



Shawn K. Aiken

Arbitration • Mediation • Litigation • Business Divorce • Corporate Governance

SHAWN AIKEN is a fellow of the American College of Trial Lawyers (ACTL) and has made Super Lawyers' "Top 50 Arizona" every year since 2009.

Shawn devotes a substantial portion of his practice to mediation and arbitration and was selected by *Best Lawyers in America*® as Lawyer of the Year (Mediation, Phoenix) for both 2012 and 2015 and as Lawyer of the Year (Arbitration, Phoenix) for 2019 and 2021.

His practice also emphasizes complex business litigation involving contracts, corporate governance, business torts, intellectual property and unfair competition. Shawn Aiken also has an extensive background, in advocacy and arbitration, in disputes concerning complex economic damages, including:

- damages models (e.g., but for causation, lost profits, use of funds, loss or destruction of business, present value, and business interruption losses);
- business and asset valuation opinions and issues (e.g., application of discounts, definitions of value, and income analysis);
- accounting principles and issues, including analyses of financial statements;
- economic methods and statistical analyses (e.g., regressions and Monte Carlo methods); and
- presentations of damages related to claims and defenses concerning loss causation, consequential losses, out-of-pocket costs, mitigation, future losses, and punitive damages.

The Maricopa County Superior Court has appointed Shawn as special master on several cases over the past five years. In addition, Shawn is a Fellow of the Academy of Court-Appointed Neutrals.

PROFESSIONAL FELLOWSHIPS AND AFFILIATIONS

Fellow, American College of Trial Lawyers, 2015

Fellow, College of Commercial Arbitrators, 2009

Fellow, Academy of Court-Appointed Neutrals

Fellow, American College of Civil Trial Mediators

American Arbitration Association: National Commercial Panel of Neutrals; National Sports Panel; Large, Complex Case Panel

Diplomate Member, National Academy of Distinguished Neutrals

American College of Civil Trial Mediators

International Institute for Conflict Prevention and Resolution (CPR): Arbitrator and Mediator, Real Estate Panel, Phoenix ADR Panel

HONORS AND AWARDS

The Best Lawyers in America: Lawyer of the Year, 2012, 2015 (Mediation, Phoenix); Lawyer of the Year, 2019, 2021 (Arbitration, Phoenix)

The Best Lawyers in America: Arbitration (2011-present), Mediation (2011-present), Commercial Litigation (2007-present)

Super Lawyers: Top 50 Arizona Lawyers, 2009-2023; *Southwest Super Lawyers* cover feature, 2010; Selectee, Business Litigation, Alternative Dispute Resolution (2007-present)

AV Preeminent® Rating: Martindale-Hubbell®

Phoenix Magazine "Top Lawyer" (Arbitration and Mediation), 2022

"Top 100 Lawyers in Arizona," *AzBusiness Magazine*, 2013-2019

Az Business Leaders (Alternative Dispute Resolution), AZ Big Media, 2017-2019

"Top 20 ADR Attorneys," *AzBusiness Magazine*, 2015

The Top 100 Trial Lawyers (Arizona), The American Trial Lawyers Association, 2008

Arizona Foundation for Legal Services and Education Award, "Top 50 *Pro Bono* Attorneys of Arizona," 2001 and 2004

COURT ADMISSIONS

Arizona, 1983

U.S. District Court for the District of Arizona, 1983

U.S. Court of Appeals for the Ninth Circuit, 1983

Supreme Court of the United States, 2010

EDUCATION

Arizona State University, J.D., 1983

St. Olaf College, B.A. *cum laude*, 1980: National Collegiate Champion, Extemporaneous Speaking, 1980

PROFESSIONAL MEMBERSHIPS AND ACTIVITIES

State Bar of Arizona: Civil Practice and Procedure Committee, 2002-2007; ADR Section; Trial Practice Section; Fee Arbitration Panel; Model Jury Instruction Committee (RAJI 3d)

Federal Bar Association

Million Dollar Advocates Forum

KEY REPRESENTATIONS

- Lead counsel on hundreds of litigated cases, including a plaintiff's bad faith jury verdict of over \$1 million
- Won a 2015 constitutional challenge against the State of Arizona seeking to restore to Arizona cities and towns the authority to set minimum wage within their jurisdictions
- In a 2015 New Mexico arbitration, achieved a favorable award, including resolution of over \$3 million in claims, in an investment partnership dissolution stemming from the adverse party's mismanagement of partnership assets
- Also in 2015, obtained a multi-million-dollar award for a local real estate development client in a dispute with a longtime investment partner
- In 2014, successfully challenged the Arizona Sports and Tourism Authority tax that funded construction of the Arizona Cardinals' University of Phoenix Stadium, on behalf of plaintiffs seeking a refund of over \$100 million
- Represented multiple plaintiffs in a successful 2014 challenge to Arizona's ban on same-sex marriages
- Successfully defended against a fiduciary duty and lost profits claim in which the plaintiff sought over \$40 million, resulting in a complete defense verdict
- Successfully defended numerous bankruptcy discharge

actions totaling over \$30 million and a breach of contract claim exceeding \$30 million against a local government

- Successfully certified class of taxpayers seeking refunds of over \$40 million from the State of Arizona
- Other matters as lead counsel include closely held shareholder and partnership disputes; contempt proceedings; disciplinary actions; fraudulent transfer claims; mismanagement, fraud and breaches of fiduciary duty; RICO; interference with and inducing breach of contract; trade secrets; breach of contract; misrepresentation; and unfair competition cases

PUBLISHED CASES

Steven Karbal v. Arizona Department of Revenue, et al., 158 P.3d 243 (App. 2007)

Meritor Savings Bank v. Camelback Canyon Investors, 792 F.Supp. 697 (D. Ariz. 1992)

Matter of Mulhall, 159 Ariz. 528, 768 P.2d 1173 (1989)

Elgin v. Great-West Life Assurance Company, 163 Ariz. 176, 786 P.2d 1027 (App. 1989)

MEMORANDUM DECISIONS

Connolly et al. v. Jeanes et al., 73 F.Supp.3d 1094 (D. Ariz. 2014)

JGD, LLC v. American Title Service Agency, LLC, No. 1 CA-CV 10-0-466

Art Marketing Group et al., v. Poor & Co., et al., 2006 WL 1081064 (D. Ariz. 2006)

WRITING FOR PUBLICATION

"Mediation as a Part of the Construction Claims-Solving Process" (chapter author), *Arizona Construction Law Practice Manual*, 3rd Ed. 2016, State Bar of Arizona

PRESENTATIONS

"Buy-Sell Agreements: 'Prenups' for Business Owners" (co-presenter), State Bar of Arizona, October 2018

"Construction Law: Mediation Best Practices" (panelist), State Bar of Arizona, June 2018

Arizona College of Trial Advocacy (faculty member), State Bar of Arizona, August 2017

"Arbitration Talks: Preparing for the Participating in the Arbitration Hearing" (panelist), State Bar of Arizona Annual Convention, June 2017

Mediation Panelist, "4th Annual Insurance Law Institute," State Bar of Arizona, June 2017

"Honey, I Shrank the Documents': Developing Best

Practices for Purchase Agreements that Get Deals Done” (co-presenter), State Bar of Arizona CLE, May 2017

“Breaking Impasse in Mediation” (Small Group Discussion), 14th Annual Advanced Mediation and Advocacy Skills Institute, American Bar Association, October 2016

“Jurisdiction Shopping, Part II: Is There an App for That? Ajo, Albuquerque or Afghanistan – Does It Make A Difference Where and How We Litigate” (faculty), State Bar of Arizona Annual Convention, June 2016

“Innovative Trial Preparation and Presentation: Opening Statements/Closing Arguments” (co-presenter), American College of Trial Lawyers, Phoenix, April 2016

“Best Practices in Commercial Arbitration” (webinar co-presenter), American Arbitration Association, April 2016

“Neutrals’ Roundtable: Motions and Award Modifications” (panelist), American Arbitration Association, Denver, September 2015

“Same-Sex Marriage,” Scottsdale Bar Association, July 2015

“Risky Business: New Challenges in Real Estate Transactions” (panelist), State Bar of Arizona Convention, June 2015

“After the Honeymoon: What’s Next for LGBT Clients?” State Bar of Arizona Convention, June 2015

“Research and Investigations: The Arbitrator’s Authority,” American Arbitration Association, September 2014

“Ten Worst Mistakes Lawyers Make in Mediation of Litigated Commercial and Business Disputes, and How to Avoid Them” (webinar), ASU Sandra Day O’Connor College of Law, June 2014

“Ten Worst Mistakes Lawyers Make in Arbitration” (webinar), ASU Sandra Day O’Connor College of Law, May 2014

“Recent Cases which Govern Drafting an Enforceable Arbitration Clause” (co-presenter), State Bar of Arizona Alternative Dispute Resolution Section CLE, May 2014

“Principled Deliberations: Decision-Making Skills for Arbitrators,” American Arbitration Association, May 2014

“Native American Sovereign Nations and Arbitration: The *Skywalk* Case,” College of Commercial Arbitrators 13th Annual Meeting, October 2013

“The Litigation Experience,” ASU Sandra Day O’Connor College of Law, October 2013

Arizona College of Trial Advocacy, Faculty Member and Presenter, 2013

“Direct and Cross-Examination of Parties and Witnesses,” Arizona College of Trial Advocacy, July 2013

“Managing a Successful Arbitration” (panelist), American Arbitration Association University, April 2013

“Ten Worst Mistakes Lawyers Make in Arbitration” (webinar), ASU Sandra Day O’Connor College of Law, January 2013

“Private Arbitration Update” (faculty member), State Bar of Arizona, 2008-2012

“Court-Assigned Arbitration: A Step-by-Step Guide Through the Process” (faculty member), State Bar of Arizona, 2010, 2012

“What We Have Here Is a Failure to Communicate” (panelist), AAA/ICDR Neutrals Conference, March 2012

“Consolidation of Separate Arbitration Proceedings,” Private Arbitration Update, State Bar of Arizona, 2009

“The CPA’s Role in ADR,” AICPA National Fraud and Litigation Services Conference, 2008

“Civil Litigation Rules and Case Law Update” (faculty member), State Bar of Arizona 2008 convention

“Electronic Discovery and Offers of Judgment” (faculty member), State Bar of Arizona Trial Practice Section, 2008

“Discovery in Arbitration” (panel member), State Bar of Arizona ADR Section, 2008

“Private Arbitration in Arizona,” State Bar of Arizona, 1999 Facilitator, State Bar of Arizona Professionalism Course, Arizona Association of Defense Counsel, 1999

“Business Tort Litigation” (three-day panel presentation), State Bar of Arizona, CLE by the Sea, 1998

“Financial Expert Witnesses,” National Litigation Support Services American Educational Conference (Arizona), 1997

“Nondischargeability Litigation,” State Bar of Arizona Eighth Annual Bankruptcy Symposium, 1997

“Jury Instructions for Business Cases,” State Bar of Arizona, CLE by the Sea (California), 1996

“Civil Jury Instructions,” State Bar of Arizona Corporate and Business Litigation Subsection, 1996

“Civil Jury Instructions,” Pima County Bar Association, 1996

MEDIATION AND ARBITRATION

ALTERNATIVE DISPUTE RESOLUTION EXPERIENCE

Extensive experience in American Arbitration Association (AAA) arbitrations as counsel

Has arbitrated under AAA Large Complex Case, Construction, and Employment Rules and ICDR, ICC, JAMS and other dispute resolution procedures

Member of the American Arbitration Association Arizona Advisory Council since 1990

PRIVATE MEDIATION

Conducted over 800 mediations and received over 300 administered and ad hoc arbitral appointments

Mediated numerous construction defect cases, including class actions

Successfully resolved many other business, personal injury, wrongful death and tort cases

AD HOC AND INSTITUTIONAL ARBITRATION

Served as sole arbitrator in cases involving business and commercial claims ranging from \$200,000 to \$100 million arising out of:

- cases brought by consumers against telephone companies, credit card issuers, tax preparation service, and college testing services
- sales of businesses and failed mergers
- internet licensing agreements
- real estate disputes, including appraisal and valuation of real property and commercial lease interests
- partnership, shareholder, corporate and accounting firm disputes
- buy-sell, licensing, real estate lease, real estate purchase, and product royalty agreements
- medical services agreements
- lender/borrower disputes
- trade secret, unfair competition, patent and copyright infringement; and,
- employment issues, including termination; trade secret, fraud, negligence, covenants not to compete/restrictive covenants, breach of contract, over-due commissions, breach of fiduciary duty, and misrepresentation claims.

Served often on three-member panels (frequently serving as chair) in cases involving claims ranging from \$30 million to over \$100 million concerning:

- \$90 million claim for breach of licensing and other agreements, fraud, and breach of fiduciary duty in the power and cooling equipment manufacturing industries
- electrical and water utilities
- employment termination
- \$10 million claim for breach of employment contract in the oil and gas industry
- multi-arbitrator mass claims panel resolving thousands of employees' claims totaling over \$30 million against a state government
- claims and counterclaims valued at over \$25 million in the medical service industry
- claims and counterclaims valued at over \$20 million in the real estate and hospitality industries

- class action involving banking claims
- cases involving failed merger and patent licensing issues
- valuation disputes, especially involving partnership and closely held interests in hotels and other commercial properties
- dissolution of medical partnership; and,
- dispute over enforcement of national class action consent order.

International matters have involved firms from Taiwan, Australia, South Africa, France, Belgium and other nations.

ALTERNATIVE DISPUTE RESOLUTION TRAINING

"Fundamentals of Effective Mediation Advocacy," American Arbitration Association (AAA), 2010

"Guerilla Mediation: Getting Agreements in the Real World," State Bar of Arizona, 2009

"Mediating Complex Multi-Party Disputes," State Bar of Arizona, 2009

"Dealing With Delay Tactics in Arbitration" (ACE004), AAA, 2007

"Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics" (ACE005), AAA, 2006
AAA Neutrals Conference, 2005

"Arbitration Awards: Safeguarding, Deciding & Writing Awards" (ACE001), AAA, 2005

"Dealing With Delay Tactics in Arbitration" (ACE004), AAA, 2005

"Arbitrator Ethics & Disclosure" (ACE003), AAA, 2004

"Commercial Arbitrator II Training: Advanced Case Management Issues," AAA, 2002

"Annual Arbitrator Update," AAA, 2001

"Commercial Arbitrator Training," AAA, 1999

Maricopa County Superior Court Mediation and Settlement Training, 1998

"Introductory Arbitrator Training," AAA, 1995

LEAD COUNSEL IN JURY AND COURT TRIALS TO JUDGMENT: REPRESENTATIVE CASES

RTC v. Bobrow, CV 92-06031 (personal guarantee)

Valley National Bank, et al. v. Sandahl, Adv. 92-1191 (six days to bankruptcy court on claim for denial of discharge)

A-Mark Precious Metals v. Lipps, C-494971 (one day to court on breach of contract)

Elgin v. Great West Life, C-53551 (five days to jury; represented plaintiff, first-party bad faith, \$1 million verdict for

plaintiff)

Walden v. Ackel, C-568955 (four days to jury on claim for breach of contract)

Palmer v. Medical Care Clinic, 87-08147 (three days to jury on breach of employment contract)

Independence Ent's v. G. McMillan & Co., 87-05786 (three days to jury re breach of brokerage agreement)

Hewitt v. Blum and McKernan, C-612089 (six days to jury re breach of contract)

Rowley v. Seal (four days to court on breach of contract and fiduciary duty claims)

Security Pacific v. Crispo (deficiency on personal guaranty)

Thoracic Cardiovascular Assoc. v. Barrette, Adv. No. 91-364 (Bankruptcy court: denial of discharge)

In Re MLB Partnership; MLB Partnership v. Bochat, et al., Adv. No. 89-811 (fraudulent transfer)

Resnick v. RSHS, CV 91-14153

Sears & Goodman, P.C. v. Curosh, CV 92-220 (claim for legal fees)

Floyd Fann v. Valley National Bank, Adv. No. 92-778 (two days to bankruptcy court re property of estate)

Moray v. Martin Sarager et al., CV 93-00598 (breach of construction contract)

Trustee C. Riley v. Herbert Aman, Adv. No. 91-870 (trial to bankruptcy court on recovery of preferential transfer)

AIM v. City of Tempe, CV 95-91669 (seven-day jury trial)

Trustee Charles Riley v. Joanne Ceimo, M.D. (trial to bankruptcy court on ownership of tax refund)

AIM v. Amack et al. (seven-day trial to court)

Arik adv. Trustee (two-day trial on discharge and dischargeability grounds)

Phoenician Olive Oil v. Tanglewood et al. (nine-day trial on fiduciary duty and contract claims)

JUDGE PRO TEMPORE: SUPERIOR COURT JURY TRIALS

Robert Young, et ux v. Walgreens Arizona Drug Co., CV 96-90176

Mathew Lilly v. Larry Layman, CV 98-19814

COMMUNITY INVOLVEMENT

Coach, Jenckes Cup Competition, Arizona State University
Sandra Day O'Connor College of Law, 2009-2011

University Lutheran Church

Arizona Baseball and Softball Commission, 2006

Tempe Leadership I

Former coach: JAM Basketball, Tempe Mudcats Baseball Club, Tempe American Little League and All-City Basketball

PERSONAL

Born in Grand Forks, ND. Married with two children.

REFERENCES AVAILABLE