



AAA Mediation.org™

**FN-21265 MN-21265 LN-21265, Esq.**

**Naples, Florida**



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**Current Employer-Title** Cleveland Construction, Inc. - In House Counsel  
NESTI Inc. - President and Owner

**Panelist Video** <https://www.adr.org/videoresume?paramName=871045976>

**Profession** Arbitrator, Mediator, Attorney; Professional Civil Engineer - Geotechnical Engineering, Concrete Design and Placement, Construction Management Issues; Business Management and Construction Safety Instructor and Consultant.

**Work History** In House Counsel, Cleveland Construction, Inc., 2020-Present; President and Owner, NESTI Inc., 1996-Present; Corporate Safety and Risk Director, Lithko Contracting, Inc., 1996-2001; Project Manager/Marketing Director/Safety Director, Wilcon Corporation, 1994-1996; Project Engineer/Carpenter/Surveyor, Baker Concrete Construction Co., 1989-1994; Heavy/Marine Division Project Engineer/Office Engineer/Surveyor/Draftsman, JA Jones Group, 1983-1989.

**Experience** Founder of NESTI, a business centered on construction safety and management training plus various aspects of litigation support. Served as project manager at Wilcon Corporation, a design/build firm. In addition to Heavy/marine on-site field experience with J. A. Jones also extensive experience in bidding and managing small to mid-range projects such as manufacturing, medical facilities, warehouses, and office buildings.

Has a wide array of hands-on field experience from the firms of Baker and Jones, with a concentration in concrete work and geotechnical issues. Work experience includes placing concrete, engineering, surveying, carpentry, and office administration (scheduling, drafting, submittals, pricing, and negotiating change order in excess of \$2 million).

Brief list of specific projects includes \$153 million Red River Lock and Dam #1 (Corps of Engineers), \$93 million Kingsbay Nuclear Submarine Dry-dock and Tender Mooring Facility (U.S. Navy), and \$43 million New York City Transit Authority Track Modernization and Electrical Substation repair.

Six month intellectual property law clerk working with trademark, patent, and trade secret issues, 1992.

Teacher for AAA and others in ethical considerations and mediation techniques.

## **Mediator Experience**

Has mediated well over 200 cases. Much of early ADR experience included facilitating consumer and community matters. The bulk of current ADR work is facilitating construction related matters, including commercial and residential. Matters have involved two parties, as well as multiple (three or more) parties with dollar amounts up to \$13 million. The majority of mediations handled have been \$200,000 to \$500,000. Parties involved have included general contractors, construction managers, subcontractors, architects, engineers, homeowners, as well as sureties and church groups.

## **Representative Issues Handled as a Mediator**

Over 100+ Mediations have included issues of: alleged poor workmanship, design drawing defects - errors and interpretation, breach of contract, critical path method (CPM) and specification interpretation, surety coverage, change order and extra work requests, changed and differing site conditions, delay damages, owner interference, eichleay formula damages, defaults, wrongful termination, waiver, failure to perform, substantial completion, punch list, personal injury, cost overruns, bid errors, schedule impacts, sufficient manpower, and mechanics liens.

Numerous mediations have been in the area of residential and home construction.

Some mediations have involved in excess of \$10M with multiple parties lasting several days.

## **Mediator Style & Process Preferences**

My philosophy is that the process works and we collectively must trust it. By that I mean generally, disputants know where the "correct" settlement lies. Often parties and their counsel do need some assistance from an experienced voice of reason in finding this best-fit settlement. However, I strongly believe that the parties and their counsel own the right (and even the obligation) to do the heavy lifting in meeting their own needs, wants and wishes before the issue gets decided for them in another forum.

Generally I find when all the relevant information becomes available and interested parties are provided an opportunity to review and comment on this information that reasonable people (given time) will indeed come to a meeting of the minds and that a settlement can be (and often is) reached. My settlement rate is currently above 85%.

I expect parties to come prepared to discuss the issues in good faith and with full authority to make decisions. This is not my agreement and the terms and conditions of settlement belong to the parties with advice from counsel, as necessary. I expect them to take ownership of the outcome and to even hold the other side accountable for reaching a mutually beneficial solution.

The roles played by each person at a mediation vary with the nature of the dispute, the disposition of the individual and the facts at their disposal. This is what makes mediation a challenge and such a supremely rewarding experience when done correctly. Having said that, initially I seek to have the parties themselves take the lead in the majority of discussions and I will stand aside for counsel that offers constructive input.

The following items are offered in order to provide greater insight: first, I am not quick to caucus. Establishing enforceable ground rules early is critical. Full disclosure of potential conflicts is cardinal to taking the case. Information that is not relevant is discouraged, while emotions behind them are recognized.

## **Education**

University of Dayton (JD-1993); University of Cincinnati (BS, Civil Engineering, concentration in Geotechnical Engineering and Construction Management, with honors-1986).

## **Professional Licenses**

Admitted to the Bar, Ohio, 1994. Professional Engineer (Civil), Ohio, 1998. Certified Safety Professional, 2001. Licensed Contractor, Virginia, 2000.

## **Professional Associations**

American Bar Association (The Forum on the Construction Industry; Alternative Dispute Resolution Committee); Associated Builders and Contractors; American Society of Civil Engineers; ANSI A-10 (Construction and Demolition Safety Requirements); American Society of Safety Engineers; National Federation of Independent Business; Builder's Exchange and OSHA's Advisory Committee on Construction Safety and Health.

<b>Recent Publications &amp; Speaking Engagements</b>	"Excavation Safety," chapter, ASSE Textbook, 2004; speaker, "Risk Management," American Concrete Institute and Associated Builders and Contractors Conferences, 2003, 2004; "Running Excavation Rats," CONCRETE CONSTRUCTION MAGAZINE, May 2002; speaker, State Governmental Affairs Activity, American Society of Safety Engineers, June 1999; speaker, "Developing Team Safety," World of Concrete, 2000, 2001, 2002.
<b>Mediation Rate</b>	\$525 Per Hour
<b>Languages</b>	English
<b>Citizenship</b>	United States of America
<b>Locale</b>	Naples, 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.