

CARY RODMAN COOPER

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Overview

Cary Cooper is a proficient arbitrator and mediator concentrating on business, commercial, and healthcare disputes. Cary's ADR skills are strengthened by his experience as a trial and appellate lawyer in a wide spectrum of cases, including contract disputes, commercial issues in product failures, supply-chain matters, indemnity agreements, director and shareholder issues in closely-held corporations, partnership disputes, and general business torts across numerous industries including automotive, banking, construction, education, environmental, finance, healthcare, manufacturing, and real estate.

Service as a Neutral

In addition to private engagements, Cary is a member of the following neutral panels:

- American Arbitration Association Commercial Panel of Neutrals;
- American Health Law Association Neutrals;
- American Health Law Association Exclusive List of Mediators;
- National Academy of Distinguished Neutrals; and
- ADR Federal Court panel, U.S. District Court, Northern District of Ohio.

Representative List of the Types of Cases as an Arbitrator:

- Dispute between several pharmacies and a pharmaceutical claims administrator under a state Prompt Pay Act.
- Dispute between healthcare system and a Medicaid managed-care insurer respecting reimbursement levels due under contract.
- Breach of contract dispute under Dealer Franchise Agreement.

- Damage claim to recover fees for architectural services for new construction and remodeling of nursing care facilities and counterclaims by owner for damages allegedly caused by improper design and construction.
- Contract dispute respecting use restrictions for medical-office building.
- Claim by healthcare provider to recover amounts debited by insurer for allegedly upcoding for services by the provider.
- Dispute between healthcare insurer and provider alleging discrimination under state's any-willing-provider statute.
- Indemnity action under Asset Purchase Agreement for damages and attorney fees incurred by purchaser of manufacturing assets in defending several personal injury lawsuits caused by defective products made by the seller of the assets before entering into the APA.

Representative List of Civil Trials, Appeals, and Arbitrations:

- A \$5.2 million jury verdict for a commercial real estate developer against an accounting firm for breach of fiduciary duty.
- A successful defense of an automotive-parts manufacturer in a lengthy arbitration denying a claim seeking more than \$100 million for an alleged breach of a license agreement to develop and distribute a continuously variable transmission.
- A \$1.9 million jury verdict for a medical device manufacturer against a hospital for fraudulently inducing sales, which verdict permitted the medical device manufacturer to favorably settle a similar case against another hospital.
- A successful federal court appeal overturning a district court's order and establishing an automobile-parts supplier's right to pursue indemnity for breach of warranty under an asset purchase agreement.
- A successful appeal to state supreme court reversing a trial court's order and enforcing the spendthrift provisions of a family trust thus preserving trust assets for the beneficiaries.
- Successfully defending two appeals in federal court sustaining a judgment for an insurance company holding that its right to a contractual set-off and recoupment of sales commissions took priority over a bank's security interest in the commissions due a third-party insurance agency.

Representative List of Reported Appellate Cases:

- *Texas UJoints, LLC v. Dana Holding Corp.*, 844 F.3d 617 (7th Cir. 2016)
- *Dana Limited v. Sypris Technologies, Inc.*, 54 N.E.3d 801, 2015-Ohio-5311 (6th Dist. Ohio App. 2015)
- *ProMedica Health System, Inc. v. FTC*, 749 F.3d 559 (6th Cir. 2014), Amici Curiae Brief on behalf of 53 Business, Professional, Educational, Civic Organizations, Municipalities, and Governmental Entities Supporting Petitioner, cert. den. 135 S. Ct. 2049 (Mem), 191 L.Ed.2d 956 (2015)
- *Wrinn v. Ohio State Highway Patrol*, No. 11AP-1006, 2013 WL 1200 256 (10th Dist. Ohio, Mar. 26, 2013)
- *Twee Jonge Gezellen Ltd. v. Owens-Illinois, Inc.*, 2007 U.S. App. LEXIS 18257 (6th Cir. 2007)
- *Grupo Condumex, S.A. de C.V. v. SPX Corporation*, 2006 U.S. App. LEXIS 23217 (6th Cir. 2006)
- *Hull v. Columbia Gas of Ohio*, 110 Ohio St.3d 96 (2006)
- *National City Bank, Northwest v. Columbia Mutual life Ins. Co.*, 282 F.3d 407 (6th Cir. 2002)
- *Columbus Bar Assn. v. Elsass*, 74 Ohio St.3d 174 (1995)
- *N.L.R.B. v. Health Care & Retirement Corp.*, 114 S. Ct. 1778 (1994) (on brief)
- *Landefeld v. Marion General Hospital*, 994 F.2d 1178 (6th Cir. 1993)
- *Domo v. McCarthy*, 66 Ohio St.3d 312 (1993)
- *Kauffman v. Allied-Signal Inc.*, 970 F.2d 178 (6th Cir. 1992)
- *Dana Corp. v. Blue Cross & Blue Shield Mutual of Northern Ohio*, 900 F.2d 882 (6th Cir. 1990)
- *Shimman v. Frank*, 625 F.2d 80 (6th Cir. 1980)
- *Markowitz & Company v. Toledo Metropolitan Housing Authority*, 608 F.2d 699 (6th Cir. 1979)

- *Palmer v. Columbia Gas of Ohio*, 479 F.2d 153 (6th Cir. 1973)

Cary began his legal career as a judicial law clerk for judges in state and federal courts, and then served two years as a public defender representing indigent criminal defendants in trials and appeals, including seven murder trials.

Professional Licenses

Admitted to the Bar: Ohio, 1969; Michigan, 1989.

Education

Ohio University (BS Zoology-1964); The University of Toledo (JD, summa cum laude-1969).

Awards and Honors

Cary has carried the AV[®] Preeminent[™] Peer Review RatingSM by Martindale-Hubbell[®] for more than 40 years reflecting the highest peer review rating for ethical standing and legal ability. He has been listed in annual editions of The Best Lawyers in America in Commercial Litigation, and in Bet-the-Company litigation. In 2009, he was named “Toledo Best Lawyers Bet-the-Company Litigator of the Year.” Cary is a life member of the United States Sixth Circuit Court of Appeals Judicial Conference. In 2006, he received The University of Toledo Alumni Foundation’s Distinguished Lawyer Award, and in 2014 he received the Distinguished Service Award from Advocates for Basic Legal Equality and from Legal Aid of Western Ohio.

Professional/Community

Professional Affiliations

- American Bar Association
- Ohio State Bar Association
- State Bar of Michigan
- Toledo Bar Association
- American Health Law Association

Community Service (present)

- Member and Board Chair, Ohio University Board of Trustees

- **Member, Advisory Board to George F. Voinovich School for Leadership and Public Service at Ohio University**
- **Member, Ohio University Foundation Board**
- **Member, Advisory Council, Advocates of Basic Legal Equality and Legal Aid of Western Ohio**