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Merton E. Marks, Esq.

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Current Employer-Title Gordon & Rees LLP, Phoenix, Arizona – Of Counsel

Profession Attorney, Arbitrator, Mediator

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 (Voluntary Active Reserve, XV Army Corps, 1960 – 1964), 1957 – 1960; Associate, Moser Compere & Emerson, 1956.

Experience Over 50 years' experience as trial counsel, arbitrator, mediator and special master in arbitrations (including international commercial arbitration), mediations, jury and non-jury trials, class actions, administrative and regulatory hearings, and appeals involving insurance (reinsurance, coverage, bad faith, workers' compensation, life, health, disability, motor vehicle, general liability); appointed by Arizona Superior Court judges as special master in complex commercial litigation; product liability (chemical, industrial, children's, consumer, medical, and cosmetic products); pharmaceutical drugs and medical devices; hotels, resorts, and golf courses (premises and security liability); workers compensation, occupational disease and employers liability claims; toxic torts (asbestos, chemical, "Sick Building Syndrome" and mold contamination); nursing home, hospital, physician, and laboratory liability; commercial disputes (RICO, unfair trade practices, antitrust, trade secret theft, partnership and corporate dissolution, and patent infringement). Knowledge of legal issues affecting golf industry (player liability, golf cart accidents and course design). Knowledge of firearms and laws governing firearms use including product liability issues (military and civilian firearms training).

Appointed judge pro tem of the Arizona Court of Appeals. Assistant Attorney General of Arizona.

Former captain, U.S. Army Reserve (seven years and one half years, active and reserve duty), Judge Advocate General's Corps; 9th Infantry Division and Judge Advocate Generals Corps and XV Army Corps. Awarded Army Commendation Medal. Military prosecutor and defense counsel in Courts Martial. Admitted to practice, U.S. Court of Appeals for the Armed Forces.

Admitted to practice, Arizona, Illinois, U.S. Supreme Court, 9th Circuit Court of Appeals, U.S. District Court.

Fellow, Chartered Institute of Arbitrators (London); Certified Arbitrator, Reinsurance and Insurance Arbitration Society; American Board of Trial Advocates; Former Chair, American Bar Association Special Committee on Federal Asbestos Legislation.

Speaker at U.S. and foreign business and legal conferences. Author, 60 published articles.

Mediator Experience

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-six cases; (2) Real estate: breach of contract cases involving residential purchase agreements-five cases, commercial sales, leases, and construction projects-10 cases, real estate partnerships-one case, construction defects-two cases, and condemnation proceedings-10 cases; (3) Corporate/partnership dissolutions: corporate and partnership dissolutions including law firms and stockholder disputes-two cases; (4) Professional liability: accounting, legal, nursing home malpractice-three cases; (5) Commercial transactions: breach of contract-business purchase-one case, bank-customer loan dispute and wrongful mortgage foreclosure-one case, and a customer-financial advisor dispute-one case; (6) Product liability: design defect claims-SUV rollover with two fatalities, swimming pool, and plumbing design and installation-three cases; (7) Employment: wrongful termination, and breach of executive pension agreement-two 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-six cases; (10) Construction site accident-one case; and (11) Gunshot injuries-one 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.

Mediator Style & Process Preferences

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.

Education

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

Professional Licenses	Admitted to the Bar: Arizona (1958), Illinois (1956-inactive); 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); former member, Arizona Trial Lawyers Association; Arizona Association of Defense Counsel (Past President); International Association of Defense Counsel; former member, American Society of Workers' Compensation Professionals; State Bar of Arizona (Alternative Dispute Resolution Section, Past Council Member); Fellow, Chartered Institute of Arbitrators (London); Maricopa County (Phoenix), and Scottsdale Bar Associations.
Recent Publications & Speaking Engagements	<p>PUBLICATIONS: 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.</p> <p>SPEAKING ENGAGEMENTS: 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.</p>
Mediation Rate	\$300 Per Hour
Languages	English
Citizenship	United States of America
Locale	Scottsdale, AZ

The AAA's Rules provide the AAA with the authority to administer a mediation including, mediator appointment, general oversight and billing. Accordingly, mediations that proceed without AAA administration are not considered AAA mediations, even when the parties select an mediator who is on the AAA's Roster.

The information contained in this resume has been supplied solely by the individual mediator and may, or may not, be a complete recitation of their experience. The AAA assumes no responsibility for the content, completeness, accuracy, or reliability of the information contained in a mediator's resume. If you have any questions about a mediator's experience or background, you are encouraged to contact your case manager.

Mediators on the AAA Roster are not employees or agents of the AAA.