian court system to adjudicate the dispute.
- Counsel for defendant 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 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 TRO was obtained following an evidentiary hearing and over the vigorous opposition of the national organization.
- Retained to provide administrative law advice to the District of Columbia Public Service Commission as to certain proposed actions, to be able to withstand expected appellate review.
- 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.
- Represented owners of strategically situated commercial real estate in the District of Columbia in successful U.S. district court and D.C. Circuit appellate litigation. This involved a specific performance action brought by a developer/assembler of adjoining properties.
- 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.
- Counsel for Tennessee bank in successful inter-creditor 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 Tennessee bank as a secured creditor in the recently concluded Chapter 11 bankruptcy of a business borrower.

- Represented a full-service 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 FCA claim was abandoned.
- 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.
- Counsel for large D.C.-area property owner in its capacity as a landlord/creditor of an airline, which was a Chapter 11 debtor in Wilmington, Delaware. A key component of this representation was litigation against the airline of the client's large claim as a landlord following the rejection of its lease under section 365 of the Bankruptcy Code.
- 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. Following the resolution of the disputes, a second group of exchanges asserted claims to recover all of their consequential damages. This resulted in a settlement following a successful mediation.
- Represented a 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 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.
- 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.

- 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.
- 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 are 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.
- 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.
- 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.
- 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-sponsored terrorism. Three of the judgments were successfully domesticated in Canada. A sixth judgment was the subject of a protracted effort to domesticate it in Israel.
- Recently 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.
- Represented a real estate industry executive named as a defendant in a libel action, which arose out of a prior business relationship. Through aggressive discovery was able to determine the client's real exposure at trial, which was far less than what the plaintiffs were seeking. This led to a very favorable settlement after mediation by a retired trial judge.
- Represented 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.
- 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.

## All News

04.19.2019 Washington, D.C. Super Lawyers Honors Carlton Fields Attorneys on 2019 List

06.28.2018 Emil Hirsch Featured in Law360's Health Hires

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

## Recognition

- AV Rated by Martindale-Hubbell
- Washington, D.C., Super Lawyers, Business Litigation, *Super Lawyers Magazine* (2013–present)

## Speaking Engagements

- "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
- U.S. District Court, District of Maryland

## Areas of Focus

### PRACTICES

- Appellate & Trial Support
- Development
- Eminent Domain
- Energy and Utilities
- International
- International: Europe
- Litigation and Trials

### INDUSTRIES

- Banking, Commercial, and Consumer Finance
- Construction
- Health Care
- Real Estate
- Securities & Investment Companies

- Qui Tam/Whistleblower Defense
- Real Property Litigation
- Securities and Derivative Litigation