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CURRENT EMPLOYER/TITLE: Sherman D. Fogel, Professional Association – President, Shareholder and Director.

PROFESSION: Mediator, Facilitator, Arbitrator and Attorney.

WORK HISTORY: Attorney/Mediator/Facilitator/Arbitrator, Sherman D. Fogel, Professional Association, formerly Fogel, Lamber & Bronnenkant, P.A. (Phoenix, AZ), 1973 - present; Attorney, Brown, Vlassis & Bain (Phoenix, AZ), 1970-1973; Attorney, Arvey, Hodes & Mantynband (Chicago, IL), 1965-1970.

EXPERIENCE: Over 45 years of experience representing both plaintiffs and defendants in commercial dispute resolution in federal and state trials, appeals, arbitrations, mediations, negotiations and settlements, and more than 40 years experience serving as a neutral in complex commercial disputes; contract disputes; limited liability company, partnership, corporate, shareholder and employee disputes; misappropriation of corporate assets, misappropriation of corporate opportunities, interference with contract and prospective business advantage and unfair competition matters; non-competition covenants, trade secret and confidential business information matters; Uniform Commercial Code matters; lender liability matters; fraud in connection with the purchase and sale of real and personal property; fraud in connection with the purchase and sale of securities; health care industry matters; marijuana (cannabis) industry matters; real estate matters; employment matters; e-commerce matters; franchising matters; public and private sector land use matters; public sector political and managerial conflicts between public bodies, internally within the public body, and between public bodies and private individuals and entities; and construction disputes. Practice has included basic and complex transactional work in substantially all of the foregoing areas.

- Arizona Supreme Court Committee on Examinations and Admissions, 1975 -1982, Vice - Chairman, 1980 - 1981 and Chairman, 1981 - 1982
- Arizona Court of Appeals Judge Pro Tem 1985, 1993, and 1995.

ALTERNATIVE DISPUTE RESOLUTION EXPERIENCE: Served as an arbitrator in over 500 commercial matters since 1974, many of which were large or complex matters heard by three arbitrator panels. Served as a mediator in more than 700 commercial disputes since 1994. Completed 14 months of service on national panel of mediators and arbitrators in connection with the settlement of national insurance company policyholder federal class action litigation, mediating and arbitrating more than 200 policyholder disputes. Concluded more than two years service as an arbitrator and mediator in a

mass claims proceeding arising out of the settlement of class action litigation brought by various employees of a State regarding on-call compensation, in connection with which I mediated or arbitrated close to 375 separate employee claims.

- Panel of Commercial Arbitrators of American Arbitration Association, 1974 to present
- AAA Panel of Commercial Mediators since early, 1994 to present
- AAA Large Complex Case Panel
- AAA Arizona Advisory Council, 1995 to present
- Executive Council of the Alternative Dispute Resolution Section of the State Bar of Arizona, 2006 to present; Chair, 2008-2009; Immediate Past Chair, 2009-2010; Outreach Committee, 2011 to 2017
- *The Best Lawyers in America* in Alternative Dispute Resolution (Arbitration and Mediation), 2008 to present
- Arizona's Finest Lawyers, 2010 to present
- Best Law Firms Rankings in *U.S. News & World Report* in Arbitration and Mediation, Tier 1, 2010 to present
- National Academy of Distinguished Neutrals, Charter Member of Arizona Chapter
- Fellow, College of Commercial Arbitrators, 2012 to present
- Fellow, American College of Civil Trial Mediators, 2019 to present
- Southwest Super Lawyers in Alternative Dispute Resolution, 2012 to present
- American Bar Association Dispute Resolution Section Committee on Mediator Ethical Guidance, 2016 to present
- **Best Lawyers' 2016 Phoenix Arbitration "Lawyer of the Year"**
- **Best Lawyers' 2017 Phoenix Mediation "Lawyer of the Year"**
- **Best Lawyers' 2018 Phoenix Arbitration "Lawyer of the Year"**
- **Best Lawyers' 2020 Phoenix Mediation "Lawyer of the Year"**

REPRESENTATIVE CASES HANDLED AS A MEDIATOR OR FACILITATOR: The following is a representative sampling, only, of the types of disputes mediated or facilitated:

- a high profile dispute between a State and a City involving the development of hundreds of acres adjacent to a large municipal park, in which more than forty people participated, representing two school districts, several citizen activist groups, a private developer and various agencies and departments of the State and the City
- disputes resulting from a dysfunctional Commission appointed by the Mayor of a City and in constant conflict with virtually every political and managerial agency and department of the City
- negotiation among multiple municipalities and public utilities involving the modification and extension of a 40 year contract for the sale of municipal effluent for use in cooling nuclear reactors at a large nuclear plant
- U.S. Equal Employment Opportunity Commission nationwide pattern-or-practice action against a large publically held corporation alleging violation of the Americans with Disabilities Act
- the restructuring of a multi-million dollar family owned high-fashion retail business operating at multiple locations in several states, involving three factions of the family, which was conducted in three phases, over approximately two years
- dispute between a municipality and a religious organization involving the disposition of a historical building

- dispute between the scientist/inventor/licensor and the licensee of patented scientific technology, resolved by an agreed division of the patented technology into industrial and medical applications and the reallocation of the rights to manufacture, use and sell products embodying the patented technology based upon the applications
- contest for control of a multi-million dollar family owned business operating out of fourteen locations in three states
- dispute between securities broker/dealer and customer involving claims in excess of \$1 Million
- disputes between investors, partners and outside consultants in the emerging medical and recreational marijuana (cannabis) industry
- a number of disputes between municipalities and commercial property owners arising out of eminent domain/condemnation proceedings
- dispute between real estate purchaser, seller and title insurer involving allegations of misrepresentation in connection of the sale and issues of title insurance coverage and exclusions
- employment contract dispute, involving claims in excess of \$350,000 for wrongful termination, severance pay and bonuses, and counterclaims for breach of fiduciary duty
- dispute between joint venture partners involving the development and marketing of computer software for use in the physical fitness industry
- a highly publicized dispute involving the ownership and operation of a private athletic training facility utilized by Olympic athletes, which involved private contract issues, municipal zoning ordinances and special use permits, and vigorous neighborhood opposition, in all of which, a municipality was an active participant
- dispute between institutional lender and borrower involving allegation by the borrower of breach of contract, wrongful foreclosure and defamation by lender
- a dispute between beneficiaries of probate estate, involving allegations of fraud upon surviving spouse's community property interest and breach of fiduciary duty by personal representative and trustee
- dispute involving investment contract, construction contract and joint venture agreement, the resolution of which paved the way for the completion of a privately owned charter school
- dispute between three physicians involving the split up of a multi-office medical practice
- dispute among four physicians involving internal governance of a multi-office medical practice and preservation of the partnership
- disputes between attorneys involving law firm internal governance matters and/or split up of the firm
- dispute between owner, contractor and subcontractor involving collapse of construction project and allocation of responsibility
- contract dispute involving two international credit cards, the issuing national bank and a corporation engaged in the discounted acquisition of delinquent credit card debt
- dispute between hotel, condominium, office and retail developers and the representatives of numerous neighborhood associations and activist groups involving an update to a plan for the development and preservation of a major urban core of a large

city, the resolution of which took almost five months and was ultimately approved by the city planning department, adopted by the city council and avoided a city wide referendum election

- dispute among a State, fifteen Counties and a large publicly held corporation regarding personal property valuation and taxation
- limited liability company internal governance dispute involving the development of a natural gas field valued at more than fifty million dollars
- a number of disputes between a County and large publicly held corporations regarding real property valuation, assessment and taxation
- lien foreclosure dispute arising out of the construction of a multi-use retail and office complex between the owner, owner's lender, title insurer, general contractor and approximately 60 of the general contractor's subcontractors, suppliers and sub-subcontractors
- A number of disputes between lenders and borrowers arising out of mortgage foreclosures and deed of trust trustee's sales, including claims for deficiencies, involving residential and commercial properties
- numerous private contract, corporate, partnership, real estate and other commercial disputes

REPRESENTATIVE CASES HANDLED AS AN ARBITRATOR: The following is a representative sampling, only, of the types of cases arbitrated:

- a four week hearing involving a ten billion dollar claim against a very well known public company arising out of the failure of a start up e-commerce business
- an international contract dispute between a local "Fortune Five Hundred" company and a Swiss Corporation
- multi-million dollar construction dispute between a publicly held corporate owner and a large multi-state contractor involving the construction of a paper pulping plants
- \$3 Million contract dispute between a grower and a food processing company involving the financing, growing, harvesting, processing and delivery of organic produce
- dispute involving the split up of a medical practice involving employment issues, share transfer restrictions and allegations of disability insurance fraud
- dispute between developer of master planned community and owner of a commercial parcel within the community regarding alleged violations of the covenants, conditions and restrictions which could require the destruction and removal of a partially constructed 8500 square foot commercial building
- dispute between a large regional hospital and a national health insurance provider
- disputes between investors, partners and outside consultants in the emerging medical and recreational marijuana (cannabis) industry
- dispute between the franchisor and a franchisee involving a product and process utilized in the construction industry
- multi-million dollar dispute involving breach of executive employment contracts by the publicly held surviving entity following a merger
- dispute between the franchisor and a franchisee involving site selection, construction and operation of multiple restaurants

- \$10 Million claim arising out of the split up of a family owned steel business having multiple divisions operating in several states
- \$20 Million claim between joint venture partners holding the patents to several important medical devices arising out of the sale of their company to a publicly held pharmaceutical company
- dispute involving the supervised dissolution and liquidation of three inter-related medical and medical real estate partnerships and limited liability companies
- dispute between a mining corporation and a contractor involving claims for additional compensation relating to dewatering of contaminated surface and ground water on the job site
- claim by the limited partners, individually and derivatively against the general partners of several real estate investment limited partnerships and limited liability companies
- multi-million dollar claim brought by a large national, but privately owned, corporation involving insurance coverage issues
- multi-million dollar international contract dispute between a domestic family owned corporation and a Japanese mega-company arising out of the purchase and sale of commercial printing presses
- five week hearing involving a twenty-six million dollar breach of contract dispute between two "Fortune Five Hundred" companies regarding the manufacture, sale, maintenance and repair of military hardware
- Dispute arising out of a failed contract for the sale of a private water company due to the failure to obtain the timely transfer of the certificates of convenience and necessity
- numerous general contract, corporate, partnership, real estate and other commercial disputes

MULTI-PARTY DISPUTE RESOLUTION EXPERIENCE: Many of the cases handled as a mediator and as an arbitrator have involved multi-party disputes, including, for example, construction disputes between owners, general contractors, subcontractors and architects; corporate and partnership split ups and reorganizations having three or more factions; real estate disputes between purchasers, sellers, real estate brokers and title companies; class action settlements involving thousands of claimants and multiple governmental agencies; and public sector matters involving representatives of various state, county and municipal departments, property owners, citizen groups, school districts and other interested parties.

ALTERNATIVE DISPUTE RESOLUTION TRAINING:

- American Arbitration Association ("AAA") Mediation Training (Phoenix 1/94)
- AAA Commercial Arbitrator Training (Phoenix 3/99)
- AAA Mediator Conference (Chicago 9/00)
- AAA Arbitrator Update (2001)
- AAA Commercial Arbitrator II Training (Las Vegas, 4/01)
- AAA Arbitrator Update (2003)
- AAA "Dealing With Delay Tactics In Arbitration" (Phoenix, 3/10)
- AAA Advanced Mediator Training: Managing the Dynamics of a Multi-Party Case (Phoenix, 11/11)

- AAA Advanced Mediator Training: The Extent (Or Limit) of Mediator Influences to Effect Settlement (Phoenix, 11/12)
- AAA Neutrals Conference (Scottsdale 1/03)
- AAA Neutrals Conference (Atlanta 10/04)
- AAA Neutrals Conference (Rancho Mirage 3/05)
- AAA Neutrals Conference (Miami 3/06)
- AAA Neutrals Conference (Coronado 2/09)
- AAA Neutrals Conference (Scottsdale 3/12)
- AAA Neutrals Conference (New Orleans 2/16)
- AAA Neutrals Conference (Nashville 3/19)
- Arizona Dispute Resolution Association (“ADRA”) workshops (1995)
- ADRA workshops (1996)
- ADRA workshops (1997)
- ADRA workshops (1998)
- ADRA workshops (2000)
- ADRA workshops (2002)
- Arizona Association for Conflict Resolution (“AACR”) Mediating Personal Injury Cases (Scottsdale, 2/12)
- AACR Mediating Environmental Law Cases (Scottsdale, 2/12)
- AACR Mediating Elder Law Cases (Scottsdale, 2/12)
- American Bar Association (“ABA”), American College of Civil Trial Mediators and International Academy of Mediators National Institute on Advanced Mediation and Advocacy Skills Training (San Francisco 12/02)
- American Bar Association Section of Dispute Resolution (“ABA Dispute Resolution Section”) Annual Meeting workshops (San Francisco, 4/00)
- ABA Dispute Resolution Section Annual Meeting workshops (San Antonio, 3/03)
- ABA Dispute Resolution Section Annual Meeting workshops (New York, 4/04)
- ABA Dispute Resolution Section Annual Meeting workshops (Los Angeles, 4/05)
- ABA Dispute Resolution Section Annual Meeting workshops (Atlanta, 4/06)
- ABA Dispute Resolution Section Annual Meeting workshops (Washington D.C., 4/07)
- ABA Dispute Resolution Section Annual Meeting workshops (Seattle, 4/08)
- ABA Dispute Resolution Section Annual Meeting workshops (New York, 4/09)
- ABA Dispute Resolution Section Annual Meeting workshops (San Francisco, 4/10)
- ABA Dispute Resolution Section Annual Meeting workshops (Denver, 4/11)
- ABA Dispute Resolution Section Annual Meeting workshops (Washington D.C., 4/12)
- ABA Dispute Resolution Section Annual Meeting workshops (Chicago, 4/13)
- ABA Dispute Resolution Section Annual Meeting workshops (Miami, 4/14)
- ABA Dispute Resolution Section Annual Meeting workshops (Seattle, 4/15)
- ABA Dispute Resolution Section Annual Meeting workshops (New York, 4/16)
- ABA Dispute Resolution Section Annual Meeting workshops (San Francisco, 4/17)
- ABA Dispute Resolution Section Annual Meeting workshops (Washington D.C., 4/18)
- ABA Dispute Resolution Section Annual Meeting workshops (Minneapolis, 4/19)
- ABA Dispute Resolution Section Advanced Mediation and Advocacy Skills Institute (San Diego, 11/11)
- ABA Dispute Resolution Section Advanced Mediation and Advocacy Skills Institute (Phoenix, 10/16)
- College of Commercial Arbitrators (“CCA”) National Summit on Business to Business Arbitration (Washington D.C., 10/09)

- CCA Annual Meeting (New York, 10/12)
- CCA Annual Meeting (Los Angeles, 11/14)
- CCA Annual Meeting (Minneapolis, 10/17)
- State Bar of Arizona Alternative Dispute Resolution Section (“AZ Bar ADR Section”) CLE programs and workshops (Phoenix, Scottsdale and Tucson, 2005 to present)

PROFESSIONAL LICENSES: Admitted to Bar in Illinois, 1965; U.S. District Court for Northern District of Illinois, 1965; Arizona, 1971; U.S. District Court for Arizona, 1971; US Supreme Court, 1972; US Tax Court, 1973.

PROFESSIONAL ASSOCIATIONS: Member of the Maricopa County, Illinois, Arizona and American Bar Associations, including membership in Sections on Alternative Dispute Resolution. Member of the Arizona Association for Conflict Resolution (formerly Arizona Dispute Resolution Association). Member of the Association for Conflict Resolution. Founding Fellow of the Arizona Bar Foundation. Fellow, College of Commercial Arbitrators. Charter Member of Arizona Chapter of the National Academy of Distinguished Neutrals. Member of the Mediation, Commercial and Large Complex Case Panels of the American Arbitration Association.

EDUCATION: University of Pittsburgh (BA-62); University of Chicago (JD-65).

PUBLICATIONS AND TEACHING:

- Faculty, American Arbitration Association Seminar, "How Arbitrators Decide Cases," Phoenix, 1983
- Faculty, State Bar of Arizona, "Feeling Good About Arbitration," Tucson, 1987
- Faculty, State Bar of Arizona, "Arbitration After Broemmer," Phoenix, 1993
- Faculty, Arizona Dispute Resolution Association workshop, "Mediating Business Disputes: Theory and Practice," Phoenix, 2000
- Faculty, American Arbitration Association Seminar, "Legal Challenges to the Use of ADR and The Contractual Response," Phoenix, 2000
- Faculty, CLE International Land Use Conference, "The Magic of Mediation: A Better Approach To Land Use Disputes," Phoenix, 2003
- Faculty, American Arbitration Association Seminar, "Insights Into Alternative Dispute Resolution: Arbitration" Phoenix, 2004
- Faculty, American Arbitration Association Seminar, "Insights Into Alternative Dispute Resolution: Mediation" Phoenix, 2004
- Faculty, Arizona Association of Defense Counsel Seminar, "Private Arbitration vs. Court Litigation - an Arbitrator's Insights," Phoenix, 2005
- Faculty, State Bar of Arizona, "Differences Between Private Arbitration and Court Litigation," Tucson, 2005
- Instructor, American Arbitration Association Arbitrator Continuing Education Course "Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics," Phoenix, 2005
- Faculty, American Bar Association, "Advanced Mediation and Advocacy Skills Training," San Antonio, 2007
- Faculty, Association for Conflict Resolution, "Advanced Commercial Mediation Institute," Phoenix, 2007
- Faculty, State Bar of Arizona, "Discovery In Arbitration: Let's Talk About It," Phoenix, 2008

- Faculty, State Bar of Arizona, CLE by the Sea, “How To Solve A Business Dispute,” San Diego, 2008
- Faculty, State Bar of Arizona, “Facilitating Business Partner Break-Ups and Resolving Break-Up Disputes through ADR,” Phoenix, 2009
- Faculty, State Bar of Arizona, “Mediating the Non-Litigated Case,” Phoenix, 2010
- Faculty, American Bar Association, “Mediating the Non-Litigated Case: Commercial, Political and Executive Disputes,” San Francisco, 2010
- Faculty, State Bar of Arizona, “How to Build Your ADR Practice – Tips from Successful Practitioners,” Phoenix, 2010
- Faculty, State Bar of Arizona, “Don’t Let Arbitration Lose Its Luster: How the Stakeholders Reduce Cost and Delay by Taking Control of the Process,” Phoenix, 2010
- Faculty, American Arbitration Association, “Essential Mediation Skills for the New Mediator,” Phoenix, 2011
- Faculty, American Bar Association, “Advanced Mediation and Advocacy Skills Institute,” San Diego, 2011
- Faculty, Arizona Association for Conflict Resolution, “Facilitating Large Community Disputes,” Scottsdale, 2012
- Keynote Speaker, Phoenix Rotary Club, “The Magic of Mediation – How to Manage Conflict, Resolve Disputes and Avoid Litigation,” Phoenix, 2012
- Faculty, Intel Corporation Mediation Training by Insight Mediation, LLC, “Managing Conflict and Resolving Disputes – The Human Side,” Phoenix, 2013
- Faculty, College of Commercial Arbitrators and American Arbitration Association, “Managing a successful Arbitration – The Preliminary Conference and Discovery,” Phoenix, 2013
- Faculty, State Bar of Arizona, “Ethical Dilemmas in Mediation,” Phoenix, 2015
- Faculty, State Bar of Arizona, “The Opening Joint Session: A Mediator’s Best Tool or Worst Nightmare?,” Phoenix, 2016
- Faculty, American Bar Association, “Advanced Mediation and Advocacy Skills Training,” Phoenix, 2016
- Faculty, State Bar of Arizona, “Technology No Nos and Blessings in Arbitration,” Phoenix, 2016
- Faculty, State Bar of Arizona, “Preparing for and Participating in the Arbitration Preliminary Hearing,” Tucson, 2017
- Faculty, State Bar of Arizona, “Mediation Dynamics: Managing the Different Expectations of the Parties, Their Lawyers and the Mediator,” Chandler, 2018

REFERENCES: Available upon request.

COMPENSATION:

Daily Rate: \$3,400 per day for mediation sessions and arbitration hearings.

Study Time and Travel: Study time at \$425 per hour. Mediation and arbitration sessions conducted outside metropolitan Phoenix, Arizona area, compensation based upon minimum 8-hour day and hourly for additional travel time, plus travel expenses.

Cancellation Policy: Once hearing dates and mediation dates are scheduled, a cancellation charge of one-half the daily rate for time not able to be filled may be charged, based upon the number of days scheduled, the length of the advance notice of cancellation, and the reason for the cancellation or postponement.