

MICHAEL S. WILK
**Arbitration, Mediation, and Dispute Resolution Domestic
and International**

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CURRENT EMPLOYER/TITLE:

Senior Counsel, Hirsch & Westheimer, P.C.

WORK HISTORY:

Hirsch & Westheimer, P.C. – 1966 to present. AV Rating in Martindale –Hubbell.

ARBITRATION AND MEDIATION PANELS:

- American Arbitration Association Panel of Neutrals (Large Complex Commercial Cases; National Panels: Banking and Secured Transactions);
- International Centre for Dispute Resolution (AAA International panel);
- CPR International Institute for Conflict Prevention and Resolution (Distinguished Neutrals; National Panels: Accounting, Banking, Energy and Financial Services Panel); • American Health Lawyers Association Panel of Neutrals;
- Ad-hoc.

ARBITRATION EXPERIENCE:

In excess of 125 (over 78 as chairman or sole arbitrator) commercial disputes between domestic and multi-national companies, originating through the above mentioned panels and before the ICC International Court of Arbitration. Representative cases:

Energy

- Dispute between geophysical service provider and exploration company relating to the interpretation and construction of a service agreement for seismic shoot in Africa.
- Various claims regarding contract interpretation including a drilling contract of an off-shore rig, provisions of a service contract maintenance, repair of a blowout preventer, and long-term operator agreement for the manufacture of products from certain feed stocks.
- Dispute between two refineries regarding a determination of the compliance with emission limits imposed by consent decree, allocation agreement, and stock purchase agreement.
- Dispute between two gas companies concerning the obligation to pay excise taxes.
- Dispute involving a refinery and chemical company dealing with the purchase, storage and sale of certain supplies of by-products used in the manufacturing chemicals and out-put requirements.

- Disputes between exploration companies and service companies involving alleged damages to well and reservoir.
- Dispute regarding representations and warranties in Asset Purchase Agreement involving fuel gases, including propylene, and provisions relating to working capital and account receivables.

Commercial

- Breach of Stock Purchase Agreement for sale of closely held private trust company and breach of fiduciary duty in a real estate limited partnership.
- Contract disputes and termination damages issues between multi-national retail companies and a software company for the manufacture of an application for mobile devices.
- Dispute between holder and issuer of warrants for common stock regarding the proper exercise of the warrants and whether the triggering event had occurred as referenced in the warrants.
- Dispute within a non-public limited partnership concerning a put option and buy/sell obligation.
- Breach of fiduciary duty and securities fraud dispute between customer and financial advisor including allegations of the purchase of unsuitable investments and failure to properly diversify investments and to educate itself about the investor's needs and financial knowledge.
- Securities and common law fraud case connected with the offering of ownership interests of a failed dotcom startup between 25 investors and the issuer and aiders and abettors.
- Claim for losses from alleged minority shareholder oppression and fraud for allegedly purchasing minority shareholder's stock without disclosing ensuing sale of the company.
- Breach of non-competition between limited partners and general partner of blind royalty fund.
- Dispute involving trade secrets between a software company and automobile dealerships.
- Breach of employment contract between national accounting firm and employee.
- Accounting malpractice disputes involving a bankruptcy trustee and an alleged failure to give a going concern opinion and allegations of improper use of company valuation.
- Dispute between minority and majority shareholders for alleged mismanagement and breach of fiduciary duties in paying excessive compensation and benefits.
- Claims against a bank for alleged wrongful dishonor, fraudulent inducement and wrongful foreclosure and cross actions for collection of obligations under notes and guaranties.
- Disputes involving interpretation of deadlock provisions of a Shareholder Agreement and exercise of buy/sell obligations, and real estate contract for failure to timely complete construction of improvements.
- Dispute between international banks regarding alleged fraudulent wire transfers.
- Lender liability suit between real estate developer and national bank.
- Dispute between investment advisor and company concerning whether a fee was earned with respect to locating a strategic investment partner.

Healthcare

- Alleged breach of support services agreement between company providing nonclinical business, administrative and marketing services to medical practices throughout the country and physician.
- Dispute between insurance companies and physician practice groups regarding timely payment of medical claims and applicability of prompt pay statutes.
- Dispute between physician and owner of a clinic regarding the physician's base compensation and incentive compensation after the closing of the purchase.

MEDIATION EXPERIENCE:

Mediated over 1750 commercial disputes between domestic and multi-national companies, mainly ad hoc, including the following representative sample:

Energy

- Dispute between working interest owner and operator of wells regarding Exploration Agreement and Joint Operating Agreement and failure to comply with COPAS accounting procedures and pay amounts under the joint interest billings.
- Case involving insurance coverage for loss of an offshore sub-sea well in the North Sea under an Energy Package Policy issued by various London insurers and alleged damages to the assembly allegedly caused by severe windstorm.
- Dispute between exploration company and service company involving alleged fraud, a bad squeeze job, incompetent control of water flow, and failure to pay for services rendered.
- Dispute involving the failure of a wireless drift indicator to accurately monitor the angle of the drill bit during drilling operations.
- Dispute between developers and suppliers of resin coated sands used in fracking involving allegations of breach of contract, violation of trade dress, and unfair competition.
- Dispute regarding whether certain non-participating royalty interests in two tracks of land were valid and subsisting, or the interest terminated pursuant to the terms of the Royalty Deeds.
- Dispute between contracting parties concerning the alleged faulty design and construction of a special use drilling platform and unfair pricing for the completed rig.
- Dispute involving a service company suit to recover on a sworn account and cross action for damage to wells and threat of bankruptcy of defendant.
- Claim for the recovery of damages allegedly caused to property by release of salt water and flaring of gas.
- Claims for personal injury and property damage caused by a superfund site between 2000 individuals and a refinery accused of dumping toxic waste.
- Dispute involving title to oil and gas interests, offset wells and directional drilling and allocation of revenue between different oil wells.
- Dispute involving alleged breach of a commission agreement seeking specific performance of delivery of assignment of overriding royalty interest allegedly due for finding an operator of an offshore oil and gas concession in the Mediterranean.

Commercial

- Dispute between parties to an exclusive license agreement for the sale and distribution of hardware and software tools that measure emissions in refineries and chemical plants to determine if the company is in environmental compliance.
- Mediation of over 20 personal injury claims against an Energy Company resulting from the explosion of a refinery.
- Dispute involving buyer and seller of a condominium unit for breach of purchase and sale agreement relating to time for closing and completion of the unit and plans and specifications for construction of the unit.
- Dispute between several parties involving breach of architect copyright laws.

- Dispute between an owner of refinery equipment, financial institution with security interests and liens on refinery equipment, and company storing the refinery equipment.
- Dispute involving a retailer that sold consumer loans by bulk sale.
- Dispute between stockholders/family members of several companies in the equipment rental business involving alleged breach of fiduciary duty and willful violation of agreements.
- Dispute between minority investor-shareholders of medical technology company alleging fraud, interference with business relationships, breach of fiduciary in operations, and management of companies in which some of the investors may own interests.
- Dispute between owners of undeveloped office condominiums involving misuse and misappropriation of funds by operator of real property.
- Securities cases involving fraud, unsuitability, and breach of fiduciary duty.
- Claim by FTC seeking injunctive relief and penalties against a technology advertising company for allegedly participating in deceptive and unfair acts and practices in the course of transmitting unsolicited commercial electronic text messaging.
- Will contest lawsuits involving allegations of incompetency and undue influence.
- Trust litigation for breach of fiduciary duties and failure to properly account to beneficiaries.

LEGAL EXPERIENCE:

Extensive experience in commercial transactions and commercial litigation in state and federal courts as well as bankruptcy and probate. Extensive experience in cases involving corporations and partnership issues, breach of contract, lending, bank deposits and transfers, real estate, energy and construction, administration of trusts and estates and breach of fiduciary duty. Transactional experience includes buying and selling businesses, both in public and private transactions.

EDUCATION:

J.D. University of Texas School of Law, with honors (1966), Associate editor, Texas Law Review

PROFESSIONAL ASSOCIATIONS AND RECOGNITIONS:

- Fellow, College of Commercial Arbitrators;
- Certified, International Mediator Institute;
- Credentialed Distinguished Mediator, Texas Mediator Credentialing Association;
- Past Chair, State Bar of Texas Alternative Dispute Resolution Section;
- Past President, Association of Attorney Mediators, Inc.;
- National Association of Distinguished Neutrals;
- Texas Association of Distinguished Neutrals;
- Past Chairman, State Bar of Texas Grievance Committee;
- Former Director, Harris County Dispute Resolution Center;
- Houston Bar Association (Chairman Peer, Mediation in Schools Task Force 1993-1994);
- Houston Bar Association (Past Council Member, Alternative Dispute Resolution Section);
- American Bar Association (Alternative Dispute Resolution Section);
- Sustaining Life Fellow, Texas Bar Foundation (Fellow);
- Continuing Life Fellow, Houston Bar Foundation (Fellow);
- AV Preeminent Status-Martindale-Hubbell;
- Texas Super Lawyer for Alternative Dispute Resolution, every year since 2003;

- Top Lawyer in ADR, Houston Lawyer Magazine.

PUBLICATIONS:

“Review of Arbitration Awards for Mistakes of Law or Fact,” *The Texas Lawyer*, April 23, 2012.

“Resolution of Domestic and International Bankruptcy Issues through Mediation,” *Conflict Management*, A Publication of the Committee on Alternative Dispute Resolution – American Bar Association, p. 19 (Summer 2005 – Volume 9, Issue 2).

“ADR Basics,” *Conflict Management*, A Publication of the Committee on Alternative Dispute Resolution – American Bar Association, p. 16 (Summer 2004 – Volume 8, Issue 3).

“Mediation of a Bankruptcy Case,” *American Bankruptcy Institute Journal*, p. 12 (May 2003).

“Helping Attorneys See Beyond the Case: Return to Objectivity,” *Alternative Resolutions* No. 2, p. 13 (November 2002).

“Alternative Dispute Resolution with the Resolution Trust Corporation and the Federal Deposit Insurance Corporation,” 9 *The Practical Real Estate Lawyer*, p. 27 (May 1993).

RECENT PRESENTATIONS:

“Handling Your First (or Next) Arbitration,” State Bar of Texas CLE, Austin, Texas (December 6, 2013).

“Managing a Successful Arbitration,” American Arbitration Association, College of Commercial Arbitrators and JAMS, New Orleans, Louisiana (March 14, 2013).

“Managing the Arbitration Process for Efficiency and Economy Following the Preliminary Hearing,” American Arbitration Association University, ACE Course (August 23, 2012).

“Mediated Settlement Agreements,” Advanced Mediation Training, AA White Dispute Resolution Center, University of Houston Law School (December 2011).

“The Award” Managing Your First Arbitration,” AAA, CCA, JAMS and AA White Dispute Resolution Center, University of Houston Law School (November 2011).

“The College of Commercial Arbitrator’s Protocols for Expectations, and Cost Effective Commercial Arbitration: An Overview,” ADR Section, State Bar of Texas Annual Meeting (June 2011).

“Arbitration Roundtable,” State Bar of Texas, ADR Counsel (February 28, 2010).