



AAA Mediation.org™

**FN-1062216 MN-1062216 LN-1062216,
Esq.**

Manhasset, New York



Current Employer-Title Len Kessler ADR Services

Professional Summary Full-time arbitrator and mediator, who is an attorney with a bachelor's degree in electrical engineering. Arbitrator and mediator since 2002. Neutral arbitrator in over 150 regular and complex disputes, including disputes regarding, engineering, construction, energy, environmental, business/commercial, and consumer matters. Broad international experience. Member of the AAA Large, Complex Construction Panel and ICDR Construction Panel. Member of the AAA Construction Master Mediator Panel. Amounts in dispute range in value from a few thousand dollars up to approximately \$23 million. Member of the Nassau County Bar Association Alternative Dispute Resolution Advisory Council, which supervises the bar association's ADR program.

Profession Attorney, Arbitrator and Mediator

Work History Len Kessler ADR Services, 2013 – 2014, 2015 – Present; Vice President/Lead Counsel, Global Construction, Gilbane Building Company, 2014 – 2015; Senior Vice President/Associate General Counsel, URS Corporation (Infrastructure & Environment Division), 2005 – 2013; Of Counsel, Agovino & Asselta, LLP, 2002 – 2005; President, Deer Trail Associates, Inc., 1999 – 2001; Vice President and General Counsel, AMEC Construction Management, Inc. (formerly known as Morse Diesel International, Inc.), 1994 – 1999; Associate General Counsel at Ebasco Services Incorporated; Litigation and Health Care Associate, Kelley Drye & Warren; Litigation Associate, Cravath, Swaine & Moore.

Experience Former chief legal officer for the 21,000 employee Infrastructure & Environment Division of URS Corporation (now part of AECOM), which had \$4 billion in annual revenue and provided engineering, construction, design-build and environmental services in approximately 250 offices in more than 50 countries. Member of the division's executive management team, participating on all top-level management committees and risk management committees. Managed a legal department of 30 attorneys, five contract managers and five paralegals. Supervised the management and direction of all outside counsel representing URS in litigation, arbitrations, claims, disputes and other matters, both domestic and international.

Experience involves complex construction and commercial disputes for projects located in the

United States and in international locations. Disputes have involved general contractors, construction managers, trade contractors, suppliers, developers, architects, engineers, and sureties in connection with private and public (federal, state and municipal) construction projects.

Disputes have dealt with claims involving;

- breach of contract, default, nonpayment, changes and extra work,
- differing site conditions,
- construction defects,
- delays and liquidated damages,
- mechanic's liens,
- standard of care, defective plans and specifications, warranty and professional liability,
- bid protests,
- payment and performance bond claims,
- insurance coverage,
- failure to meet process output performance specifications and guarantees,
- failure to use building information modeling (BIM) and similar virtual design and construction (VDC) technology,
- defective materials,
- structural design,
- geotechnical engineering,
- performance-based remediation,
- joint ventures and teaming agreements,
- employment issues,
- personal injury arising from construction defects,
- negligence and other torts, and
- general commercial issues.

Representative disputes have involved HVAC, plumbing, structural steel, electrical, foundation, geotechnical engineering, excavation, roofing, carpentry, welding and safety.

Drafted and negotiated construction and commercial contracts, teaming agreements, joint ventures and shareholder agreements. Construction projects have ranged in value from \$5 million to almost \$1 billion. Throughout career drafted and negotiated all kinds of construction project delivery agreements including agreements for architecture, engineering and design services, general contractor, construction management, design-build, public private partnerships, subcontracts, environmental services and performance-based remediation and consulting.

Mediator Experience

On the roster of the American Arbitration Association Construction Master Mediator Panel. Mediated over 200 construction and commercial disputes. Amounts in dispute have ranged up to approximately \$20 million. Appointed to the Nassau County Bar Association ADR Advisory Council, which supervises and administers the bar association's arbitration and mediation dispute resolution program. On the New York State Supreme Court Commercial Division Roster of Mediators for New York, Queens, Kings and Nassau Counties and the New Jersey Superior Court Roster of Mediators. Mediator for Nassau County Bar Association ADR Program.

Representative Issues Handled as a Mediator

Disputes between contractors and owners regarding claims by contractors for extra compensation due to out-of-scope work, defective plans and specifications and excusable delays. There are often counterclaims by owners regarding defective work and for liquidated damages due to delay.

Disputes between owners and architects/engineers regarding whether plans and specifications contained errors and omissions and whether the architect/engineer met the standard of care.

Disputes between design-builders and owners regarding whether the design-builder met performance specifications.

Disputes between contractors and subcontractors, where the subcontractors are seeking extra compensation due to out-of-scope work and the contractors are seeking recovery from the subcontractors for defective work and delays to the project.

Mediator Style & Process Preferences

My role as a mediator is to facilitate the settlement of a dispute. However, due to my extensive experience in the construction industry in chief legal officer roles, the parties usually want my evaluation of the strengths and weaknesses of their cases. Sometimes one or both attorneys for the

parties want me to help them manage their clients' expectations regarding what would be a reasonable settlement. I am very comfortable providing my input and I find it often results in a dispute settling more quickly.

The construction industry relies on maintaining strong relationships between all the participants on a construction project. I try to emphasize the importance of maintaining relationships in the mediation.

Lastly, if it will be beneficial and with the parties agreement, I will supervise the parties limited exchange of necessary information that will allow them to reach a settlement based upon concrete facts rather than allow the dispute to linger due to unsubstantiated speculation.

Technology Proficiency

Willing to conduct arbitration hearings and mediations using on-line platforms such as Zoom. In addition, willing to conduct hybrid arbitration hearings and mediations.

Experience with issues and disputes arising from electronically stored information ("ESI"), including issuing protective orders regarding ESI.

Willing to receive all submissions and evidence in electronic format. Paper submissions are neither required or desired.

With a bachelor's degree in electrical engineering, very comfortable dealing with disputes involving technology.

Very proficient with computer technology.

Education

Rutgers University (J.D., Rutgers Law Review; Rutgers Journal of Computers and the Law- Managing Editor - 1973); City College of New York (B.E.E., Eta Kappa Nu Honor Society for electrical and computer engineers - 1970).

Professional Licenses

Admitted to the Bar: New York, 1974; U.S. District Court: Southern District of New York, Eastern District of New York.

Professional Associations

American Bar Association (Construction Industry Forum, Dispute Resolution Section, Public Contract Law Section); New York State Bar Association (Dispute Resolution Section, Real Property Law Section, Construction Law Committee); Nassau County Bar Association (ADR Committee and Construction Law Committee); New York City Bar Association (Construction Law Committee).

Recent Publications & Speaking Engagements

AUTHOR:

"Using Mediation to Resolve Construction Disputes and Adjusting for Pandemic Impacts", The Practical Guidance Journal;

"Arbitration of Construction Disputes under the Rules of American Arbitration Association", Lexis Practice Advisor – Real Estate;

"Using Mediation to Resolve Construction Disputes", Law 360;

"Changes in Work and Claims Provisions in Construction Contracts" Lexis Practice Advisor – Real Estate;

"Construction Contract Methods of Compensation and Payment" Lexis Practice Advisor - Real Estate;

"Termination and Suspension Clauses in Construction Contracts" Lexis Practice Advisor - Real Estate;

"Owner-Architect Agreement Drafting Checklist (for a Fixed Price Design-Bid-Build Project)" Lexis Practice Advisor – Real Estate;

"Advantages and Disadvantages of the Primary Construction Project Delivery Methods", Lexis Practice Advisor – Real Estate;

"Warranties in Construction Contracts", Lexis Practice Advisor – Real Estate;

"Guaranteed Maximum Price Construction Agreements", Lexis Practice Advisor – Real Estate;

"Contingent and Timing Payment Provisions in Construction Subcontracts", Lexis Practice Advisor – Real Estate;

"Drafting Notes and Alternative Clauses for a Guaranteed Maximum Price Clause", Lexis Practice Advisor – Real Estate;

Form and Drafting Notes: "Default and Termination Clause (Construction Contract)", Lexis Practice Advisor – Real Estate;

Form and Drafting Notes: "Termination for Convenience Clause (Construction Contract)", Lexis

Practice Advisor – Real Estate;

Form and Drafting Notes: “Limited Indemnity Clause (by Contractor of Owner for Third Party Claims and Optional Indemnity by Owner of Contractor)”, Lexis Practice Advisor – Real Estate; Form and Drafting Notes: “Intermediate Indemnity Clause (by Contractor of Owner for Third Party Claims)” Lexis Practice Advisor – Real Estate; and

Form and Drafting Notes: “Broad Indemnity Clause (by Contractor of Owner for Third Party Claims)” Lexis Practice Advisor – Real Estate.

SPEAKER:

“A View from the Trenches! The Positive Impact of ADR for General and Other In-House Counsel”, Nassau County Bar Association, February 2018

"Alternative Dispute Resolution: Resolving an Estate-Related Commercial Dispute Through Mediation", Nassau County Bar Association, March 2014

"Trials vs. Arbitrations [National and International] for Construction Disputes," 2008 Construction Superconference, December 2008.

"Practical Skills Mortgage Foreclosures and Workouts - Enforcement of Mechanic's Liens/Mechanic's Liens Foreclosures", New York State Bar Association, May 2004.

"Selected Topics in ADR 2004: The Basics, Ethical Considerations, Recent Legal Developments & Effective Clause Drafting," American Arbitration Association and the Suffolk Academy of Law of the Suffolk County Bar Association, November 2003 and April 2004

Mediation Rate	\$550 Per Hour
Languages	English
Citizenship	United States of America
Locale	Manhasset, NY

The AAA's Rules provide the AAA with the authority to administer a mediation including, mediator appointment, general oversight and billing. Accordingly, mediations that proceed without AAA administration are not considered AAA mediations, even when the parties select an mediator who is on the AAA's Roster.

The information contained in this resume has been supplied solely by the individual mediator and may, or may not, be a complete recitation of their experience. The AAA assumes no responsibility for the content, completeness, accuracy, or reliability of the information contained in a mediator's resume. If you have any questions about a mediator's experience or background, you are encouraged to contact your case manager.

Mediators on the AAA Roster are not employees or agents of the AAA.