



# Philip G. Kircher

## Member

## Philadelphia

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Philip G. Kircher handles a wide variety of complex commercial litigation in state and federal courts including securities, antitrust, shareholders' rights, business and real estate joint ventures, corporate governance, breach of fiduciary duties and general breach of contract matters.

Philip has represented manufacturers, wholesalers, retailers, hospitals, doctors, food service operators, software designers, architects, engineers, constructors, schools, banks, state and local governments and others, both as plaintiffs and defendants, in courts, before agencies and in private arbitration.

Philip has been a fellow of the American College of Trial Lawyers since 2000 and is a Pennsylvania "Super Lawyer." The *National Law Journal* has twice cited Philip's trial work in its annual listing of most significant verdicts.

Philip was managing editor of the *Villanova Law Review* and following law school clerked for the Honorable Donald W. VanArtsdalen in the U.S. District Court for the Eastern District of Pennsylvania.

Philip is a member of the board of directors of the Pennsylvania SPCA and provides substantial pro bono legal services to a variety of animal rescue organizations.

## Experience

Won a unanimous defense verdict on behalf of a medical center, a university, and two individual defendants at the conclusion of a three-week jury trial in federal court in Chicago in which the clients' potential exposure was \$80 million. The plaintiff, an orthopedic surgery resident and Air National Guard officer whose employment was terminated in the final year of his residency, brought claims of breach of contract, defamation, and discrimination and harassment under the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), and sought back pay and reinstatement or lifetime earnings as a spine surgeon. After hearing testimony from more than a dozen witnesses, and with a 19-page verdict form in hand, the jury reached its verdict in less than three hours.

Won summary judgment as to liability, and then negotiated a favorable damages settlement, on behalf of a plaintiff-bank in a complex indemnity action arising from its acquisition of another bank. At issue were trusts that included stranger-originated life insurance policies ("STOLIs"), which are considered illicit by the life insurance industry.

Served as lead counsel in a complex and discovery-intensive matter involving 50 radiologists who went to work, through their radiology practice employer, for our health system/hospital client. These radiologists were subject to a post-employment non-compete agreement. They resigned from the radiology practice and joined the hospital as new employees. The practice sued both the health system and the radiologists, and we defended on the primary grounds that the restrictive covenants were unenforceable because they presented a threat to the general public health. The case settled favorably at mediation in advance of the preliminary injunction hearing.

Represented one of the 25 largest accounting firms in the United States in a case against a former employee for violation of a non-solicit agreement. The dispute arose after the defendant left the firm to work for a competitor, and several dozen clients followed her to the new firm. The case settled favorably

## Practice Areas

- Commercial Litigation
- Product Liability
- Securities Litigation & SEC Enforcement
- Intellectual Property

## Industry Sectors

- Gaming

## Education

- Villanova University School of Law, J.D., 1976
- Drexel University, B.S., 1972

## Bar Admissions

- Pennsylvania

## Court Admissions

- U.S. District Court -- Eastern District of Pennsylvania

## Affiliations

- American College of Trial Lawyers

## Awards & Honors

- Fellow, American College of Trial Lawyers
- Pennsylvania Super Lawyer
- Best Lawyers in America

## Clerkships

Honorable Donald W. VanArtsdalen, U.S. District Court -- Eastern District of Pennsylvania

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after the depositions of six of those clients.

Served as lead trial counsel for a health system and one of its hospitals in a successful declaratory judgment action against another hospital. The dispute arose from an agreement under which the defendant hospital “loaned” pediatric residents to the client for two years, after which they were to return to the defendant hospital. The residents did not wish to return at the conclusion of the two years, and the client supported that decision. After a two-week bench trial, the court declared the agreement’s mandatory return provisions unenforceable as against public policy.

Obtained a complete victory, after a three-week bench trial in federal court, on behalf of a major chemical manufacturer in a retaliation case brought by a former employee. The trial victory capped more than 15 years of litigation involving multiple lawsuits filed by the former employee. The matter that was tried centered on whether certain litigation decisions in an underlying case were retaliatory, and also presented complicated legal issues that had a dramatic effect on the damages that could be sought at trial. We filed a number of pre-trial motions on these issues seeking to limit damages, and won all of them, with the net results of removing \$69 million of the claimed \$70.5 million in damages and significantly limiting the scope of the trial. This victory was affirmed on appeal to the U.S. Court of Appeals for the Third Circuit.

Achieved a complete victory, plus attorneys' fees and costs, after a five-day FINRA arbitration on behalf of an investment banking firm specializing in sell-side advisory services. The dispute stemmed from the client's retention by an Australian company in connection with the sale of that company. The litigation centered on whether the two-stage sale our client negotiated obligated the Australian company to pay fees to our client in connection with both closings. The respondent argued that only the first closing triggered a payment obligation, but we convinced the arbitrator that under the parties' agreement payment was due in connection with both closings, securing a nearly seven-figure total award for our client.

Won preliminary injunctive relief on behalf of a Pennsylvania-based client in the wellness industry that faced efforts by MGM Resorts International and Life Time Fitness, Inc. to develop a competing business in Las Vegas. This result was secured in federal court in Nevada and led to a favorable settlement.

Represented a large international financial institution (bank) in litigation involving the enforcement of an interest rate swap between the bank and a large central Pennsylvania area school district. After the swap agreements were executed and performed under for some time, the school district filed a declaratory judgment action to void the agreements, in an attempt to avoid payment of a significant termination fee. An issue of first impression involving cross-motions for summary judgment, the federal court in Harrisburg, Pa., ruled against the school district’s argument that the agreements were unenforceable because the related bonds had never been issued.