

# THOMAS J. BREWER

## ARBITRATOR

TELEPHONE  
(206) 623-5321

719 SECOND AVENUE  
SUITE 1150  
SEATTLE, WASHINGTON 98104  
Email: [tjbrewer@tjbrewer.com](mailto:tjbrewer@tjbrewer.com)  
Website: [www.tjbrewer.com](http://www.tjbrewer.com)

FACSIMILE  
(206) 780-3945

## RESUME

### **Profession:**

Independent Arbitrator

### **Experience:**

Independent arbitrator specializing in complex international and domestic commercial arbitrations. Twenty-five years of experience (1975-2000) as a trial lawyer representing and counseling clients in business and commercial cases. Experience serving as an arbitrator since 1985. Practice limited to providing arbitration and other ADR services since 2000. Served as a sole or panelist arbitrator in hundreds of cases involving a wide variety of parties and issues. Frequent service as chair of three-arbitrator panels. Experience serving as an arbitrator in cases administered by AAA, ICDR, JAMS, ICC, LCIA, SIAC and under the UNCITRAL, CPR, Society of Maritime Arbitrators and American Association of Railroads rules, and in numerous other non-administered cases.

Member of the International Centre for Dispute Resolution's ("ICDR") International Roster of arbitrators and of its Energy Arbitrators List. Member of the American Arbitration Association's Commercial, Large Complex Case, and Construction Rosters of arbitrators, and of the AAA's domestic National Energy, M&A and Joint Ventures, Aerospace, Aviation and National Security, National Healthcare and ERISA panels. Member of the CPR Institute's International/Cross-Border panel of arbitrators, National Panel of Distinguished Neutrals, Energy, Oil and Gas, Commercial Real Estate and Health Care & Life Science panels of neutrals. Also a member of the Silicon Valley Arbitration & Mediation Center's 2017 Tech List of leading arbitrators and mediators in the technology sector. Substantial prior experience serving as arbitrator in all of these areas.

Fellow, College of Commercial Arbitrators. Fellow, Chartered Institute of Arbitrators (FCIArb). Charter Member, National Academy of Distinguished Neutrals. Member, London Court of International Arbitration, North American User's Council.

Listed in *Best Lawyers in America* for arbitration, 2017 and prior years, *Who's Who Legal: Arbitration*, 2017 and prior years (WWL comment: "'superlative' and was particularly picked out for his expertise relating to IP disputes and energy cases");

“Washington Super Lawyers,” 2000-2017, and *Lawdragon* “500 Leading Judges in America.” Selected by *Best Lawyers* as Lawyer of the Year for arbitration in Seattle in 2015 and again in 2017.

**Types of Cases:**

Service as an arbitrator has included many large disputes (*e.g.*, eight-, nine- and ten-figure claims) but has also included a wide variety of other matters, of varying size, involving corporations, privately-held companies, LLC’s, partnerships, governmental entities and individuals. Types of cases handled have included:

<ul style="list-style-type: none"> <li>• commercial contract</li> <li>• intellectual property</li> <li>• energy (oil, gas, electric power, solar, biomass and wind)</li> <li>• international sales and licensing disputes</li> <li>• a wide variety of domestic licensing disputes, including technology and pharmaceutical</li> <li>• breach of contract/breach of warranty</li> <li>• unfair competition</li> <li>• construction</li> <li>• telecommunications</li> <li>• government contracting</li> <li>• business purchase and sale</li> <li>• copyright</li> <li>• trademark, trade secret and patent</li> <li>• international sales and joint ventures</li> <li>• biotechnology and medical products</li> </ul>	<ul style="list-style-type: none"> <li>• software and other technology disputes</li> <li>• partnership, LLC and shareholder disputes</li> <li>• aviation industry disputes</li> <li>• commercial health care disputes</li> <li>• disputes involving professionals</li> <li>• commercial leasing and real estate</li> <li>• compensation disputes involving highly-compensated executives</li> <li>• ERISA and multi-employer pension plan withdrawal liability cases</li> <li>• Employee non-disclosure and confidentiality covenants, and non-competition agreements</li> <li>• insurance coverage</li> <li>• franchise</li> <li>• valuation</li> <li>• distribution</li> <li>• railroad industry disputes</li> <li>• disputes involving applications for emergency or interim relief</li> </ul>
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**Education:**

Dartmouth College (B.A., Government, magna cum laude, 1968); Oxford University (B.A., Jurisprudence, First Class Honours, Wronker and Jurisprudence Prizes, Rhodes Scholar, 1973); Harvard Law School (J.D., magna cum laude, law review, 1975).

### **Employment History:**

2000-present: Self-employed independent arbitrator and ADR neutral; practice limited to providing arbitration and other ADR services. 1985-2000: Substantial, but not full-time, experience serving as a neutral arbitrator and mediator. 1975-2000: Trial lawyer representing and counseling clients in business and commercial cases. Partner, Wickwire, Greene, Crosby, Brewer & Seward, 1994-00; Partner (1981-94)/Associate (1975-81), Heller Ehrman White & McAuliffe (and predecessor firm acquired by merger), 1975-94.

### **Publications and Speaking Engagements:**

Speaker, 2017 National Energy Arbitration Conference: "Resolving Energy Arbitrations in Times of Crisis," CI Arb, Houston; 2016 AAA/ICDR Panel Conference, "Red Flags and Risk Areas for Arbitrators: A Review of Recent Cases Challenging Arbitrator Authority," New Orleans, 2016; Speaker, AAA Seminar: "Arbitration Advocacy for Courtroom Lawyers: Two Experienced Arbitrators Discuss What Works, and What Doesn't, in Arbitration," Denver, 2015; Contributing Author, THE LEADING PRACTITIONERS' GUIDE TO INTERNATIONAL OIL & GAS ARBITRATIONS, (Juris, Gaitis ed., 2015); Contributing Author, THE COLLEGE OF COMMERCIAL ARBITRATORS GUIDE TO BEST PRACTICES IN COMMERCIAL ARBITRATION, 3rd ed., Juris Net 2013 (and to the two prior editions); Author, *Arbitrator Boundaries: What Are the Limits on Arbitrator Authority?* 2012 AAA YEARBOOK ON ARBITRATION AND THE LAW; Co-author, *International Arbitration in Washington - The Need for the Model Law*, WASHINGTON STATE BAR NEWS, vol. 66, no. 4, April 2012; Speaker, *The Process and Practice of International Arbitration*, ICDR Seminar, December 2011. (Partial Listing.)

Some examples of pending or prior commercial arbitrations include:

### **SERVICE AS PANEL CHAIR OR SOLE ARBITRATOR:**

- A domestic arbitration between a U.S. State government and a major oil company involving claims for royalty income damages arising out of production curtailments and pipeline replacements in a major U.S. oil field (Panel Chair).
- A domestic IP arbitration involving alleged breaches of a patent licensing agreement for development of a vaccine (Panel Chair).
- A domestic energy arbitration between parties to a long-term electric power tolling agreement involving claims for recovery of winter reliability penalties imposed by the New England ISO as ancillary charges and counterclaims alleging systematic miscalculation of availability charges (Panel Chair).
- An international arbitration between U.S. and Taiwanese parties related to performance of patent licensing and product development agreements for technologies used in e-readers (Panel Chair).

- A domestic energy arbitration between an RTO and a transmission customer that operates an electric power plant involving alleged breaches of a service agreement (Panel Chair).
- An international arbitration of an antitrust dispute between a large U.S. national retailer and a Japanese manufacturer of flat screen technology products relating to damages allegedly caused by a horizontal price-fixing conspiracy (Sole Arbitrator).
- A domestic energy arbitration involving a dispute over interpretation of the price term in a long-term gas purchase contract (Panel Chair).
- An international arbitration involving a pharmaceutical licensing dispute between U.S. and Indian parties (Panel Chair).
- An international arbitration between Belgian and Brazilian owners of a Texas oil and gas refinery relating to a corporate governance dispute and resulting valuation of the refinery (Panel Chair).
- An international arbitration between a U.S. seller and a Japanese purchaser involving claims of alleged breaches of an asset purchase agreement for a nanocrystal technology business (Sole Arbitrator).
- A wind energy dispute between the owner of a 5,000+ acre wind power generation project and a large public utility (Panel Chair).
- An international arbitration involving a pharmaceutical licensing dispute between U.S. and Canadian parties (Panel Chair).
- A domestic energy arbitration between parties disputing the interpretation of a long-term electric power purchase agreement (Panel Chair).
- An international arbitration between U.S. and Chinese parties involving a licensing dispute related to a medical product (Panel Chair).
- A domestic arbitration between co-owners of a marine fueling terminal and tank farm involving claims of breach of contract and breach of fiduciary duties against the LLC's managing member (Panel Chair).
- A domestic arbitration between a prominent professional athlete and a manufacturer of athletic clothing and footwear arising out of an international licensing and promotional agreement (Panel Chair).
- An international arbitration between US and Canadian railroads to set fair-market rental car-hire rates for use of approximately 5,000 73-foot centerbeam flatcars (Sole Arbitrator).
- An international energy arbitration between a Canadian governmental entity and a private hydroelectric power generator relating to alleged breaches of a long-term electric power supply contract (Sole Arbitrator).
- An international arbitration of a dispute between Saudi Arabian and U.S. software joint venture partners (Panel Chair).
- A patent licensing dispute related to distribution in Brazil of certain agricultural seed products containing patented insect-resistant transgenically modified traits (Panel Chair).

- An international arbitration between a U.S. manufacturer of business jets and a European customer involving breach of warranty claims (Panel Chair).
- An international arbitration of a franchising dispute between parties from India and the U.S. (Sole Arbitrator).
- A domestic arbitration of a consumer protection, business tort and breach of contract dispute between property owners and a company engaged in removing underground storage tanks and remediating petroleum-contaminated soils (Sole Arbitrator).
- An international arbitration between U.S., U.K. and Korean parties alleging breaches of long-term international supply contracts for zinc concentrates (Panel Chair).
- An insurance coverage dispute addressing whether coverage existed under D&O policies for class action claims brought against a payment processing firm in the debt-settlement industry (Panel Chair).
- An insurance coverage dispute addressing whether coverage existed under an employment practices policy for class action claims brought against a trucking and delivery firm (Panel Chair).
- A domestic energy arbitration between parties to a long-term gas purchase contract involving disputed interpretations of contractual provisions related to deductions for demand charges (Sole Arbitrator).
- A domestic energy arbitration between a coal-fired electric power generating plant and a utility over interpretation of the pricing provisions in a long-term (30 year) power purchase agreement (Panel Chair).
- A domestic energy dispute between parties in the Eastern U.S. alleging breaches of a 30-year electric power purchase agreement at a 100+ megawatt biomass-powered facility (Sole Arbitrator).
- A dispute relating to construction and operation of a long term electric power purchase option agreement (Panel Chair).
- A construction arbitration related to alleged construction defects in the construction of a shopping center (Panel Chair).
- A domestic arbitration of construction claims and breach-of-privacy counterclaims involving an entertainment industry personality (Panel Chair).
- An international arbitration between US and Chinese parties related to small parcel shipping charges billed to a large internet retailer (Panel Chair).
- A large multiemployer pension plan withdrawal liability case submitted to arbitration pursuant to ERISA (Sole Arbitrator).
- A commercial real estate dispute between the lessor of a manufacturing plant and the lessee involving allegations of waste allegedly committed by the tenant during a long-term (45+ years) commercial lease (Panel Chair).
- Service as an Emergency Arbitrator pursuant to Article 37 of the ICDR's International Arbitration Rules in several cases.

## **SERVICE AS A NEUTRAL PANELIST ARBITRATOR:**

- An international telecom patent licensing arbitration involving claims for royalties and defenses and counterclaims alleging antitrust violations and breaches of contractual obligations to standard setting organizations (ETSI and IEEE) to license SEPs patents on FRAND terms.
- An international arbitration between a U.S. airline and three European airlines over interpretation of revenue sharing agreements following a merger involving one of the original contracting parties.
- An international arbitration involving alleged breaches of a co-development agreement providing for design, development and financing of photovoltaic solar electric power projects for a California city.
- A domestic energy arbitration between parties to an oil and gas participation agreement over interpretation and implementation of an “area of mutual interest” provision.
- An international biotech arbitration between US and Swiss parties related to alleged breaches of a licensing agreement covering certain genotypes sold for use in a test kit for human papillomavirus.
- A patent licensing dispute between a licensor and the estate of the inventor of patents widely used in the commercial aviation industry.
- An international insurance coverage arbitration involving claims by a large brokerage firm for coverage of mutual fund losses made under D&O policies.
- An international arbitration between US and Austrian parties arising out of the sale of a software company involving alleged breaches of representations and warranties given by the sellers related to balance sheet and tax liabilities.
- An international arbitration between Israeli and Chinese parties relating to sales and licensing of a technology product in China.
- An international arbitration between British, Israeli and U.S. investors in a large commercial real estate project related to alleged breaches of the parties’ development agreements, fiduciary duties and capital call obligations.
- An international arbitration of a dispute arising out of the alleged wrongful termination of a custom manufacturing agreement between U.S. and Brazilian parties and alleged breaches of the agreement’s non-competition and confidentiality covenants.
- An international arbitration between US and Indian parties relating to interpretation and enforcement of the royalty provision in a software licensing agreement permitting manufacture of a GPS navigational product sold to the commercial aviation industry.
- An international arbitration between U.S. and Dutch parties of a trade secret, breach-of-contract and RICO dispute between competing manufacturers of an environmental remediation product used to remove mercury from the waste gas streams of coal-fired public utilities.

- A domestic energy arbitration between a natural gas shipper and gatherer over alleged breaches of a natural gas gathering agreement.
- A dispute between a private investment firm and several of the firm's portfolio managers over interpretation of contractual provisions governing management of holdback accounts.
- An international ICDR arbitration between Swedish and U.S. parties involving alleged breaches of a patent licensing agreement covering certain microprocessor technology used in cell phones.
- A domestic arbitration between a major oil company and a U.S. state government to determine the value of the company's Alaska North Slope crude oil production landed on the U.S. West Coast.
- A domestic arbitration involving a dispute between a software development firm and a company owning natural gas pipelines involving breach of contract and breach of warranty claims related to customization and development of a software product.
- A commercial real estate arbitration involving decennial rent re-set appraisal and valuation issues related to the biotech campus buildings of a large U.S. medical school.
- A rate-setting dispute between a Class I railroad and several short line railroads involving claims of alleged breaches of freight operating agreements.
- A domestic energy arbitration between a qualifying cogeneration power plant and a large industrial customer over alleged improper termination of a long-term purchase and sale agreement for supply of steam.

**Special Master Experience:**

Served as a court-appointed special master responsible for making decisions and recommendations concerning applications for advancements and reimbursements in Chempoint.com, Inc. v. Steigers, et al., King County Sup.Ct. No. 11-2-24411-3-SEA.

Served as a court-appointed special master responsible for resolving all discovery issues regarding electronically stored information in UCC Ueshima Coffee Company, Ltd. v. Tully's Coffee Corporation, No. C06-1604 RSL (W.D.Wash.), an international licensing, trademark and market development dispute between Japanese and U.S. parties. Served as a court-appointed special master for all discovery matters in Whatley v. Nike, Inc., No. CV98-063-MO, U.S.D.C., Or., a patent infringement case. Served as a court-appointed special master to verify and report to the respective state and federal courts concerning a class action defendant's performance of certain settlement obligations in West, et al. v. Group Health Cooperative of Puget Sound, et al., No. C01-716P (W.D. Wash.) and Stone v. Group Health Cooperative of Puget Sound, et al., King County Sup. Ct. No. 01-2-14261-5 SEA. Served as a court-appointed special master for discovery matters in Amazon.com Commerce Services, Inc. v. Expedia, Inc. (King County Sup. Ct. No. 02-2-25747-0SEA), a breach of contract and antitrust action. Served as the court-appointed special master to arbitrate the amount of class action damages in James E.

Hoffman and Dale Snow v. REGENCE BLUESHIELD, No. C98-1078P (W.D. Wash.) and Steven R. Holman v. REGENCE BLUESHIELD, No. 00-2-02033-3SEA (King County Superior Court).

**Mediation Experience:**

Mediation experience has included numerous breach-of-contract and business tort disputes between parties in various industries; disputes arising out of the purchase and sale of businesses; intellectual property and patent disputes; various types of licensing disputes, including software and other technology-related matters; energy cases; international disputes; insurance coverage disputes; construction and government contracting disputes, including False Claims Act disputes; copyright, trademark infringement and dilution disputes; reorganization and debtor-creditor disputes; trade secret and unfair competition disputes in high technology and other industries; law firm dissolution and legal malpractice claims; disputes involving family members, family-owned businesses, and estates; real estate-related disputes; franchise disputes; securities cases; and disputes relating to enforcement of employee non-competition and confidentiality covenants.

