



J. Philip Kirchner

In Memoriam

CHERRY HILL
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In Memoriam

Phil Kirchner is a member of the firm's Business and Corporate Department and its Litigation Department, and an active member of the Construction; Insurance; Higher Education; Restaurant & Hospitality; Pharmaceutical; and Charitable Organizations Industry Practice Groups. In past years, Phil was a Managing Shareholder of the firm and the founder and chair for many years of its Litigation Department.

He focuses his practice in business litigation and in negotiating international supply, quality and other contracts for his manufacturing clients.

Litigation Practice

Mr. Kirchner concentrates his litigation practice on complex litigation of all types of business issues in both federal and state courts, primarily in New Jersey and Pennsylvania. He has extensive experience representing public and private business entities and individuals in commercial litigation involving trial, arbitration, mediation, and appeals of various business disputes. Over the years, his matters have included contract disputes; insurance coverage claims; disputes among owners of closely held businesses ("business divorce"); employment disputes, including claims of breach of restrictive covenants; trademark infringement and theft of trade secret claims; claims under the state and federal securities laws; antitrust claims; and construction disputes. Mr. Kirchner also represents clients in estate and probate contests involving claims of undue influence, lack of capacity and breach of fiduciary duty. Mr. Kirchner also regularly advises his business clients on strategies for avoiding litigation and for insuring against losses from litigation claims.

Corporate Practice

While ushering clients through the litigation process for the bulk of his career, Mr. Kirchner developed significant experience in drafting and negotiating contracts. He now spends a significant amount of his time drafting and negotiating national and international Supply and Quality Agreements and

Practice Areas

Litigation
Labor and Employment Law
Insurance Counseling and
Recovery Law
Construction Law

Industry Groups

Higher Education
Pharmaceutical
Restaurant & Hospitality
Construction
Nonprofit & Charitable
Organizations
Gaming
Alternative and Renewable
Energy

Admissions

New Jersey
Pennsylvania
Supreme Court of New
Jersey
Supreme Court of
Pennsylvania
U.S. District Court for the
District of New Jersey
U.S. District Court for the
Eastern District of
Pennsylvania
U.S. Court of Appeals for
the Second Circuit
U.S. Court of Appeals for
the Third Circuit

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other contracts for his clients in the manufacturing industry. In this capacity, he reviews, prepares, and negotiates effective and clearly defined contracts to protect client interests and limit future litigation exposure. His unique background as a trial lawyer helps him produce contracts for his clients that protect their business and legal interests. Many of his contracts involve customers in foreign countries, through which he has developed a special understanding of the complexities of international contracts, involving foreign cultures and laws. His understanding of these complexities helps him secure solid quality and supply agreements that transcend borders, advance his clients' business interests, and, at the same time, protect them in the event of a dispute.

Insurance Counseling & Recovery Practice

Over the course of his career, Mr. Kirchner has handled a number of insurance coverage matters. He has exclusively represented policyholders in disputes with their carriers, both in court and out of court, and he has counseled his business clients in all aspects of insurance coverage, including their coverage needs. He has also negotiated numerous business contracts for his clients, in which the type, amount, and various details of the insurance coverage required for the deal were at issue. The types of insurance issues he has handled over the years have included property and casualty, construction, intellectual property, environmental, business automobile, personal injury, directors and officers, and cyber theft coverage disputes and questions about coverage.

Restaurant & Hospitality Industry

In his capacity leading the firm's Restaurant & Hospitality Industry Group, Mr. Kirchner has represented his food service, restaurant, and hospitality clients, including the South Jersey Independent Restaurant Association (a/k/a the "SJ Hot Chefs"), in a variety of matters, including: contract litigation; contract negotiation, drafting and review; trademark and tradename litigation; theft of trade secret cases; enforcing, defending and challenging restrictive covenants in employment contracts; landlord-tenant disputes; and various government regulatory issues. He also regularly counsels and advises his clients on ways to avoid regulatory problems in such areas as wage and hour issues, tipping policies, sales taxes and employment withholding taxes, overtime pay and minimum wage.

Estate Litigation Practice

Mr. Kirchner regularly litigates cases involving disputes over decedents' estates on both the plaintiffs' and defendants' side and also representing executors, trustees, and other fiduciaries. He has prevailed in 2 such cases before the New Jersey Supreme Court. In both cases, he represented a beneficiary accused of exerting undue influence against the decedent, and, in one case, the Supreme

U.S. Court of Appeals for the Ninth Circuit

U.S. Supreme Court

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Education

- University of Pennsylvania, J.D., *magna cum laude*
 - Associate Editor, *University of Pennsylvania Law Review*
 - Order of the Coif
 - Arthur Littleton Legal Writing Instructor
 - Maurer Prize in Criminal Procedure
- University of Vermont, M.Ed., *summa cum laude*
- Villanova University, B.A., *cum laude*

Court reversed an adverse ruling against his client making new law in New Jersey. In that case, he had not been involved in the trial but was hired by the defendant to pursue an appeal from an adverse judgment that included an award of significant attorney's fees and costs to the plaintiff. He convinced the New Jersey Supreme Court to reverse the award of attorney's fees, and, in so doing, created new law in New Jersey. The Supreme Court adopted his narrow bright line test for an award of attorney's fees in undue influence cases to clarify what had been an unsettled area of the law. In the second case, after 3 years of discovery, he secured an award of summary judgment dismissing claims against his client for lack of capacity and undue influence, and appointing her executor of her husband's estate. That decision was affirmed on appeal by both the New Jersey Appellate Division and the Supreme Court.

Mr. Kirchner has presented seminars on a variety of substantive topics involving commercial litigation and on a number of litigation practice-related topics, including writing effective briefs, successful discovery techniques, litigating restrictive covenant claims, and the effective use of expert witnesses. He has chaired the Commercial Litigation Committee of the Camden County Bar Association for a number of years. He is also a former editor of *New Jersey Lawyer* magazine. Mr. Kirchner was a Legal Writing Instructor of first-year law students during his third year of law school. He continues his passion for effective legal writing by teaching seminars and running workshops at his firm on various writing topics.

Prior to law school, Mr. Kirchner was a Dean of Students at several major US universities and colleges.

REPRESENTATIVE MATTERS

- Successfully prevailed on a motion for summary judgment in a New Jersey estate litigation matter, dismissing undue influence and lack of capacity claims, saving the client millions of dollars in assets from her late husband's estate, and appointing her executrix of the estate.
- Convinced New Jersey Supreme Court to reverse trial and appellate court decisions awarding attorney's fees to an estate in dispute involving claims of undue influence.
- Successfully defended against breach of restrictive covenant claims in 2 cases: one involving the sale of a veterinary practice, and the other involving an award of summary judgment to a medical doctor who left her firm to join another practice.
- Successfully negotiated hundreds of supply agreements for 2 glass manufacturing companies who sell glass containers for use by pharmaceutical companies. Successfully negotiated quality agreements, non-disclosure agreements, and other contracts for the same clients.
- Successfully negotiated contracts, including supply, quality and confidentiality agreements, for manufacturer of plastic packaging products supplying to pharmaceutical companies.
- Convinced competitor of glass manufacturer to cease and desist from false advertising about composition of its glass containers.
- Defense of Fortune 100 company officer against multiple class action lawsuits and civil action by SEC alleging securities fraud; avoided criminal prosecution for client and settled civil suits for no liability and no payment.
- Summary judgment for corporate seller of office building and land, dismissing claims of fraud and mistake brought by purchaser in sale-leaseback transaction.
- Successful settlement of multimillion-dollar claim for educational software vendor against school district.
- Secured million-dollar judgment after trial for investor in publicly traded company.

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- Secured judgment after trial for government defense subcontractor against prime contractor for breach of teaming agreement.
- Secured injunction after trial to protect trademarks of real estate developer and prevent infringement by non-competitor.
- Successful settlement of lawsuit to dissolve two partnerships, with significant tax savings and avoidance of adverse tax consequences to client's profit-sharing plan.
- Successful defense of non-resident pharmacist against civil claims by NJ Attorney General for violation of state statutes regarding Internet sales of prescription drugs.
- Enforcement of three-year non-competition agreement against sales manager of chemical coatings company.
- Successful settlement of ERISA claim by Fortune 100 company buyer of business unit against Fortune 100 company seller; settlement required seller to pay \$25 million to pension plan covering acquired workers.
- Convinced New Jersey Supreme Court to narrow the preclusive effect of New Jersey's "entire controversy doctrine" in cases involving initial litigation outside of New Jersey.

HONORS & AWARDS

- Rated AV® Preeminent™ by Martindale-Hubbell
- Named a New Jersey "Super Lawyer," 2005, 2008 - 2021, 2023, Business Litigation, by Thomson Reuters, publishers of *New Jersey Super Lawyers*
- Named to the Top Attorney List, Litigation, *SJ Magazine*, 2010, 2012, 2014
- Fellow, Litigation Counsel of America
- Peter Perlman Service Award, 2018, awarded by Litigation Counsel of America
- Mary J. Sherlach Courage Award, 2018, awarded by Mary's Fund charity

A description of the standard or methodology on which the accolades are based can be found here. No aspect of this advertisement has been approved by the Supreme Court of New Jersey.

PROFESSIONAL AFFILIATIONS

- Burlington County Bar Association
- Camden County Bar Association
 - Chair, Commercial Litigation Committee
- Philadelphia Diversity Law Group
 - Legal Writing Instructor
- Diversity Law Institute
- Exit Planning Exchange (XPX) - Philadelphia Chapter
- Litigation Counsel of America
 - Senior Fellow
- New Jersey State Bar Association
- Order of Certus

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- Advocate
- Pennsylvania Bar Association
- The Trial Law Institute
- The Association of the Federal Bar of New Jersey
- The Union League of Philadelphia

COMMUNITY ACTIVITIES

- Mental Health Association, Southwestern New Jersey
 - Vice President, Board of Directors
 - Past President, Board of Directors
- Haddonfield Recreation Council
 - Member
- Building Baseball Dreams, Inc., a nonprofit company whose goal is to raise money for inner city youth baseball programs
 - President
- Haddonfield Little League
 - Past president
- Union League of Philadelphia
 - Member

ARTICLES & ALERTS

How to Avoid Costly Business Litigation: Tip #6 Use Non-Competition Agreements with Your Employees Sparingly
FG Law Blog (September 6, 2022)

'Change Is Coming': Despite ABA Vote, Law Firms Will Face More Rivals Outside the Legal Industry
The American Lawyer (August 10, 2022)

What You Should Include in Your Business Ownership Agreement
FG Law Blog (August 3, 2022)

Ten Tips for Avoiding Litigation: Tip #5 – Treat Your Employees Fairly and Consistently
FG Law Blog (April 15, 2020)

Ten Tips for Avoiding Litigation: Tip #4 - Every Significant Business Transaction Should be Documented
(March 30, 2020)

Ten Tips for Avoiding Litigation: Tip #3 – Check Your Insurance Coverage Frequently to be Sure it Protects Your Business from Exposure to Risk
FG Law Blog (March 24, 2020)

Ten Tips for Avoiding Litigation: Tip # 2: Avoid Doing Business with Members of your Family
FG Law Blog (March 10, 2020)

Continued

Tip for Avoiding Costly Business Litigation: Tip#1 - Always Have a Strong Written Agreement to Govern Your Business

FG Law Blog (March 3, 2020)

Will my Arbitration Agreement be Enforced?

New Jersey Law Journal (April 30, 2018)

A Cautionary Tale: Court Gives Employee Handbook Disclaimer Thumbs Down

Legal Alert (February 20, 2018)

Tipping: Servers Fear Trump Rule Could Change Who Controls Tips

The Asbury Park Press (February 2, 2018)

New Jersey Court Sets Limits For Enforcement Of Mandatory Arbitration Clause

Flaster Greenberg Blog (March 7, 2016)

Movin' On Up

Pizza Today Magazine (November 2015)

How Doctors Can Make Their Non-Compete Agreements Rock-Solid

Physicians News Digest (August 7, 2015)

How to Make Your Non-Compete Agreements Rock-Solid

Becker's Hospital Review (June 22, 2015)

The Big Break-Up

Pizza Today Magazine (October 2014)

How To Avoid Costly Partnership And Shareholder Disputes, But How To Come Out Ahead If Fighting Is Unavoidable

Ed Hitzel's Restaurant Magazine (August 2014)

Slow Down – How to create a successful restaurant partnership, and make it last

Ed Hitzel's Restaurant Magazine (June 2014)

Consequences of New IRS Revenue Ruling Concerning Tax Treatment of Automatic Gratuities

Ed Hitzel's Restaurant Magazine (May 2014)

Employer's "Reasonable Steps" No Longer Enough in Restaurant Sexual Harassment Case

Legal Alert (March 12, 2010)

Stop that. Do that. Using Class Actions for Injunctive Relief

New Jersey Lawyer, vol. 14, no. 44 (October 31, 2005)

Physicians May Be Free to Compete

New Jersey Law Journal, vol. CLXXIX, no. 13, index 1281 (March 28, 2005)

Internal Inquiry Results: The Disclosure Quandary

The Legal Intelligencer (June 3, 2004)