



AAA Mediation.org™

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Key Biscayne, Florida



Current Employer-Title Cuthbertson Consulting – President

Profession General Contractor, Consultant - Finance, Construction, Business

Work History President, Cuthbertson Consulting, 1990 – Present; Vice President, Interamerican Engineers & Constructors Corporation, 1980 – 1990; General Manager, Electromechanical Division and various other executive positions, SOVIPE Construction Group (Nicaragua and Honduras), 1965 – 1980.

Experience Licensed general contractor with over 35 years' experience managing construction, real estate and financial institutions in Latin America and the United States. Responsible for company management; contract negotiations and administration; dispute resolution through negotiation, arbitration and litigation; negotiation and subsequent management of bonding and credit lines with banks and bonding companies. Experience in construction companies dedicated to building construction (40%), home building and development (20%), electromechanical construction (20%), and financial institutions (20%). Time split equally between Latin America and the United States. Projects have included 20-story office buildings, high-rise apartments, embassies, banks, 2,000 unit housing developments, breweries, industrial buildings and industrial installations.

Mediator Experience Served as a mediator on more than 10 construction-related mediations and approximately 10 commercial mediations. In construction cases, approximately 40% have been owner/developer versus contractor disputes, with some concerning up to seven figures (involving quality, delay, and cost); 40% have been contractor versus sub-contractor disputes (involving payment, changes, and back-charges); and 20% have been non-commercial owner (public entity/not for profit/institutional) versus contractor (concerning cost, specifications, and delay) disputes. In commercial mediations, all cases have been owner versus insurance companies disputes, dealing with casualty damage and repair costs.

Representative Issues Handled as a Mediator Typically, issues have been related to cost overruns, disputed change orders, quality, or delays during construction. In numerous cases, the architect, while not a party to the mediation, has been perceived to be a factor in the costs incurred.

Successfully mediated a case between a U.S. contractor and a Latin American developer over the construction of an office building in the Caribbean with a seven-figure claim for delay and quality issues. Issues were split into various components and partially negotiated into agreement. Upon

reaching an impasse on the remaining issues, the parties agreed to a non-binding "mini-trial" with the mediator acting as the judge in order to evaluate their respective cases. A framework agreement was established for "mini-trial" to allow discovery of relevant information. During preparation for mini-trial, the case was settled, as each side then more fully understood the strengths and weaknesses of their respective cases.

Mediator Style & Process Preferences My 20 years of mediation and arbitration experience and 30 years of construction experience have convinced me that it is vital to resolve disputes as early as possible via negotiation. Doing so reduces the costs and losses and may preserve the relationship. My experience has also convinced me that most disputes result from lack of communication between the parties or unrealistic expectations of one or another of the parties.

My objective is to convince the participants to share that philosophy (in case they don't already) and try to help them negotiate a realistic resolution based on that philosophy. My responsibility is to open communication and understanding between the parties, so that they may better understand what happened on the project. That is not always easy, as personal animosities often become associated and intertwined with the underlying problems to a point where logical understanding is sometimes obscured. Part of my success is in my ability to help the parties cut through those animosities and to push them to look at their respective situations objectively. It is not always successful, but works in a high percentage of cases and is crucial to resolving the conflict.

It is vital to try to mesh the parties understanding of what really happened on the project so that they can agree on that part. Agreement on that part may push them to understand what they can realistically expect to receive or pay as a result of what happened. I always strive to get to an agreement within the mediation context. But, that is not always possible. With an honest approach to the situation, and with an understanding of what happened and what can happen in the future if the dispute is not settled, most parties will decide to settle the dispute. Not all will settle in the first mediation attempt, but a successful mediation will create a level of understanding that will allow communication and settlement in a subsequent mediation attempt or directly by the parties before an arbitration or trial.

Education Harvard University (MBA-1964); Massachusetts Institute of Technology (BS, Mechanical Engineering-1962); Amherst College (BA-1962).

Professional Licenses Licensed General Contractor, Florida.

Professional Associations Association of American Chambers of Commerce in Latin America; American Society of Mechanical Engineers; BAC Florida Bank (Director).

Recent Publications & Speaking Engagements Co-author, CONDOMINIUM-HOUSING FOR TOMORROW, Management Reports, 1965.

Mediation Rate \$250 Per Hour

Languages English, Spanish

Citizenship United States of America

Locale Key Biscayne, FL

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.