



Shawn K. Aiken

Litigation • Arbitration • Mediation • Corporate Governance

AIKEN SCHENK

ATTORNEYS AT LAW

SHAWN AIKEN'S PRACTICE emphasizes complex business litigation involving contracts, business torts, intellectual property and unfair competition. He also devotes a substantial portion of his practice to mediation and arbitration, and was selected by *Best Lawyers in America* as Lawyer of the Year, 2012 (Mediation, Phoenix). For three consecutive years (2009-2011), Shawn Aiken has ranked among Super Lawyers' "Top 50 Arizona Lawyers."

#### HIGHLIGHTS

During more than 20 years of litigation and trial work, has represented clients in trademark, trade dress, partnership and closely held shareholder disputes; violations of non-competition covenants; 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

Lead attorney on hundreds of litigated cases, including nearly 25 trials to judgment and a plaintiff's bad faith jury verdict of over \$1 million

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 represented plaintiffs in a partnership dispute, overcoming the lack of a written partnership agreement in winning a \$4.5 million arbitration award

Arbitrations and trials as lead counsel have ranged from legal malpractice to business sales, complex contract disputes, contempt proceedings, disciplinary actions and fraudulent transfer claims

Successfully defended numerous bankruptcy discharge actions totaling over \$30 million and a breach of contract claim exceeding \$30 million against a local government

#### PROFESSIONAL ACTIVITIES AND HONORS

*Super Lawyers*®: Top 50 Arizona Lawyers, 2009-2011; *Southwest Super Lawyers* Cover Feature, 2010; Selectee, Business Litigation, Alternative Dispute Resolution (2007-2011)

*The Best Lawyers in America*®: Lawyer of the Year, 2012 (Mediation, Phoenix); Commercial Litigation and Alternative Dispute Resolution (2009, 2010, 2011 and 2012 editions); Alternative Dispute Resolution (2007 and 2008 editions)

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)

Certified by the National Board of Trial Advocacy (Civil Trial Law), 1996-2016

Arizona's Finest Lawyers, 2010-present

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

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

Volunteer Lawyers Program: Volunteer of the Month, July 2003 and June 1998

#### PROFESSIONAL AFFILIATIONS

Litigation Counsel of America: Fellow; State Delegation Co-Chair

American Association for Justice: Commercial Litigation Section  
Federal Bar Association

Million Dollar Advocates Forum

Chartered Institute of Arbitrators

College of Commercial Arbitrators

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

National Arbitration and Mediation: International Panel of Complex Commercial Arbitrators

National Academy of Distinguished Neutrals: Charter Member  
Horace Rumpole Inn of Court: Master, Counselor, Past President

#### 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

## **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)

## **ARTICLES AND PRESENTATIONS**

"Mediation as a Part of the Construction Claims-Solving Process" (chapter author), *Arizona Construction Law Practice Manual*, Second Ed., Vol. 2, 2011

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

"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*

"2008 Private Arbitration Update" (faculty member), *State Bar of Arizona*, 2008

"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" (presenter and materials), *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 and materials), *State Bar of Arizona*, *CLE by the Sea*, 1998

"Financial Expert Witnesses" (presenter and demonstration), *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" (presenter and materials), *State Bar of Arizona*, *CLE by the Sea (California)*, 1996

"Civil Jury Instructions" (presenter), *State Bar of Arizona Corporate and Business Litigation Subsection*, 1996

"Civil Jury Instructions" (presenter), *Pima County (Arizona) Bar Association CLE Seminar*, 1996

Presenter on civil rules, arbitration and professional service to classes at the *Arizona State University College of Law*, *University of Arizona College of Law*, and *Phoenix International School of Law*

## **COMMUNITY INVOLVEMENT**

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

*Arizona Baseball and Softball Commission*

*University Lutheran Church*

*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.

## **MEDIATION AND ARBITRATION**

### **ALTERNATIVE DISPUTE RESOLUTION EXPERIENCE**

Conducted over 200 arbitrations, mediations, settlement conferences, and jury trials as arbitrator, mediator, and judge pro tempore.

Extensive experience in *American Arbitration Association* arbitrations as counsel.

Member of the *American Arbitration Association Large, Complex Case Program* and *International, National Sports, and Commercial Panels*.

Sole arbitrator in cases involving business and commercial claims ranging from \$200,000 to \$20 million, including those arising out of 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; employment termination, trade secret, fraud, negligence, covenants not to compete/restrictive covenants, breach of contract, overdue commissions, breach of fiduciary duty, and misrepresentation claims.

Served on three-member panels (frequently serving as chair) in cases involving claims ranging from \$30 to over \$90 million involving employment termination; class action involving banking claims; failed merger and patent licensing issues; valuation disputes, especially hotel and other commercial properties; dissolution of medical partnership; and enforcement of national class-action consent order.

Served as neutral on several cases brought by consumers against the telephone company, credit card issuers, and college testing service.

International matters have involved firms from, for example, *Taiwan*, *Australia*, *France* and *Belgium*.

Served on multi-arbitrator mass claims panel resolving thousands of employees' claims totaling over \$30 million against the *State of Arizona*. Member of the *American Arbitration Association Arizona Advisory Council* since 1990.

## ALTERNATIVE DISPUTE RESOLUTION TRAINING

AAA Dealing With Delay Tactics in Arbitration (ACE004), 2007, 2005; AAA Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics (ACE005), 2006; Attended AAA Neutrals Conference, 2005; AAA Arbitration Awards: Safeguarding, Deciding & Writing Awards (ACE001), 2005; AAA Arbitrator Ethics & Disclosure (ACE003), 2004; AAA Commercial Arbitrator II Training: Advanced Case Management Issues, 2002; AAA Annual Arbitrator Update 2001; AAA Commercial Arbitrator Training, 1999; Maricopa County Superior Court Mediation and Settlement Training, 1998; AAA Introductory Arbitrator Training, 1995.

## JUDGE PRO TEMPORE: SETTLEMENT CONFERENCES

*David Berenter v. Henry Bongiovi and Jane Doe Bongiovi*, CV 93-25243 (Settled)

*Desert Schools Federal Credit Union v. Arizona Auction Services*, CV 94-12468 (Settled)

*Contractors Bonding & Insurance Co. v. C&F Equipment Co, Inc.*, CV 94-19724 (No settlement)

*Jo Anne Day, etc., et al v. Sears Roebuck and Co., etc.*, CV 95-01610 (Settled)

*Siener v. Desert Vista Hospital, et al.*, CV 95-16681 (Settled)

*Stacy Paige Fetter v. Mesa Psychiatric Hospital, Inc.*, CV 95-16681 (Settled in part)

*Annette L. Zambeck v. Peter F. Fisher, et al.*, CV 96-06644 (Settled)

*Adella Osborn v. ABCO Markets, Inc.*, CV 96-02059 (No settlement)

*Damson/Birtcher Realty Income Fund-I v. Phyllis E. and John Doe Halbach*, CV 95-01867 (No settlement)

*Phillip Troy Vernon v. Standard Chartered Bank*, CV 90-01365 (Settled)

*Ampelia Galvan, et al. v. Leeco Investment Company, et al.*, CV 96-05695 (No settlement)

*Zwolinski v. White, M.D., Libmann, M.D., Hearter, M.D., et al.*, CV 96-14301 (No settlement)

*El Slash Cattle Co., Inc. v. Leavitt*, CV 95-18574 (Settled)

*Isaak Goltsman v. Boris Goltsman, et al.*, CV 98-17444 (No settlement)

*Scott McNair v. Bryant Stooks, et al.*, CV 97-23323 (Settled)

*Pauline Sill v. Alliance Medical*, CV 98-23145 (Settled)

*City of Phoenix v. NW Properties*, CV 96-14646 (Settled)

*Gypsum Construction Co. v. Biltmore Gardens Associates*, CV 2000-009503 (Settled)

## PRIVATE MEDIATION

Mediated construction defect cases, including class actions

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

## AD HOC AND INSTITUTIONAL ARBITRATION

Served as a neutral on:

- cases brought by consumers against a telephone company, credit card issuers, and college testing services
- a \$90 million claim for breach of licensing and other agreements, fraud, and breach of fiduciary duty in the power and cooling equipment manufacturing industries
- a \$10 million claim for breach of employment contract in the oil and gas industry
- a 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
- acted as advocate, sole arbitrator, and chairman or member of three-arbitrator panels on numerous other occasions

## 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

## 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, 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: breach of contract)

*Palmer v. Medical Care Clinic*, 87-08147 (Three days to jury: breach of employment contract)

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

*Hewitt v. Blum and McKernan*, C-612089 (Six days to jury: breach of contract)

*Rowley v. Seal* (Four days to court: breach of contract and fiduciary duty)

*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)

**REFERENCES AVAILABLE**