



# Emil Hirsch

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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, litigation related to the health care, real estate, financial services and utility industries, bankruptcy litigation, and matters involving administrative and constitutional law. He represents financial institutions, real estate industry participants, health care providers (including hospitals), public utilities and 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 and administrative law issues. He has extensive experience representing clients in bet-the-company litigation.

Emil is fluent in German, Romanian, Hungarian, and Hebrew.

## Experience

- Counsel for a District of Columbia independent instrumentality in bet-the-company litigation against it and the District of Columbia for specific performance, constructive trust, and multimillion-dollar damages relief brought by an entity that claims to have contracted to purchase all real estate and operating assets owned by the instrumentality. Prevailed on summary judgment as to all claims. Succeeded in having the judgment affirmed on appeal.
- Represented owners of strategically situated commercial real estate in the District of Columbia in successful federal district court and appellate court litigation. The litigation involved a specific performance action brought by a developer/assembler of adjoining properties. Prevailed at trial, and subsequently succeeded in having the plaintiff's lis pendens notice expunged immediately after judgment was entered and in having the trial court's judgment affirmed on appeal by the U.S. Court of Appeals for 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 a mediation by a retired trial judge.
- Represents a full-service hospital in an ongoing 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. After its dismissal

by the court, the FCA claim was abandoned.

- Counsel for hospital entity in federal court litigation brought by a physician. The claim alleges FCA violations, the violation of several whistleblower statutes, as well as termination in violation of public policy. A decision on the client's motion to dismiss is pending.
- 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. A recent mediation has resulted in a very favorable resolution of these claims.
- Counseled 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 on jurisdictional grounds.
- Represents a utility company in appellate litigation over the validity of its assessment of stormwater-related charges to customers who claim that they receive no benefit from the client's provision of stormwater-related services. The utility's authority to charge such customer's was challenged on constitutional and statutory grounds.
- Counsel for 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 has been vacated.
- Served as counsel for three section 1031 exchangers in connection with claims against the officers and directors of a deficient national qualified intermediary company. The claims involved breach of fiduciary duty, gross negligence and waste of corporate assets, and constructive fraud. The claims were settled prior to filing suit.
- Trial counsel for a defendant in District of Columbia litigation. The action involved claims arising out of alleged breaches of noncompetition and noninterference covenants with former employees of the plaintiff corporation. Succeeded in having the court grant a directed verdict on the statutory conspiracy claim, which posed the greatest dollar exposure for the clients. Both sides have appealed.
- Represented a health care provider in conducting an internal investigation into questionable procurement practices and a related data breach.
- Completed in record time, the Maryland judicial foreclosure of a commercial purpose loan secured by multiple residential condominiums.
- Counsel for owner/landlord of headquarters building in Northern Virginia. Represented landlord throughout the duration of the tenant's Delaware Chapter 11 bankruptcy case. The principal portion of this representation included protracted litigation as to the measurement of the landlord's consequential damages following the rejection of its lease under bankruptcy law.
- 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.
- Retained by a nonprofit entity to represent it in 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 is 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 is one of the named defendants.

- 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. Recently 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 development entity that assembled a large retail development project that was subsequently leased for 99 years to a prominent regional development firm. Represented client in litigation brought by a retail tenant for substantial damages for breach of certain agreements.
- Represented a national lender and loan servicer in an adversary proceeding brought in the U.S. Bankruptcy Court for the District of Maryland in which the owners of Prince George's County, Maryland, commercial real property attempted to limit the extent of the lender's deed of trust security interest. The property law issue raised by the borrowers is a unique issue under Maryland law and the applicable zoning and subdivision of lots ordinances of Prince George's County. The action resulted in a recorded consent order, which declares the lender's security interest to extend to the entirety of the collateral, including the disputed portions thereof.
- Protracted representation over an eight-year period of an international retailer in protecting its long-term leasehold interest at a very profitable District of Columbia store location from being condemned by the district. In this capacity, functions as trial and appellate counsel in a pending declaratory judgment action, a quick take condemnation action, and three appeals to the D.C. Court of Appeals.
- Counsel for construction contractor/creditor in a high-profile District of Columbia Chapter 11 real estate reorganization. This representation included a federal district court action against a non-debtor guarantor of the construction work payments and the enforcement of judgment against the non-debtor guarantor.
- Represented Maryland resident in two federal district court actions in Maryland, one of which involved an unsuccessful attempt to set aside a last will and testament and a related inter vivos trust involving assets, which included Hawaii real estate and a Hawaii settlement agreement, which was asserted as a bar to any claims.
- Represented secured lender in a two-phase loan restructuring effort. The first stage was a successful effort to extend the lender's forbearance from pursuit of foreclosure in exchange for securing lockbox control over the entire rent stream. The second effort, to reach a global resolution of all disputes with 22 entities that comprise the borrower, failed due to the inability of the borrower entities to

reach unanimity so as to execute the documents prepared by counsel.

- Served as testimonial expert on behalf of a secured lender in lender liability action filed in the District of Columbia arising out of foreclosure of commercial property.
- Served as an officer and director of a New York corporation, which owns a building located in the Broadway-Soho retail district in New York City. Responsible for conducting and successfully concluding the negotiation of a very lucrative 15-year lease with a *Fortune* 100 corporate tenant for the entire building. Also handled the executive level supervision of the legal efforts of four separate law firms employed to handle lease documentation, AIA contracts, and landlord-tenant litigation. This executive responsibility also included negotiation of all corporate contracts, and the retention and supervision of engineers and architects during an ongoing construction job consisting of three phases, negotiations with two separate brokerage firms, and overseeing a successful legal effort to secure timely surrender of possession by a prior tenant.
- Counsel for section 1031 exchanger of commercial property in the state of Montana in complex dispute with the now-bankrupt section 1031 Landmark Exchange Services subsidiary of Landmark Financial Group. The first phase of litigation of this dispute, which was settled very favorably to the client, took place in the U.S. Bankruptcy Court for the Eastern District of Virginia (Richmond Division) and the U.S. District Court for the Eastern District of Virginia. The case has resulted in ongoing further representation of the client and three additional but similarly situated parties in their capacity as creditors of the bankruptcy estate, which has already repaid 100 percent of the exchange proceeds.
- Represented a U.S. subsidiary of a European REIT in connection with the preparation and issuance of a legal opinion on certain aspects of the purchase money financing utilized to acquire a premier Washington, D.C., office building. The scope of the opinion involved the enforceability of the loan documents and the assignment of rents instrument.
- Represented a Delaware limited liability company, a subsidiary of a European REIT, as purchaser of a valuable District of Columbia office building, in connection with the issuance of a legal opinion on the validity and enforceability of a loan assumption agreement and related instruments under District of Columbia law.
- Represented Florida shopping center owner in Circuit City's Chapter 11 bankruptcy case in Richmond, Virginia. The client's claim arose out of a rejected lease for anchor tenant space.
- Counsel for family-owned commercial real estate ownership entities at multiple locations in Maryland and Northern Virginia, whose locations have been leased to a corporation formerly owned by the managing member of the landlord entities. The purpose of this representation was to devise strategies for minimizing conflict, and to avoid litigation between the landlord entities and the tenant corporation while the latter was experiencing financial management turmoil and a downturn in sales volume.
- Over a period of 10 years, represented national lender and subsequently loan servicer/asset manager with respect to 23 retail locations across the United States. Responsible for negotiating the terms and conditions of take-back agreements for this lender to recover possession of all 23 locations; resolving all title and other legal issues associated with the take-back process; and the full scope of landlord representation in a protracted and large Chapter 11 reorganization in Richmond, Virginia, including claims litigation and settlement of all disputed claims.

- Counsel for general contractor secured by a deed of trust and a separate absolute assignment of net proceeds derived from the sale of a distressed condominium development project. Formulated equitable lien-based theory to obtain favorable settlement of a dispute with the project owner and a competing creditor, as to the portion of the condominium sales proceeds that were not secured by the previously recorded deed of trust.
- Represented a secured lender with respect to two separate commercial mortgage loans secured by office condominium collateral in Maryland. The borrower was a Chapter 11 debtor with an uncommonly difficult financial structure. The collateral securing this loan was recovered as a result of foreclosure.
- Represented secured creditor in bankruptcy court and the Superior Court of the District of Columbia in a protracted litigation to reinstate the existence and lien priority of an improperly released deed of trust on valuable commercial property in northeast Washington, D.C.
- Represents a large local utility company in the U.S. Bankruptcy Court for the District of Columbia in its creditor capacity in Chapter 11 reorganizations of a variety of real estate entities. On multiple occasions, DC Water moved to convert a building owner's Chapter 11 case to Chapter 7 liquidation after numerous confirmed plan payment defaults had occurred and diversion of cash to other entities was discovered. These conversions resulted in sales of the real estate and payment of the client's liens in full.
- Counsel for national construction contractor involving a major Virginia project in which funding of a construction loan was suspended. Formulated and drafted a legal solution for the client whereby, upon resumption of the construction loan funding, payment to the client for its past work was made directly from the lender on an earmarked basis, so as to provide protection against a bankruptcy filing by the property owner.
- Counsel for construction contractor of large Northern Virginia condominium project. Successfully represented the client in defeating an attempt by the project owner and its title insurer to enjoin the continuation of state court mechanic's lien action.
- Headed a team of attorneys who were selected to perform due diligence on a portfolio of 37 Maryland commercial real estate loans, which included several large co-participated loans.
- Represented prominent Washington, D.C., development company and one of its operating entities in dispute over the restructuring of a multimillion-dollar permanent loan in which Equitable Life was the lead institutional co-participant. After extensive discovery and the filing of an action for declaratory judgment to determine the voting rights of each participant on a several basis, a major restructuring of the underlying loan was successfully negotiated and implemented.
- Counsel for loan originator/servicer of seven separate tranches of secured debt on commercial property. Each tranche was funded by individual or pension fund investors. When no unanimity could be achieved as to the restructuring of the underlying loans and the sale of the collateral, the client organized a managed Chapter 11 bankruptcy filing of the borrower entity. A secured creditors' reorganization plan was proposed pursuant to which the different tranches of debt were successfully consolidated into a single tranche. The plan was confirmed over objection of a number of note investors and the sale of the collateral took place shortly thereafter.
- Represented full recourse mortgage borrowers on over 30 Baltimore investment properties. Following discovery of the identities of each of the investor's co-

participants in the mortgage loans and of a massive fraud perpetrated by the loan originator/servicer of the mortgages, U.S. District Court and Bankruptcy Court litigation was instituted by the clients in the District of Columbia. This resulted in heavily discounted dollar settlements with every mortgage investor in the fraudulently induced mortgages and in a substantial federal court money judgment against the loan originators, which was paid in full.

- Federal district court and appellate court counsel for New York state lender in obtaining three federal court judgments and achieving their complete satisfaction following enforcement litigation against trust assets, including 10 Baltimore properties owned by a trust set up by the judgment debtors. After a trial before the federal district court, the trust was declared to be: (1) a sham; (2) an alter ego of the judgment debtors; and (3) not a spendthrift trust.
- Represented two separate Connecticut-based Native American tribal organizations in federal court litigation, as well as in a present effort to rectify a legislative error in a federal statute, which extinguished aboriginal Mohegan title to large area of land in the State of Connecticut. The present effort is designed to broaden, beyond only one of the two tribal factions, the class of tribal members who are eligible for the benefits provided as a quid pro quo for extinguishment, as part of a 1994 Congressional extinguishment of land claims.
- Retained by owner of a very large assembly of commercial real estate to negotiate and document consensual resolution of multiple disputes with virtually every creditor constituency in a Chapter 11 case that had languished for years without a plan of reorganization. Succeeded in negotiating workout terms with each creditor constituency, drafted, filed, and obtained the confirmation of a plan of reorganization, and negotiated the terms, conditions, and structure of the exit financing extended to the client upon emergence from Chapter 11.
- Counsel for take-back lender whose 10-year promissory note was inadequately secured from the inception and whose lien priority in the operating assets of a lucrative retail business had been primed by intervening liens. Succeeded, after receivership litigation, in having the client's lien priority restored to first priority status and in negotiating to have the collateral include for the first time the tenant's interest in a long-term lease.
- Served as testimonial expert in District of Columbia real property action in which the former owner of an investment property foreclosed on by Wells Fargo sought to set aside the completed foreclosure sale.
- Served for a period of seven years on the board of directors and executive committee of a District of Columbia nonprofit entity. This service on the board included a period when the construction of a large new wing of the nonprofit's campus was approved, negotiated, and financed. Also, served as general counsel of the non-profit entity on a pro bono basis. In this capacity, was responsible for resolving numerous disputes including executive compensation, professional services contracts, and governance matters.
- Served as a co-executor of a substantial Florida estate whose assets include real estate and all shares of stock in a corporation whose most valuable asset is New York City commercial real estate. This involvement consisted of day-to-day supervision of the estate's affairs and maximization of the value of these shares of stock, including working with real estate appraisers, consultants, leasing brokers, and other industry professionals.

## All News

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

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06.28.2018 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

## 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

### INDUSTRIES

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

- International
  - International: Europe
  - Litigation and Trials
  - Qui Tam/Whistleblower Defense
  - Real Property Litigation
  - Securities and Derivative Litigation
- Real Estate
  - Securities & Investment Companies