



AAA Mediation.org™

FN-11124 MN-11124 LN-11124, Esq.

Primary Areas of Expertise

PHILADELPHIA, Pennsylvania

Release 5.1.0

Testing March 24



Current Employer-Title Kurtz and Partners, P.C. – Of Counsel

Profession Attorney, Arbitrator, Mediator

Work History Current, Of Counsel, Kurtz and Partners P.C. 2017 – Present; Shareholder, Jacoby Donner P.C., 1995 – 2017; Partner, Bolger & Picker, 1980 – 1995; Deputy Attorney General, Commonwealth of Pennsylvania, 1977 – 1980; Law Clerk to the Honorable Lois G. Forer, Philadelphia Court of Common Pleas, 1976 – 1977.

Experience Over 35 years' experience practicing commercial litigation and dispute resolution, primarily involving the construction industry (80%).

Construction Cases: Represented developers, prime contractors, suppliers, manufacturers, architects, engineers and construction managers. Extensive experience handling multi-million dollar claims for delay, acceleration and other time related claims, construction failures, design defects and contractor termination. Particular experience with stadium construction, solar and other power plants, EPC contracts, school projects, site work and mechanical and electrical systems. Represented development manager in negotiation of contracts and subsequent dispute resolution proceedings on \$450,000,000 professional sports stadium project; Drafted construction contracts for international auto racing project, extreme sports facility and wind farm energy facilities; Represented electrical contractor wrongfully terminated from Power Plant Project and recovered amount owed plus counsel fees; Represented owner in roof collapse of a 40 acre distribution facility for major retailer and negotiated complete \$8,000,000 repair by contractor and structural steel supplier and \$10,000,000 settlement of client's business interruption claim against its own insurance carrier; Defended conveyer subcontractor and surety in claim for \$23,000,000 brought by Oregon owner of a co-generation plant against the contractor, design professionals and other subcontractors. Successfully extricated client from case through summary judgment.

Commercial Cases: Represented wholesaler in action against its software consultants who claimed proprietary rights in client's products and refused to supply source code necessary to support client's products. Obtained TRO, permanent injunction and a judgment for \$22,000,000.00; Represented clean room design builder in action against former employees who misappropriated trade secret and proprietary information to set up competing business. Obtained ex parte order directing Federal Marshall to seize computers of former employees Case resolved with monetary payment and

consent order for permanent injunction; Defended wholesaler and its principals in multi-million dollar RICO claim by Israeli supplier. Court entered summary judgment based upon the forum selection and choice of law clauses in the agreement between the parties; Defended major city in multi-million-dollar claim by manufacturer of mass transit rail cars; Represented investment banking firm seeking unpaid finders fee for financing. Obtained judgment for full amount and counsel fees which was affirmed on appeal.

Joint Venture Issues: Represented numerous clients in joint ventures for various projects, including for bonding and MBE/WBE purposes. Also represented clients where in disputes about responsibilities of the joint venture partners, liability issues arising from the joint ventures and claims between joint venture partners.

Mediator Experience

Served as a mediator since 1994. More than half of mediations have involved multiple parties. Have been very successful in resolving multi-party cases on commercial and public authority disputes involving the contractors, design professionals and subcontractors. Representative cases handled as a mediator have included the following: (1) At request of court, successfully mediated a multi-party, multi-million dollar dispute involving public authority, contractor, design engineer and two subcontractors. (2) Successfully mediated a multi-million dollar dispute between developer and construction manager on new high rise condominium project, involving claims for extras, delays and alleged defective work. (3) Successfully mediated a dispute between contractor and a Municipal Authority arising out of termination of contractor on a water treatment plant. Contractor sued for delay damages caused by design professional and supplier. Amount in controversy was over \$2,000,000. (4) Successfully mediated multi-million dollar defect dispute between owner and supplier of wind turbine blades (5) Successfully mediated multi-million dollar disputes arising out of construction of a casino Successfully mediated a dispute on a large high rise apartment project involving claims by owner against the CM and 25 subcontractors (6) Successfully mediated a dispute between contractor and owner of bank concerning alleged delays, defective work and contract balance. Total amount in dispute exceeded \$1,000,000. (7) Successfully mediated delay and disruption claims on \$50,000,000 school project involving District, three prime contractors, design professional and one subcontractor. Aggregate amount in dispute exceeded \$5,000,000. (8) Successfully mediated a claim dispute between contractor, architect and public housing authority wherein owner claimed defective work and design. (9) Successfully mediated a \$1,400,000 dispute between municipal parking authority and ten defendants who were involved in constructing a parking garage. Resolved dispute in two sessions. (10) Successfully mediated a seven-party dispute over delays alleged to have originated from site work and piling issues. (9) Resolved claims among and between at least 10 parties and insurers arising out multi-million dollar claims by Owner for defective curtain wall system used on multiple buildings on business campus. (11) Has also had good success resolving multi-party cases involving school districts or other public authorities.

Representative Issues Handled as a Mediator

Construction cases mediated have addressed virtually all issues, including: delay, disruptions, acceleration, termination for default, termination for convenience, total cost issues, multi-prime issues, design build issues, design defects, faulty workmanship, owner interference, constructive changes, cardinal change, equipment failure, and general payment issues.

Mediator Style & Process Preferences

I view mediation as the opportunity for parties to control the outcome of a dispute on their own terms. I will utilize many different techniques to enable the parties to identify and assess the risk and balance that risk against the cost involved in litigation. I use my experience to help counsel and the parties understand how a panel or judge might ultimately view an issue. I also like to explore possible unconventional agreements to repair or maintain business relationships or avoid impasse. I expect the parties to be prepared and understand that mediation will not bring "victory", but a pragmatic resolution to a business dispute that will allow the parties to re-focus their energy on core business endeavors. However, I do not unduly coerce a party into accepting a resolution demanded by an unyielding party making unreasonable demands. In such cases, I will follow-up with the parties until the time is right to reconvene. I am very persistent and have been ultimately successful in resolving most disputes.

Technology Proficiency

Proficient in hosting and conducting Zoom arbitrations and mediations. Experience with large volume e-discovery both as an advocate, neutral and discovery master. Prefer to receive all documents and exhibits virtually.

Education

Temple University (JD-1976); Washington and Lee University (BA, cum laude-1971).

Professional Licenses	Admitted to the Bar: Pennsylvania (1976), New Jersey (1985), New York (2015-inactive); U.S. District Court: District of Pennsylvania (1976); U.S. Court of Appeals, Third Circuit (1977); U.S. Court of Claims Appeals (1990); U.S. Supreme Court (1987).
Professional Associations	College of Commercial Arbitrators (Fellow); Chartered Institute of Arbitrators (Fellow); American College of Civil Trial Mediators (Fellow); National Academy of Distinguished Neutrals(Fellow); Construction Lawyers Society of America (Fellow); International Mediation Institute (IMI) Certified Mediator; International Bar Association; American Bar Association (Forum Committee on the Construction Industry; Fidelity and Surety Committee; Alternative Dispute Resolution Committee); General Building Contractors Association (Inactive); American Institute of Architects (Inactive); Engineers Club of Philadelphia(Inactive); Construction Financial Management Association (Past Board Member, Philadelphia Chapter); National Bond Claims Association; Philadelphia Surety Bond Claims Association.
Recent Publications & Speaking Engagements	<p>SPEAKING ENGAGEMENTS: "Training for New Mediators, AAA (2016); "ADR, Taking Control of Disputes to Save Time and Money", Webinar for Construction Financial Management Association (2013); "Getting Paid in a Down Economy", presented to Philadelphia General Building Contractors Association and Building Contractors Association of South Jersey (2012); "Insurance Risks in Development" (2012); "Advance Mediation Techniques" AAA (2011); "Mechanic's Liens and Bond Claims" to Construction Financial Management Association and General Building Contractors Association, (2010); "Risk Issues in Green Construction" to Construction Financial Management Association, (2010); Multiple seminars to trade associations on new ConsensusDOCS and revised AIA construction contract forms (2008); Addressed the International Academy of Mediators at the Annual Conference in Philadelphia, PA (May 25, 2007); Panel Member/Presenter at the AAA Mediation Conference, Miami, FL on "Using Quantitative Evaluation Methods: Decision Trees in Construction Mediation" (March 30, 2007); Panelist, Dispute Resolution Division of the ABA Forum Committee on the Construction Industry on "Arbitrator Disclosure to Avoid Vacatur of Awards" (May 2006); Panelist, American Arbitration Association on "Best Practices in Complex Construction Arbitration" (June 2004).</p> <p>PUBLICATIONS: "Ownership of Architectural Plans" (Philadelphia Business Journal, May 2004); "Indemnity Clauses - How Much Risk is Too Much"" CONSTRUCTION TODAY, General Building Contractors Association, Inc., Summer, 2003; "Whose Mediation Is It Anyway," CONSTRUCTION TODAY, issue 3, 2000; "Written Employment Contracts for Association Executives - Should You Have One"" WISCONSIN SOCIETY OF ASSOCIATION EXECUTIVES NEWSLETTER, September/October 1998; "Understanding Subcontract Agreements is Key," TRI-STATE REAL ESTATE JOURNAL, CONSTRUCTION MONTHLY, April 1990; "Pennsylvania Mechanics Liens and Bonds," PROFESSIONAL EDUCATION SYSTEMS, 1988; "How to Reduce the Risk of Claims on a Project with Careful Personnel Selection," TRI-STATE REAL ESTATE JOURNAL, CONSTRUCTION MONTHLY, February 1987.</p>
Locations Where Parties Will Not be Charged for Travel Expenses	<p>Arbitrations: No charge for travel time.</p> <p>Mediations: No charge for travel time or travel expense in North America</p>
Mediation Rate	\$750 Per Hour
Languages	English
Citizenship	United States of America
Locale	PHILADELPHIA, PA

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.