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## **ADR SUPPLEMENTAL CV OF KEN MANN**

### **EXPERIENCE OVERVIEW**

- Several hundred mediations and arbitrations (as chair, panel member, and sole arbitrator) for AAA, FINRA, court-annexed, etc. and seven jury trials, countless complex pleadings, motions/hearings, discovery, bench trials and appeals (over 15 published decisions) as sole or lead counsel, with many complex, contentious, and document-intensive disputes involving, *e.g.*, :
  - Alleged fraud, defamation, and other business torts ▪ Real Estate ▪ Securities ▪ Bankruptcy discharge, dischargeability, preference, and workout issues ▪ Commercial Transactions ▪ Insurance rates, coverage, exclusions, etc.; Buy-sell, valuation, and related issues on closely held entities ▪ Employment Law ▪ ESI Issues ▪ Estates, Trusts, Taxes ▪ Civil RICO and other statutory torts.
- Over ten years of transactional real estate, commercial, corporate, financing, employment, estate planning, and tax planning experience.
- Former CPA and audit senior with Price Waterhouse before law school, primarily on a NYSE mortgage focused REIT, an offshore, open-end ownership focused REIT, and a privately held securities broker-dealer and market maker of Florida OTC securities.
- Some of Ken’s proudest ADR experiences have included:
  - (a) Opposing counsel in contentious and protracted litigation cases later appointing him to serve as the mediator or as the sole arbitrator in binding arbitrations in seven figure contests involving business valuations and other disputes;
  - (b) Appointment (as the neutral Chair) to serve with panel members who were appointed by the Fla. Dept. of Financial Regulation (*fka* Dept. of Insurance) and the applicable insurers, in five publicly conducted (under Florida's Sunshine Laws) statewide homeowner insurance rate, binding arbitration proceedings. To Ken’s knowledge, two of the panels’ rate awards were and remain unique in Florida -- one as the only unanimous insurance rate award, and the other as the only zero increase award.
  - (c) Retention by a national, not-for-profit, ADR administrator to represent an arbitrator to protect the sanctity of arbitral deliberations and related concerns in discovery, in a vigorously litigated *vacatur* proceeding.

### **Mediator Experience Examples:**

Disputes re accountings, investment management, conflicts of interest, defalcations, & other alleged breaches of fiduciary duty by majority or managing shareholders, directors, partners, LLC members, trustees, personal representatives, etc.; Varied contract disputes re interpretation, breach, specific performance, damages, fees, etc. in commercial real estate purchase/sale agreements, lease agreements, & purchase/lease-back agreements; Sale of an unprofitable but valuable golf-course property among surviving family members; Sale of a minority partner's interest in a real estate ltd. ptrship. involving various types of investment & income-producing properties; Eminent domain case involving entitlement or not to condemn & valuation; Real estate tax assessment case re special-purpose property b/t gov'n't. & taxpayer; Contract disputes

on sales of condominium & single family residences; Fee dispute b/t CPA firm & time-share company; Franchisor/franchisee dispute re breach or national origin discrimination; Franchisor/Franchisee ins. agency dispute re accountings, who breached, etc.; Worker's compensation ins. rate disputes between insurer & employer on reclassification of personnel upon audit; Contract dispute between hospital & 3rd party administrator; Asserted class action involving payday lending ; Charter contract dispute between bus company & tour-bus charterer; Appropriate royalties & other terms relating to an agricultural invention; Several personal injury claims, e.g., cruise line & passenger, bar patron & insurer for bankrupt, adversary proceeding between a bankruptcy trustee & an insurer; etc.

**Arbitrator Experience Examples:**

Real estate specific performance, re contract formation, unclean hands, rescission, etc.; Breach & measure of damages in design-build, special use construction contract; Construction ptrship agreement; Procuring cause, etc. issues re commercial real estate commissions; Breach, fraud, land sales fraud, etc. b/t seller & developer/builder on sale of platted & unplatted residential subdivisions; Alleged lender liability & fraud defenses to promissory notes, guarantees, commercial mortgages, etc.; Stock purchase dispute re, inter alia, threshold issue of arbitrability; Consulting agreement payable in publicly traded stock & of ancillary option for additional shares; Sale of dental practice; Medical practice dissolution; Executive employment contracts; Contract between hospital & staff physician; Alleged fraud, civil theft, breach, etc. b/t franchisee & franchisor; Similar issues b/t franchisee & franchisor re FDA approvals for medical device, efficacy, etc.; Product liability, damages, etc. re pacemaker; Licensor/licensee dispute re print vs. internet distribution, competitive pricing & reasonable commercial expectations, economic duress doctrine, contract definitional clauses vs. unforeseen technology, etc.; Requirements contract -- UCC provisions & contract interpretation re course of dealing, good faith & fair dealing, ambiguity, cover, etc.; Ins. rate disputes (all as chair) between Fla. Dept. of Ins. & insurers; Life ins. policy re suicide exclusion or accident; Coverage, exclusion & ERISA issues re employer's long-term disability policy; False advertising claims, breach, etc. b/t internet co. & internet marketing co.; Magnuson-Moss & other statutory consumer & common law re auto; Pest control co./customer dispute re warranty terms, causation, damages, discovery, etc. on major structural damage.

**Common Issues in the Mediation and Arbitration Examples:**

Duty, breach, causation, entitlement & amount of compensatory & punitive damages, entitlement to legal fees (& occasionally, amount), rescission, waiver, estoppel, laches, fraud, accountings, accounting issues, contract interpretation, & valuation; occasionally, legal malpractice or subrogation; as well as, in estate & trust matters, undue influence & legal capacity. AAA Commercial Arbitration & Mediation Panels. FINRA Mediation & Arbitration Panels, incl. employment disputes.

**REPRESENTATIVE PUBLISHED CASES**

\**Patton v. Kera Technology, Inc.*, 895 So.2d 1175 (Fla. 5th DCA 2005), rev. granted, 912 So.2d 318(Fla. 2005)

\**Campellone v. Cragan*, 910 So.2d 363 (Fla. 5th DCA 2005)

\**Magnolia Manor, Inc. v. Siegel*, 866 So.2d 142 (Fla. 5th DCA 2004)

\**In re Inman*, 260 B.R. 233 (Bankr. M.D. Fla. 2000)

- \**Florida Dept. of Revenue v. Race*, 743 So.2d 169 (Fla. 5th DCA 1999)
- \**Bryan v. Clayton*, 698 So.2d 1236 (Fla. 5th DCA 1997), *rev. denied*, 707 So.2d 1123 (Fla. 1998), *cert. denied*, 524 U.S. 933 (1998), *after remand*, 753 So.2d 632 (Fla. 5th DCA 2000)
- \**Peck v. Delta Fire Sprinkler, Inc.*, 675 So.2d 711 (Fla. 5th DCA 1996)
- \**C&W Leasing, Inc. v. Orix Credit Alliance, Inc.*, 957 F.2d 815 (11th Cir. 1992)
- \**In re Siefert*, 130 B.R. 607 (Bankr. M.D. Fla. 1991)
- \**In re Walsh*, 123 B.R. 925 (Bankr. M.D. Fla. 1991)
- \**Barden v. Pappas*, 532 So.2d 707 (Fla. 5th DCA 1988), *after remand*, 565 So.2d 755 (Fla. 5th DCA 1990)
- \**Jones v. Orlando Second Car Center*, 30 Fla. Supp.2d 105 (Fla. 9th Cir. 1988)
- \**Winterbotham v. Computer Corps, Inc.*, 490 So.2d 1282 (Fla. 5th DCA 1986)
- \**Holland v. Hattaway*, 438 So.2d 456 (Fla. 5th DCA 1983)
- \**Zirot v. Gilmer*, 336 So.2d 680 (Fla. 4th DCA 1976)

### **PUBLICATIONS AND SPEAKING ENGAGEMENTS:**

"Mediation and CPAs", 27 AZCPA 13, July/August 2011; "ADR Is Useful In Handling Wills & Trusts," DISPUTE RESOLUTION TIMES, AAA, Summer 1997; "Creditor's Attorney Chokes on Heintz Shtik Maneuver," XIX ACTIONLINE 11, Real Property, Probate & Trust Law Section of the Florida Bar, September-October 1995; case note, 23 MERCER LAW REVIEW 431, 1972.

Adjunct Faculty (taught Professional Responsibility), Barry University of Orlando School of Law, Fall 2000. Over 25 CLE seminar outlines and speaking engagements for state and local bar associations and other professional and civic groups, e.g., Arizona Bar Real Property Section (Mediation of troubled commercial mortgage loans), Florida Bar (Real Property, Probate and Trust Law Section & Consumer Law Section), Orange County (FL) Bar, Marion County and Seminole County (FL) Inns of Court, annual conventions of Attorneys Title Insurance Fund, University of Miami annual real estate symposium, Lawyers' Title Insurance Corp., Central Florida Tax Roundtable, Florida Institute of CPA's, civic groups, and public television. Topics included: mediation and arbitration; real estate fraud; real estate title insurance issues; bankruptcy litigation (discharge/dischargeability); FDCPA and other consumer law; ethics, professionalism, and legal malpractice; major probate, tax, and business legislation; estate planning; will drafting; tax issues in divorce, etc.

### **LICENSURE**

- Member, Arizona Bar (2005) and Florida Bar (1973).
- Admitted to practice before: U.S. Supreme Court; U.S. Courts of Appeals: 9th (2005), 2nd, and 11th Circuits; 9th Cir. Bankruptcy Appellate Panel; D. Ariz. (2005); M.D. Fla.; U.S. Tax Court; U.S. Court of Federal Claims.
- Certified Mediator (Fla. Civil & Appellate); Mediation Panel Member: Bankr. D. Ariz. (Phx.) and Former (before relocating to Arizona) Mediation and Arbitration Panel Member, M.D. Fla. (Orl.).
- Former CPA (Florida and North Carolina).