

GARY L. BIRNBAUM

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Professional Experience

Mariscal, Weeks, McIntyre & Friedlander, P.A., Phoenix, Arizona (1980-present)

Shareholder/Director (1981 - present); Executive Committee Member (1987 - present); Managing Director (1992 - present).

Practice includes all aspects of civil/commercial litigation, including trial and appellate work in state and federal courts and before various administrative agencies. Cases have included complex class action and multi-district proceedings, eminent domain, land use, construction, securities, employment, professional liability, insurance, title insurance and escrow litigation. Lead trial counsel in state court cases in Arizona, Nevada, Utah and California and in the United States District Court for the District of Arizona. Lead appellate counsel in federal and state (Arizona and California) appellate proceedings. Transactional work has included real estate acquisition and financing, economic incentive, development and redevelopment agreement negotiation and drafting, business acquisitions and sales (including hospitals, sports franchises, and other commercial businesses) and general corporate representation. Mariscal, Weeks, McIntyre & Friedlander, P.A. is a 57-member general civil practice law firm operating from offices at The Phoenix Plaza in metropolitan Phoenix, Arizona.

Professional activities have also included participation as mediator (well over 300 cases), as arbitrator, and as counsel in connection with alternative dispute resolution (ADR) proceedings, and as a court-appointed special master.

Professional recognitions include selection by "Best Lawyers in America" as the Phoenix, Arizona "Bet-the-Company" Litigator of the Year (2009); as the "Alternative Dispute Resolution" Lawyer of the Year (2010); and as the "Condemnation and Eminent Domain Law" Lawyer of the Year (2012).

Associate Dean for Graduate Studies and Program Development, Sandra Day O'Connor College of Law at Arizona State University (July 2006-present)

Responsibilities have included oversight of the College of Law's graduate (L.L.M. and M.L.S.) programs, adjunct faculty, and new program development. Faculty advisor to the Arizona State Law Journal Board of Editors (2007-2011). Assisted in the design and establishment of courses in Complex Litigation (Rule 23), Private

Property Rights, Business and Real Estate Valuation and Accounting for Lawyers, among others. Co-founder of the College of Law's "Trial Advocacy Program" (2011).

Adjunct Professor of Law, Sandra Day O'Connor College of Law at Arizona State University (2001-present)

Developed and taught classes for second and third year law students entitled "Private Property Rights" and "Advanced Topics in Business Law: Valuing Interests in Real Property and Closely-Held Businesses." Subject matter includes eminent domain, real estate valuation, business valuation, title insurance and other land use-related subjects.

Instructor, Arizona State University Master of Real Estate Development Program (2006-2011)

Participation in establishment of Arizona State University's transdisciplinary Master of Real Estate Development (MRED) program, in conjunction with the W.P. Carey School of Business, the College of Design, the College of Law, and the College of Engineering (Del E. Webb School of Construction). Instructor in the MRED program from its inception.

Streich, Lang, Weeks & Cardon, P.A., Phoenix, Arizona (1976 - 1980)

Associate attorney with major Phoenix-based business law firm. Practice emphasized securities, antitrust, eminent domain, and general commercial litigation.

Bar Admissions

Admitted to practice before the Supreme Court of Arizona (1976), United States District Court for the District of Arizona (1976), Ninth Circuit Court of Appeals (1980), Tenth Circuit Court of Appeals (1990), United States Tax Court (1982), United States Court of Federal Claims (1993) and the United States Supreme Court (1980).

Professional Associations and Recognitions

Fellow, American College of Trial Lawyers (Member, Arizona State Committee)
Fellow, College of Law Practice Management.
Fellow, Litigation Counsel of America

Member, National Academy of Distinguished Neutrals
Member of the American Bar Association (Sections on Litigation, Dispute Resolution and Law Practice Management), State Bar of Arizona, Maricopa County Bar Association, American Judicature Society, International Municipal

Lawyers Association and the Association of Justice (formerly, the American Trial Lawyers Association). Chairman of the State Bar of Arizona, Law Practice Management Section (1994-95). Fellow, Arizona Bar Foundation and Maricopa County Bar Foundation.

Member, American Society of Counsellors of Real Estate (CRE)

Arizona Chapter Treasurer (1996); Vice President (1997)

Member, Lambda Alpha International (Land Economics Society)

Member, National Panel of Commercial Arbitrators of the American Arbitration Association

Member, Panel of Mediators, American Arbitration Association

Member, Panel of Mediators and Arbitrators, The Counsellors of Real Estate

Martindale-Hubbell Rating: AV

Listed in The Best Lawyers in America (Currently listed in “Bet-the-Company” litigation, business litigation, real estate, real estate litigation, eminent domain, legal malpractice defense, arbitration and mediation (1997-present)

Listed in “Best of the Bar” (Real Estate) (The Business Journal)

Listed in American Lawyer – Litigation, Best Lawyers-Commercial Litigation (2004-present)

Listed in The Legal 500 – United States (Real Estate) (2007-present)

Listed in Chambers USA – America’s Leading Lawyers for Business (2004-present) (Commercial Litigation)

Listed in Southwest Super Lawyers (2007-present) (Business Litigation). Also selected as one of Arizona’s “Top 50” lawyers

Listed in Benchmark Litigation, Local Litigation Stars (Commercial Litigation, Eminent Domain, Legal Malpractice) (2012)

Selected by “Best Lawyers in America” as Phoenix, Arizona “Condemnation Eminent Domain Law” Lawyer of the Year (2012)

Selected by “Best Lawyers in America” as Phoenix, Arizona’s “Bet-the-Company” Litigator of the Year (2009)

Selected by “Best Lawyers in America” as Phoenix, Arizona’s “Alternative Dispute Resolution” Lawyer of the Year (2010)

Education

J.D. magna cum laude, Indiana University School of Law, Bloomington, Indiana (1976)

Articles and Book Review Editor, Indiana Law Journal 1975-76

Order of the Coif (1976)

Recipient, Indiana University Foundation and James Calamaras Fellowships

B.A. summa cum laude, State University of New York at Binghamton, Binghamton, New York (1973).

Graduated with Highest Honors in Political Science

Phi Beta Kappa (1973); Pi Sigma Alpha (1973)
Recipient, University and New York State Regents Scholarships
Recipient, Rischel-Searles Memorial Award (1973) for outstanding academic achievement and participation in community affairs

Representative Cases and Transactions

- Representation of a major homebuilder before the Ninth Circuit Court of Appeals and, on certified questions, before the Arizona Supreme Court. In a case of first impression, established the inapplicability of certain tolling principles to Arizona's construction-related statute of repose. *Albano v. Shea Homes Ltd. P'ship*, 634 F.3d 524 (9th Cir. 2011); *Albano v. Shea Homes Ltd. P'ship.*, No. CV-11-0006-CQ, 2011 Ariz. LEXIS 35 (Ariz. Sup. Ct. June 30, 2011).
- Representation of the country's largest title insurers in various trial, appellate, and administrative proceedings, including cases involving escrow liability and title insurance claims. By way of example, successful representation of First American Title Insurance Company in trial court and appellate proceedings involving claims based upon the forfeiture of certain asserted federal mining claims (*Brings v. First American Title Insurance Company*, No. 1 CA-CV 91-0633, Arizona Court of Appeals).
- Representation of a real estate investment limited partnership in connection with a condemnation action instituted by the City of Sedona to acquire approximately 100 acres of land in Yavapai County, Arizona for construction of a wastewater treatment facility. A three week jury trial resulted in a recovery by the landowners of approximately \$3.0 million in excess of the City's pretrial acquisition offer. (*City of Sedona v. Sedona Dells Associates*, No. 53445, Yavapai County, Arizona, Superior Court).
- Successful representation of two national banks in separate class action cases arising out of the participation of the banks as lenders in the federal guaranteed student loan program. (*Sandra Crawford v. The American Institute of Professional Careers, Inc., et al.*, No. CV 93-15901, Maricopa County, Arizona, Superior Court; *Grace Keams, et al. v. Tempe Technical Institute, et al.*, No. CIV 91-0728-PHX-RCB, U.S. District Court, District of Arizona).
- Representation of the State of Arizona (Office of the Governor) and subsequently the Town of Cave Creek (as Town Attorney) in connection with the planning and financing of the acquisition of more than 2,000 acres of land incorporated by intergovernmental agreement into the Spur Cross Ranch Conservation Area.

- Representation of a major Arizona law firm in connection with two professional liability actions arising from the failure of a Tucson-based real estate syndicator. Dismissal of each of the cases by the United States District Court for the District of Arizona (Tucson) was affirmed by the Ninth Circuit Court of Appeals and writs of certiorari to the United States Supreme Court were denied. (David Randall Jenkins, et al. v. Lawrence Ollason, No. 92-15678, Ninth Circuit Court of Appeals; David Randall Jenkins, et al. v. Lawrence Ollason, No. 92-15766, Ninth Circuit Court of Appeals).
- Decade-long representation of the Maricopa County (Arizona) Board of Supervisors in connection with post-judgment proceedings in class action litigation relating to conditions in the Maricopa County jails (Damian Hart, et al. v. Sheriff Jerry Hill, et al., No. CIV 77-479-PHX-EHC(MS), U.S. District Court, District of Arizona) and relating to the provision of behavioral health services to the indigent seriously mentally ill residing (Charles Arnold, et al. v. Arizona Department of Health Services, et al., No. C 432355, Maricopa County, Arizona, Superior Court).
- Representation of one California and two Arizona law firms in connection with third party professional liability and ERISA-based claims arising out of the alleged loss by certain union pension funds of more than \$100 million in various real estate investment and mortgage transactions. (Arizona State Carpenters Pension Trust Fund v. William E. Miller and Georgia Miller, et al., No. CIV 89-0693 PHX RGS).
- Representation of a national motor vehicle rental system in connection with various state and federal trial and appellate court proceedings, including multistate, consolidated class action commercial and securities litigation, national and statewide class action wage and hour litigation, and securities litigation arising out of the alleged "squeeze out" of certain minority stockholders. (Shivers v. Amerco, 670 F.2d 826 (9th Cir. 1982)).
- Representation of the chief executive officer of a major regional utility in connection with insider trading, breach of fiduciary duty and similar claims asserted in a series of class and derivative actions in the United States District Court for the District of Arizona and in the Superior Courts of both Maricopa County and Pima County, Arizona. (In re Tucson Electric Power Securities Litigation).
- Representation of an officer/agent of a national bank in a racketeering action in the United States District Court for the District of Utah involving alleged losses in excess of \$500 million (Greyhound Financial Corp. v. J.R. Willyard et al., No. 87-C-0811B, U.S. District Court, District of Utah).

- Representation of three contractors/subcontractors in connection with the consolidated actions denominated In re MGM Grand Hotel (Las Vegas) Fire, MDL No. 453 (U.S. District Court, District of Nevada).
- Representation of the Land Title Association of Arizona, the Arizona Rock Products Association, Valley Partnership, and other parties, as amicus curiae, in appellate proceedings involving various issues of statewide importance. (e.g., Northwest Bank Arizona, N.A. v. Superior Court, 192 Ariz. 240, 963 P.2d 319 (App. 1998); Luce v. State Title Agency, Inc., 1 CA-CV 96-0327); Turken v. Gordon, 574 Ariz. Adv. Rep. 17, 224 P.3d 158 (2010).
- Representation of a regional apartment developer in construction defect litigation in Utah state court. The litigation (two-month jury trial) is believed to be the largest case (in terms of number of represented litigants) ever tried in Salt Lake County, Utah. (Consolidated Sterling Village litigation, Civil No. 970 90 3734CN.)
- Representation of the City of El Mirage, Arizona, the Town of Queen Creek, Arizona, and the Town of Cave Creek, Arizona as City/Town Attorney, appointed by the City and Town Councils, respectively. Representation of the City of Scottsdale, the City of Litchfield Park, the City of Sedona, the City of Mesa, the City of Chandler, the City of Apache Junction, the Town of Gilbert, and the Town of Paradise Valley as special counsel for specific land use and commercial litigation matters. Representation of the Boards of Supervisors of Maricopa County, Coconino County and Mohave County in connection with disputes involving other governmental bodies and separation of powers issues. Representation of other municipalities in transaction privilege tax, land use and other litigation.
- Representation of the Maricopa County (Arizona) Stadium District in connection with twenty (20) consolidated eminent domain proceedings to acquire land for construction of Bank One Ballpark (now Chase Field), a 48,000 seat retractable dome stadium to be constructed in Phoenix, Arizona. Representation included three jury trials, various appeals, one administrative relocation benefits proceeding and negotiation of various land acquisition agreements.
- Representation of the City of Scottsdale, Arizona in connection with a variety of eminent domain proceedings in the Superior Court for the State of Arizona in and for the County of Maricopa and in the United States District Court for the District of Arizona. Cases have involved improved and unimproved properties and two jury trials. Representation of the City has involved the acquisition of over 5,000 acres of land for incorporation into the McDowell Mountain Preserve. Representation of the City of Scottsdale has also included land acquisition and planning for the ASU/Scottsdale Center

for New Technology and Innovation (now called “Skysong”), to be managed by an affiliate of the Arizona State University Foundation.

- Representation of major national and international corporations and insurers in connection with litigation in various state and federal courts and before state and federal administrative bodies.
- Representation of the developer of the largest urban redevelopment project ever undertaken in the State of Arizona (City of Phoenix). Upon completion, the project will encompass more than three City blocks and involve construction of more than one million square feet of mixed-use (office, hotel, residential and retail) development. Total project cost is projected at approximately \$1 billion.
- Successful representation (in 2007-2008) of two of Arizona’s largest law firms in legal malpractice actions. Cases involved a jury trial in the Maricopa County Superior Court and a bench trial in the United States District Court for the District of Arizona.
- Successful representation of the City of Mesa, initially in the trial court and subsequently on appeal, in defense of a challenge to the validity of the City’s cultural facilities development impact fee. *Home Builders Ass’n of Cent. Arizona v. City of Mesa*, 226 Ariz. 7, 243 P.3d 610 (Ct. App. 2010), review denied (Apr. 19, 2011).
- Representation of landowners (most recently, in 2008-2009) in eminent domain jury trials involving land acquisition by the Arizona Department of Transportation (SanTan Freeway) and the City of Phoenix (Metro Light Rail). Each of the trials resulted in one of the State’s largest reported verdicts in the year of trial.
- Representation of the State of Arizona/Arizona Board of Regents and certain Arizona State University faculty in state and federal court litigation relating to the alleged conversion of Indian blood samples. *Havasupai Tribe v. Arizona Board of Regents*, 204 P.3d 1063 (Ariz. Ct. App. 2008).
- Successful representation of a Maricopa County Superior Court Judge in civil racketeering litigation filed by the Maricopa County Attorney’s Office.
- Representation of the Maricopa County Superior Court in United States District Court and Ninth Circuit Court of Appeals proceedings challenging the constitutionality of the Court’s Spanish-speaking and Native American DUI conviction probation programs. *Thomas v. Mundell*, 572 F.3d 756 (9th Cir. 2009).

- Trial experience includes service as lead trial counsel in state and/or federal court proceedings in Arizona, California, Utah and Nevada; in arbitration proceedings in Arizona and California; and in federal and state administrative proceedings.

Professional Publications

(a) Texts and Treatises

Contributing Author, The Law of Eminent Domain – 50 State Survey (Arizona Section) (American Bar Association, 2011). (Online compendium)

Author, Nichols on Eminent Domain, Chapter 6 (Takings and Damages) (Matthew Bender 1994).

Contributing Editor, Commercial Real Estate Transactions Practice Manual (State Bar of Arizona 1989).

(b) Significant Law Journal Articles and Notes

G. Birnbaum and P. B. Converse, "The Economics of Law Practice: Where Does the Money Go?" Arizona Attorney (May 1997)

G. Birnbaum, L. Stahl & M. West, "Standardized Agreements and the Parole Evidence Rule" 26 Arizona Law Review 793 (1984).

G. Birnbaum, "The Gallagher Covenant," 13 Arizona Bar Journal 8 (April 1978).

G. Birnbaum, "Remarriage and Wrongful Death: A Model for Voir Dire Examination," 52 Indiana Law Journal 281 (1976).

G. Birnbaum, "Express Contracts to Cure: The Nature of Contractual Malpractice," 50 Indiana Law Journal 361 (1975).

Seminar Presentations

- American College of Trial Lawyers and CLE West, "Business Valuation/Economic Damages" (Phoenix, Arizona; November 2011) (Program Chair) [forthcoming]
- Arizona Game & Fish – Negotiation Skills Training (Phoenix, Arizona; April 2011) (Instructor)

- CLE West/Latz Negotiation Program – “Negotiation” (Phoenix, Arizona; June 2010) (Panelist)
- Arizona State University (co-sponsor) – “Ethics for Municipal Lawyers” (Tempe, Arizona, 2010) (Speaker)
- CLE International – Eminent Domain Conference, “Ethics Issues in Eminent Domain Cases; Recent Trials of Significance (Phoenix, Arizona, May 2009) (Speaker and Panelist)
- State Bar of Arizona “Mediation of the Complex Commercial Case” (Phoenix, Arizona, March 2009) (Panelist)
- State Bar of Arizona, Family Law Institute; “Presentation of the Business Valuation Case” (Phoenix, Arizona, January 2009) (Speaker)
- Law Seminars International, “Commercial Real Estate Leases” (Phoenix, Arizona, October 2008 (Seminar Co-Chair)
- State Bar of Arizona, “Valuation of Professional Practices” (San Diego, California, July 2008) (Speaker)
- Arizona Society of Certified Public Accountants, “Presentation of the Business Valuation Case at Trial” (Phoenix, Arizona, September 2007) (Speaker)
- State Bar of Arizona, “Mediation” (San Diego, California, July 2007) (Speaker)
- Law Seminars International, “Advanced Commercial Real Estate Leases – Division of Condemnation Awards Between Landlord and Tenant” (Phoenix, Arizona, April 2007) (Speaker)
- State Bar of Arizona, “Expert Witnesses” (San Diego, California, July 2006) (Speaker)
- State Bar of Arizona, “The Economics of Law Practice” (San Diego, California, July 2006) (Speaker)
- State Bar of Arizona, “Business Appraisal” (May 2006) (Speaker and Seminar Chairman)
- State Bar of Arizona, “The Valuation of Residential Real Estate” (San Diego, California, July 2005) (Speaker)

- CLE International, “Right to Take Defenses in Eminent Domain Litigation” (April 2005) (Speaker)
- LandAmerica Escrow Conference, “Litigation Involving the Navigability of Arizona Watercourses” (Prescott, Arizona, November 2004) (Speaker)
- State Bar of Arizona, “An Introduction to Title Insurance” (San Diego, California, July 2004) (Speaker)
- State Bar of Arizona, “Fundamentals of Mediation” (San Diego, California, July 2004) (Panel Member)
- Valley Partnership, “Economic Incentive Agreements” (2004) (Moderator)
- CLE West, “Escrow Liability” (October 10, 2003) (Speaker)
- State Bar of Arizona, “Direct and Cross Examination of the Valuation Expert” (San Diego, California, July 2003) (Speaker; Trial Practice Demonstration)
- State Bar of Arizona, Professionalism Course (June 2003) (Instructor)
- State Bar of Arizona, “Alternative Dispute Resolution” (June 2003) (Panel Member)
- American Bar Association, Section of Litigation “The Art of Storytelling in Trial Practice” (Houston, Texas, April 2003) (Speaker)
- Maricopa County Bar Association, Bench-Bar Conference, “Model ADR Procedures” (March 2003) (Speaker)
- CLE International, “The Appraisal of Real Estate” (Aug. 2002) (Seminar Chairman; Speaker)
- State Bar of Arizona, “Boilerplate” (San Diego, California, July 2002) (Speaker)
- State Bar of Arizona, “Advanced Commercial Real Estate” (April 2002) (Speaker)
- State Bar of Arizona, Law Practice Management Section, Managing Partners Forum, “Law Firm Growth and Management” (March 2002) (Speaker)
- CLE International, “Eminent Domain Conference” (March, 2002) (Speaker)

- State Bar of Arizona “Business and Real Estate Valuation” (July 2001) (Speaker)
- CLE International, “Eminent Domain Conference” (May 2001) (Speaker)
- National Business Institute, "Business Valuation" (July 1999) (Seminar Chairman; Speaker)
- State Bar of Arizona, Law Practice Management Section, Managing Partners Forum, "Law Firm Management and Economics" (April 1999) (Principal Speaker)
- State Bar of Arizona, "Advanced Current Topics in Real Estate and Real Estate Finance" (November, 1997) (Contributor, "The Gift Clause: A Constitutional Obstacle to Public Support of Private Development Projects")
- State Bar of Arizona “Documentation of Complex Business Transactions” (July 1997) (Speaker)
- National Business Institute, "Real Estate Titles and Title Insurance in Arizona" (January 1997) (Seminar Chairman; Speaker)
- State Bar of Arizona, Law Practice Management Section "Law Firm Economics" (November 1996, January 1997, February 1997) (Seminar Chairman; Principal Speaker)
- State Bar of Arizona, "Advanced Current Topics in Real Estate and Real Estate Finance" (October 1996) (Panel Member)
- State Bar of Arizona, Law Practice Management Section, Managing Partner's Forum (April 1996) (Panel Member).
- National Business Institute, "Real Estate Litigation in Arizona" (March 1996) (Principal Speaker).
- State Bar of Arizona, Law Practice Management Section, "Managing Partners Forum" (April 1995) (Seminar Chairman; Moderator).
- National Business Institute, "Title Insurance" (January 1995) (Principal Speaker).
- State Bar of Arizona, Law Practice Management Section, "Money, Organization, Competition and the Practice of Law in the '90s" (Arizona State Bar Convention, June 1994) (Moderator).

- State Bar of Arizona, "The Appraisal of Real Estate" (October 1993) (Seminar Chairman).
- International Right-of-Way Association, "Ethics (In Land Acquisition Transactions)" (September 1993) (Speaker).
- Maricopa County Bar Association, "Bench/Bar Conference" (May 1993) (Panel Member).
- Arizona Society of Certified Public Accountants, "Cross Examination Skills Workshop For Financial and Accounting Experts" (January 1993) (Instructor).
- State Bar of Arizona, "Working with Financial Experts" (January 1993) (Speaker).
- Maricopa County Bar Association, Corporate Counsel Section, "Trial of the Condemnation Case: Closing Argument Demonstration" (1991) (Speaker).
- State Bar of Arizona, "Eminent Domain in Arizona" (Arizona State Bar Convention, June 1990) (Speaker).
- Maricopa County Bar Association, "Effective Oral Arguments" (May 1990) (Speaker).
- State Bar of Arizona, "Maximizing Your Effectiveness in Taking and Defending Depositions" (June 1990) (Speaker/Panel Member).
- Maricopa County Bar Association, "Rule 11" (July 1989) (Speaker).
- Maricopa County Bar Association, Trial Advocacy Course (1986) (Faculty).
- Participation as a judge in the Arizona State University College of Law, Jessup International Moot Court Competition, Canby (Appellate) Moot Court Competition, and Jenckes (Closing Argument) Moot Court Competition (various times, 1992–2000; 2007-present) and in the American Bar Association, "Representation in Mediation" Regional Competition at Arizona State University (2009).
- Participant on various seminar panels involving litigation, real estate, eminent domain, valuation, mediation (ADR) and law practice management topics.

Personal/Other Activities

Date of Birth: April 29, 1952
New York City, New York
Married (Denise B. Birnbaum)

Civic activities include membership on the Board of Directors of the Phoenix Theatre, one of the oldest continuously operating theatres in the United States (1980-1986; 2006-present), and service for two terms as President of the Theatre. Membership on the City of Phoenix Citizens Bond Committee (by appointment of Mayor Goddard) and on the City of Phoenix Committee on Preservation of the Arizona Biltmore Golf Course (by appointment of Mayor Rimsza). Membership on the Dean's Council of 100 (Executive Committee) at the Sandra Day O'Connor College of Law at Arizona State University. Membership on the National Board of Visitors of the University of Arizona College of Law (2000-present) and on the Board of Directors of the Maricopa Health Foundation (2000).

Representative Clients and References

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Principal
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Town of Cave Creek
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RECENT PUBLISHED COMMENTS REGARDING
GARY L. BIRNBAUM

Selected by **BEST LAWYERS IN AMERICA** as “Alternative Dispute Resolution” Lawyer of the Year for Phoenix, Arizona (2010)

Selected by **BEST LAWYERS IN AMERICA** as the “Bet-the-Company” Litigator of the Year for Phoenix, Arizona (2009)

Selected by **SOUTHWEST SUPER LAWYERS** (2007-2011) (Commercial Litigation) as one of Arizona’s “Top 50 Lawyers”

Selected by **BEST LAWYERS IN AMERICA** as the “Condemnation and Eminent Domain Law” Lawyer of the Year for Phoenix, Arizona (2012)

BENCHMARK LITIGATION: THE DEFINITIVE GUIDE TO AMERICAN LEADING LITIGATION FIRMS AND ATTORNEYS (2009-2010)

Arizona – Local Litigation Stars (2010)

“Mariscal Weeks has earned a reputation as one of the finest commercial and real estate litigation firms in Arizona. The firm was founded thirty years ago, and has grown to be one of the largest in the state with over fifty lawyers. The firm’s specialty in real estate litigation, which includes eminent domain condemnation law, construction law, title insurance and escrow litigation, has allowed it to grow into one of the most active firms in a state that until recently experienced unprecedented growth. The recent downturn, however, has been a boon to the firm’s litigation group as projects go south and parties litigate over the fallout.”

...

“Clients mention that partners Gary Birnbaum and Timothy Thomason ‘have the expertise to represent us for title insurance and escrow matters which means we don’t have to pay for someone to learn what our company and industry is all about.’ Peers note that Birnbaum’s work in alternative dispute resolution has been steadily on the rise.”

Arizona – Local Litigation Stars (2012)

“Also an associate dean at Arizona State’s law school, Gary Birnbaum is a seasoned Arizona practitioner and well known in the legal community. He is considered by peers and clients as a “top-drawer” attorney for complex commercial and real estate cases, including eminent domain litigation and insurance matters.”

THE LEGAL 500 – UNITED STATES (2009)

Arizona: Real Estate – Transaction and Finance
(Recognized as one of four “Leading Lawyers”)

“[Birnbaum] attracts considerable praise as ‘a brilliant lawyer, Gary is probably on everyone’s shortlist if there is something that requires special brilliance to deal with.’”

CHAMBERS USA – AMERICA’S LEADING LAWYERS FOR BUSINESS (2011)

Arizona – Litigation - General Commercial, Leading Individuals (Band 1)

“The ‘superb and well versed’ GARY BIRNBAUM is admired for his versatility and ability to think on his feet. As one of the most recognized lawyers in the state, he frequently represents governmental entities in trial court and appellate matters.”

CHAMBERS USA – AMERICA’S LEADING LAWYERS FOR BUSINESS (2010)

Arizona – Litigation - General Commercial, Leading Individuals (Band 1)

“GARY BIRNBAUM is regarded as one of the leading commercial litigators in the state, with interviewees praising his meticulous preparation and eloquence in the courtroom.” “He’s quick to bring a case together and is able to draw on his experience to give a practical and direct assessment.”

CHAMBERS USA – AMERICA’S LEADING LAWYERS FOR BUSINESS (2008)

Arizona – Litigation - General Commercial, Leading Individuals (Band 1)

“Strategic thinker’ GARY BIRNBAUM is “excellent on his feet,” and has a diverse practice in business and real estate litigation, alternative dispute resolution and legal malpractice defense. Focusing on complex commercial litigation, he conducts niche work in eminent domain and condemnation law, representing both landowners and municipalities. He recently tried a number of cases, including an employment case in California, the arbitration of a land valuation case in Arizona and a high-stakes legal malpractice defense case.”

CHAMBERS USA – AMERICA’S LEADING LAWYERS FOR BUSINESS (2007)

Arizona – General Commercial Litigation, Leading Individuals (Band 1)

“Managing director GARY BIRNBAUM’S practice emphasizes real estate and business valuation disputes, particularly in the context of eminent domain acquisitions. Recent such clients in this category have included the Valley metro Light Rail System and the future University of Arizona Medical Campus. Other work has involved negotiating development agreements for several planned regional shopping centers, and settling two class

actions relating to the transportation industry in California courts. A part-time academic in both legal and real estate faculties, Birnbaum is “bright and persuasive, with the ability to approach complex problems with common sense and practical tactics.”

CHAMBERS USA – AMERICA'S LEADING LAWYERS FOR BUSINESS (2006)

Arizona – General Commercial Litigation, Leading Individuals (Band 1)

“GARY BIRNBAUM is hailed as an ‘intense, tenacious and tactical’ litigator, whose skills extend to mediation where he is considered to be a leading light.”

BENCHMARK (2007)

Arizona - “Local Litigation Stars”

*“Managing director, **GARY BIRNBAUM**, ‘dominates’ the team [at Mariscal, Weeks, McIntyre & Friedlander, P.A.]. Peers describe Birnbaum as a ‘jack of all trades,’ while clients recognize him for his expertise in real estate litigation. Birnbaum has served as lead trial counsel in several of Arizona’s neighboring states, including Utah, Nevada and California. He has represented some of the country’s largest title insurers, including First American Title Insurance Company, in various trial and appellate proceedings. Birnbaum is further recognized for his “thriving” alternative dispute resolution practice, and is widely and ‘justifiably’ considered to be one of the best evaluative mediators in the state. One client attributes his success in the area to the fact that “he’s not afraid to make his opinions known and not afraid to bang heads in a mediation to drive the parties to a fair and rational results.”*

THE LEGAL 500 - UNITED STATES (2007)

Arizona: Real Estate – Transaction and Finance

*“**GARY BIRNBAUM**, managing director of the firm, has a diverse practice that covers real estate, construction, condemnation and land use, title insurance and escrow litigation and complex and commercial litigation, and is praised by clients for his ‘terrific job at leading real estate work downtown.’”*

THE LEGAL 500 - UNITED STATES (2008)

Arizona: Real Estate – Transaction and Finance

*“MANAGING DIRECTOR, **GARY BIRNBAUM**, is described as a ‘superstar’ of the Arizona real estate market, where his broad-based practice encompasses all areas of real estate from acquisition and sale to financing. Clients consider that ‘one of his important traits in his capacity to grasp issues and put them in to a document,’ while another is that Birnbaum ‘rarely puts up on objection without supplying alternative issues to move forward.’”*

THE BEST LAWYERS IN AMERICA (2010)

Listed in the following categories:

- ❖ Business Litigation
- ❖ Real Estate Law
- ❖ Alternative Dispute Resolution
- ❖ Eminent Domain/Condemnation Law
- ❖ Legal Malpractice Defense
- ❖ “Bet-the-Company” Litigation

“Client Comments” from www.BestLawyers.Com

"Gary is the Guru of Arizona real property development law. He has an amazing ability to sit down with a group of aggressive and obnoxious developers and take control of the negotiations. Everyone listens intently when Gary speaks. He can also be very easy-going with a unique sense of humor. Gary always makes the client feel at ease and produces requested work product posthaste without any errors. His sense of humor also has a disarming affect on settlement negotiations involving property transactions. Finally, Gary is seen by many as a mentor and is an incredibly generous individual."

Joel Stern - City Attorney

City of Apache Junction

"Gary is an incredibly bright lawyer. Gary does a great job of understanding the client's objectives and coming up with creative ways to achieve them. We have received a higher level of service and professionalism from Gary than any other lawyer has ever provided us."

Mike Ebert - Managing Partner

RED Development

"If Mr. Birnbaum had studied voice rather than law, the world would have known four great tenors in the last 30 years. His intellect and work ethic yield enormous benefits to his clients. In the several condemnation cases that Gary defended for me, the results (one of which was eight figures) exceeded my own expectations."

James Kaufman - Proprietor

Kaufman Mortgage Company

"Gary wins cases. He can organize the case to communicate. Gary can offer counsel on a wide variety of matters and is a student of the law. He is tenacious and relentless, but not pig headed. Gary will tell you when he believes you are wrong and he will encourage you when you are right. Gary is unafraid of being in a tight spot, yet he will not get in one thoughtlessly. In a fight, he is the person you want on your side."

*E.J. Joe Shoen - Chairman
U-Haul International*

"Gary is a staunch advocate, skillful dealmaker, persistent negotiator, and patient educator. Gary's partnership has been an essential factor in structuring and negotiating a series of public/private partnerships between our development firm and municipalities in Arizona and other Southwestern states. These partnerships have facilitated both significant public infrastructure improvements and major retail developments, which in turn have generated increased sales tax and property tax receipts while also providing employment opportunities and community amenities for the local area."

*Robert Mayhall - Principal
WDP Partners, LLC*

"I first met Gary some 30 years ago when we were first-year associates just out of law school. My impressions of Gary have remained the same during our three-decade relationship. He is the most intelligent, creative, and hard working attorney that I know. Gary is very well respected by all who know him. He is very skilled at both written and oral communication and experienced at providing a variety of legal and business-related advice."

*Thomas Schoaf - Mayor
City of Litchfield Park*

"We feel as a community in Cave Creek that Gary Birnbaum is a friend who cares about our best interest. Time and time again when we need a creative mind to present us with resolution for an important and complex issue, Gary is always available with a complete attention and full support of a cadre of skilfull, experienced, and dedicated lawyers. We feel that Gary represents always the good and positive side of his profession."

*Usama Abujbarah - Town Manager
Town of Cave Creek*

"Gary Birnbaum is the best real estate/condemnation lawyer in Arizona. Gary led the way on a City of Phoenix condemnation of my property, which, at the time, paid the highest price per square foot in the history of Arizona. Gary is efficient, ethical, and his character is beyond reproach. He takes my phone calls at the office, home, and in his car. I trust and respect Gary. He is very committed to his clients. "

*Leon Woodward - President
U.S. Parking Systems, Inc.*

"Gary has quickly become a very valuable resource to me as the General Counsel of a large real estate development company. Gary is very well respected for being extremely bright and well versed in both the law and the practice relevant to our industry. What I like most about Gary's counsel is that he often provides both a legal and a practical answer to a given issue. At times, it is his practical answer that solves the issue most efficiently."

*Bradley Wright - Vice President and General Counsel
SunCor Development*

"Gary is a lawyer for all occasions. He always looks for the correct yet proper answer to a problem. What is most appreciated about Gary is his willingness to seek a solution that will save the most time and money for everyone concerned. I have found few who measure up to the standard that Gary works by in all situations. His advice is sought and respected. The balance he brings to a conversation is rare indeed. Not only do I count on Gary for legal advice and legal work, but I also count him as a friend."

Ron Frank - EVP

U-Haul International

"Gary has represented Westcor and WDP for as long as I care to remember. In the field of public-private partnerships related to public infrastructure, Gary is truly an icon. Due to Gary's extensive experience, depth of knowledge, and ability to communicate persuasively with all parties, it is virtually impossible for any party to take an unreasonable position when Gary is representing us, or in several situations, when Gary is representing the municipality. Gary's presence at a meeting or a negotiation immediately increases the level of reasonableness and cooperation at the entire table, which makes resolution of any contentious issue more probable."

Jack Rasor - Principal

WDP Partners, LLC

"The corporate subsidiaries of LandAmerica have retained Gary to represent it or its insureds in a variety of complex matters involving real estate and regulatory issues. At all times, Gary has proved extremely knowledgeable, solution oriented, excellent at both verbal and written communication, and very professional. He is an asset to the legal community."

Diane Flaaen - Arizona State Counsel

LandAmerica Financial Group, Inc.

"I have been privileged to know and work with Gary for over 15 years. In my opinion, Gary is the leading legal authority on real property valuation in Arizona and he has been an invaluable resource for our firm. He is an excellent litigator and his presence tends to discourage others from pursuing litigation when negotiation is the more appropriate course of action. He complements his legal expertise with a strong financial acumen and extreme diligence in pursuing his client's objective. Gary is a person of high integrity and a good friend."

John Bradley - Vice President

DMB Associates, Inc

"Gary Birnbaum is one of the best lawyers I have ever worked with. He has a tremendous knowledge of the law - especially real estate and development agreements - and he is willing to share all he knows with those of us who know so much less. He is prompt in returning telephone calls and in completing projects. I have retained him on behalf of many clients and they have never been disappointed."

Susan Goodwin - President

Curtis, Goodwin, Sullivan, Udall & Schwab, PLC

"Gary is a great lawyer and one of the best litigators in the state. In fact, he is the first person I would think of for both real estate litigation and for mediation. He is whip smart, forceful, and inspires confidence. We've always been most grateful to have him on our side."

Mark Larson - Vice President and Chief Litigation Counsel - Aerospace

Honeywell International