

LITIGATION

Alternative Dispute Resolution | Business and General Litigation | Commercial Litigation
Commercial Litigation | Construction Litigation | Employment Litigation
Family Law and Divorce | Government Investigations Response and Compliance
Life, Health, Disability and ERISA Litigation | Medical Liability and Health Care Litigation
Patent and Intellectual Property Litigation | Personal Injury Litigation
Probate, Trust and Fiduciary Litigation | Real Estate and Environmental Litigation
Securities and Shareholders Litigation

Mirick O'Connell attorneys provide high-quality, cost-effective litigation and strategic counseling services for our clients. We use practical, results-oriented methods to resolve and, where appropriate, avoid disputes for our clients. We recognize that litigation is often disruptive and expensive. Our goal is to be a problem solver for our clients. We seek to achieve that goal quickly and effectively in order to achieve a positive outcome. Our clients include individuals, closely-held businesses and Fortune 500 companies in the banking, insurance, real estate, construction, health care and life sciences, biotechnology, manufacturing and financial services industries.

Unlike other litigators, Mirick O'Connell attorneys actually try cases. Our litigators conduct trials in the state and federal courts and we represent clients in arbitrations. However, we recognize that not every case should be tried. In those circumstances, the litigation process can achieve leverage that creates a favorable environment for negotiating successful results. Where appropriate, we work with our clients and our opponents in mediation and alternative dispute resolution. We counsel our clients on litigation avoidance and risk management. We work with our clients to evaluate each and every dispute that arises to determine the best way to solve our client's problem, be it defending the case through verdict or seeking a negotiated settlement.

Mirick O'Connell litigators have been recognized for their excellence by *Law & Politics* in its annual designation of Massachusetts "Super Lawyers" and "Rising Stars." Although headquartered in Massachusetts, our litigators handle cases for some of our clients regionally, in the state and federal courts in Massachusetts, Connecticut and Rhode Island. In other states, we routinely coordinate with local counsel who share our goals of efficiency, timeliness and good results. Where appropriate, we welcome the opportunity to engage performance-based compensation arrangements with our clients.

Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) is the general term for a variety of ways to resolve legal conflict out-of-court. ADR can involve one – or sometimes more ADR processes:

- MEDIATION
- CASE EVALUATION
- SPECIAL MASTER SERVICES
- ARBITRATION

ADR participants resolve their conflicts in an office setting, instead of a public courthouse. The ADR process is private, efficient, neutral, and fair. Participants choose their location and schedule sessions at their convenience.



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Excellence in our work.
Excellence in client service.
Excellence in value.

Mirick O'Connell has offered ADR services for more than 20 years. The Superior Court and Probate and Family Courts of the Commonwealth and the federal court have appointed Mirick O'Connell lawyers to resolve or recommend solutions in a wide variety of disputes including business, internal governance, commercial, financial, personal injury, construction, bankruptcy, employment, discovery, probate and custody. All of our ADR lawyers are experienced trial lawyers with specialized ADR training to complement their trial skills and legal expertise. Our Private Client, Business Litigation, Personal Injury, Probate Litigation, Family Law, and Employment and Labor and Bankruptcy Groups all offer specialized neutral services.

Mediation is a voluntary ADR process in which a neutral who has been trained in effective communication and creative problem solving assists the parties in reaching a mutually acceptable resolution of the parties' conflict. Mediation by a trained mediator is entirely confidential. Mediation is especially suitable to diffuse emotions and resolve potentially volatile disputes in a calm and private environment. Mediation also permits the parties to arrive at creative solutions to their disputes that would otherwise not be possible in contested litigation.

Case Evaluation is a confidential ADR process in which a trial lawyer experienced in the particular issues to be resolved advises one party on the likely case result if the case is tried. Case Evaluation provides neutral assessment of a range of settlement options. It offers a party the unbiased reality check that may be necessary to reach settlement.

A Special Master resolves discrete disputed matters during litigation. A Special Master is court-appointed, usually at the parties' request. He or she efficiently resolves preliminary issues that may require expertise or attention otherwise not available to the court, such as examination of voluminous documents. Special Masters offer timeliness, productivity, and expertise.

Arbitration is a private trial. In arbitration, the parties select a decision maker based on her or his known expertise, experience and temperament. The parties may also select a panel of decision makers, especially if the dispute involves one or more fields of unique expertise, such as law and engineering in a construction matter. The parties control the process entirely, setting their arbitration rules by agreement. They generally waive rights of appeal, knowing that, with few exceptions for bias or for other impropriety, their dispute will end with the arbitration award. Like all other forms of ADR, except Special Master appointments, the arbitration process is confidential. Results may be entered as a judgment or court order and are enforceable to the same extent as judicial orders and judgments entered after trial or public hearing.

To learn more about Mirick O'Connell's ADR professionals and services, contact us at 508-791-8500 or ckillian@mirickoconnell.com. Our ADR Coordinator will arrange a telephone or in-person consultation with an attorney appropriate for your matter.

Mirick O'Connell offers ADR consultation in Worcester, Westborough, and our Boston, Massachusetts offices and in other locations by agreement of the parties.

Business and General Litigation

Mirick O'Connell's Business and General Litigation Group understands business and knows how to get results. Our litigators have a proven track record of successfully resolving cases through negotiation, alternative dispute resolution and, when necessary, aggressive action in the courtroom. Our extensive trial experience gives us a decisive edge in representing our business clients through every stage of a dispute.

Whether representing closely-held companies, large publically-held corporations or any type of enterprise in between, we focus on our client's objectives. We provide value to our business clients by minimizing risk, offering practical options and balancing creative strategies with the economic realities of protracted litigation.

Our attorneys handle disputes of all magnitudes including "bet the company" litigation. We regularly handle cases involving corporate governance and management disputes, shareholder disputes, derivative actions and claims of breach of fiduciary duty. We litigate intellectual property matters including patent and trade secrets disputes. We litigate cases involving fraud, intentional interference with contractual relationships, virtually every type of breach-of-contract claim and cases involving unfair or deceptive trade practices.

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Representative Matters

- Successfully litigated and mediated a derivative-shareholder lawsuit / "freeze out" claim arising from a dispute between the owners of a closely-held corporation.
- Successfully challenged the decision of a public company's special litigation committee to terminate a shareholder action alleging executive misconduct, played a significant role in a proxy contest and forced a resolution that ultimately generated approximately \$64 million for shareholders.
- Secured a judgment of more than \$6 million against a director who misappropriated funds that were intended for investment in a corporation.
- Successfully represented an officer of a public company in a joint securities fraud investigation by the Department of Justice and the SEC, who elected not to prosecute at the conclusion of the investigation.
- Obtained a landmark appellate decision from the Supreme Judicial Court of Massachusetts ruling that newspapers are exempt from sales and use tax based on the proportion of space devoted to advertising.
- Obtained a seven-figure jury award on behalf of a manufacturer in the United States District Court in a breach of contract claim against its former joint venture.
- Obtained defense verdicts in favor of the research department of a world-renowned university against breach of contract claims in Worcester Superior Court.
- Secured preliminary and permanent injunctions in the Business Litigation Session of Suffolk Superior Court on behalf of a nanotechnology business against its former chief chemist for trade secret misappropriation.
- Successfully defended packaging supplier and new sales employee in the Business Litigation Session of Suffolk Superior Court against efforts to restrain their competitive activities.
- Achieved a refusal to prosecute decision by the U.S. Attorney's Office following an FBI investigation into allegations of computer crimes and theft of intellectual property involving the design and manufacture of medical equipment.
- Successfully tried a jury case in the U.S. District Court for the District of Massachusetts for fraud and tortious interference with contractual/advantageous relationship against a company engaged in organizing amateur sports leagues, its shareholders and its attorney. We prevailed in an appeal to the U.S. Court of Appeals for the First Circuit. Our collection efforts resulted in full satisfaction of judgment.
- Successfully defended a \$1 million claim for breach of contract against a manufacturer of computer hardware by serving a motion for summary judgment that relied almost exclusively on the plaintiff's own deposition testimony to demonstrate that the claim was barred by the plaintiff's prior conduct and to demonstrate the speciousness of the claim.
- Negotiated the settlement of complex litigation among shareholders of two closely-held, international plastics companies involving various business torts, contract claims and equitable remedies; coordinated the transfer of stock, the implementation of a security agreement and indemnification for international financing obligations.
- Prevailed in a trial in the U.S. District Court for the Eastern District of New York on behalf of a company that provides licensure and educational services to financial institutions against allegations, including breach of contract, breach of fiduciary and equitable claims, initiated by a sales and marketing company after termination of the relationship for poor performance.

Commercial Litigation

Our Commercial Litigation Group applies practical, results-oriented methods to achieve cost-effective results in all types of contract disputes. We execute innovative approaches to problem solving in areas involving the purchase and sale of goods, warranty, commercial credit, product liability, fraud, enforcement of security interests, public construction contracts, consumer protection, collection and commercial leases.

In contrast to traditional litigation approaches, which are often criticized for their inefficiency, we exploit the tools available through litigation procedure to create cost-effective and timely resolutions of contract claims. To add efficiency to our approach, we rely on computerized databases, private investigative resources and, where appropriate, asset and accounting analysis. Our attorneys work toward developing leverage to create a favorable environment for negotiating successful results.

As an integral part of our work, we develop a case plan based on the particular needs of the situation at hand and the budgetary considerations of the client. Time spent on this initial case assessment is, in our experience, the key to success in these cases.

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Construction Litigation

While our goal is always to minimize risk and achieve smooth and timely project delivery, there are times when risk turns into dispute. When that occurs, our team of construction litigators is adept at advising our clients through all phases of dispute resolution. We regularly appear in state and federal courts, in all forums of alternative dispute resolution, including mediation and arbitration, as well as before various regulatory and administrative hearing boards. We represent clients in a broad range of contract and extra-contractual claims. Our group has extensive experience in resolving disputes over construction terms addressing payment methods and procedures, scope of work, deadline and delay, termination and suspension, as well as insurance and warranty requirements. We regularly prosecute and defend mechanics lien claims, surety bond claims, delay claims, extended conditions claims, defective design or specification claims, wage and employment matters, and bid protests, among others.

Representative Matters

- Negotiated a favorable resolution for a general contractor in a multi-million dollar delay claim stemming from defective design documents and extended conditions in a multi-phased renovation and new construction of a hospital. The general contractor's claim included a substantial pass-through claim by the mechanical subcontractor. The hospital brought a counterclaim alleging defective installation of concrete subflooring. The litigation involved claims, counterclaims and cross-claims by and between the owner hospital, its architect, the general contractor, and multiple subcontractors and suppliers.
- Successfully prosecuted multi-million dollar claims for breach of contract and unfair business practices on behalf of a designer and builder of pollution control systems for power generation facilities.
- Obtained a mechanics lien and successfully negotiated a settlement on behalf of a site subcontractor who was owed a substantial contract balance and change order amounts on a private project in which the general contractor had filed for bankruptcy protection.
- Represented a general contractor and its surety in defending claims on a payment bond brought by a specialty concrete subcontractor on a public works project involving renovation and build out of a college dormitory. The general contractor had a number of defenses, including defective installation of underlayment and flooring surface and delay caused by the subcontractor's lack of manpower.

Employment Litigation

We have an extensive track record of success representing employers in the defense of claims of all forms of discrimination, sexual harassment and retaliation, wrongful termination, wage and hour and other workplace matters. We also have extensive experience litigating non-disclosure, non-competition and non-solicitation agreements, including efforts to obtain or prevent the entry of preliminary and permanent injunctions. We appear regularly in state and federal courts and before the Massachusetts Commission Against Discrimination and the Equal Employment Opportunity Commission.

Representative Matters

- Successfully defended an office solutions company in the U.S. District Court against a race discrimination claim brought by a regional sales manager. The plaintiff had rejected a settlement offer of several hundred thousand dollars before proceeding to trial
- Obtained a high-seven-figure award for our minority shareholder client following a jury-waived trial for "freeze-out" in Worcester Superior Court. This was one of the few cases in which the Court ordered the repurchase of a minority shareholder's stock interest in the company at a percentage of the company value without any discount for marketability or minority interest
- Successfully defended an automobile dealership and leasing company in Middlesex Superior Court against an age discrimination claim brought by a former sales manager
- Secured preliminary and permanent injunctions in the Business Litigation Session of the Suffolk Superior Court on behalf of a nano-particulate business against a former chief chemist for trade secret misappropriation
- Successfully defended a warehouse and bulk supplier in Bristol Superior Court in separate age discrimination and workers' compensation claims brought by a driver and a warehouse worker, respectively
- Successfully defended an accounting firm against a pregnancy discrimination claim brought by an accountant in Worcester Superior Court
- Obtained a summary judgment in favor of our accounting firm client in a disability discrimination claim in the U.S. District Court. On appeal, dismissal was affirmed by the U.S. Court of Appeals for the First Circuit

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- Obtained a summary judgment in favor of our aerospace manufacturing client in a race discrimination claim in the U.S. District Court. The plaintiff's appeal was dismissed by the U.S. Court of Appeals for the First Circuit
- Obtained enforcement of a non-competition agreement on behalf of an educational software company, resulting in the removal of a former executive from a competitor's workforce and the recoupment of attorneys' fees
- Successfully defended multiple executives facing numerous counts of discrimination, wrongful termination and whistleblower retaliation in federal court. The case was won with an initial motion to dismiss prior to discovery
- Successfully defended a municipality facing breach-of-contract claims in federal court following termination of an employee's contract for poor performance. The case was won prior to summary judgment based on admissions by the plaintiff at her deposition
- Successfully defended a major medical institution facing breach-of-contract claims, intentional interference with contractual relations and defamation in federal court. The case was won with an initial motion to dismiss prior to discovery
- Successfully defended a service provider and its executives against age discrimination claims. The case was won based on admissions obtained at the plaintiff's deposition

Family Law and Divorce

In this dynamic world of divorce, paternity and custody disputes, the attorneys in our Family Law Group possess exceptional reputations, knowledge and experience in Family Law. We provide attentive, dependable and cutting-edge legal representation. Whether you are looking for the right lawyer to represent you in a simple uncontested divorce, custody dispute or complex property litigation, Mirick O'Connell will provide you with discreet representation and experienced staff.

Our Family Law Group attorneys advise a broad range of clientele, including CEOs, politicians, members of the judiciary and bar, physicians, executives, entrepreneurs, homemakers and hourly wage earners.

Our clients deserve and rightly expect prompt attention from their legal team. To facilitate this, we maintain responsive standards to ensure our clients maximum accessibility and prompt attention to their questions and concerns.

We know that divorce and family disputes are some of the most difficult times in our clients' lives and we strive to provide the consideration and sensitivity our clients need. Most importantly, we will help you focus on your future.

The services provided by Mirick O'Connell's Family Law Group include:

- Divorce – from simple to complex
- Hidden Asset Discovery
- Child Support
- Parenting Plans
- Paternity
- Removal / Relocation of Children
- Alimony, spousal support and maintenance, including termination, modification and extension
- Post Judgment Enforcement and Contempt
- Property Valuation, including real estate, pensions, stock options, businesses, sophisticated investment entities and intellectual property
- Estate Planning
- Guardianship
- Same Sex Divorce
- Real Estate Partition
- Name Change
- Asset Restraining Orders
- Domestic Violence Restraining Orders
- Grandparent's Rights
- Pre-Divorce Counseling
- Pre- and Post-Nuptial Agreements

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Mirick O'Connell also provides credentialed, experienced Family Law Neutral Services including:

- Mediation
- Arbitration
- Discovery Master
- Conciliation

Government Investigations Response and Compliance

The Government Investigations Response and Compliance Group represents clients in a range of matters including government investigations, regulatory and administrative proceedings, and criminal prosecutions. Our attorneys represent individuals and organizations that are the subject of investigations by the FBI, SEC, U.S. Department of Justice, U.S. Attorney's Office, state Office of the Attorney General and other federal, state and local enforcement agencies. We also advise organizations that discover employee malfeasance or theft, or whose employees are the subject of a criminal investigation.

Our attorneys have represented clients in actions involving allegations of health care fraud, unfair lending practices, embezzlement, fraudulent billing practices and bank fraud. The Government Investigations Response and Compliance Group has conducted internal corporate investigations at the direction of audit committees and in response to outside criminal investigations. Our attorneys also handle academic disciplinary matters where parallel criminal proceedings are involved.

Response to Government Investigations

S.E.C. / Massachusetts Securities Division

- Managed responses to multiple investigations by the S.E.C.'s Boston and New York Regional Offices involving allegations of insider trading and the issuance of company stock.
- Negotiated settlement on behalf of investment advisor following an investigation by the Massachusetts Securities Division.
- Represented client in S.E.C. investigation involving alleged unlawful pyramid scheme.
- Coordinated responses to parallel S.E.C. and grand jury investigations on behalf of investment advisors involving federal securities laws.
- Advised private investment company with regarding to S.E.C. investigation.

F.B.I. / U.S. Attorney's Office

- Represented certified public accountant in embezzlement investigation conducted by the U.S. Attorney's Office and the Department of Justice.
- Represented local law enforcement agency in a civil rights investigation conducted by the F.B.I. and the U.S. Department of Justice.
- Achieved a refusal to prosecute decision by the U.S. Attorney's Office following an FBI investigation into allegations of computer crimes and theft of intellectual property.
- Represented a clinical medical facility in an FBI investigation concerning medical billing practices.
- Obtained non-prosecution decision by the U.S. Attorney's office following investigation involving real estate investment by foreign nationals.
- Achieved non-indictment for client involved in federal grand jury investigation concerning alleged bank fraud.
- Performed an internal investigation and represented a corporate client in an FBI health care fraud investigation.

Attorney General's Office / State and Local Law Enforcement

- Represented client in an investigation by Massachusetts Attorney General's Office involving educational lending practices.
- Represented state contractor in a Massachusetts Attorney General Grand Jury investigation concerning potential bid rigging and gifts/gratuities violations.
- Negotiated settlement with the Massachusetts Attorney General's Office following an investigation in alleged unfair marketing and billing practices.
- Represented corporate client in criminal investigation conducted by the Worcester P.D. resulting in decision not to prosecute.
- Responded to an investigation by the Massachusetts Attorney General's Office on behalf of a client concerning medical billing practices.

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- Achieved non-prosecution decision on behalf of client investigated for criminal environmental violations involving alleged hazardous waste discharge.
- Represented client in a Massachusetts Attorney General Grand Jury investigation involving alleged violations of political contribution laws.

H.H.S. Office of Inspector General / MASSHEALTH

- Responded to health care fraud investigation conducted by the Office of Inspector General of the U.S. Department of Health and Human Services.
- Negotiated a comprehensive Corporate Integrity Agreement on behalf of a medical services provider with the Department of Health and Human Services, Office of Inspector General.
- Advised medical billing company involved in MassHealth billing audit concerning the provision of optical services.
- Represented medical provider in a MassHealth investigation into improper billing practices.
- Other Investigative Agencies
- Advised corporation under investigation by the Office of Foreign Asset Control.
- Represented manufacturer in antidumping investigation conducted by the U.S. International Trade Commission.
- Represented client in an audit and investigation conducted by the Massachusetts Division of Banks.
- Advised client subject to investigation by the National Railroad Passenger Corporation Inspector General's Office.
- Represented multistate manufacturer subject to investigation by U.S. Immigration and Customs Enforcement.
- Represented client in response to search warrant video surveillance requests.

Internal Investigations

Employee Fraud / Embezzlement

- Conducted internal corporate investigation in response to a health care fraud inquiry by the Office of Inspector General of the U.S. Department of Health and Human Services.
- Carried out internal investigation relating to allegations of multimillion dollar theft from a manufacturing facility.
- Performed investigation into allegations of employee embezzlement and violations of Federal Firearms Dealers Regulations. Made referral to law enforcement for federal prosecution.
- Conducted internal investigation and oversaw analysis of accounting records involving allegations of bank fraud. Coordinated and relayed findings to the FBI for criminal prosecution.
- Assisted financial institution with internal investigation involving employee embezzlement. Made referral to US Attorney's Office.
- Performed internal investigation for the audit committee of a public company involving allegations of corporate fraud.
- Reviewed patent documentation and made referral to US Attorney's Office regarding theft of intellectual property.

Corporate / Non-Profit and Public Entities

- Performed internal investigation of police department's timekeeping practices.
- Conducted internal investigation of academic medical facility involving alleged unlawful billing practices.
- Performed internal corporate fact finding in response to Massachusetts State Police investigation.
- Conducted internal investigation of healthcare provider compliance issues and made self-disclosure to Massachusetts Medicaid Fraud Division.

False Claims Act / Qui Tam Actions

- Responded to Civil Investigative Demand in response to whistleblower claims, represented client in parallel federal criminal and civil investigations, and represented client in federal civil litigation involving the U.S. Attorney's Office and the Department of Justice.
- Received a full dismissal by both the U.S. Department of Justice and relator in a whistleblower case involving allegations of healthcare fraud and violation of the Anti-Kickback Statute and Stark Act.

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Life, Health, Disability and ERISA Litigation

The firm's Life, Health, Disability and ERISA Litigation Group has a long history of providing our clients with consistently successful results on their behalf whether it be through negotiation, mediation, summary judgment, arbitration, trial or appeal. We exclusively represent insurers, employee benefit plans, and third-party administrators. Our clients include some of the largest life and disability insurance companies in the United States.

We handle cases in connection with both individual and group claims, under state and federal law. Members of our team regularly lecture and write scholarly articles. Our expertise covers a full array of issues arising in this area of litigation including the defense of life, health and disability benefit claims, long-term care, rescission and reformation cases, interpleader, breach of fiduciary duty allegations, and bad faith claims, including the Massachusetts consumer protection statute, Chapter 93A. The team also handles matters concerning government investigations or inquiries initiated by state administrative agencies including the Department of Insurance and the Massachusetts Attorney General. Many clients seek our advice before a claim reaches a formal dispute to help evaluate complex factual or legal issues. We also provide training to clients to help manage legal risks in the life, health and disability arena.

While based in Massachusetts, our representation is regional in nature encompassing Connecticut, New Hampshire and Rhode Island. We have also been specially admitted in other jurisdictions. We have successfully represented dozens of insurers, employee benefit plans and third-party administrators in literally hundreds of cases through the full range of trial and appellate courts, including the Massachusetts Appeals Court, the Supreme Judicial Court and the First Circuit Court of Appeals. Our attorneys have resolved numerous cases through negotiation and mediation. However, when necessary, we have litigated cases to a final conclusion obtaining numerous favorable rulings and verdicts by defending against preliminary injunctions or litigating motions for summary judgment, arbitrations and trials. We have also represented our clients in precedent-setting decisions before the First Circuit Court of Appeals and the Massachusetts Supreme Judicial Court and Appeals Court. While represented by our group, no client has had a bad faith claim successfully prosecuted against it.

Representative Matters

- Successfully represented insurer before the Massachusetts Appeals Court which upheld a judgment that an insurance policy was properly rescinded for fraudulent misrepresentations
- Obtained a judgment in the Massachusetts Superior Court in 2011 that an insured had failed to comply with the appropriate care provision of his disability policy by failing to undertake mental health treatment recommended as a consequence of an independent medical examination
- Obtained a ruling in federal district court requiring that the ERISA plan participant show the denial of benefits was improperly influenced by a conflict of interest before discovery was permitted
- Obtained a jury verdict in 2008 in Massachusetts state court for an insurer against an insured claiming that total disability was a result of an accident, rather than a sickness
- Obtained an arbitration award in 2008 voiding a life insurance policy for a change in an insured's health between the date of the application and the date of the issuance of the policy
- Represented an insurer in obtaining a precedent-setting ruling in federal district court regarding the production of surveillance materials in discovery
- Obtained a ruling on behalf of an insurer in federal district court that an administrative record could not be opened to admit evidence generated after a final decision on an ERISA claim
- Represented an insurer in federal district court in establishing grounds for a rescission of coverage in a benefit plan governed by ERISA
- Obtained a summary judgment decision that attention deficit disorder was a mental illness as defined by the ERISA plan
- Represented an insurer before the U.S. Court of Appeals for the First Circuit in establishing that summary judgment is the appropriate means to resolve an ERISA case regardless of the standard of review and that enlargement of the administrative record is not permitted after the administrative appeal is decided
- Represented an insurer before the U.S. Court of Appeals for the First Circuit in establishing that an individual disability policy was encompassed within an ERISA plan
- Represented a disability insurer before the U.S. Court of Appeals for the First Circuit in establishing the standard of review in an ERISA benefit claim determination

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Medical Liability and Health Care Litigation

Mirick O'Connell attorneys represent our health care clients in litigation matters. We represent hospitals, physician practice groups, health care insurers, physicians, nurses and other medical providers in cases involving professional liability, employment disputes, and breach of contract. We have resolved these cases through trial and arbitration, with numerous verdicts and awards in our clients' favor. Outside of the courtroom, we represent physicians and other medical professionals before their respective boards of professional licensure. We provide risk management services for our health care clients, including advice on preparation of forms used for patient care, and on policies and procedures. We are often called upon to assess liability for pending claims and potential for early resolution.

Representative Matters

- Successfully defended a primary care physician on a claim alleging failure to diagnose stroke in a 45-year-old man left with serious and permanent impairments
- Successfully defended a primary care physician on a wrongful death claim alleging failure to diagnose pneumonia
- Successfully defended a transplant surgeon on a wrongful death claim alleging improper performance of kidney transplant surgery that lead to sepsis and the subsequent death of a 55-year-old woman
- Successfully defended primary care physicians in a case alleging failure to timely diagnose prostate cancer by not offering PSA test after age 50
- Successfully defended obstetricians in two separate cases alleging failure to diagnose and properly manage deliveries complicated by shoulder dystopia
- Successfully defended an orthopedic surgeon in a case alleging failure to properly treat a fractured femur and tibia in 14-year-old boy
- Obtained dismissal of all claims against a psychologist by the Board of Registration in Psychology after filing pre-trial motions with the administrative law judge
- Negotiated consent agreements for numerous medical professionals with their licensing boards, which allowed them to remain in practice without a suspension of licensure
- Successfully represented a major medical institution in grievance arbitration involving an endoscopy technician who claimed a collective bargaining agreement violation after being removed from his department due to his inability to safely perform advanced procedures
- Successfully represented a major medical institution in negotiations with a surgeon threatening a lawsuit after receiving a contractual notice of intent not to renew his contract
- Coordinated the investigation of allegations of workers' compensation fraud and threats to witnesses by a housekeeping employee of a major medical institution, culminating in an employment termination decision that the union has not challenged
- Successfully represented a major medical institution in a breach of contract, defamation, and tortious interference action brought in federal court in Massachusetts. The case was won with a motion to dismiss prior to discovery

Personal Injury Litigation

The personal injury lawyers at Mirick O'Connell are dedicated to fighting for the interests of injured people. As the largest law firm in Worcester, Massachusetts, we have the resources to go toe to toe with the biggest corporations and insurance companies to fight for our clients. We are completely committed to our clients. If you are unable to come to any of our three Massachusetts offices, we can travel to meet you, on your schedule. Once you become our client, whether you have been injured in a car accident, truck accident, slip and fall, product liability, construction site accident, or other type of case, you will receive an unmatched level of personal service.

Our goal with every case is to maximize your recovery. Although most clients prefer to settle their case outside of court, we prepare every case to go to trial, and if the insurance company does not offer you a fair settlement, we will be completely prepared for a trial.

Types of Matters we Handle:

- Car Accidents
- Truck Accidents
- Motorcycle Accidents
- Brain Injuries
- Neck Injuries
- Spinal Cord Injuries
- Bicycle Accidents
- Slip and Fall / Trip and Fall
- Product Liability / Defective Products
- Construction Site Accidents
- Liquor Liability
- Daycare Injuries
- Negligent Security
- Wrongful Death

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Probate, Trust and Fiduciary Litigation

Within the next two decades, unprecedented wealth will pass between generations in the form of lifetime gifts and transfers through wills and trusts. Inevitably, conflicts concerning this transfer of wealth will arise—often causing painful and expensive disputes. Our attorneys have the requisite experience to counsel the parties involved with these transfers, and they have the tenacity necessary to resolve any disputes that may arise.

The Probate, Trust and Fiduciary Litigation Group represents executors, administrators, trustees, guardians, conservators, beneficiaries and other family members. The integration of our experienced Trusts and Estates Group with our skillful litigation and trial attorneys enables us to provide sound legal advice and creative dispute-resolution strategies. While our attorneys strive to seek practical, prompt resolutions, they also have extensive experience trying cases when necessary. Above all, we recognize that it is our responsibility not only to guide our clients through sophisticated financial and legal matters, but also to understand the often-complex emotional and psychological challenges of probate litigation.

Representative Matters

- Persuaded the Appeals Court to reverse a judgment and find that the defendant trustees, stockholders, officers and directors breached their fiduciary duties and engaged in self-dealing by committing trust assets to unauthorized business ventures
- Negotiated the resolution of a long-term dispute among siblings by forcing the sale of real estate through a petition to partition
- Successfully defended beneficiaries who were sued by the decedent's sister in an action to determine title to real estate
- After commencement of trial, favorably settled a case in which the will was executed by an individual suffering from Alzheimer's disease who was vulnerable to undue influence
- Successfully opened a guardian's three accounts by showing fraud and manifest error against the guardian in which the guardian mismanaged the ward's estate
- Prevented a co-executor's attempt to gain sole control of an estate after the co-executor forged our client's name, misappropriated estate assets and violated an injunction
- Successfully petitioned the Supreme Judicial Court to reform trusts so that the reformation would be recognized for federal transfer tax purposes

Real Estate and Environmental Litigation

Our attorneys regularly handle all types of real estate and environmental conflicts. We understand that land is unique and that real estate disputes create challenging legal, financial and sometimes even emotional issues. Our litigators have the ability, resources and trial experience necessary to resolve these challenging issues in a creative and cost-effective manner.

We have successfully resolved cases on behalf of developers, contractors, buyers, sellers, landlords, commercial tenants, municipalities and utilities. We regularly handle zoning and subdivision disputes and appeals before local permitting boards, the Housing Appeals Committee for affordable housing projects under Chapter 40B, and in court. We have litigated numerous disputes arising out of the purchase and sale of real estate, including claims for breach of contract, misrepresentation and unpaid commissions. We have also litigated a variety of matters involving title, adverse possession, boundary disputes, title insurance, tax abatement and eminent domain matters.

Our Firm has a vibrant environmental litigation practice where we represent clients in all aspects of environmental litigation, enforcement, regulatory appeals and permitting. These cases include cleanup disputes, cost recovery actions and related environmental insurance claims, as well as enforcement and permitting matters involving air, water, wetlands and endangered species. From cutting-edge issues involving emerging contaminants like PFAS and 1,4 dioxane at landfills and manufacturing facilities, to more common releases involving chlorinated solvents, oil and gasoline at dry cleaners and gasoline stations, our team has the knowledge, experience, network and contacts to navigate the evolving landscape of federal, state and local regulation of our environment.

If a conflict concerns real estate, chances are good that a member of our litigation team has had experience handling similar matters. In all land use disputes, we provide practical, creative and cost-effective solutions informed by the perspective that sophisticated trial experience provides.

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MIRICK, O'CONNELL, DEMALLIE & LOUGEE, LLP

Real Estate Litigation Representative Matters

- Represented owners, developers and municipalities in a variety of zoning, wetlands, Chapter 40B and wireless communication tower cases.
- Obtained a dismissal of zoning-related claims for a commercial property owner concerning the non-conforming use of the property.
- Successfully prosecuted claims on behalf of a real estate investment company against an insurance carrier for failure to provide coverage and benefits under a commercial property policy.
- Represented a seller of real estate in obtaining an Appeals Court decision awarding our client damages for a buyer's failure to complete the purchase of commercial property.
- Successfully defended a large commercial tenant in lease claims related to the termination of the lease and building repairs.
- Successfully defended beneficiaries of a trust sued by a family member who sought ownership of trust real estate. Legal issues raised at trial included judicial estoppel, laches, the statute of frauds, the statute of wills, the canons of ethics, adverse possession and constructive trust.
- Negotiated a resolution to a long-term dispute by forcing the sale of real estate through a petition to partition and by filing suit against an escrow agent.
- Represented a land owner in Land Court and the Appeals Court in an adverse possession case in which our client obtained title to upland and tidal flats.
- Derailed an abutter's challenge to a special permit granted to a client for the construction and use of property as a continuing care retirement facility.
- Represented a municipality before the Appeals Court, which upheld a zoning board's decision to deny modifications to a comprehensive permit under Chapter 40B for an affordable housing development.

Environmental Litigation Representative Matters

- Obtained a judgment and award of attorney's fees after trial for a property owner under M.G.L. c. 21E (the Massachusetts Superfund statute), and successfully defended the judgment on appeal, against a municipality requiring it to conduct a multi-million dollar assessment and remediation of an historic landfill.
- Successfully represented the municipal owner of the then-largest solid waste landfill in Massachusetts in federal and state groundwater contamination claims involving 1-4 dioxane and other contaminants. The claims were brought by two non-profit environmental groups and over 30 families under the federal Clean Water Act, the Resource Conservation & Recovery Act and Massachusetts General Laws, Chapter 21E and various tort theories.
- Represented a customer of a barrel recycling facility in federal litigation under CERCLA involving a Rhode Island site contaminated with dioxin.
- Represented an international bank in a dispute involving TCE contamination of a distressed property briefly owned by our client after a foreclosure.
- Successfully obtained the rescission of our client's purchase of a 78-acre property based on the seller's failure to disclose known-PCB contamination.
- Represented a municipality in litigation and drafting regulations related to the potential siting of a soil reclamation facility.
- Obtained a multi-million dollar arbitration award and judgment for breach of contract and unfair business practices claim on behalf of a leading designer of pollution control systems for power plants.
- Represented a regional school committee in the defense of various constitutional and tort claims involving the alleged lead contamination of drinking water.
- Represented property owners, operators and municipalities in various wetland enforcement actions under the Massachusetts Wetlands Act and state and local wetlands regulations.
- Represented a Massachusetts municipality before the Massachusetts Supreme Judicial Court in a case of first impression regarding regulatory takings.
- Represented numerous clients in a variety of industries (including technology, manufacturing, automotive and construction) defending and resolving environmental compliance actions brought by State and federal regulators.

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MIRICK, O'CONNELL, DEMALLIE & LOUGEE, LLP

Securities and Shareholder Litigation

Mirick O'Connell attorneys represent clients in shareholder disputes and securities arbitrations as well as in SEC and other regulatory investigations.

Our attorneys represent clients by both prosecuting and defending minority shareholder claims, claims of breach of fiduciary duty, derivative litigation and other corporate governance disputes in public and private companies.

Our securities litigators also have experience representing investors and brokerage firms in FINRA arbitrations involving allegations of securities fraud and account mismanagement. We have represented clients in SEC, FBI and other regulatory investigations involving alleged securities fraud.

Our attorneys have also conducted internal investigations on behalf of boards of directors and committees of independent directors.

Representative Matters

- Represented a major stockholder in a public company in a shareholder derivative suit involving claims of breach of fiduciary duty and self-dealing by top-level management
- Represented individuals and broker-dealers in FINRA arbitrations involving claims of churning, unsuitability and other types of account mismanagement
- Defended the principal of a privately-held investment management company against claims of account mismanagement
- Represented a majority shareholder in a post-sale dispute involving allegations of bank fraud
- Represented an investor in a claim against a 401(k) plan administrator involving allegations of market timing and violations of mutual fund trading practices
- Represented a majority shareholder in defense of a freeze-out claim following the termination of a minority shareholder executive
- Represented a client in a government investigation involving alleged accounting irregularities and successfully settled the matter following the preparation of a Wells submission
- Represented investors in bringing a derivative action for breach of fiduciary duty and operation of a limited partnership in violation of the partnership agreement
- Represented a client in SEC, FBI and grand jury investigations involving alleged violations of federal securities laws
- Represented a minority shareholder in prosecution of freeze-out, wrongful termination and self-dealing claims

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