



David R. King

*Partner*

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David King is a partner in Herrick's Litigation Department.

He concentrates his practice in complex commercial litigation, including real estate, construction, class action and securities litigation. David is also an experienced insurance coverage and reinsurance litigator, having represented both insureds and insurance companies in coverage matters and reinsurance claims. He regularly represents and advises the firm's clients with respect to insurance related issues, including purchasing appropriate coverage, policy interpretation and claims submissions.

David practices in state and federal courts before both trial and appellate courts, and also resolves matters through alternative dispute resolution mechanisms including mediation and arbitration. He is recognized as an AV Preeminent-rated attorney under the Martindale-Hubbell Peer Review Ratings.

His recent matters include the representation of the Chapter 7 bankruptcy trustee of Winstar Communications in an adversary proceeding in Delaware Bankruptcy Court. David co-chaired the three-month bench trial, which resulted in a judgment worth over \$300 million for the trustee on preference, equitable subordination and breach of contract claims. David also successfully represented the trustee through the appeal of the judgment to the District Court of Delaware, and on further appeal to the United States Court of Appeals for the Third Circuit, where the Court affirmed the Bankruptcy Court in all relevant aspects and left the judgment fully intact. He continued to represent the Trustee's interests in disputes among Winstar's creditors concerning distributions of the litigation proceeds.

Other recent matters include the successful defense of Bridgestone Americas in the Third Circuit's landmark Marcus class action decision, his representation of a consumer products manufacturer post trial, where he secured the reversal of a jury verdict in a published New Jersey Appellate Division opinion that remanded the construction contract dispute for a new trial, and his ongoing representation of a registered investment advisor in a multi-million dollar key-man disability policy coverage action.

David and his wife are co-founders and board members of Colin's Kids, a nonprofit charity dedicated to funding research into congenital heart defects, and aiding families struggling with the cost of care for infants born with heart defects.

#### Services

- Litigation
- Construction and Development
- Product Liability
- Real Estate Litigation & Dispute Resolution
- Insurance & Reinsurance

- Restructuring & Finance Litigation
- Corporate Litigation
- Sports
- Employment Litigation

#### Education

- Columbia Law School (J.D., 1995)
  - Harlan Fiske Stone Scholar
- Boston College (B.A., 1992)

#### Accolades

#### Award Methodology

#### Publications

##### April 30, 2015

Will New Jersey Federal Courts Dismiss Class-Action Complaints at the Motion to Dismiss Stage?

New Jersey Law Journal

##### August 2012

Third Circuit Court of Appeals Vacates Class Certification in Marcus v BMW of North America

#### Matters

##### NFL Franchise - Class Action

Represented a national football league team in a class action.

##### Bankruptcy Chapter 11 Trustee - Bankruptcy & Sale of 4778 Broadway

Represented Donald F. Conway, the Bankruptcy Chapter 11 Trustee, in the sale of 4778 Broadway, in the Inwood section of Manhattan, to affiliates of the Housing Development Partnership Corporation and Madd Equities, for 12.3 million, which was authorized by the Bankruptcy Court. Herrick provided strategic advice and counsel in marketing the site, analyzing potential zoning issues, environmental issues and transactional services.

##### Pharmaceutical Company - Consumer Fraud Class Action Dismissed with Prejudice

Achieved a significant victory in New Jersey federal court on behalf of a pharmaceutical company, securing the dismissal of our client from a putative class action alleging violations of consumer fraud laws in the marketing of product. Finding that the plaintiffs had failed to remedy basic pleading deficiencies in their original complaint, dismissed for lack of jurisdiction and failure to state a claim, the court dismissed the amended complaint with prejudice since "further amendment would be futile."

##### Consumer Products Manufacturer - Jury Verdict Reversed NJ Construction Dispute Remanded for New Trial

Herrick achieved a significant appellate victory on behalf of a leading consumer products manufacturer in litigation with a general contractor and third-party subcontractors over payment for work done on a multimillion dollar building project in New Jersey. In a published opinion ordering a new trial, the New Jersey Appellate Division agreed that "the jury instructions and verdict sheet both misstated the applicable legal principals of contract law," leading to a verdict in which the contractor was found to have breached its contract with our

client yet nonetheless received an award on a services-rendered basis, which only applies in the absence of a binding agreement. The appellate court further found that the trial court's flawed instructions prevented the jury from considering our client's counterclaim for damages incurred as a result of the contractor's defective work.

#### Commercial Bank - All Claims Dismissed in Litigation over Failed Loan

Negotiated a settlement on behalf of a commercial bank resulting in the voluntary dismissal of all claims filed in a New Jersey state court by an asset manager seeking to hold the bank responsible for losses on a failed loan made to a furniture business prior to the business' bankruptcy filing. Claiming that it had been induced into extending the loan based, in part, on a multi-million revolving credit line extended to the business by our client, the plaintiff argued that the credit line and our client's alleged failure to adequately monitor the business gave the plaintiff the impression that the business was in better financial shape than it was. Following Herrick's filing of a third-party complaint, repeated motions to dismiss and an aggressive discovery, the plaintiff dismissed its claims against our client without any payment or admission of wrongdoing while negotiating settlements from the remaining defendants.

#### Multinational Tire Manufacturer - Consumer Fraud Class Action Defense

Successful defense of the North American subsidiary of a multinational automotive parts manufacturer in national consumer fraud class actions involving allegations that an innovative tire design was more susceptible to road hazard damage than regular tires. The firm's successes on behalf of the client include obtaining an important, precedent setting decision from the Third Circuit Court of Appeals that vacated the lower court's certification of a limited New Jersey sub-class of plaintiffs, and then later securing the dismissal of all but one of the claims asserted in a copycat class action, effectively precluding the plaintiffs from further pursuing the litigation.

#### National Energy Services Provider - Consumer Fraud Class Action

Defense of the affiliate of a national energy services provider in a consumer fraud class action filed in Pennsylvania federal court by plaintiffs claiming to have been "locked" into variable rate contracts charging purportedly inflated rates for electricity.

#### Private Equity Credit Investing Arm - Disability Insurance Dispute

Representing the credit investing arm of a publicly traded private equity firm, with \$19 billion under management, in a dispute with insurers over payment of disability benefits under a multimillion dollar "key man" policy insuring our client's former co-chief executive officer.

#### Electricity Supplier - TCPA Class Action Favorably Resolved

Negotiated a favorable settlement on behalf of a national electricity services provider to resolve a putative class action filed in New Jersey federal court by a plaintiff alleging violations of the Telephone Consumer Protection Act (TCPA).

#### Building Materials Manufacturer - Product Liability Disputes

Representing major manufacturer of commercial and residential roofing in multiple warranty claims.

#### Red Rock Services Trustee - Appellate Victory in Bankruptcy Litigation

Herrick secured an appellate victory for the chapter 7 trustee of bankrupt demolition subcontractor Red Rock Services, affirming a judgment of almost \$1 million won in a bankruptcy adversary proceeding in the Eastern District of Pennsylvania. On behalf of the trustee, Herrick sued a general contractor for breach of its obligations under subcontracts with Red Rock in a pair of multimillion dollar construction projects in Baltimore and Boston. After eight days of trial, the trustee was awarded a judgment of almost \$1 million, including attorneys' fees. Herrick defended the judgment on appeal to the district court, where it was affirmed, and went on to successfully defend the ruling on the defendant's second appeal to

the Third Circuit, which affirmed the judgments of the bankruptcy court and district court in their entirety.

#### Life Settlement Investment Firm - Advice and Litigation

Represent a German investment firm with respect to its investment portfolio of U.S. life insurance policies. In addition to providing advice concerning life settlement laws and regulations in various jurisdictions, Herrick has also represented the company in litigation on its disputed claims in multiple jurisdictions. In 2012, Herrick procured a multi-million dollar settlement for the client, almost 90 percent of the policy value, in New Jersey federal litigation in which the carrier contested the claim as a likely STOLI ("stranger originated life insurance") policy. More recently, in 2013, Herrick settled a large claim filed in Pennsylvania federal court in which our client received approximately 70 percent of the policy value in a case where the age of the insured, a former Syrian national, was disputed. Herrick will continue to represent the client on U.S. claims going forward.

#### Turkish Exporter - Favorable Jury Verdict and Judgment in Breach of Contract Litigation

Obtained favorable jury verdict and judgment on behalf of a Turkish furniture exporter asserting breach of contract claims in New Jersey federal court against a former business partner and the former head of the client's U.S. affiliate.

#### Registered Investment Advisor - Business Divorce Dispute

Herrick represented the co-founder of a successful mutual fund RIA in a business divorce dispute with his partner brought in Pennsylvania state court. After the parties agreed to submit their claims to arbitration, Herrick's client prevailed following a two week hearing. The arbitrator found that our client's ex-partner had breached his fiduciary duties, and made a substantial award to our client.

#### Madoff Litigation - Filings Against the SEC

We represent a number of victims of Bernard Madoff's Ponzi scheme. In January of 2009, we filed notices of claim with the Securities & Exchange Commission alleging negligence under the Federal Tort Claims Act. The SEC rejected our claims six months later, and on Wednesday, October 14, 2009, we filed the historic and first known lawsuit against the SEC seeking monetary damages under the FTCA, *Molchatsky and Schneider v. United States*. We were lead counsel on the *Molchatsky* case and filed two additional cases against the United States on behalf of other Madoff victims. While the Second Circuit ultimately dismissed the action, essentially saying that the SEC had absolute immunity, the case sent a message that Herrick will leave no stone unturned on behalf of its clients. The firm continues to defend Madoff victims in clawback actions initiated against them by the Madoff bankruptcy trustee.

#### Consumer Products Retailer - Partnership Dispute

Representation of three partners in a 'bet the company' lawsuit brought in New Jersey state court by the fourth partner, who claimed to be an oppressed minority shareholder. Herrick defeated the plaintiff's order to show cause seeking injunctive relief including the appointment of a receiver, and then obtained a dismissal of the lawsuit based on arbitration agreement.

#### Insurance Producer - Commission Dispute

Represented an insurance producer embroiled in an arbitration with a former client over unpaid commissions. The arbitration resulted in a recovery of over \$1 million.

#### Insurer - Regulatory and Administrative Advice

Represented an insurer with respect to the regulatory and administrative aspects of its rebate programs, including audit advice as well as representation in disputes with pharmacy benefits managers.

#### Finance Company - Ponzi Scheme Foreclosure

Representation of a finance company in its foreclosure of a commercial property placed in receivership due to the collapse of an alleged Ponzi scheme by the ownership entity.

#### NYSE Company - Internal Investigation

Representation of the Audit Committee of a New York Stock Exchange listed company to conduct an internal investigation of whistleblower claims brought by a former officer alleging that certain officers and directors had committed accounting fraud and violated the Sarbanes-Oxley Act.

#### Real Estate Investment Management Companies - Construction Litigation

We defended a large industrial real estate investing entity and its investment management firm in a \$90 million construction defect litigation with an industrial tenant in New Jersey. We succeeded in getting most of the plaintiff's case dismissed on summary judgment, and then settled the rest of the dispute case before trial. The settlement included the plaintiff turning over escrowed back rent to our client and entering into a favorable lease extension.

#### Rogue Employee - CFTC and CME Investigations

Conducted an internal investigation into massive trading losses incurred by a rogue employee of a futures commission merchant, and represented the FCM in connection with investigations into the conduct by the CFTC and CME.

#### National Retail Brokerage Firm - Civil Litigation

Representation of a national retail brokerage firm in a state court action alleging sales practice violations.

#### Real Estate Company - Management Agreement Litigation

Represented a real estate services company in a \$20 million lawsuit brought by former customers. The former customers, owners of two large New York City office buildings, claimed that our client, which managed the buildings, had committed numerous acts of wrongdoing over several years, including breaching contracts, fraud, and breaching fiduciary duties. The customers sought to recover all the fees they'd paid our client over the years under New York's "faithless servant" doctrine. The District Court granted our summary judgment motion, dismissing all of the higher-damage tort and equity claims, and we then settled the remaining breach of contract claim. The former customers lost their appeal to the Second Circuit Court of Appeals, bringing the case to a successful conclusion for our client.

#### Investor Group - Fraud and Misrepresentation Claims

Represented an investor group in connection with fraud and misrepresentation claims against an investment manager in various private investments.

#### Solar Energy Company - Breach of Contract

Representation of a solar energy company in connection with an employee's suspected breach of a non-compete agreement and breaches of fiduciary duty. Herrick advised the company on how to terminate the rogue employee and to secure evidence relating to any unfair competition engaged in by a competitor.

#### Commodities Broker - Civil Litigation

A leading futures and options broker in a civil litigation stemming from a \$200 million fraud perpetrated by a hedge fund manager.

#### Retail Brokerage - NYSE Investigation

Representation of a national retail brokerage firm in claims brought by the Enforcement Division of the New York Stock Exchange relating to proxy procedures used on an industry-wide basis. The case was favorably resolved after discovery.

#### First Allied Securities - NASD Arbitration

Representation of First Allied Securities in an NASD arbitration in Seattle, Washington involving claims against a competitor for raiding an entire division of the company, including multiple brokers in multiple offices.

#### Woolsulate - Lurgi Lentjes Arbitration

Representation of Woolsulate Corp., a New Jersey insulation contractor, in pursuing claims in mediation and arbitration against Lurgi Lentjes, a German energy company, to recover amounts due for services provided by Woolsulate at a PSE&G facility in Trenton, New Jersey.

#### Medical Device Company - Raiding

Represented a medical device company in avoiding litigation threatened by a competitor over our client's hiring of several of the competitor's employees.

#### Medical Device Company - Employment Contract Litigation

Represented a medical device company, and two individuals in a litigation brought in New Jersey state court by a competitor. The plaintiffs claimed that our clients had violated restrictive covenants in two former employees' contracts, and sought injunctive relief and damages. The Court denied injunctive relief, and the case settled before discovery with no payment by our clients.

#### Real Estate Developer - Construction Litigation

Represented a real estate developer in a multiparty litigation involving alleged construction defects resulting from the conversion of a 17-story refrigerated building into a condominium property. Herrick replaced prior counsel, and was able to quickly settle lawsuits that had been pending in both federal and state court in New York for over a year.

#### Insurance Company - Reinsurance Claims

Representation of an insurance company in a run off in pursuing reinsurance claims against multiple reinsurers and reinsurance pools, both foreign and domestic, including claims in both state and federal courts in New York and New Jersey.

## Events

#### Construction Defect Litigation: From A to Z

August 20, 2015

National Business Institute

#### Construction Defect Litigation: From A to Z

September 19, 2013

#### The Financial Expert's Role in the Litigation Process

December 17, 2009

AICPA Webinar

## News

#### October 28, 2020

Congratulations to Herrick Attorneys on their Selection to Super Lawyers  
*Super Lawyers*

#### September 12, 2019

Congratulations to Herrick Attorneys on their Selection to Super Lawyers  
*Super Lawyers*

October 6, 2017

NJ Judge Moves Fruit Snacks Class Action Across the River  
*The New Jersey Law Journal*

April 10, 2017

Jury Got Bad Instructions In Contract Row, NJ Court Says  
*Law360*

April 30, 2015

Will NJ Federal Courts Dismiss Class-Action Complaints at the Motion to Dismiss Stage?  
*New Jersey Law Journal*

May 24, 2013

Herrick Lawyers, Practices Recognized by Chambers USA 2013  
*Chambers USA*

April 2, 2013

New Jersey Law Journal Names Herrick Finalist for Commercial Litigation Department of the Year  
*New Jersey Law Journal*