



AAA Mediation.org™

FN-25045 MN-25045 LN-25045, Esq.

Denver, Colorado



Current Employer-Title The Holt Group LLC, Attorneys & Counselors at Law – Managing Principal
Western Neutral Services, LLC – Principal

Profession Construction Attorney; Construction Arbitrator; Construction Mediator

Work History Principal, Western Neutral Services LLC, 2005 – Present; Managing Principal, The Holt Group LLC Attorneys & Counselors at Law (formerly Holt & Stalder LLC), 2003 – Present; Director and Shareholder, Ireland Stapleton Pryor & Pascoe P.C., 2000 – 2003; Owner and Attorney, Holt Professional Corporation, 1995 – 2000; Vice President/General Counsel, Construction Management & Technical Services Inc., 1994 – 1995; Director, PMCA S.A., 1992 – 1994; President, Bookhardt O'Toole & Holt, 1988 – 1992; President, Holt & Gebow Attorneys, 1983 – 1988; Director, Gassman & Holt P.C., 1981 – 1983; Partner, Durham Gassman & Holt, 1980 – 1981; Associate, Shank Irwin & Holmes, 1979 – 1980; Associate, Holland & Hart, 1974 – 1979; Law Clerk to Hon. Preston Devine Presiding Judge, California First District Court of Appeals, 1974.

Experience Over 30 years as a commercial and construction arbitrator and mediator, involving a range of matters from the most basic two-party disputes to very complex, multi-party disputes and related contractual relationships. Over 300 mediations and over 100 arbitrations to award over the course of the 30 years of experience, involving a wide variety of agreements and contracts for insurance, construction, surety, subcontractor default, real estate, and other commercial documents. In-depth knowledge of construction and design practices, procedures, standards and customs.

Over 45 years' experience in construction law, financial transactions, commercial contract negotiation drafting and interpretation, dispute resolution, and representation of owners, general contractors, subcontractors and design professionals in their businesses. Experience includes various engagements, transactions and projects, where project construction costs have ranged to over \$340 million.

At present, legal practice includes the representation of general contractors, subcontractors, construction managers, design professionals, architects, engineers, and their insurance carriers in contract negotiations, construction disputes, as well as various other public and private administrative proceedings. Extensive experience in negotiating contracts with foreign companies and governments in Europe and Africa. Substantial experience with all aspects of alternative dispute

resolution and the preparation, evaluation, negotiation, and litigation of claims and construction industry insurance policies, practices, and claims procedures in arbitration, judicial and administrative forums.

Mediator Experience

Handled over 150 construction mediations over the last 10 years throughout the United States. In over 35 year career as a construction neutral, handled over 350 construction mediations, early neutral evaluations and customized dispute resolution procedures. Continues to serve as a construction arbitrator and uses this experience to assist in the resolution of disputes via mediation. Between January 1, 2006 and December 31, 2019, assisted parties in the successful resolution of over 150 separate construction disputes, including:

- A dispute between seven parties involving the design and construction of an industrial facility in the railroad industry. The claims exceeded \$25 million and over 10 insurance companies were involved in the mediation process.
- Ten other multi-party mediations involving owners, governmental entities, and design and construction professionals in disputes over the design, installation and construction of steel bridges, water treatment facilities, waterlines, meatpacking plants, sewage treatment plants, large residences, airports and schools.
- Three disputes involving differing site conditions, contract disputes, failure to pay disputes and general construction defect matters.
- Five mediations including "time-based" delay, impact, acceleration and loss of productivity claims.
- Ten multi-party mediations involving owners, general contractors, subcontractors, lenders, design professionals and construction manager/owner's representatives, in disputes over the design, construction and project close-out disputes on multifamily condominium and rental projects.

Extensive written and teaching experience on the special challenges, characteristics and procedures that are typically encountered in multi-party mediations. Of the over 350 commercial and construction disputes handled, more than half have involved three or more parties. These parties have included owners, general contractors, design-builders, architects, engineers, specialty consultants, insurance carriers, governmental entities at the local, municipal, state and federal levels. In addition to the parties, multi-party disputes typically involve insurance coverage issues and the management of consultants and experts that are more nuanced and complicated than two party disputes.

Since 1980, has served as an advocate in commercial and construction mediations all over the United States, in representation of one of the parties. During this period of time, has served as the "first chair" lawyer in over 250 meditations, as an advocate for various construction industry clients, including owners, developers, design-builders, general contractors, subcontractors, architects, engineers and specialty design professionals. The amounts in dispute have ranged from \$200,000 to over \$150,000,000.

Representative Issues Handled as a Mediator

Construction cases mediated have included issues involving design and construction defects, time-based claims (delay, impact, loss of productivity, acceleration, etc.), change orders, differing site conditions, construction contract and subcontract disputes, insurance coverage and excess coverage issues, as well as contract disputes. Has considerable experience with the successful mediation of construction disputes involving governmental entities, telecommunications, transportation, multi-family housing and land development issues.

Mediator Style & Process Preferences

First, the Mediator must "do no harm" to the process, the parties or the dispute. In this regard, I only take on disputes that I have the background, experience, training and time to handle. I do not give up hope on the parties or process, no matter how difficult or challenging it is or becomes and I continue to work to resolve disputes until they are resolved or the Parties "tell me to go away".

Every mediation is different and the approach taken by the mediator must be individually tailored to each set of factual and legal circumstances, present and past relationship among the Project participants, the evaluation of counsel, along with the type and number of Parties. For this reason, I start every mediation process with a pre-mediation conference call with all counsel to start to become familiar with the dispute including input and recommendations from counsel. Thereafter, I hold individual ex-parte calls with each Party and its counsel. Thereafter, in conjunction with counsel, we develop the schedule and content of the submissions, agree upon the structure and format of the mediation conference itself and get buy-in from everyone on the overall approach that will be used for that particular mediation.

In conjunction with counsel for the parties, we work to develop a customized process based upon: 1) the nature of the dispute(s), 2) the status of development of the case, 3) the suggestions and requests of counsel, 4) role of insurance (if any), and 5) my ever evolving perception of the techniques and approaches that are most likely to produce a resolution of the dispute. As appropriate, I hold ex parte, pre-mediation conference calls with each party and additional joint conference calls, as necessary and/or requested. With respect to the mediation conference itself, as appropriate, I use a combination of facilitated fact exploration, party and expert presentations, coupled with selective and strategic issues, claim and damage evaluations, to nurture and support the parties' settlement negotiations. My extensive experience in the industry as a neutral, advocate, teacher and contract negotiator allows me to adapt my style on a case-by-case basis to the needs of the parties and the nature of the disputes at issue.

I believe that every dispute can benefit from the mediation process, provided that it is set for a time in the dispute when all parties can be ready to participate in a meaningful in-person negotiation process. In my experience, it is essential that the mediator become thoroughly familiar with the parties, the dispute, the law and the background materials before the in-person conference. The mediator must help lead and coordinate the process, and must never give up on the process or the parties. My goal is always to achieve a "global settlement" of all issues. However, if it appears that impasse is likely towards the end of the face-to-face process, and a global settlement does not appear achievable, I will settle claims piecemeal and use it as a vehicle for motivating the parties to address and resolve the remaining claims. Finally, if all of the claims do not get resolved during the face-to-face mediation conference, I will always follow up with telephone conferences thereafter. As a mediator, my approach is to ruthlessly pursue the resolution of the dispute and end the litigation or arbitration process.

Technology Proficiency

Proficient in the use of various business and legal software programs, including Outlook, Excel, MS Word, PowerPoint, Access, Visio, Summation, Digital War Room, Teams, Zoom, GoToMeeting, Adobe, Microsoft Edge, Google, Tabs, iManage and Citrix.

Education

Peace Theological Seminary and College of Philosophy (M, Theology-1997); The Law School, Stanford University (JD-1974); Morehouse College (BA, Summa Cum Laude-1971).

Professional Licenses

Admitted to the Bar: Colorado (1974); Supreme Court of Colorado; U.S. District Court: District of Colorado; U.S. Court of Appeals: Eighth, Ninth & Tenth Circuits; U.S. Supreme Court; admitted Pro Hac Vice: Hawaii State Courts, Superior Court - Los Angeles County, California; U.S. District Courts: Western District of Texas, Northern District of Georgia, District of Utah, District of Nebraska, Eastern District of Virginia and United States District Court for the District of Wyoming.

Professional Associations

2015-24 Denver's Top Lawyers; 2020-22 Colorado Super Lawyers - Construction Litigation; Fellow - College of Commercial Arbitrators (Past President); American Bar Association (ABA) Forum on the Construction Industry (Past Member, Governing Committee, 2007-2010); International Mediation Institute (IMI) Certified Mediator; National Academy of Distinguished Neutrals (Member); AAA, National Construction Mega Project Arbitration Panel; The Stanford Law School (Dean's Advisory Council); National Association of Bond Lawyers (NABL); Listed in the "Red Book" of public finance professionals; American and Colorado Bar Foundations (Life Fellow); Phi Beta Kappa National Honor Society (Delta of Georgia Chapter); Board of Directors/Executive Committee, Colorado Golf Association; Board of Directors, Common Ground Golf Course, Denver, Colorado; former Member and former Chair, Litigation Council, Colorado Bar Association.

Recent Publications & Speaking Engagements

PUBLICATIONS: (2023) "The Design Professional", Chapter 3, ABA Forum on Construction Law, FUNDAMENTALS; (1/21) ABA Publications, The Design Professional's Guide to Construction Law, Chapter 9 – "Considerations for Subconsultant and Subcontract Agreements for Design Professionals and Construction Managers"; (12/2019) Practicing Law Institute, Building Better Construction Contracts 2019, "The 'Neutral' Neutral"; (1/2019) ABA 2019 Forum Mid-winter Meeting Perspectives from the Mediator and Coverage Counsel, "Claims and Disputes Against a State or Local Government Owner: A Brief Discussion of Salient Points Related to Public Projects that Construction Attorneys Should Know"; (12/2018) PLI Institute's Building Better Construction Contracts December 2018 Seminars, New York, NY, "Above All, Do No Harm: The Mediator's Ethical Obligation to Both the Parties and the Professions"; (2018) Construction Super Conference 2018, Las Vegas, NV, "Evidence in Arbitration: From the Arbitrator's Perspective Arbitration Hearing – 'Burn Rates' – 'Time really is money – don't waste it'"; (10/2013) ABA, Forum on the

Construction Industry, "Fundamentals of Construction, Second Edition, Chapter 2 - The Design Professional"; (9/2013) ABA Forum on the Construction Industry, Construction ADR Handbook Chapter 32 - "The Design Professional's Perspective on ADR"; (9/2009) DePaul University Law School, Arbitration Symposium Chicago, IL "Whither Arbitration – What Can Be Done to Improve Arbitration and Keep Out Litigation's Ill-Affects?".

SPEAKING ENGAGEMENTS: (4/11/24) ABA Forum on Construction Law 2024 Annual Meeting, New Orleans, Plenary 4: "The Art of Cross Examination", with John Heisse and Karen Layng; AAA 2023 Annual Panel Conference - "Discovery Best Practices for Construction"; (2/24/23) Chartered Institute of Arbitrators, North American Branch, "Ask the Arbitrator: "Best Practices in Commercial Arbitration-Tips from Leading Arbitrators and In-House Counsel"; (10/15/22) College of Commercial Arbitrators 2022 Annual Meeting - "The Managerial Arbitrator: A Dialogue about Tips and Techniques to Address Cutting Edge Issues"; (6/9/22) AAA 2022 Construction Conference, "Don't Get Lazy with Your Downstream Contracts – Consolidation and Joinder in Construction Disputes";(12/7/2021) Construction Super Conference 2021, Orlando, FL, "S13 AAA - How did you like your last construction litigation? Why is arbitration different than litigation?", with Michael Marra, John Carpenter, Esquire, Stephen Seeger, Esquire and Wendy Venoit, Esquire; (11/19/21) Georgia Institute of Dispute Resolution, 28th Annual ADR Institute, "Professionalism in Arbitration"; (10/1/21) The College of Commercial Arbitrators Presents: "Using the Pre-Hearing Conference to Win Your Commercial Arbitration"; (9/29/21) ABA Forum on Construction Law, 2021 Denver Regional Conference, "Schedules and Delays, Contract Changes and Differing Site Conditions"; (5/20) "Special Powers of Commercial Arbitrators", ABA Dispute Resolution Section, 2020 Virtual Spring Conference Webinar. (3/2020) The Construction Lawyer, Winter Edition, "Claims and Disputes Against State or Local Government Owner: What Construction Attorneys Should Know", Kelli Gross, Esq., L. Tyrone Holt, Esq. and James F. Butler, III, Esq.; (12/19/2019) Construction Super Conference 2019, Rancho Palos Verdes, CA, "S31 In Search of Neutrality: Ethical Questions for Neutrals and for the Advocates Who Select Them", with David Waddell, ProActive Arbitration, Sara Beiro Farabow, Partner, Seyfarth Shaw LLP; (12/17/2019) (2/1/2019) ABA, Forum on Construction Law, 2019 Mid-winter Meeting, Los Angeles, CA, "Plenary 5 - Litigating Public Construction Cases: You Can Handle the Truth!".

| | |
|-----------------------|--------------------------|
| Mediation Rate | \$585 Per Hour |
| Languages | English |
| Citizenship | United States of America |
| Locale | Denver, CO |

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.