

John (Jay) McCauley, Esq., FCI Arb
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Private Dispute Resolution

John (Jay) McCauley serves exclusively as an arbitrator, mediator and arbitration consultant in domestic and international business disputes. He came to this profession nearly twenty years ago from a background as a Harvard Law School educated, AV rated litigation partner in a large international law firm. He specializes in complex commercial, employment, construction, healthcare, insurance, intellectual property and real property matters, including class actions.

He has been continuously listed for the past eight years as a California *Super Lawyer* and, for the past seven years, has been included in *Best Lawyers in America*, in the field of ADR, which named him “Lawyer of the Year” in the field of Mediation for the San Jose region in 2013.

He is a Fellow of the Chartered Institute of Arbitrators and of the College of Commercial Arbitrators, and he is a Distinguished Fellow of the International Academy of Mediators. He has taught courses in Arbitration Law over the last fifteen years at Pepperdine, Loyola, UMKC and Creighton Law Schools. He is a contributing author of the third edition of the *College of Commercial Arbitrators Guide to Best Practices in Arbitration*, and an editor of the fourth edition of that publication. He is also a faculty member of the USC/JAMS Advanced Arbitration Institute.

He is a member of the International Centre for Dispute Resolution’s (“ICDR”) International Roster of Arbitrators. He is also a member of the American Arbitration Association’s Commercial, Large Complex Case, Real Property and Construction, Employment and Healthcare Panels, and of the USA & M “Senior Arbitrator Panel.” In the past decade he has handled more than 170 arbitrations and 600 mediations, involving primarily large and complex matters.

Legal Career

Private Practice as Arbitrator, Mediator, and Arbitration Consultant 1998-present. Serves on the roster of the American Arbitration Association, the International Centre for Dispute Resolution (ICDR), USA&M, and Judicate West

Partner, McCauley & Associates 1990-present; Partner, Paul, Hastings, Janofsky & Walker, 1987-90, Associate, 1983-87; Associate, Tuttle & Taylor, 1980-83

Former Resident Professor of ADR and Chair of the Arbitration Program, Creighton University Law School, 2011-13; Adjunct Professor: Creighton Law School, 2010; UMKC Law School, 2009 and 2010; Pepperdine Law School, spring and fall semesters, 2007; Loyola Law School, 1997-02

Education

Harvard Law School (JD, cum laude-1980); University of Pennsylvania (MA-1973); University of California at Irvine (BA-1971)

Extensive professional training in Arbitration and Mediation, ranging from the attending Straus Institute weeklong intensive course “Mediating the Litigated Case” (1998) to matriculating in the National University of Singapore International Arbitration Academy (November-December, 2013)

Professional Affiliations

Fellow, Chartered Institute of Arbitrators, since 2014

Fellow, College of Commercial Arbitrators (former chair, Law School Education Committee and an editor of the *CCA Guide to Best Practices*), since 2011

Distinguished Fellow, Emeritus, International Academy of Mediators, since 2002

Professional Recognition

Listed in *Best Lawyers in America*, ADR section, since 2008;

Named *Best Lawyer Magazine's* 2013 “Lawyer of the Year” in Mediation for the San Jose, California region;

Named “California SuperLawyer” since 2009;

AV rated attorney (since the mid-1980s) listed in *Martindale-Hubbell Register of Preeminent Lawyers* (since the early 1990s)

Representative Cases

Business/Commercial

- Arbitration of claim for alleged breach of a 20-year development and operating agreement between an supplier of an large “outsourced” acute psychiatric services unit and a community hospital located in Washington DC (Panel Chair)
- Arbitration of claims of misrepresentation brought by the purchaser of a private for-profit career college with several campus in Florida (Panel Chair)
- Arbitration of a derivative claim for fraud and accounting and appointment of a receiver brought by minority shareholder based on alleged patterns of unjustifiable expense allocation and fraudulent transfers among eight cosmetic manufacturing and distributions companies having partial common ownership (Sole Arbitrator)
- Arbitration of a Claim for Securities Fraud and Improper Dilution of Shares brought by a large investor in a \$50 million dollar real estate cemetery development company located in Mexico City (Sole Arbitrator)
- International Arbitration among British, Israeli and U.S. investors for alleged breaches of the parties' development agreements, fiduciary duties and capital call obligations in a large eight-phase commercial real estate development project in Las Vegas (Neutral Panelist)
- Arbitration of claim of breach of agreement between a marketer and a debt solution company involving resolution of proper distribution of proceeds generated from services provided to clients delivered by the marketer (Neutral Panelist)
- Arbitration of a claim for fraud between an investor and a limited liability company specializing in collateralized lending to borrowers in the solar power industry (Neutral Panelist)
- Lead counsel representing minority partners in a general partnership dissolution action under the Revised Uniform Partnership Act, where the underlying assets were 1,000 acres of citrus holdings in the San Joaquin Valley.

- Lead Counsel representing the American manufacturer of kidney stone lithotripters in a multi-million dollar action for breach of distributor agreement covering Europe and the Middle East

Class Action

- Arbitration of Wage and Hour Class Action involving a nationwide membership fitness company (Sole Arbitrator)
- Lead Counsel defending officers and directors in multiple securities fraud class actions
- Mediator in approximated three-dozen Wage and Hour Class Action cases
- Author of article “What is Special about Mediating Class Actions?”

Construction

- Arbitration of claim for alleged breach of a joint venture operating agreement in connection with an unexpected need to use extensive concrete channels and holding ponds in lieu of a simpler “wide street and berm” system to meet entitlement requirements for the handling of water flows in a 190 acre desert recreational development project in Southern California
- Lead counsel defending or prosecuting construction disputes, including disputes involving: tilt-up building construction defect; wastewater discharge; mold; window seepage; subcontractor lien; and scope of construction manager duties under AIA contract provisions

Employment

- Mediator, approximately three-dozen class actions involving alleged violation of wage and hour laws
- Mediator, several hundred wrongful termination or constructive termination actions, including actions for sex, age, race, religious, and sexual preference discrimination, whistleblower, and “failure to accommodate” disability matters
- Arbitrator, approximately 50 wrongful termination matters, and 12 wage and hour matters

Environmental

- Mediator, multi-party dispute among public and private entities involving mitigation of cross-jurisdictional environmental impacts of several major residential development projects under the California Environmental Quality Act (CEQA)
- Lead counsel defending a large refuse disposal company in a major CERCLA action brought by the EPA against the client, whose disposal activities accounted for about 50% of the volume of a superfund site, at the time ranked 7th on the EPA list of priorities
- Lead counsel defending an international Construction Company in a \$7 million dollar administrative proceeding before the California Water Quality Control Board arising out of pumping of allegedly contaminated ground water into Newport Bay during site preparation

Healthcare Law

- Arbitration of multiple cases involving claims for medical malpractice (including cases for alleged failure to diagnose cause of serious malady, allegedly needless election of risky procedure; and surgical failure)
- Arbitration of a nine-figure claim for rescission and restitution by a major pharmaceutical company against a single product drug development company for alleged misrepresentations concerning the likelihood that a cancer-treatment drug undergoing Phase III clinical trials would obtain FDA approval (an adjudication that included analysis of statistical evidence of viability of the drug)
- Arbitration of a \$75 million claim for in breach of contract by a manufacturer of patented blood-separation devices used in blood plasma collection centers
- Arbitration of claim for breach of operating agreement involving a large physician-owned medical office building (Sole Arbitrator)
- Hearing Officer, Judicial Review Committee (adjudicating fairness hearing determining whether a surgeon should retain hospital privileges)
- Lead counsel defending the former executive director of the University of California, Irvine, Medical Center in more than 90 cases filed in connection with the unauthorized embryo transfer scandal involving the UCI Center for Reproductive Health

Insurance

- Arbitration of a large claim for breach of indemnity and defense obligations brought against a major Directors' and Officers' (D & O) insurance company (Panel Chair)
- Arbitration of claim of breach of insurance coverage obligation and bad faith brought against a major title insurance company by owner of eight parcels of ocean-front property in Maui, Hawaii (including resolution of off-record native Hawaiian title claims in the form of historical access rights to privately-owned ocean property, and appraisal of mega-value properties) (Neutral Arbitrator)
- Arbitration adjudicating 16,000 significant discrete claims for medical insurance coverage under a capitated care contract between a large Northern California-based hospital system and a large HMO (assignment involved designing a successful case management mechanism using creative bifurcations to try all claims within two years using a total of only 18 hearing days) (Sole Arbitrator)
- Coverage Counsel representing a waste disposal company in connection with the enforcement of coverage for environmental claims under 30 years of CGL policies issued by multiple insurance carriers
- Coverage counsel representing officers and directors of an aeronautical engineering company enforcing defense and indemnity obligations arising under a directors and officers liability policy in connection with a securities fraud class action filed against the clients

Intellectual Property

- Arbitration of individual and derivative claims for fraud and waste involving a successful close corporation with international operations in the niche specialty of brokering of licenses to use brand names
- Arbitration of claims for unfair competition, theft of trade secrets and interference, seeking and injunctive relief, brought by a national insurance company against one of its high producing former brokers and that broker's new employer
- Arbitration of claims of breach of trade secrets and covenants not-to-compete in involving a manufacturer of a proprietary salmon oil capsule and a large national "big box" pharmacy

- Lead appellate counsel for plaintiff in a federal action arising out of a wrongful patent infringement claim, involving an invention used to secure windows in commercial buildings, *U.S. Aluminum/Texas v. Alumax Inc.* 831 F. 2nd 878 (9th Cir. 1987)
- Lead counsel representing a developer of ophthalmic dispenser inventions in a breach of license agreement arbitration brought by a major pharmaceutical company
- Mediator, copyright dispute pertaining to design patterns used by a textile manufacture
- Mediator, patent know-how license agreement dispute involving the radioactive “seeds” used in treatment of prostate cancer

International

- International Arbitration among British, Israeli and U.S. investors (as well as multiple alleged bona fide purchasers for value) for alleged breaches of the parties' development agreements, fiduciary duties and capital call obligations in a large eight-phase commercial real estate development project
- Fellow, Chartered Institute of Arbitrators
- Panel Member, International Centre for Dispute Resolution (ICDR)
- Participant, The Singapore International Arbitration Academy (an 11-day intensive seminar in International Commercial and Investment Treaty Arbitration), November-December 2013

Professional Malpractice

- Arbitration of claim for legal malpractice against a large Los Angeles-based law firm for failure to bring a derivative action or implement an allegedly feasible corporate control strategy in connection with an underlying corporate governance dispute involving a large privately held multi-state enterprise

Real Estate

- Arbitration of claims for lender liability and breach of joint venture real estate development agreement between a federally recognized Indian Tribe and a Delaware land development Corporation Corporation

(including resolution of complex issue of enforceability of an arbitration agreement in the context of applicable tribal law)

- Arbitration involving the determination of the fair market rental value of San Diego commercial building
- Arbitration of a dispute between a landlord and a restaurant tenant concerning alleged failure of tenant to pay rent; to maintain fire insurance; and to maintain occupancy needed for landlord to obtain fire insurance; and concerning landlords alleged unreasonable withholding of assent to an assignment of the lease to a new tenant
- Arbitration of specific performance claim for alleged breach of agreement to transfer large tract of commercial property
- Mediation of dispute among partners of a medical facility leased to physicians, concerning rights under a partnership operating agreement.
- Mediation of multiple eminent domain matters concerning the fair market value of land condemn by various agencies of the State of California
- The Lead counsel representing a limited partnership, in a \$20 million dollar secured real property “wrongful foreclosure” jury trial arising out of the foreclosure sale of a 1500-acre parcel of land within the city limits of Los Angeles.
- Lead Counsel representing a national automotive servicing company in a trial concerning alleged forfeiture of extension rights on a long-term lease of the client’s central training facility in Sacramento, California.
- Member of trial team defending a master-plan developer of 38,000 acres of developed and undeveloped real property in Central Orange County, California, in a \$500 million dissenting shareholder action -- likely the largest real estate valuation case ever tried in the United States
- Lead counsel representing a general partnership in a multi-million dollar action involving use of letters of credit in secured real property sales transaction.
- Lead counsel representing minority partners in a general partnership dissolution action under the Revised Uniform Partnership Act, where

the underlying assets were 1,000 acres of citrus holdings in the San Joaquin Valley.

Securities

- Arbitration of claims for alleged fraud, securities fraud and improper dilution of shares brought by a large investor in a \$50 million dollar cemetery development company located in Mexico City and Cuernavaca, Mexico
- Arbitration of a claim by an investment broker against a major brokerage company for alleged breach of contractual obligation to not to interfere with the broker's application to FINRA to expunge an "U-5 regulatory filing" impairing the Claimant's broker's license
- Substantial prior experience as a litigator defending officers and directors in multiple securities fraud class actions (alleged violations of the Securities Act of 1933 or of Rule 10b-5 of the Securities and Exchange Act of 1934)

Publications and Speaking Engagements

Publications:

Editor and Contributing Author of *College of Commercial Arbitrators' Guide to Best Practices in Commercial Arbitration*, 4th edition, October, 2017 (Juris Publishing),

"The Extraordinary Power to Summon Non-party witnesses to Arbitration Hearings," American Arbitration Association sponsored CLE presentation, Los Angeles and San Francisco, January and April, 2016

Contributing Author, *College of Commercial Arbitrators' Guide to Best Practices in Commercial Arbitration*, 3rd edition, 2013 (Juris Publishing),

"Reflections on the Tension between Justice and Efficiency in Arbitration," Program Materials, Eleventh Annual Conference of the College of Commercial Arbitrators, October, 2011;

"Closing the Doors to Justice?: *Rent-a-Center* and Its Implications," DAILY JOURNAL, July 16, 2010; "Determining Arbitrability When Parties Allege Unconscionability," DAILY JOURNAL, May 14, 2010;

"California Supreme Court Opens Door Closed by United States Supreme Court: an Analysis of Hall Street and Cable Connection cases," IPADR Blog, September 2008;

Co-author, "Ten Most Common Mistakes Trial Lawyers Make in the Arbitration Hearing," Beverly Hills Bar Association ADR Section, November 2003;

"Ten Good Ways to Lose Settlement Opportunities," Orange County Bar Association Labor and Employment Section, January, 2003;

"What Is Special about Mediating Wage & Hour Class Actions?" program material, Beverly Hills Bar Association ADR Section, November 2001;

"Overcoming Common Barriers to Settling Cases," ORANGE COUNTY LAWYER, September 2000;

"Appellate Advocacy as an Art Form," course materials, Loyola Law School, 1997

Speaking Engagements:

Presenter, USC Law School-JAMS Advanced Arbitration Institute: "Drafting Sound and Enforceable Awards," as part of four day annual program, July 2016 and July 2017;

Speaker, "Arbitral Jurisdiction and Arbitrability," USC Law School Corporate Counsel Institute, June 2017;

Guest Lecturer, "Arbitration of Intellectual Property Cases," UNLV Law School, June 21, 2016;

Panelist, "'Experienced arbitrators and litigators examine the accuracy of the growing criticisms aimed at Commercial Arbitration as it is practiced today," Beverly Hills Inns of Court, June 2, 2016;

Speaker, "Summoning Non-party Witnesses to Arbitrations," American Arbitration Association sponsored CLE presentation, January 28, 2016;

Panelist, "Mediation Advancements in the United States and the United Kingdom, a Comparison" Chartered Institute of Arbitrators (London Branch), London England, June, 2015;

Co-chair and Speaker, "What Arbitrators and Lawyers Need to Know about Commercial Arbitration," sponsored by the College of Commercial Arbitrators and the Los Angeles County Bar Association, January 23, 2014;

Moderator and Panelist, Live National Telephonic Seminar, Current Issues in Arbitration, sponsored by Rossdale CLE, April 2013;

Panel Chair, "Conducting Efficient Arbitrations," plenary panel presentation, October 2011 annual conference of the College of Commercial Arbitrators, Denver, Colorado;

Keys to Effective Advocacy in the Arbitration Forum, full day solo continuing legal education presentation to attorneys in Kansas City (sponsored by UMKC Law School) and in Omaha (sponsored by Creighton Law School), 2011;

Basics of Commercial Arbitration in the United States, presentation to graduate law students and faculty, National University of Ireland, Galway, Ireland, September 2009;

"Unique Challenges in Multiparty and Class Action Employment Mediations," Southern California Mediation Association Annual Employment Conference, May 20, 2006;

AAA sponsored speaker, "Ten Tips by which Already Good Litigators Can Excel in Arbitration Hearings," American Arbitration Association Sponsored Full-day Seminars, Los Angeles, Orange County and San Diego, August-September 2005;

Guest lecturer, "Mediating Wage & Hour Employment Cases," Pepperdine Law School, November 2005;