



## Michael J. Gartland, Esq.

### Biography

#### Overview

- Practice concentrated in the areas of commercial, civil and appellate litigation, commercial law, bankruptcy law, and debtor/creditor rights.
- Lead counsel in numerous reported decisions.
- Licensed to practice law in Kentucky, Maine, Massachusetts, New Hampshire (inactive) and Colorado (inactive), for a total of seventeen state and federal courts.
- Sole or primary responsibility for prosecuting or defending approximately 1,000 civil actions in federal and state courts in several different states involving a broad range of claims, including:
- Environmental contamination

- Liability under the WARN Act
- Misappropriation of trade secrets
- Fair Debt Collection Practices Act
- Fair Credit Reporting Act
- Lender liability
- Avoidance and recovery of preferences and fraudulent transfers
- Breach of fiduciary duty
- Enforcement of nondisclosure and noncompetition agreements
- Breach of contract
- Fraud
- Negligent misrepresentation
- Enforcement of money judgments
- Conversion
- Foreclosure of mortgages
- Failure to pay wages
- Unjust enrichment
- Wrongful use of civil proceedings and abuse of process
- Civil conspiracy
- Deprivation of rights, privileges, or immunities secured by the U.S. Constitution

## **Notable Cases**

- On September 13, 2023, obtained a \$100,000 jury verdict (the maximum amount requested by plaintiffs) in *Ermold v. Davis*, United States District Court for the Eastern District of Kentucky, Case No. 0:15-cv-00046-DLB-EBA. The sole claim at issue in this action was against Kim Davis (the then-Clerk of Rowan County, Kentucky) under 42 U.S.C. § 1983 for violating plaintiffs' rights under the United States Constitution when she refused to issue this same-sex couple a marriage license. This case is ongoing and has been covered extensively by the media.
- Obtained a summary judgment against Kim in *Ermold v. Davis*, 2022 WL 830606 (E.D. Ky. Mar. 18, 2022).
- Obtained a reversal before the Court of Appeals of Kentucky of an order granting judgment on the pleadings that a 100% assignment of claims was champertous and thus invalid in *THC Kentucky Coal Venture I LLC v. Richard*, 2020 WL 4512817 (Ky. Ct. App. July 24, 2020).

- Successfully prosecuted a motion to hold JPMorgan Chase Bank, N.A. in contempt of court for violating the discharge injunction in a Chapter 13 bankruptcy case of *In re Van Pelt*, 599 B.R. 1 (E.D. Bankr. 2019).
- Obtained a reversal at the United States Court of Appeals for the Second Circuit of an order denying summary judgment for the plaintiff on a claim for contract reformation in *First Tech. Capital, Inc. v. Airborne, Inc.*, 726 F. App'x 85 (2d Cir. 2018).
- Successfully defended an appeal before the Supreme Court of Kentucky of a \$1,308,403.60 judgment entered against an oil and gas producer for failure to pay natural gas royalties in *Nami Resources Company, L.L.C. v. Asher Land and Mineral, Ltd.*, 554 S.W.3d 323 (Ky. 2018).
- Obtained a reversal at the United States Court of Appeals for the Sixth Circuit of the trial court's dismissal of claims against Kim Davis (the then-Clerk of Rowan County) in her individual and official capacities for her refusal to issue a marriage license to a same-sex couple in *Ermold v. Davis*, 855 F.3d 715 (6th Cir. 2017).
- In October 2015, obtained as lead counsel for twenty-one plaintiffs at a thirteen-hour mediation a confidential settlement against Fifth Third Bank less than three weeks before a scheduled three-week jury trial before the Fayette Circuit Court in a civil action styled as *CPC Livestock, LLC v. Fifth Third Bank*, Civil No. 13-CI-03666. Plaintiffs' asserted tort claims totaled approximately \$7.8 million.
- In October 2014, obtained as lead counsel for counterclaim-defendants a summary judgment on \$5.1 million of asserted counterclaims for breach of contract, fraud, negligent misrepresentation and unjust enrichment in *First Technology Capital, Inc. v. JPMorgan Chase Bank, N.A.*, 53 F. Supp. 3d 972 (E.D. Ky. 2014).
- Created new law in the First Circuit as to the interpretation of Rule 60(a) of the Federal Rules of Civil Procedure in *Crowe v. Bolduc*, 365 F.3d 86 (1st Cir. 2004).
- Successfully defended a federal class action that raised a liability issue of first impression concerning the intersection of bankruptcy law and Maine law governing the failure to pay severance pay in *Carrier v. JPB Enters.*, No. 01-187-P-C, 2001 WL 1646673 (D. Me. Dec. 26, 2001).
- Collected \$2.0 million from Mary Alice Davis, the heiress to the Shaw's supermarket chain, in a Maine case that received significant media coverage in newspapers and on television.
- Briefed and argued an appeal to the Supreme Judicial Court of Maine concerning where the statute of limitations as to a city's claim for unpaid property taxes was tolled during the

client's Chapter 7 bankruptcy proceeding in *City of Saco v. Pulsifer*, 749 A.2d 153 (Me. 2000).

- Briefed and argued one of the most often-cited parol evidence cases decided under Maine law in *Handy Boat Serv., Inc. v. Prof'l Servs., Inc.*, 711 A.2d 1306 (Me. 1998).
- Negotiated transaction documents for the sale of substantially all the assets of Optical Dynamics Corporation for \$1.4 million in its assignment for the benefit of creditors' proceeding.

## **Energy Company Cases**

- Lead counsel for plaintiff in a multi-million dollar coal lease dispute in *West Virginia Mid Vol, Inc. v. Rockhouse Land LLC (In re Hopedale Mining LLC)*, Adv. Proc. No. 1:20-bk-12043 (GRH). The litigation settled after a thirteen hour mediation in November 2021. As a result of the settlement, the client acquired the right to mine millions of tons of metallurgical coal located in West Virginia.
- Successfully defended and settled in January 2010 an action styled *Covol Fuels No. 3, LLC v. Redbird Mountain Coal Co., LLC*, Adv. Case No. 09-6064 (Bankr. E.D. Ky.), in which the plaintiff sought \$32.0 million of damages related to the construction of a coal processing facility on property owned by Asher Land and Mineral, LLLP. Through the settlement, Asher (the defendant client) received \$2.8 million in the first quarter of 2010 and a favorable new long-term coal lease.
- Lead litigation counsel for a plaintiff in a coal lease dispute involving millions of dollars in an adversary proceeding within the chapter 11 case of *Horizon Natural Resources Company*, one of the largest reorganization cases ever filed in the Eastern District of Kentucky. The case settled before trial with the client receiving one hundred percent of the overriding coal royalties due it and ninety percent of its legal fees, costs and expenses in bringing the enforcement action.

## **Bankruptcy Cases**

- Taken or defended at least 400 depositions or Bankruptcy Rule 2004 examinations.
- Defended a state court action to establish liability for real estate taxes that had been discharged in a chapter 7 bankruptcy proceeding, and successfully argued before the trial court and Supreme Judicial Court of Maine that a state statute of limitations provision did not toll the time for the taxing authority to commence the suit. *City of Saco v. Pulsifer*, 749 A.2d 153 (Me. 2000).

## **Education**

- **Georgetown University Law Center**, Washington, District of Columbia
  - J.D. – 1989
- **Clark University**
  - M.B.A., Finance – 1984
- **University of Northern Colorado**
  - B.S., Marketing – 1981

## **Bar Admissions**

- Supreme Judicial Court of the Commonwealth of Massachusetts (1989).
- United States District Court for the District of Massachusetts (1990).
- United States Court of Appeals for the First Circuit (1990).
- Supreme Court of Colorado (1992) (inactive status).
- Supreme Court of New Hampshire (1992) (inactive status).
- United States Court of Appeals for the Tenth Circuit (1992).
- United States District Court for the District of Colorado (1992).
- United States District Court for the District of New Hampshire (1992).
- Supreme Judicial Court of Maine (1997).
- United States District Court for the District of Maine (1997).
- Kentucky Supreme Court (2006).
- United States Court of Appeals for the Sixth Circuit (2006).
- United States District Court for the Eastern District of Kentucky (2006).
- United States District Court for the Western District of Kentucky (2006).
- United States District Court for the Western District of New York (2015).
- United States Bankruptcy Court for the Western District of New York (2016).
- United States Court of Appeals for the Second Circuit (2017).

## **Published Works**

- Michael J. Gartland and J. Wesley Harned, Overview of H.R. 2533: Chapter 11 Bankruptcy Venue, Vol. 9., No. 1, ABI Legislation Committee Newsletter (Feb. 2012)
- Michael J. Gartland and J. Wesley Harned, Overview of § 3545: The Family Farmer Bankruptcy Tax Clarification Act of 2012, Vol. 9., No. 4, ABI Legislation Committee Newsletter (Dec. 2012)

- Michael J. Gartland, Excusable Neglect: A Trap for the Unwary, Vol. 10., No. 2, ABI Bankruptcy Litigation Committee Newsletter (May 2013)
- Michael J. Gartland and J. Wesley Harned, speaker, The “Big Six” Admissibility Questions, National Business Institute (NBI), The Rules of Evidence: A Practical Toolkit(Aug. 2014)

## **Representative Cases**

- *CPC Livestock, LLC v. Fifth Third Bank, Inc.*, No. 1:12-cv-00204-JHM, 2013 WL 1411222 (W.D. Ky. Apr. 8, 2013)
- *Richard v. Spradlin, Trustee*, No. 12-127-ART, 2013 WL 1571059 (E.D. Ky. Apr. 12, 2013)
- *Williams v. THC Kentucky Coal Venture I LLC*, No. 7:11-cv-45-KKC, 2011 WL 6027722 (E.D. Ky. Dec. 5, 2011)
- *Turner, Trustee v. J.P. Bolduc (In re Crowe Rope Industries, LLC)*, 307 B.R. 1 (Bankr. D. Me. 2004)
- *Northeastern Graphic Supply, Inc. v. Net 2 Press, Inc. (In re: Northeastern Graphic Supply, Inc.)*, 2003 WL 22848944 (Bankr. D. Me. Dec. 2, 2003)
- *Carrier v. JPB Enterprises, Inc.*, 2001 WL 1646673 (D. Me. Dec. 26, 2001)
- *City of Saco v. Pulsifer*, 749 A.2d 153 (Me. 2000)
- *Handy Boat Service, Inc. v. Professional Services, Inc.*, 711 A.2d 1306 (Me. 1998)
- *Merrill Lynch, Pierce, Fenner & Smith v. Bennert*, 980 F. Supp. 73 (D. Me. 1997)
- *Northeast Office & Commercial Properties, Inc. v. Smith Valve Corp. (In re Northeast Properties & Commercial Properties, Inc.)*, 178 B.R. 915 (Bankr. D. Mass. 1995)
- *Big & Tall of America, Inc. v. Den Norske Bank A/S (In re Big & Tall of America, Inc.)*, 167 B.R. 1 (D. Mass. 1994)
- *In re Van Pelt*, 599 B.R. 1 (Bankr. E.D. Ky. 2019)
- *In re Joseph*, 584 B.R. 696 (Bankr. E.D. Ky. 2018)

## **Honors**

- Continuing Legal Education Award, Kentucky Bar Association
- Kentucky Super Lawyers, Business Litigation

## **Past Positions**

- Hon. James F. Queenan, Jr. of the U.S. Bankruptcy Court, District of Massachusetts, 1989 to 1990

### **Languages**

- English

### **Professional Associations**

- Kentucky Bar Association
- Fayette County Bar Association

### **Current Employment Position**

- Member of DelCotto Law Group PLLC