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### **Professional Experience**

**Work History:** Of Counsel, Lang & Klain, PC. January 1, 2020 to Present; Member, Dickinson Wright, PLLC, January 1, 2013 to December 31, 2019; Shareholder, Director and Partner, Mariscal, Weeks, McIntyre & Friedlander, PA, 1972-2012; Associate, Hoffman & Davis (Chicago, Illinois), 1969-72.

**General Construction Experience:** For over 45 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 45 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 45 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); has frequently acted as a panel member and/or chairman on three-member arbitration panels; selected as party-appointed arbitrator (now known as "Canon X Arbitrators") on various tripartite panel arbitrations. Typical ADR construction disputes involving projects varying from airports, highways, bridges, hotels, wastewater treatment plants, commercial structures, apartment projects, schools, universities, design and construction of clean rooms, exclusive subdivisions and public buildings, to private residences, bid disputes on public projects, mass grading and channel excavation projects, and negligence claims against and/or between design professionals. Many of these disputes have involved roof failures, flooding, mechanical and HVAC systems, defective pipes (both sewer and water), hydrology, and computer flood modeling, expansive soils, subsidence of soils and other civil and mechanical engineering related issues. ADR responsibilities have included selection as an arbitrator or mediator not only in Arizona, but other jurisdictions throughout the Southwest.

**Experience as an Advocate for a Party:** Some examples of over 45 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 \$10 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, as well as 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 grading and channel excavation projects; numerous soil cases involving subsidence and expansive soil issues; construction disputes involving delays and extra claims arising from subsurface water and rock issues, including issues surrounding import and export of materials; extra claims associated with errors in topographical surveys, changes in site conditions and unknown subsurface conditions; extra claims due to quantity variations for site work and related unexpected truck hauls for import and export of materials; disputes involving soil testing, installation of lifts, failed dewatering programs, installation and location of French drains and dykes, rock correction formulas; errors in interpretation of computer modeling of project sites for bid estimate on public project impacting contractor's bid quantities; evaluation and analysis of contractors' cost and other records supporting equitable adjustment claims; 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; contractor's claims against public owner for extras and unpaid change orders on a large wastewater treatment plant; 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; liquidated damage claims and other damages sought from contractor's failure to timely complete construction of industrial plants and a casino; disputes over construction of buildings at Universities and other public structures; design and implementation of water drainage systems on highway construction projects; damages resulting from the design and construction of bridges and walkways on highway projects; damage claims arising from defective manufacture and installation of miles of large diameter water pipelines; construction of luxury homes; fraud and misrepresentation claims; delay damages resulting from design and construction of clean rooms, analysis and proper interpretation of disputed CPM expert opinions related to delays including the construction of

highways and bridges and other projects; and disputes between design professionals and their consultants.

➤ **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; personal injury claims and disputes over interpretation of forensic contract and valuation of services providing ingesting and processing of data from computer hard drives.

**Experience as a Mediator:** Mediated approximately 1000 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. Successfully mediated numerous disputes by video via Skype, Zoom, GoToMeeting and other virtual platforms.

➤ **Construction Matters:** Contractor delay claims against owners 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; numerous school district disputes with contractors, subcontractors, design professionals and sureties (performance and payment bonds); hospital dispute with design professional over design and selection of HVAC equipment, cooling systems and related piping; 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' 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; damages associated with construction of 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 to school building and other structures caused by expansive soils; airport facilities disputes; disputes over construction of \$160 million cement plant involving delay claims, liquidated damages and disputed change orders, and disputes over the construction of 12 miles of failing walls in residential community; construction of marijuana facility, malpractice claims against law firm, development agreements with public entities, solar contracts with school districts, complex bankruptcy claims involving UFTA, fraud and self-dealing; multiparty claims involving highways and bridges.

➤ **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; employment agreements and disputes between members of law firms.

**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, terminations, contract interpretations, extended and home office overhead, general conditions, design errors, insurance coverages, standards of care, industry practices, no damage for delay clauses, bid disputes, quantity errors, surveying, HVAC, piping and other mechanical systems, subsurface conditions including soils and drainage issues, performance and payment bonds, prompt pay claims, contract waivers including consequential damages, etc.

**Awards and Honors:** Mr. Friedlander has been listed for many years in *Best Lawyers in America* (ADR and Construction); and in *Superlawyers of the Southwest* (ADR); selected in *Best Lawyers* as “Construction Law Lawyer of the Year for 2011” for Phoenix, Arizona; selected in *Best Lawyers* as “Lawyer of the Year in Arbitration for 2013 (Phoenix) and 2021 (Scottsdale)”; selected in *Best Lawyers* as “Lawyer of Year for Construction Litigation for 2015, 2017 and 2020; selected for inclusion by AZBusiness Leaders Magazine for Alternate Dispute Resolution 2016, 2017 and 2018 and Construction 2019; selected by AZ Business Magazine as one of the “Top100 Lawyers in Arizona 2020,” Charter Member, Arizona Chapter of National Academy of Distinguished Neutrals; *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 (Commercial and Construction Panels, Construction Mediation Panel, Joint Venture Panel and Master Mediator Panel for Construction for AZ, NM, OK and TX); 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, delay damages and consequential damages, 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, Arizona's new RUAA, Arizona's revised interest statute, unjust enrichment and quantum meruit claims in the construction industry, an arbitrator's authority to award pre-judgment and post-award interest, and awarding liquidated damages in termination situations (both for convenience and default).