



ADR SERVICES, INC.
Your Partner in Resolution

DE-CONSTRUCTING
CONSTRUCTION
MEDIATION PART 2

EXPERTS & INSURANCE

Hon. Jacqueline Connor (Ret.)
John D. Hanover, Esq.

Ted Levin, Esq.
Robert S. Mann, Esq.

HOW TO USE
EXPERTS
EFFECTIVELY IN
CONSTRUCTION MEDIATION

THE FOUR-STEP PLAN

01

SET THE
RIGHT GOAL

02

RETAIN THE
RIGHT
EXPERT

03

PREPARE
THE
RIGHT
WAY

04

ACHIEVE THE
RIGHT
RESULT

SET THE RIGHT GOAL



- Bad Faith Goals
- Clarify Technical Information
 - Develop Information
 - Exchange Information
 - Confirm Information
- Narrow the Issues
- Influence a Future Conversation
- Achieve a Resolution

RETAIN THE RIGHT EXPERT



THE GOOD

- Clear and Concise, Articulate, Experienced
- Builds consensus, Well-prepared, Authentic
- Flexible, Persuasive, Accurate, Educator
- Knows What To Say, How To Say, When To Say It And When To Keep Quiet



RETAIN THE RIGHT EXPERT



THE BAD

- Inarticulate, Inexperienced, Poorly Prepared
- Inauthentic, Untruthful
- Inflexible, Unpersuasive, Inaccurate
- Confrontational
- Makes inappropriate remarks, at inopportune moments and intrudes



RETAIN THE RIGHT EXPERT

& THE UGLY

- Bad Reputation
- On Record with Contrary Positions
- Expands Role From Expert To Advocate
- Inflames Client
- Creates Unrealistic Expectations
- Alienates Others in the Case



GOOD EXPERTS TELL A STORY

Find the Drama

- Photos, Models, and Videos
- Smoking Guns
- Egregious Conditions



PREPARE THE RIGHT WAY



- **LINK THE PREPARATION TO THE GOAL**
- **PLAN YOUR WORK AND WORK YOUR PLAN**

PREPARE THE RIGHT WAY



- **TO DEVELOP INFORMATION THE EXPERTS ASKS, NOT TELLS**
- **TO EXCHANGE INFORMATION BE TRANSPARENT**
- **TO CONFIRM INFORMATION REVIEW THE RELEVANT DOCUMENTS AND SEARCH OUT THE MISSING INFORMATION AND ASK A LOT OF QUESTIONS**

PREPARE THE RIGHT WAY

TO INFLUENCE A FUTURE CONVERSATION:

- **TELL A GREAT STORY**
- **FOCUS ON INSURANCE
COVERAGE**
- **MASTER THE DETAILS**





THE “TEE-UP DAY”

MOST COMPLEX
CONSTRUCTION
CASES NEED A
TEE-UP DAY

THE “TEE-UP DAY”

DEFECT LISTS, COR, LEGAL ANALYSIS, RESULTANT PROPERTY DAMAGE MUST BE PUBLISHED:

- Well In Advance of Tee-Up Day
- Defense Counsel Needs to Review With Defense Experts
- Defense Counsel Needs to Report to Carrier
- Carrier Needs to Evaluate and Obtain Authority

THE “TEE-UP DAY”



ALLOCATED DEMANDS

- Defense Counsel Needs to Review
- Experts Need to Review
- Carrier needs to Review
- Pass-Through Demands Rarely Helpful

THE “TEE-UP DAY”



WHAT'S LEFT ON TEE-UP DAY

- Questions From Defense Experts
- Challenges to Allocations
- Requests for Additional Information

ACHIEVE THE RIGHT RESULT

- Expert Presentations: Persuasive, Dramatic, Detailed
- Joint Expert Sessions (with/without mediator)
- Neutral Experts
- On-Call Experts
- Excusal of Experts when appropriate

THE ROLE OF
INSURANCE,
INDEMNITY, & BONDS
IN CONSTRUCTION
MEDIATION

INTRODUCTION

- Role of insurance in resolving construction disputes
- Effect of further risk transfer through indemnity provisions and bonds



TYPES OF INSURANCE/ BONDS IN CONSTRUCTION



COMMERCIAL GENERAL LIABILITY (CGL)

- COVERAGE FOR PROPERTY DAMAGE AND BODILY INJURY
- “OCCURRENCE” VERSUS “CLAIMS-MADE” POLICIES
- KEY EXCLUSIONS (WORKMANSHIP, CONTRACTUAL LIABILITY, POLLUTION, MOLD)
- COMPLETED OPERATIONS COVERAGE

TYPES OF INSURANCE/ BONDS IN CONSTRUCTION



BUILDERS RISK COVERAGE

TYPES OF INSURANCE/ BONDS IN CONSTRUCTION

PROFESSIONAL LIABILITY/ E&O COVERAGE

- COVERAGE FOR ARCHITECTS, ENGINEERS AND DESIGN PROFESSIONALS
- LIMITATIONS (POLICY LIMITS, CLAIMS MADE)

TYPES OF INSURANCE/ BONDS IN CONSTRUCTION

SUBCONTRACTOR POLICIES

- ADDITIONAL INSURED
ENDORSEMENTS

TYPES OF INSURANCE/ BONDS IN CONSTRUCTION



OTHER POLICIES

- WRAP POLICIES (OCIP/CCIP)



TYPES OF INSURANCE/ BONDS IN CONSTRUCTION

SURETY BONDS

- PAYMENT & PERFORMANCE BONDS



KEY INSURANCE ISSUES AT MEDIATION



COVERAGE DISPUTES

- DUTY TO DEFEND VS. DUTY TO INDEMNIFY
- RESERVATION OF RIGHTS
- ALLOCATION BETWEEN COVERED AND NON-COVERED CLAIMS
- POLICY EXCLUSIONS DISPUTES

KEY INSURANCE ISSUES AT MEDIATION



- STACKING POLICIES
- PRIMARY VS. EXCESS COVERAGE
- DECLINING LIMITS POLICIES
(DEFENSE COSTS)
- POLICY LIMITS

KEY INSURANCE ISSUES AT MEDIATION



ADDITIONAL INSURED STATUS

KEY INSURANCE ISSUES AT MEDIATION



TRIGGER OF COVERAGE

- OCCURRENCE VS. CONTINUOUS TRIGGER

INDEMNITY PROVISIONS



**Types of indemnity
provisions**

**California Anti-
Indemnity Statutes**

PRACTICAL CONSIDERATIONS FOR USE OF AND AFFECTING INSURANCE TO RESOLVE DISPUTES AT MEDIATION

- **Exchange** coverage positions and policy documents well in advance
- Identify **all potential carriers**
- Address whether there are issues/disputes over **reservations of rights** and/or **policy exclusions**
- Address whether there are issues with **policy limits** that may affect the negotiations – especially with respect to any **declining limits policies**
- Submit reports **early** so adjusters are present with **sufficient authority**
- Ensure adjusters are **present** with **sufficient authority**
- Address whether any **coverage counsel** will be present at the mediation



SPEAKERS



**HON. JACQUELINE
CONNOR (RET.)**

judgeconnor@adrservices.com



**JOHN
HANOVER, ESQ.**

jhanover@adrservices.com



**TED
LEVIN, ESQ.**

tlevin@adrservices.com



**ROBERT
MANN, ESQ.**

rmann@adrservices.com

THANK YOU

