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### **Professional Experience**

**Work History:** Shareholder, Director and Partner, Mariscal, Weeks, McIntyre & Friedlander, P.A ("Mariscal Weeks"), 1972-present; member of Executive Committee at Mariscal Weeks for over 30 years; Mariscal Weeks is a general civil practice law firm located in Phoenix, Arizona and operating throughout the State of Arizona; Associate, Hoffman & Davis (Chicago, Illinois), 1969-72.

**General Construction Experience:** For over 40 years extensively involved in construction disputes, with over 70% involving large, complex, multi-party construction matters as described herein. Represented owners (including public owners), design professionals, general contractors, and subcontractors in both court and various ADR proceedings.

**General Litigation Experience:** For over 40 years practice has also included all aspects of civil/commercial litigation in state and federal courts and before administrative agencies involving the types of matters indicated below.

**Alternative Dispute Resolution Experience:** For over 40 years, has either represented construction industry clients in ADR proceedings or acted as mediator or arbitrator in a myriad of construction and commercial disputes (i.e., contracts, franchises, leases, sale of businesses, joint ventures); frequently acted as panel chairman in three-member arbitration panels; selected as party-appointed arbitrator (now known as "Canon X Arbitrators") on various tripartite panel arbitrations. Typical ADR construction disputes involved projects varying from airports, highways, hotels, treatment plants, commercial structures, apartment projects, subdivisions and public buildings, to exclusive, private residences, bid disputes on public projects, mass and channel excavation projects, and negligence claims against design professionals. ADR responsibilities have included being selected as an arbitrator or mediator not only in Arizona, but throughout the Southwest.

**Experience as an Advocate for a Party:** Some examples of over 40 years experience in handling construction claims include: represented national engineering and design company (one of the largest in the United States) in claims arising from the design and construction management of a \$40 million wastewater treatment plant, and the construction of related sewer lines in the City of Sedona; represented luxury hotel owner in litigation over hotel construction issues with general contractor and surety (\$15 million); represented general contractors in matters involving waste treatment facilities (\$3-\$5 million) and the construction of schools (varied up to \$5 million); represented a general contractor on an \$8 million audit dispute with owner on a \$350,000,000 project; represented an owner defending a \$5 million claim involving extra costs arising from environmental remediation and project delays; represented an owner in the design/construction of refrigeration facility (approximately \$2 million); represented college in

pursuit of \$3 million in claims against general contractor, soils engineer and architect; represented owner of large hotel construction project in disputes with contractor over accounting and delay issues on cost plus project; represented hospital in \$300 million project in disputes over project delays, defective work and design claims; represented owners and bidders in public bid protests, including the construction of the new Phoenix City Hall project, remodel of Terminal 4 at Sky Harbor International Airport, and a bridge project on Interstate Highway 17 in Arizona; represented general contractor in the renovation and expansion of major hotel in Tyson's Corner, Virginia; and represented numerous owners in the construction of condominiums, apartments, resorts, office and medical buildings.

Other commercial disputes involved representing title companies in title and escrow disputes; representing an international produce and marketing company in disputes with foreign growers and involving secured transactions under the UCC and foreign laws; partnership dissolutions and other partnership/joint venture issues; real estate disputes involving options, purchase agreements, easements, mechanics liens, title and insurance issues; flood damage to farm land and farm crops, employment agreements; insurance policy coverage issues and claims; family law disputes.

**Experience as an Arbitrator:**

➤ **Construction Matters:** Disputes involving mass and channel excavation projects; numerous soil cases involving subsidence and expansive soil issues; waste treatment and water reclamation projects; industrial projects; schools; manufacturing plants (structural and carbon fiber facilities); mold claims in both commercial and residential structures; defective construction of floors and roofs; lost profit, delay and impact claims; wrongful termination claims; malpractice claims against architects and engineers; design and installation of HVAC and other cooling systems on public and private buildings; owners' and general contractors' claims on both commercial and residential projects over defective construction and errors in plans and specifications; liquidated damage claims brought by governmental entities, including school districts, and large private owners; damages involving late delivery and installation of specified proprietary materials; disputes over construction of buildings at Universities and other public structures, including water drainage systems, highway construction, construction of luxury homes; and fraud claims.

➤ **Commercial Matters:** Disputes over contracts; duties and responsibilities on marketing agreements; termination of contracts; interpretation and enforcement of various terms of settlement agreements; insurance coverage questions arising from contracts and settlement agreements; claims arising from settlement of adversary proceedings in the Bankruptcy Court; interpretation of rights under an employment agreement; and personal injury claims.

**Experience as a Mediator:** Has mediated hundreds of disputes, both as a private mediator and for the American Arbitration Association. Majority of matters mediated relate to construction disputes and the other matters relate to general civil/commercial matters.

➤ **Construction Matters:** Delay claims against owner and design professionals; delay claims by owners against contractors and design professionals; contractor claims on school district project against owner and engineer, where contractor wrongfully terminated and owner sought liquidated and other damages well in excess of contractor's claims; easement and driveway relocation dispute on multimillion dollar spec home involving the lender, title company, designers, builder, and adjacent property owners; delay and other impact claims against school district brought by contractor and surety and school district's off-setting

liquidated damage claim; owner's claims for roof repair and replacement, mold remediation, drywall and structural repairs against architect, structural engineer, general contractor, roofing subcontractor, and various suppliers; multi-party disputes involving public structures, including jail/juvenile facility, and waste treatment plants; multi-party claims involving construction of hotels, schools, hospitals and private residences; claims against design professionals; supply contract disputes; multi-phase mediations on large commercial projects (over extended periods of time and numerous sessions), including public buildings, and wastewater treatment plants; termination of a general contractor on an industrial project; disputes over the development of a golf course project; disputes over installation of sewer and water systems and off-sites on public and private projects; disputes over upgrades for waste treatment plant; damages caused by expansive soils; airport facilities disputes; and disputes over construction of \$160 million cement plant involving delay claims, liquidated damages and disputed change orders.

➤ **Commercial Matters:** Disputes involving real property, including title insurance and escrow claims, easements, options, leases, partnership/joint venture, deficiency, foreclosure, property valuations, and mechanics liens; bankruptcy disputes (adversary proceeding involving fraudulent conveyances and insider transactions); insurance coverage, bad faith and intentional interference claims against insurance company; family disputes over trust agreements; trademark and patent infringement claims; accounts receivable and other types of collection claims; procurement contracts; exclusive purchase agreements, Uniform Commercial Code claims; and employment agreements.

**Multi-Party Experience:** Because of their complexity, most court proceedings, mediations and arbitrations handled relating to construction industry disputes generally involve multiple parties (i.e., the owner, general contractor, subcontractors, design professionals, and sureties), and in many cases, with mediations in multiple phases/sessions, spreading the gamut from traditional contract disputes to complex delay and impact claims, loss of productivity, lost profits, acceleration, scheduling (including CPM issues), liquidated damages, change orders, termination, contract interpretations, extended and home office overhead, general conditions, design errors, insurance coverage, standards of care, industry practices, no damage for delay clauses, etc.

**Awards and Honors:** Listed in *Best Lawyers in America* (ADR and Construction); Listed in *Superlawyers of the Southwest* (ADR); selected in *Best Lawyers* as "Construction Lawyer of the Year for 2011" for Phoenix, Arizona; *Martindale-Hubbell* rating, A.V.

**Professional Licenses:** Admitted to the Bar: Illinois, 1969; Arizona, 1973; U.S. District Court: Northern District of Illinois, 1969; District of Arizona, 1973; U.S. Court of Appeals, Ninth Circuit, 1992; U.S. Supreme Court, 1977.

**Professional Associations:** American Arbitration Association (Construction Panel and Construction Mediation Panel); American Bar Association (Construction Industry Forum Committee); State Bar of Arizona; Maricopa County Bar Association; board member (over 20 years) and former Chairman of the Board of John C. Lincoln Health Network hospital system.

**Education:** University of California at Berkeley (BA-1966); Northwestern University (JD-1969).

**Court and Bar Appointments:** Acted as Special Master for Maricopa County (Arizona) Superior Court, Special Commissioner for Maricopa County Superior Court and *Judge Pro Tem*, Maricopa County Superior Court and Arizona Court of Appeals; board member and

financial officer of ADR Section of Arizona State Bar Executive Council; Chairman of an Arizona State Bar Ethics Committee for over 8 years.

**Publications and Speaking Engagements:** Contributor to Arizona's "Construction Law Practice Manual;" wrote numerous articles and for many years has lectured extensively for private organizations and for numerous State Bar Continuing Legal Education programs on various construction dispute issues, including bid disputes, contractor and owner damages, design defects, notice requirements for claims, disclaimers and waivers of claims, change orders, constructive change orders, flow-down clauses, no damage for delay provisions, incorporation by reference, and other types of construction claims, ADR (various aspects of mediation and arbitration), litigation, use of experts, cross-examination of experts, malpractice issues in handling construction claims, negotiation of construction disputes, and Arizona's new RUAA.

**Rates:** Fees (including study time) range from \$450/Hr for two-party mediations to higher hourly rates for complex, multi-party mediations, and \$450/Hr for arbitrations. Additional charges for travel costs and other reasonable expenses.

**Arbitration Cancellation Policy:** If an arbitration is cancelled within 30 days before the hearing, the cancellation fee is 50% of the per diem rate. The per diem rate is based upon an 8-hour day. In the event of a cancellation, and no replacement matter is found for the cancelled time slot, the cancellation fee may be charged. However, if another matter can be scheduled within that time slot, there will be no cancellation fee.

**Arbitrator/Mediator References:** References will be provided upon request.