

**MERRIL HIRSH, FCIARB**  
HIRSHADR PLLC  
LAW OFFICE OF MERRIL HIRSH PLLC  
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**EMPLOYMENT**

Principal HirshADR PLLC & Law Office of Merrill Hirsh PLLC	Nov. 2017-present
Partner, Troutman Sanders, LLP (since merger)	2009-Oct. 2017
Partner, Ross, Dixon & Bell (Masback), LLP	1994-2009
Associate, Ross, Dixon & Masback, LLP	1989-1994
Trial Attorney, U.S. Dept. of Justice, Civil Division	1982-1989
Volunteer, Student Counsel, 40 hours/week, Harvard Legal Aid Bureau	1980-1982

**EDUCATION**

Harvard Law School, J.D., 1982 *Magna Cum Laude*  
Oberlin College, B.A., 1979, with High Honors in Government, Comfort Starr Award for Excellence in Government (1979), *Phi Beta Kappa* (1978)

**ILLUSTRATIVE EXPERIENCE**

- Represented plaintiffs and defendants in cases in state or federal courts in over 40 states and in numerous arbitrations
- Co-counsel in case resulting in a completely favorable Delaware jury verdict in favor of insurer based on failure to obtain consent to a settlement and affirmance by the Delaware Supreme Court
- Lead counsel for the Financial Planning Association in its successful challenge to the SEC's "broker-dealer" rule in the U.S. Court of Appeals for the District of Columbia Circuit.
- Lead counsel for the Air Line Pilots Association in the arbitration involving one of the largest financial claims in its history.
- Lead counsel for insurer in first case ever to rule on whether entity insurance coverage for securities claims applies to claims arising from the insured's securitization of mortgages
- Successfully represented client in administrative law challenge concerning EPA regulation in the United States Court of Appeals for the District of Columbia Circuit
- Successfully represented client in NEPA challenge in the United States District Court for the District of Columbia
- Represented State of Nevada before the Nuclear Regulatory Commission in opposing the licensing of the Yucca Mountain repository
- Represented UPREIT contributor in arbitration seeking to enforce tax protection agreement entered into by one of the largest REITs in the world.
- Represented relators in novel False Claims Act case that obtained \$76.25 million in recoveries based upon allegations of price fixing for carbon fiber and in companion antitrust litigation.

- Successfully represented the USA Track & Field Association in an antitrust challenge to its standards for competition.
- Lead counsel for the many-year primary insurer in a 15-year coverage dispute involving scores of thousands of asbestos claims.
- Obtained an \$87.5 million settlement, serving as plaintiffs' co-lead counsel on behalf of a group of telecommunication companies in litigation involving telephone rates.
- Was part of a team that secured a jury verdict finding over 26,000 violations of the Federal False Claims Act relating to the purchase of oil off Government and Native American leases.
- Lead counsel for the primary director's and officers' liability insurer in connection with what was at the time the nation's largest health care bankruptcy.
- Lead counsel for inventor of the accordion-folded car shade in patent and Lanham Act challenge.
- Substantially responsible for crafting the class action mechanisms used to settle \$2 billion of asbestos liabilities.
- Represented a DSL service provider in an antitrust action against a competing incumbent local exchange carrier for unlawfully maintaining monopoly power in various telecommunications markets.
- Lead counsel for the (then) Veterans' Administration in two-month trial concerning the constitutionality of fee limits
- Lead counsel for the U.S. Department of Education in eight-month Kansas City, Missouri school desegregation trial

#### **SELECTED PUBLICATIONS**

- "Special Masters: Helping Judges' Reach Exceed Their Grasp," ALTERNATIVES (International Institute for Conflict Prevention and Resolution) (in publication)
- "We've Just Made Peace, Let's Address the Next War: Taking Some Care To Get Dispute Resolution that Works for You," TROUTMAN SANDERS PRIVATE EQUITY QUARTERLY, Summer 2016 (available at <https://sites-troutmansanders.vuturevx.com/32/1244/landing-pages/we-just-made-peace--let-s-address-the-next-war--taking-some-care-to-get-dispute-resolution-that-works-for-you.asp>), reprinted in LAW 360, September 1, 2016.
- "Writing Arbitration Clauses to Get the Arbitration You Want," *Law 360* (August 9, 2016) (with Nicholas Schuchert), available at <https://www.law360.com/articles/826544> .
- "Special Masters: A Different Answer to a Perennial Problem," ABA THE JUDGES JOURNAL (with James Rhodes and Karl Bayer), v. 55 No. 2 (Spring 2016) at 26, available at [http://www.troutmansanders.com/files/Uploads/Documents/JJ\\_SP16\\_v55n02\\_HirshRhodesBayer.pdf](http://www.troutmansanders.com/files/Uploads/Documents/JJ_SP16_v55n02_HirshRhodesBayer.pdf)
- "Overlitigation is Killing Us: How In-House Counsel Can Get the Service They Deserve," CORPORATE COUNSEL (May 2016).
- "Getting It Right: The Other Challenge for Arbitration," D.C. BAR LITIGATION SECTION QUARTERLY UPDATE at 16 (Winter 2015/2016), available at <http://www.dcb.org/sections/litigation/loader.cfm?csModule=security/getfile&PageID=44925>
- "Getting to Yes ... or No: Dispute Resolution that Resolves Disputes," ALTERNATIVES (International Institute for Conflict Prevention and Resolution), v. 33 No. 7, at 1

(July/August 2015), *reprinted in* International Arbitration Journal (Oct. 2015) <http://international-arbitration.livejournal.com/46379.html>

- Special Masters: How To Make the Best of Both Worlds (multi-part posting on Karl Bayer's Disputing blog, beginning November 2014) <http://www.disputingblog.com/special-masters-how-to-make-the-best-of-both-worlds-part-i/>
- "How to Hold Down Costs of Adjudication: Even in the US," TerraLex *Connections* (October 2014)
- "Background of the Illinois Brick Decision," Appendix, ABA Section of Antitrust Law's Indirect Purchaser Litigation Handbook (August 8, 2007).
- Reverse Payment Settlements, ANTI-TRUST (Summer 2007)
- "I Didn't Say Orphan Often: The Benefits of a Bright-Line Rule Banning Brand to Generic Payments in Hatch-Waxman Patent Settlements," ABA Antitrust Health Care Chronicle, Vol. 19, No. 2 (Summer 2005).
- "Are False Positives Really So Negative? A Response to Kevin McDonald," ANTI-TRUST, Vol. 17 No. 3, at 83 (Summer 2003).
- "The Essential Facilities Doctrine: Keeping the Word 'Epithet' from Becoming One" (March 21, 2003).
- "In Re High Fructose Corn Syrup: A New Form of Chicago School Education," Findlaw.com (November 1, 2002).
- "Can An Insurer and An Insured Settle an Insurance Policy?," 11 Mealey's Litig. Rep. at 15.
- ABA's Antitrust and Telecommunications Practice Guide, Sherman Act Section 2 Chapter, Co-Author.

#### **SELECTED PRESENTATIONS AND SPEAKING ENGAGEMENTS**

- Special Masters: A Way of Bringing Alternatives Into Judicial Dispute Resolution, American Bar Association, Dispute Resolution Section, Spring Meeting (scheduled April 2017, San Francisco)
- Report on the ABA Judicial Division, Lawyers' Conference Committee on Special Masters, Presentation to the Annual Meeting of the Academy of Court-Appointed Masters (scheduled March 31, 2017, San Diego)
- Special Masters: Instructional Webinar for the National Judicial College (expected Spring 2017)
- Special Masters: Webinar for the ABA/ADR Court Committee (expected Spring 2017)
- Special Masters, Program for the William B. Bryant American Inn of Court, moderator, Oct. 18, 2016
- Strategies for In-House Counsel To Reduce Litigation Costs, Strafford Continuing Education Webinar, Oct. 13, 2016
- Is There a Better Way? Strategic Use of Special Masters To Improve Judicial Efficiency and Reduce Litigation Cost (American Bar Association Annual Meeting, San Francisco, August 2016)
- "Antitrust: The Business Case" (2010)
- Developments in U.S. Antitrust Law, London UK (2009)
- "The FTC v. Cephalon case: What does it mean for future brand-generic patent settlements?" ABA Section of Antitrust Law

- “A Dickensian View of Pharmaceutical Antitrust: Bleak House or Great Expectations?” Generic Drug Summit, Institute for International Research (June 19, 2008).
- “Overturning the SEC ‘Broker Dealer Rule’ – What to Expect Going Forward,” 2008 fi360 National Conference (May 8, 2008).
- “Should We Allow Brand Companies to Pay Generics to End Patent Challenges: James J. Kirkpatrick Meet Shana Alexander,” Law Seminars International, Seminar on Pharmaceutical Antitrust (April 24, 2008).
- “February In-House Counsel Antitrust Update,” ABA Section of Antitrust Law (March 3, 2008).
- “The SEC’s Regulation of Fee-Based Brokerage Accounts: A Case Study in Administrative Law,” ABA Administrative Law Conference (October 25-26, 2007).
- “A General Practitioner’s Guide: What to do if Your Client has an Antitrust or Intellectual Property Issue,” Ross, Dixon & Bell, LLP (April 24, 2007).
- “Paying Off Generics to Prevent Competition with Brand Name Drugs: Should it be Prohibited?” Testimony before the Senate Judiciary Committee (January 17, 2007).
- Law Seminars International, Seminar on International Cartels (September 8, 2006).
- “In-House Counsel Antitrust Update,” ABA Antitrust Section, Corporate Counseling Committee (June 28, 2006).
- ABA Antitrust Health Care Conference (May 12, 2006).
- Telecommunications Program, ABA Antitrust Spring Meeting (April 1, 2005).

### **OTHER DISTINCTIONS**

Academy of Court Appointed Masters Civil Justice Award (2017)

Member Executive Committee, ABA Judicial Division Lawyers Conference, effective Aug. 2017-August 2020)

Co-chair ABA Judicial Division, Lawyers Conference Committee on Special Masters (2017-present)

Delegate Member 2017 District of Columbia Judicial and Bar Conference

Hearing Committee member, DC Board of Professional Responsibility (Nov. 2, 2016-Nov.2, 2019)

Master William B. Bryant American Inn of Court, Washington, DC

Fellow of the Chartered Institute of Arbitrators

Member Joint College Commercial Arbitrator/International Mediation Institute/Straus Institute for Dispute Resolution International Task Force on Mixed Mode Dispute Resolution Processes

Diploma in International Arbitration, Chartered Institute of Arbitrators, Nov. 24, 2014

Selected for inclusion in Washington DC Super Lawyers (2012-present).

Named to Superlawyers’ Blue Ribbon Panel for evaluating DC lawyers (2013).

2007 “Lawyer of the Year,” Compliance Reporter

2007 “Lawdragon 3000” Leading Lawyer

### **BAR ADMISSIONS**

District of Columbia Court of Appeals, December 1982

United States Supreme Court

United States Courts of Appeals for the 3rd, 4th, 5th, 7th, 9th, 10th and D.C. Circuits

United States District Courts for the District of Columbia and Colorado

United States Court of International Trade

### **OTHER MEMBERSHIPS**

Member ABA Judicial Division, Mediation and ADR Committee

ABA Antitrust Section Task Force on Brand-Generic Patent Settlement Legislation

ABA Advisory Committee

ABA, Dispute Resolution, Litigation and Antitrust Sections and Judicial Section Lawyers' Conference

U.S. National Committee, International Chamber of Commerce, Dispute Resolution

DC Bar, Litigation Section, Committee on Dispute Resolution

Terralex, International Dispute Resolution Practice Group

### **OTHER INTERESTS**

Bridge (Sapphire Life Master)

Bicycling

Classical and Show Music