



Merton E. Marks, Esq.

Hourly Rate	\$300
Current	Gordon & Rees LLP, Phoenix, Arizona - Of Counsel
Practice	5
Cases	71
Languages	English

Current Employer-Title

Gordon & Rees LLP, Phoenix, Arizona - Of Counsel

Work History

Of Counsel, Gordon & Rees LLP, 2013-present; Of Counsel, Hymson Goldstein & Pantiliat, PLLC, 2012-2013; Attorney, Arbitrator and Mediator, Merton E. Marks, P.C., 2001-2012; Partner, Lewis and Roca, LLP, 1974-2001; Partner/Associate, Shimmel, Hill, Bishop & Gruender, 1965-1974; Attorney, Industrial Commission of Arizona, 1964-1965; Assistant Attorney General, Office of the Attorney General of Arizona, 1962-1964; Partner, Morgan, Marks & Rogers, 1960-1962; Captain, Judge Advocate General's Corps, U.S. Army, Active Duty, 9th Infantry Division, 1957-1960 (Voluntary Active Reserve, XV Army Corps, 1960-1964); Associate, Moser, Compere & Emerson, 1956.

Experience as a Mediator

Over 70 mediations. Most were complex cases with exposures of \$500,000-\$25,000,000 involving potential compensatory and punitive damages. (1) Insurance: first and third party coverage and insurance bad faith claims involving commercial, homeowners and workers' compensation policies-6 cases; (2) Real estate: breach of contract cases involving residential purchase agreements-5 cases, commercial sales, leases, and construction projects-10 cases, real estate partnerships-1 case, construction defects-2 cases, and condemnation proceedings-10 cases; (3) Corporate/partnership dissolutions: orporate and partnership dissolutions including law firms and stockholder disputes-2 cases; (4) Professional liability: accounting, legal, nursing home malpractice-3 cases; (5) Commercial transactions: breach of contract-business purchase-1 case, bank-customer loan dispute and wrongful mortgage foreclosure-1 case, and a customer-financial advisor dispute-1 case; (6) Product liability: design defect claims-SUV rollover with two fatalities, swimming pool, and plumbing design and installation-3 cases; (7) Employment: wrongful termination, and breach of executive pension agreement-2 cases; (8) Personal injury: motor vehicle accidents-automobiles, motor carriers, police cars, airport tug, golf carts, SUVs, buses, and a Dram shop claim-14 cases; (9) Premises liability: hotels, business premises, and major league baseball game-6 cases; (10) Construction site accident-1 case; and (11) Gunshot injuries-1 case.

Representative Issues Handled as a Mediator

Issues have included: insurer liability for coverage denial, inadequate investigation, nonpayment of benefits; liability issues regarding residential purchaser's concealment of financial information and intent to resell property in violation of contract provisions; tenant in breach of lease; refusal of owner to sell property to buyer on contract terms; lessor's concealment of latent damage to premises; lessor's failure to make tenant improvements prior and subsequent to lease execution; contractor's failure to build premises per agreement; liability of general partner of land partnership for alleged mismanagement; determination of just compensation for taking, "Kelo" case issues-government condemnation of private property for commercial development; liability of owner who withdrew from corporation taking key employee and trade secrets and formed competing business; rights and liabilities of law firm partners on withdrawal of several partners to form new firm; liability of former owner to purchaser of business for concealment of losses, pending claims, and other potential liabilities; claim by mortgagee against bank for wrongful foreclosure for alleged nonpayment of loan; liability of financial planner for advice regarding unsuitable investments; manufacturer liability for design defect claims involving SUV rollovers, swimming pool designer for swimmer injury; professional liability of: CPA firm for inadequate audit; law firm for incorrect advice re

decedent's pension benefits and firm's bad faith claims against malpractice carrier; nursing home for elder abuse; employer liability for retaliatory employment termination; liability of publicly traded corporation for pension benefits claimed by former executives under plan of prior employer merged into corporation; negligence issues in vehicle accident-personal injury cases; "Dram Shop" liability of bar for fatal automobile accident caused by intoxicated patron; and premises liability of business.

Years of Practice as a Mediator

5

Total Number of Cases Mediated

71

Mediation Experience as an Advocate or Party

Prior to becoming a full time arbitrator and mediator in 2001, served as a litigation partner in Lewis and Roca LLP, Phoenix, AZ. (1974-2001) and Shimmel, Hill, Kleindienst & Bishop, Phoenix, AZ (1965-1974). Represented corporate clients in mediations as national coordinating counsel for a Fortune 50 corporation in a medical device class action of 1500 cases in 40 states; trial counsel in breast implant litigation; represented one of the world's largest hotel corporations in hotel security litigation (actions by guests alleging they were crime victims due to lack of security); counsel for foreign corporation in three month civil rico trial. Judge pro tempore on Arizona Court of Appeals. Assistant attorney general of Arizona, securities division and state real estate department.

Mediation Philosophy

Successful mediation requires commitment of the parties to work toward a settlement without arguments as to who is right and wrong. In commercial disputes, particularly between companies with pre-existing business relationships, my objectives as mediator are to design a settlement that resolves the dispute, continues the parties' business relationship, preserves confidentiality, avoids media exposure and accomplishes this quickly and at reasonable cost. During my preparation for the mediation, I design tentative solutions. At the mediation, I stress that any resolution to which the parties agree will be better than the unpredictable result of litigation. As a former trial lawyer, I urge the parties to look at their positions realistically: the party's credibility, the potential jury verdict and the costs of litigation.

Mediation References

Douglas G. Zimmerman, Esq., dougz@jsslaw.com, (480) 663-2155; Larry A. Zier, Esq., zierlaw@aol.com, (480) 990-8783; Carl F. Mariano, Esq., mariano@lbbsslaw.com, (602) 385-1059.

Alternative Dispute Resolution Training

AAA ACE19 Case Finances: What Arbitrators Need to Know, 2019; AAA Arbitrator Performance & Demeanor ACE18, 2018; AAA Party-Appointed Arbitrators - Dealing with the Presumption of Partisanship, 2017; AAA Arbitrating a Difficult Discharge Case, 2016; AAA Arbitrator Ethics & Disclosure ACE03, 2016; AAA Explaining Complexity—How to Improve Your Presentation of Technical Information in Arbitration 2015; AAA Principled Deliberation: Decision-Making Skills for Arbitrators, 2014; AAA Managing the Arbitration Process for Efficiency & Economy Following the Preliminary Hearing, 2013; AAA Maximizing Efficiency & Economy in Arbitration: Challenges at the Preliminary Hearing, 2012, 2011; AAA Webinar, Prescriptions for Payor Provider Disputes: Implementing the New AAA Healthcare Payor Provider Arbitration Rules, 2011; AAA Advanced Mediator Training, 2009; ARIAS, Fall Meeting, 2008; ARIAS Spring Meeting, 2008; AAA Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics ACE05, 2006; The Seminar Group, Update on Arbitration and Mediation of Trade Disputes in Asian Countries, 2006; Maricopa County Bar Association Corporate Counsel Division, Drafting Arbitration Agreements and Avoiding Litigation Through Arbitration and Mediation, 2006; International Chamber of Commerce/U.S. Council on International Business, International Arbitration Issues, 2006; Scottsdale Bar Association, Recent Developments in Arbitration, 2006; Maricopa County Bar Association Corporate Counsel Division, U.S.-China Cross Border Insights, 2006; The Seminar Group, Doing Business with China-Arbitration in China and Singapore, 2005; Arizona State Bar, Arbitration & Mediation Update, 2005; AAA, Roundtable-Discovery and Evidence in Arbitration, 2005; Defense Research Institute, Pharmaceutical & Medical Device Litigation, 2005; AAA Dealing with Delay Tactics in Arbitration ACE04, 2005; me Consultants Annual Seminar, Construction Defect Claims, 2004; NASD, Arbitration Expungement, 2004; ARIAS-US, Reinsurance Arbitration, 2004; State Bar of Arizona, Use of ADR to resolve Business Disputes, 2004; Maricopa County Bar Association Corporate Counsel Division, How Corporations Can Save Money and avoid Litigation Through ADR, 2004; Federation of Defense and Corporate Counsel, Contract Clauses in International Arbitration Agreements, 2004; Federation of Defense & Corporate Counsel, Contractual Expansion of Arbitration Appeal Rights, AAA/ABA Revised Code of Ethics for Commercial Arbitrators, 2004; AAA Arbitrator Ethics and Disclosure ACE03, 2004; Federal Bar Association, Litigation and Arbitration of International Disputes, 2003; NASD Arbitration Training, 2003; State Bar of Arizona, Implementing Rule 16(g) ADR, 2003; AAA

Arbitrator Update 2002; AAA Commercial Arbitrator II Training: Advanced Case Management Issues, 2002; AIDA/ARIAS Arbitration Discovery Issues in Reinsurance Arbitration, 2002; National Business Institute, Construction Mediation, 2002; AAA CLE, ADR Rule Change to Arizona Rules of Civil Procedure, 2002; Arizona State Bar, Bankruptcy ADR, Phoenix, 2002; Arizona State Bar, ADR Rule Change to Arizona Rules of Civil Procedure, 2002; AAA Arbitrator I Training-Fundamentals of the Arbitration Process, 2001; Arizona State Bar, Private Arbitration Program, 2001; Arizona State Bar, Cross Border Arbitration and Mediation Program, 2001.

Professional Licenses

Admitted to the Bar: Illinois, 1956; Arizona, 1958; U.S. District Court, District of Arizona, 1961; U.S. Court of Appeals, Ninth Circuit, 1962; U.S. Court of Appeals for the Armed Forces, 1957; U.S. Supreme Court, 1970.

Professional Associations

American Bar Association (Special Committee on Federal Asbestos Legislation, Past Chair; Workers' Compensation & Employers' Liability Committee, Past Chair; Dispute Resolution Section, Arbitration Committee, Mediation Committee; Tort and Insurance Practice Section); American Board of Trial Advocates; Past member, Federation of Defense and Corporate Counsel (Alternative Dispute Resolution Section, Past Chair; Pharmaceutical Litigation Section, Past Chair); Arizona Trial Lawyers Association; Arizona Association of Defense Counsel (Past President); International Association of Defense Counsel; American Society of Workers' Compensation Professionals; State Bar of Arizona (Alternative Dispute Resolution Section, Past Council Member); International Bar Association (Section on Business Law, Arbitration, Insurance, International Litigation and Products Liability Committees); Fellow, Chartered Institute of Arbitrators (London); Maricopa County (Phoenix), and Scottsdale Bar Associations.

Education

Northwestern University College of Arts & Sciences (BS, Political Science and Economics-1954); Northwestern University School of Law (JD-1956); Pepperdine University Law School, Straus Institute for Dispute Resolution, Mediation, (2007).

Awards and Honors

Lecturer on Arbitration Rules of Evidence, Georgetown Law School; Chairperson, American Bar Association Special Committee on Federal Asbestos Arbitration; Elected to membership in American Board of Trial Advocates, International Association of Defense Counsel; Past President, Arizona Association of Defense Counsel;

Publications and Speaking Engagements

Author of over 50 published papers, including: "New Trends in Arbitration and Mediation," VOIR DIRE JOURNAL, American Board of Trial Advocates, Spring 2003; "Arbitration and Mediation - Today's Solution for Business and Sports Disputes," EXECUTIVE GOLFER, April 2002; "Security on the Golf Course - Is Any Place Safe Anymore?" EXECUTIVE GOLFER, June 2001; "U.S. Product Liability Law," INTERNATIONAL BUSINESS LAWYER, vol. 26, no. 2, pp. 69-74, International Bar Association, February 1998; "Legal Issues in Recovery For Fear of Future Disease Without Physical Injury," FEDERATION OF INSURANCE & CORPORATE COUNSEL QUARTERLY, vol. 41, no. 2, p. 235, Winter 1991; "Bad Faith Claims Arising Out of Workers' Compensation Cases," LEGAL INSIGHT, National Council on Compensation Insurance, vol. 3, issue 3, p. 4, September 1988.

Speaker on ADR, class actions, product liability, insurance, and related subjects at legal and industry conferences in the U.S., England, Canada, France, Germany, Israel, and Spain, including: "Resolution of Trade Disputes Under China's and Singapore's Arbitration Laws," Seminar Group, Seattle, October 2005; "Drafting Arbitration Clauses," Maricopa County Bar Association, Corporate Counsel Division, Phoenix, June, 2006; "Contract Expansion of Arbitration Appeals," AAA Construction Panel, December 2004, AAA Commercial Panel, October 2004; International Trademark Association Mediation Practice Panel, November 2004; "Comparison of Arbitration, Mediation and Litigation," AAA, September 2004; "New Trends in International Commercial Arbitration," International Lawyers Network, Seattle, May 2003 and Chicago International Dispute Resolution Association, November 2003; "New Trends in Tort, Insurance and Commercial Arbitration and Mediation," Maricopa County Bar Association, February 2003; "New Trends in Arbitration and Mediation," Scottsdale Bar Association, February 2003; "ADR Overview and Update," American Corporate Counsel Association, Arizona Chapter, December 2002.

Compensation

\$300 Per Hour

Languages

English

Citizenship

United States of America

Locale

Scottsdale, AZ

The AAA provides mediators to parties on cases administered by the AAA under AAA mediation procedures. Mediations that proceed without AAA administration are not considered AAA mediations, even where parties select a mediator who is a member of an AAA mediation roster.