



## **SEAN K. MCELENNEY**

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## **BIOGRAPHY**

Sean McElenney is a seasoned litigator who has successfully tried cases and arbitrations and argued appeals in civil cases across the United States. He has broad experience litigating all aspects of complex commercial disputes in state, federal and bankruptcy courts, and in arbitration. Mr. McElenney connects with his clients, learns their business and significant issues, and works vigorously and creatively to address the litigation hazards they face. From early case assessment, budgeting, and litigation/resolution strategy through discovery, motion practice, trial, and appeal, Mr. McElenney teams with his clients to achieve their business goals through efficient and effective case management. When resolution is not appropriate or possible, he will aggressively prepare for and try the case.

## CIVIC INVOLVEMENT & HONORS

- AB Top Lawyers – Product Liability, *Arizona Business Magazine*, 2008-2010

## COMMITTEE CONTENT

- Pro Bono Committee

## COMMERCIAL AND BANKRUPTCY LITIGATION

He regularly handles complex business disputes and provides counsel on resolution strategies to avoid litigation for his clients, which range from private family-owned businesses to large publicly traded companies. His experience on matters in this area include unfair competition, family office disputes, partnership, limited liability member, and shareholder disputes, securities claims, breach of fiduciary duty, business tort, and breach of contract allegations, product liability, commercial leasing disputes, construction litigation, debtor-creditor relations, stay relief litigation, claim objections, fraudulent transfer and preference litigation and repatriating assets from foreign jurisdictions. Mr. McElenney has represented litigation clients in a variety of industries including aviation, trucking, tires and hospitality.

## CREDITOR RIGHTS

Mr. McElenney represents financial institutions in matters related to creditors' rights in debt enforcement, lender liability, workouts, and related litigation, with particularly deep experience in obtaining receiverships, attachments, writs of garnishment, and other pre-judgment provisional remedies to maximize the recovery for his clients.

## FIDUCIARY LITIGATION

He is principally responsible for the handling complex fiduciary, trust, and estate litigation matters representing both trustees and beneficiaries on fiduciary issues in administering trusts, managing trust assets, including family limited partnerships, limited liability companies, and corporations. He has significant experience advising on allocation and administration issues ranging from charitable remainder trusts, minimum distributions, business succession, fiduciary and tax litigation, to principal and income accounting.

## REAL ESTATE

Mr. McElenney also represents parties in real estate, real estate development, and construction defect litigation, as well as professional liability matters.

## CONSUMER FINANCIAL SERVICES

Mr. McElenney focuses his consumer financial services litigation practice on representing institutions in complex business litigation matters, both locally and nationally. He has experience defending clients on matters alleging violations arising under federal lending and banking regulations, including Truth in Lending Act (TILA), Fair Credit Reporting Act (FRCA), Real Estate Settlement Procedures Act (RESPA), Fair Debt Collection Practices Act (FDCPA), Home Ownership and Equity Protection Act of 1994 (HOEPA), Telephone Consumer Protection Act (TCPA), state unfair and deceptive acts or practices (UDAP) statutes, common law predatory lending claims in federal and state courts, and other consumer lending and protection statutes and regulations, such as those promulgated by the Consumer Financial Protection Bureau (CFPB).

## COPYRIGHT AND TRADEMARK

His intellectual property practice concentrates primarily cases involving claims of trademark and trade dress infringement, copyright infringement, false designation of origin, and unfair competition.

## WHITE COLLAR

Mr. McElenney has successfully defended federal money laundering and civil asset forfeiture claims.

He typically handles cases as lead attorney, but also as part of a BCLP trial team or a team member in conjunction with other top U.S. law firms. He has also served as national and regional counsel for clients. Mr. McElenney is active in *pro bono* work and has been recognized by the United States Department of State for serving as lead counsel in International Child Abduction cases tried in district court under the Hague Convention. Mr. McElenney was a senior trial attorney for the United States Department of Justice prior to joining the firm and interned with Hon. Armand Arabian of the California Supreme Court.

## ADMISSIONS

- Nevada, 2005
- Arizona, 1997
- California, 1992

- United States Court of Appeals for the Ninth Circuit

United States District Courts for the District of Arizona, Southern District of California and District of Nevada

## **EDUCATION**

University of San Francisco, J.D., *magna cum laude*, 1992

University of California-Los Angeles, B.A., 1989

## **RELATED PRACTICE AREAS**

- Business & Commercial Disputes
- Aviation, Aerospace & Defense
- M&A Disputes
- Real Estate
- Real Estate Disputes
- Banking & Finance Disputes
- Litigation & Dispute Resolution
- Finance
- Regulation, Compliance & Advisory
- Financial Services
- Catastrophic Accidents
- Consumer Fraud
- Consumer Products
- Food, Ag & Nutrition
- Insurance (Class Actions)
- Pharmaceutical & Medical Devices (Class Actions)
- Pharmaceutical & Medical Devices (Mass Torts)
- Enforcement
- Litigation
- Regulation
- Class Actions
- Consumer Finance Disputes
- Fiduciary Disputes
- Mass Torts & Product Liability

## **EXPERIENCE**

- Obtained \$5 million arbitration award in securities fraud, theft of corporate opportunity, and breach of fiduciary duty claims.
- Represent lender in workout, enforcement, foreclosure, and sale of \$1.3 billion timeshare loan portfolio.
- Represent a lender in obtaining multi-million pre-judgment writ of garnishment in breach of guaranty litigation.
- Represent national mortgage lenders and servicers in claims alleging wrongful foreclosure, HAMP loan modifications, and common laws torts related to foreclosures and eviction proceedings.
- Represent lender in multi-million dollar pre-judgment provisional remedy in breach of guaranty litigation.  
Argue to Arizona Supreme Court enforceability of clauses in commercial loan documents waiving guarantor statutory post-foreclosure deficiency protections.
- Represent institutional trustee in breach of fiduciary duty, trust administration, allocation, and estate tax issues.
- Represent management company, family offices, trustees, and beneficiaries in breach of fiduciary duty, mismanagement, embezzlement, securities violations, and document validity claims in \$200+ million estates.
- Obtained \$32.5 million in international estate litigation involving lack of testamentary capacity and undue influence.
- Trial and appellate counsel for trustees successfully obtaining dismissal of beneficiaries' petition to remove trustees and asserting claims of breach of fiduciary duty.
- Represent national grocery store in successful enforcement of exclusive use provision.
- Represent shareholder in fraud, wrongful termination, and breach of contract claims in improper corporate squeeze out.
- Represent fashion retailer asserting copyright protection of its design, development, and production of women's apparel and accessories.
- Obtain injunction protecting musical instrument manufacturer from trademark, false designation and license agreement violations.
- Represent sports equipment manufacturer against entertainment company in trademark, false designation of origin, and unfair competition claim.

- Counsel commercial landlord regarding a self-help and statutory lien remedies.
- Obtained defense judgment, sustained through appeals to the Arizona Court of Appeals and Supreme Court, in legal malpractice action arising from potential multi-million dollar medical malpractice action.
- Defended renowned country club from member's lawsuit regarding by-laws and tournament play.
- Defend home builder and subcontractors in construction defect litigation arising from work in a residential master planned community.

## RELATED INSIGHTS

Awards

Aug 17, 2023

**The Best Lawyers in America® 2024**

Insights

Jan 12, 2021

**Nevada Supreme Court Affirms That Rescission of Default Is Effective To Deaccelerate Mortgage Loan**