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FN-16723 MN-16723 LN-16723, Esq.

New Brunswick, New Jersey



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Current Employer-Title Hoagland, Longo, Moran, Dunst & Doukas, LLP - Co-Chair of Construction Law Department

Panelist Video <https://www.adr.org/videoresume?paramName=769562970>

Profession Attorney, Mediator and Arbitrator

Work History Executive Management Committee (2003-Present)/Equity Partner (1990-Present)/Associate (1983-1990), Hoagland, Longo, Moran, Dunst & Doukas, LLP, 1983-Present.

Experience Devotes law practice exclusively to representing clients in the construction industry and others involved in construction claims. Has represented clients involved in projects ranging in value from under \$100,000 to well over \$250 million. Maintains the highest Martindale Hubbel "AV" rating, and has been selected by both "Best Lawyers in America" as well as New Jersey's "Super Lawyers" from 2005 through current year in the field of construction law. Also named to "Best Lawyers of the Year in Construction" in 2017 and 2020.

Actively involved in the representation of architects, engineers, construction contractors, and private owners in all types of construction contract claims, property damage suits, building defect litigation, malpractice claims, delay claims, change order disputes, and construction site personal injury actions. Also provides extensive non-litigation consultation services such as contract review and risk management counseling, as well as, legal advice and guidance in real time as disputes arise during projects. Presently serves as corporate counsel for numerous architectural and engineering firms located throughout New Jersey, as well as, multiple mid-sized construction firms.

Served as the Counsel of Record in the following reported construction litigation cases: Sykes vs Sullivan Engineering (established the standard of care applicable to design professionals in the absence of a contract), Gelber vs Zito Partnership (established a new rule of law when multiple claims arising out of the same project are separately brought in court and before the American Arbitration Association), Greczyn v Colgate (a case of first impression regarding the ten year statute of repose), State v Perini (another case of first impression regarding the statute of repose;

specifically, the "trigger date" when the project at issue employed multiple phases and multiple substantial completion dates), *Commercial Insurance v Natoli* (upheld immunity from suit of expert witness). *Hill International v Atlantic City BOE* (case of first impression regarding whether architect can serve as an expert for affidavit of merit purposes against an engineer or vice versa).

Lectured on various aspects of construction law in many forums, including at Stevens Institute, NJIT, Princeton's School of Architecture, and before the Construction Industry Section of the New Jersey Bar Association, as well as, New Jersey's "Judicial College."

Mediator Experience

Has represented clients as an advocate in several hundred - probably approaching a thousand - construction claims that have been mediated since the mid-1980s. Since early 2012, has served as a mediator in nearly two hundred construction claims, which has now become the largest part of my professional practice. In 2022 was placed on the "Master Panel of Construction Mediators" by the American Arbitration Association. Named as one of the "Class of 2017 ADR Champions" by The National Law Journal; Rated "AV Preeminent" Lawyer by Martindale-Hubbell; Has consistently been selected by both "Best Lawyers in America" as well as New Jersey's "Super Lawyers" from 2005 through current year in the field of construction law.

Cases have involved all types of disputes arising out of all types of projects. Extensive experience in disputes including, but not limited to, delay claims; disruption claims; loss of productivity claims; change order disputes; roof defects; solar panel claims; building envelope water infiltration; structural defect claims; HVAC defect claims; electrical defect claims; plumbing defect claims; defective lighting issues; tenant fit-out disputes; site remediation projects; construction cost estimate disputes; and serious construction site accident cases to name a few examples.

Representative Issues Handled as a Mediator

Construction defect claims (e.g. roofs, structural, MEP, civil, solar, building envelope, LEED, etc.)
Architectural and engineering design errors & omissions
Contract scope interpretation
Delay, interference, and acceleration claims
Change order disputes
Critical path evaluation
Liquidated damages
Serious construction site accidents
Code and regulatory interpretation
Wrongful termination.

Mediator Style & Process Preferences

Several years ago I was hired as a mediator in a case after multiple sessions with a prior mediator were woefully unsuccessful. During my initial discussions with counsel, I asked what they wanted to see done differently. One responded, "I want the facts to matter." As both an advocate, and now as a mediator, I believe in that approach wholeheartedly. Mediation should not entail a process by which parties are pressured to accept a deal they disdain. When done correctly, mediation is an efficient and cost-effective way to acceptably resolve a dispute based on the material facts and the applicable law; not in spite of them.

It is difficult to be effective if the mediator does not gain the trust of the lawyers and their clients. At the commencement of every mediation, I usually read to the parties the portions of The Model Standards for Mediators regarding both self-determination, as well as, private caucus confidentiality. Parties need to appreciate that while compromise may be needed, no one can impose a settlement upon them. Moreover, in order for the process to work it is critical that the parties (and their counsel) are forthcoming with a mediator during the private caucus sessions in order to reach an acceptable resolution of their case. I do not think anything is more important than developing a relationship with each party in which they know that they can be perfectly candid with me without fear I will disclose any information to the other parties that they want kept confidential.

It is essential that a mediator is very well versed with the underlying facts of the case, and is intimately familiar with the applicable legal standards germane to the dispute. How can a mediator convince a party to compromise their settlement position if it is apparent to the party or their counsel that the mediator does not really understand the case? Thus, I will "get down into the weeds" of the dispute when preparing for the mediation session. During my preparation, I formulate specifically targeted questions to separately ask the parties in the individual private caucus sessions. Also, in my estimation an initial, brief "joint" session is almost always helpful; not for "lawyer grand standing" but to discuss how mediation is so much different than either court or arbitration, and to determine if

there are any areas of agreement within the overall dispute.

An effective mediator wears two hats; that of a facilitator and that of an evaluator. In a private caucus session I may evolve into the role of "devil's advocate" through the "Socratic" method. It is far more effective for a mediator to ask questions in a manner that will cause a party to consider compromising from their initial position(s) of their own volition, than to try to "force" them to alter a position. That being said, I do endeavor to share my experience in construction-related disputes if it appears that would be helpful to a party to understand the risks of not resolving the dispute through the mediation process.

Finally, mediation is often not over end at the end of the day. All too frequently a mediator may throw up his or her hands and declare that the case cannot be settled as the clock approaches 5pm. However, unless and until every party to the dispute presents a "best and last" proposal - and actually means it - impasse may not have been reached, and thus, there could still be work to do. I have assisted parties settle claims on many occasions through persistent, post-mediation session communications via phone, email, and/or even zoom.

Education

Catholic University, School of Law (JD-1983) and selected as student speaker at graduation; University of Scranton (BS, Business Management, cum laude and member of Jesuit Honors Program-1980).

Professional Licenses

Admitted to the Bar: New Jersey, 1983; U.S. District Court: District of New Jersey, 1983; U.S. Court of Appeals, 1991.

Professional Associations

New Jersey Bar Association (Construction Industry Section)
Member of Panel of Mediators for New Jersey Superior Court Program
Fellow, Construction Lawyers Society of America.

Recent Publications & Speaking Engagements

PUBLICATIONS: "Tips From The Bar: Signs This May Be a Project to Avoid" Published in Sealed and Delivered: A Risk Management Newsletter for Design Professionals in March 2022; "The Pros & Cons of Virtual Mediation" Published in New Jersey Law Journal in February 2022; "The A.T. vs Cohen Case and Revival of the Ferreira Conference" Published in New Jersey Law Journal in March 2018; "The Impact on Building Defect Litigation from the Supreme Court Decision in The Palisades" Published in the December 2017 edition of New Jersey Lawyer Magazine; "But Words Will Never Hurt Me" Published in April 2016 Edition of Marketer; "The Duty of Design Professionals and the Privy Defense" Published by New Jersey State Bar Association's Construction Law Section Newsletter (2010); "What About The Architects?" Published in New Jersey Law Journal (July 2007); "Engineer's Need for a Written Contract" Published in Engineering Times (September 2005); "The Constitutional Right to Equal Public School Facilities in NJ" Published in Builder/Architect Magazine (2004); "Legal Standard Applicable to Land Surveyor" Published in Coordinate Magazine (Spring 2000).

SPEAKING ENGAGEMENTS: Speaks on construction law and risk management multiple times per year. Examples: Presented a seminar entitled "Effective Construction Mediation" in March 2023 before the Construction Industry Section of New Jersey Bar Association; Presented a seminar for NJ ICLE "Zoom Mediations & Arbitrations: Here to Stay?" in June 2021; Guest Lecturer on "Construction Mediation" for engineering class at Stevens Institute in December 2020 and December 2021; Presenter at seminar on "Construction Experts" October 2019; Panelist and Speaker at seminar entitled "AIA Contract Documents Workshop" in April 2018; Speaker at National Business Institute Seminar "Risk Transfer Clauses in Construction Contracts" in October 2017, Presenter at State Bar Association Convention for the "Mythbusters Game Show Experience" in May 2017, Speaker for National Business Institute Seminar in December 2016 for "Construction Contracts - Start to Finish Seminar"; Member of Panel at December 2015 ICLE Seminar on Construction Law for Real Estate Attorneys; Speaker on Recent Developments in Construction Law at Judicial College in November 2015; Guest Speaker before American Society of Civil Engineers on "Engineer's Site Safety Obligations" in November 2014; Co-Presenter before AIA-NJ for Seminar entitled "Trends and Challenges Facing Design Professionals Today" in October 2014; Speaker at NBI Seminar on topic of "Construction Defect Litigation" in September 2013; Co-Presenter at All Day Seminar on Risk Management for Design Professionals at the Atlantic Cape Community College in May 2013; Speaker at "Fundamentals of Construction Contracts" in January 2013; Presenter at January 2012 Seminar entitled "Legal Issues for Professional Engineers" on the Statute of Repose, Site Safety Cases, and Engineers' Ethics; Guest Lecturer in November 2009 at

Princeton University's School of Architecture; In October 2009 was a Presenter before the Crittenden Insurance Coverage Forum as featured panelist on the topic of "Managing Risk Exposure in the Era of BIM, Sustainable Design and Other Emerging Trends"; Lectured for Lorman Business Services on the New AIA Contracts in 2008 and 2009; Appeared before Society for Marketing Professional Services Annual Meeting and Member Recognition Program at The Hyatt in New Brunswick in June 2008; In September 2008 was featured speaker at one-day program for experienced engineers entitled "Legal Issues for New Jersey Professional Engineers"; Spoke before New Jersey State Bar Association on "The New 2007 AIA Contract Documents" in May 2008.

Mediation Rate	\$500 Per Hour
Languages	English
Citizenship	United States of America
Locale	New Brunswick, NJ

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.