

## David B. Goroff

### Partner

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David B. Goroff has substantial trial experience with an emphasis in appellate litigation, pharmaceutical litigation, bankruptcy litigation, RICO litigation, and antitrust litigation and counseling. He serves as National Chair of the firm's Appellate Practice. He is also a member of the firm's Bankruptcy & Business Reorganization and Antitrust Practices.

David has more than 35 years of experience as an appellate lawyer and has worked on hundreds of appeals before the nation's federal and state appellate courts, state supreme courts, and the United States Supreme Court. He also has extensive experience with administrative appeals, with a particular emphasis in bankruptcy appeals.

As an appellate lawyer, he assists clients in all aspects of appellate practice, including preparing briefs, presenting oral arguments, drafting appellate motions, drafting petitions for certiorari, leave to appeal, rehearing, or en banc review, preparing amicus briefs, conducting moot courts, and advising on appellate strategy, including in positioning cases for possible appeal at the trial level.

### Representative Experience

- *Balderson v. Lincare, Inc.*, 62 F.4th 156 (4th Cir. 2023). Successfully obtained full reversal of judgment entered after trial which had found client, a medical device manufacturer, liable for gender discrimination and punitive damages.
- *Cortlandt Street Recovery Corp. v. Bonderman*, 215 A.D.3d 446 (1st Dept. 2023). Successfully represented trustee for bondholders in appeal affirming client stated claims for alter ego liability against consortium of private equity firms in judgment enforcement action.
- *Apotex Corp. v Hospira Healthcare India Private Ltd.*, 214 A.D.3d 430 (1st Dept. 2023). Successfully represented pharmaceutical company in appeal which restored fraud and tortious interference claims arising from rival's failure to supply drug products.

- *Detterbeck v. Detterbeck*, 2022 IL App (1st) 220162-U. Successfully obtained reversal of dismissal of claims by clients — trust beneficiaries — against accounting firm for professional negligence.
- *Detterbeck v. Detterbeck*, 2022 IL App (1st) 210042-U. Successfully obtained reversal of dismissal of claims by clients — trust beneficiaries — against firm owned by co-trustee for aiding and abetting trustees' breaches of fiduciary duty.
- *Stillwater Liquidating LLC v. Chernyakova*, 2022 WL 557060 (Cal. App. 2d Dist. 2022). Successfully obtained reversal of dismissal of claims for fraudulent transfer against debtor's transferee on behalf of client, a liquidating trustee in bankruptcy.
- *Emens v. California Catholic Conference*, 2020 WL 706624 (Cal. App. 2d Dist. 2020). Successfully argued on behalf of client church entities that trial court should have dismissed public nuisance and civil conspiracy claims because plaintiff lacked standing.
- *Detterbeck v. Detterbeck*, 2019 IL App (1st) 18113-U. Successfully obtained reversal of dismissal of claims brought by trust beneficiaries for against successor trustees for breach of fiduciary duty and against those who aided them for related claims.
- *Medical Mut. Of Ohio v. Abbvie, Inc., et al.*, 784 F. Appx. 457 (7th Cir. 2019). Along with counsel for several other pharmaceutical companies, represented client in successful appeal of dismissal of RICO claims brought by insurance company in connection with testosterone replacement therapy drugs. Co-counsel argued.
- *Oil States Energy Servs., LLC v. Greene's Energy Group, LLC*, 138 S. Ct. 1365 (2018). Co-drafter of briefs in U.S. Supreme Court case finding that conduct of U.S. Patent and Trademark Office during *inter partes* review of a patent did not violate Article III of U.S. Constitution. Foley colleague argued.
- *Camofi Master LDC v. Spradlin*, 2017 WL 4478332 (E.D. Ky. 2017). Successfully represented bankruptcy trustee in appeal affirming Bankruptcy Court's finding that non-debtor lacked standing to bring tortious interference claims which belonged exclusively to trustee.
- *Campbell v. Marriott Ownership Resorts Inc.*, 2016 WL 817876 (Cal. App. 4th Dist. 2016). Successfully represented client, owner of vacation resorts, in appeal determining that forum selection clause in parties' contract was enforceable and required litigation be brought in Florida and not California.
- *Empress Casino Joliet Corp. v. Balmoral Racing Club*, 831 F.3d 815 (7th Cir. 2016). Successfully represented owner of horse racing track in case overturning jury verdict for RICO claim. Foley colleague argued.
- *State ex rel. Pusateri v. People's Gas Light & Coke Co.*, 2014 IL 116844 (Il. S. Ct). Successfully represented utility in Illinois Supreme Court case which restored trial court's dismissal of false claims act suit brought against it. Co-counsel argued.
- *In re Brookfield Commons No. 1, LLC.*, 735 F.3d 596 (7th Cir. 2013). Successfully argued that client, second mortgage-holder for shopping center, had valid bankruptcy claim even though there was no equity in property at time of bankruptcy filing.
- *On Command Video v. Roti*, 705 F.3d 267 (7th Cir. 2013). Successfully argued on behalf of client had no individual liability for corporate entity's debts.

David has substantial trial (jury and non-jury), arbitration, and litigation experience in numerous areas of complex litigation, including RICO, pharmaceutical litigation, antitrust, labor and employment, class action, financial institution litigation, and director and officer litigation.

- [Names confidential] (2021). Led week-long international arbitration hearing on behalf of client Israeli pharmaceutical company against a European manufacturer for breach of distribution agreement. Arbitration took place before Dutch arbitrator in Amsterdam under International Chamber of Commerce Rules and resulted in award in client's favor.
- *Select Rehabilitation, LLC v. EmpowerMe Rehabilitation Kentucky LLC*, 1:21-CV-00039-GNS (W.D. Ky. 2021). Led TRO hearing on behalf of client therapy services company against rival company for misuse of trade secrets.
- *In re GenCanna Global U.S. Inc.*, 20-50133 (Bankr. E.D. Ky. 2020). Led evidentiary hearing re sale of assets on behalf of Creditor's Committee.
- *Dynamed, Inc. v. Life Spine, Inc.* (Baltimore, Md. City Court 2010). First-chair trial counsel representing medical device manufacturer in suit concerning alleged tortious interference with competitor's covenant not to compete. Obtained judgment as a matter of law on behalf of client from trial court.
- *In re Resource Technology Corp.*, 08-4118, 08-4310 (Bankr. N.D. Ill. 2010). First-chair counsel in bankruptcy trial contesting denial of administrative claim based on tortious conduct attributable to Chapter 7 Trustee.
- *Peltz v. Arrow Electronics (In re Bridge Information Systems, Inc.)*, 383 B.R. 139 (Bankr. E.D. Mo. 2008). Obtained US\$12.5m victory as first chair in one-week bench trial on behalf of Plan Administrator for bankrupt information services company in preference lawsuit against opponent, a *Fortune* 100 company.
- *EEOC v. Custom Companies*, 02 C 3768, 03 C 2293 (N.D. Ill. 2006). Defended trucking firm in jury trial against claims of sexual harassment and retaliatory discharge (split verdict).
- *In re Old Naples Securities, Inc.*, 343 B.R. 310 (Bankr. M.D. Fla. 2006). First-chair trial counsel representing Securities Investors Protection Act trustee in challenging Ponzi scheme and acts of fraud that led to collapse of brokerage firm.
- *Peltz v. Vancil (In re Bridge Information Systems, Inc.)*, 302 B.R. 41 (Bankr. E.D. Mo. 2003). First-chair trial counsel in bankruptcy hearing challenging preference. (Reversed on appeal).
- *In re Safety Kleen*, 331 B.R. 605 (Bankr. D. Del. 2003). First-chair counsel for objectors to Section 363 sale of assets of waste disposal company.
- *Peltz v. Application Engineering (In re Bridge Information Systems, Inc.)*, 287 B.R. 258 (Bankr. E.D. Mo. 2002). First-chair trial counsel in bankruptcy hearing upholding preference recovery.
- *In re Emerald Casino Co.*, 334 B.R. 378 (Bankr. N.D. Ill. 2002). First-chair counsel for petitioners at evidentiary hearing which upheld petition placing Illinois casino corporation into involuntary bankruptcy.
- *Peltz v. WorldNet (In re USN Communications, Inc.)*, 280 B.R. 573 (Bankr. D. Del. 2002). First-chair trial counsel in bankruptcy hearing upholding preference recovery.

- *In re TWA* (Bankr. D. Del. 2001). Successfully represented a consortium of airports in preliminary injunction evidentiary hearing challenging debtor-airline's misuse of passenger facility charges.

David is experienced in all facets of bankruptcy practice, including representing debtors, chapter 11 and chapter 7 Trustees, creditors' committees, asset purchasers, claimants, secured lenders, plan administrators, and liquidating trustees.

- *In re Stillwater Liquidating LLC*. (Bankr. S.D.N.Y.). Representing liquidating trustee in investment funds' bankruptcy, including in ongoing litigation matters in other courts).
- *In re GenCanna Global U.S. Inc.*, 20-50133 (Bankr. E.D. Ky. 2020). Represented Creditor's Committee in litigation matters relating to bankruptcy of wholesale CBD supplier.
- *In re Licking River Mining, LLC*, 605 B.R. 153 (E.D. Ky. 2014-19). Led litigation on behalf of Chapter 7 Trustee in coal company bankruptcy.
- *In re Black Diamond Mining Co., LLC* (Bankr. E.D. Ky.). Led litigation on behalf of chapter 7 Trustee in coal company bankruptcy.
- *In re Centrix Financial, LLC*, 434 B.R. 880 (Bankr. D. Colo. 2010). Represented liquidating trustee in bankruptcy concerning the failure of a multibillion-dollar subprime automobile lender. Leading litigation of suits challenging fraudulent transfers and acts of fraud and breach of fiduciary duty by directors and officers and to enforce fidelity bond.
- *In re Bridge Information Systems* (Bankr. E.D. Mo.). In bankruptcy of multibillion-dollar financial information services provider, originally represented Official Committee of Unsecured Creditors before plan confirmation and then court-appointed Plan Administrator after confirmation. Oversaw and supervised more than 400 lawsuits challenging preferences and fraudulent transfers and litigated objections to bankruptcy claims, some in eight figures.
- *In re Farmland Industries, Inc.*, 376 B.R. 718 (Bankr. W.D. Mo. 2007). Represented Liquidating Trustee in bankruptcy of agricultural cooperative. Conducted investigation into possible claims against directors and officers.
- *In re USN Communications, Inc.* 288 B.R. 391 (Bankr. D. Del. 2003). Represented post-confirmation plan administrator in bankruptcy of telecommunications company. Supervised more than 100 lawsuits seeking estate recoveries, including for preferences and fraudulent transfer.

David's antitrust counseling includes preparing antitrust compliance programs for clients, structuring joint ventures, advising clients regarding the application of antitrust laws to previously regulated industries, advising clients on trade association participation, and assisting clients with the merger review process before the Federal Trade Commission and the U.S. Department of Justice. This has included the preparation of Hart-Scott Rodino filings, white papers, and other materials in response to agency "Second Requests" for information.

His health care industry counseling has included issues regarding establishing managed care networks, provider contracts, mergers, joint ventures, most-favored nation clauses, exclusive provider contracts, staff

privilege issues, medical device manufacturing and distribution, and medical records issues. He was previously vice-chair of the Books and Treatises Section of the American Bar Association Antitrust Section (1997-1998).

Selected RICO litigation representations include (besides above):

- *Fund Recovery Servs. LLC v. RBC Corp.*, 2022 WL 4607582 (N.D. Ill. 2022). Successfully argued motion to dismiss RICO claim on behalf of 25 RICO defendants. Claim had sought more than US\$200m.

Selected antitrust litigation representations include:

- [Names confidential] (2015-16). Represented insurance company in arbitration challenging anticompetitive effects of a hospital merger.
- *Health Care Service Corporation's acquisition of assets of Lovelace Health Plan* (2014). As antitrust counsel for HCSC, successfully obtained Agency approval for client's US\$220m acquisition of Albuquerque, New Mexico-based health insurance business.
- *Green v. Peoples Energy Corp.* (N.D. Ill. 2003). Successfully litigated dismissal of class action suit against Illinois natural gas utilities regarding rule mandating use of gas meters.
- *Sunguard Systems International v. WTD Consulting*, 99 C 6987 (N.D. Ill. 2001). Represented client in defending against antitrust counterclaim filed in trade secret case.
- *Federal Trade Commission v. B.A.T. Industries* (S.D.N.Y. 1994). As second-chair counsel, represented American Brands in a Clayton Act Section 7 action brought by the FTC to enjoin the sale of a US\$1bn division of American Brands to British American Tobacco. This matter included a week-long preliminary injunction hearing and settle on terms which allowed the client to complete its sale at the original price.

## Awards and Recognitions

- Selected by his peers for inclusion in *The Best Lawyers in America*® in the field of Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law (2020-2024)
- Selected for inclusion in the *Illinois Super Lawyers*® lists (2005-2006, 2008-2016, 2018-2022)
- Named an Illinois "Leading Lawyer" by the Leading Lawyers Network (2007-2022)

## Thought Leadership

- Adjunct professor for the University of Illinois Law School and Chicago-Kent College of Law. Taught course for many years on Advanced Illinois Civil Procedure and Appellate Practice using self-prepared text.
- Instructor for the Illinois Institute of Continuing Legal Education and the National Institute for Trial Advocacy.

## Practice Areas

- [Antitrust & Competition](#)

- Appellate
- Bankruptcy & Business Reorganizations
- Creditor Committee Representation
- Fiduciary Representation
- Financial Institutions
- Litigation
- Privacy, Security & Information Management

## Education

- Columbia University's Law School (J.D., 1985)
  - Harlan Fiske Stone Scholar
  - Notes and Comments Editor, *Columbia Law Review*
    - Note: "The First Amendment Side Effects of Curing Pac-Man Fever," 84 Columbia Law Review 744 (1984)
    - Article: "Fair Use and Unpublished Works: Harper & Row v. Nation Enterprises," 9 V.L.A./Columbia Journal of Law and the Arts 125 (1985) (Winner American Intellectual Property Association's Robert C. Watson Award for outstanding student publication.)
- University of Illinois (B.A., summa cum laude, 1982)
  - Phi Beta Kappa
- Law clerk for the Hon. Richard D. Cudahy of the U.S. Court of Appeals for the Seventh Circuit

## Admissions

- Illinois State Bar
- U.S. District Courts for:
  - Northern District of Illinois
  - Central District of Illinois
  - Eastern District of Michigan
  - Western District of Michigan
  - District of Colorado
  - Western District of Wisconsin
  - Eastern District of North Carolina
  - Southern District of New York
  - Western District of Oklahoma
  - Eastern District of Tennessee
- U.S. Courts of Appeals for the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, District of Columbia and Federal Circuit
- U.S. Supreme Court

*\*The Illinois Supreme Court does not recognize certifications of specialties in the practice of law and no award or recognition is a requirement to practice law in Illinois.*