



AAA Mediation.org™

FN-2711 MN-2711 LN-2711, Esq.

Primary Areas of Expertise

New York, New York

Real estate



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Current Employer-Title MoxleyADR LLC - Principal

Panelist Video <https://www.adr.org/videoresume?paramName=941709876>

Professional Summary Experienced arbitrator and mediator with broad legal and business expertise from years of serving as litigator, arbitrator, and mediator in wide range of cases; committed to conducting each proceeding fairly and efficiently; attuned to contemporary best practices; flexible in working with counsel to design process suited to each arbitration and to tee up issues for resolution in each mediation; adept in assessing and navigating complex factual, contractual, and legal issues; attentive listener; hard-working and responsive; decisive; accomplished in writing fair, well-reasoned, and enforceable awards and finding common ground in mediations; alert to cyber security; respectful of counsels' time; and attentive to needs of each case. TEST

Profession Attorney, Arbitrator and Mediator

Work History Principal, MoxleyADR LLC, 2012-Present; Adjunct Professor, Fordham University School of Law (teaching arbitration and international law), 2003-Present; Distinguished ADR Practitioner in Residence, Benjamin N. Cardozo School of Law, 2009-Present; Of Counsel, Kaplan Fox & Kilsheimer LLP, 1994-2012; Partner/Counsel, Jones Hirsch Connors & Bull, 1987-1994; Associate/Assistant Professor, St. John's University School of Law, 1991-1992 & 1994-1998; Partner, Schwartz Klink & Schreiber P.C., 1979-1987; Adjunct Professor, New York Law School, 1986-1991; Associate, Davis Polk & Wardwell, 1970-1979; Law Clerk to Hon. Thomas F. Croake, United States District Judge for the Southern District of New York, 1969-1970.

Experience Over 35 years as a litigator, arbitrator and mediator in a wide range of domestic and international disputes, including in commercial, securities, executive employment, insurance, business divorce, corporate, partnership, intellectual property, franchise, banking, accounting, construction, commodities, real estate, and tax cases.

Educator in the field of dispute resolution, including teaching arbitration law and practice and training arbitrators, with a focus on to how to conduct commercial arbitrations to achieve fairness,

expedition, and economy pursuant to processes designed, in conjunction with counsel, to suit the needs of the particular case. Bar leader in the ADR field, chairing committees and presenting CLE programs and trainings as to arbitration and mediation.

Cases have involved claims ranging from millions to over a billion dollars and issues as to contractual and legal rights and obligations, complex legal instruments and disputed facts, allegations as to contract language and intent, custom and usage, bad faith and unfair dealing, fiduciary duty, fraud, malpractice, tortious interference, waiver, estoppel, parol evidence, force majeure and issues as to corporate governance, rights and obligations of officers, directors, controlling shareholders, investment advisors, brokers, account executives, supervisors, issuers, accountants, attorneys, physicians, engineers, architects, actuaries, educators, regulators, consultants, athletes, security and fire alarm providers, and issues as to valuation, tender offers, class actions, securities research, soft dollars, risk, discretion, suitability, patent validity and infringement, design-arounds, D&O coverage, property and casualty, excess/surplus lines, environmental/pollution, notice, loss reserves, IBNR, actuarial, TPAs, run-offs, title insurance, extra work, design changes, engineering, turnkey, electrical, fires, energy, cement plants, co-generation plants, nuclear power, shopping centers, airports, residential maintenance services, military contracts, goods and services, shipping, distributors, jewelry, watches, advertising, art, cosmetics, horses, chemicals, insecticides, restaurants, fast food, vehicles, school districts, and matrimonial settlements.

Representative Cases: representing plaintiffs and defendants, individuals and institutions in courts throughout the country: representation of state insurance regulator in case involving claims of over \$140 million against former officers, directors and auditors of two insolvent insurance companies; representation of accountants, officers and directors against claims of fraud and other breaches of duty; representation of public company against company from which it had bought securities; representation of hedge fund in securities cases concerning investments; representation of accounting firm and accountants in defense of securities fraud class action; representation of insureds, insurers, and reinsurers in coverage cases; representation of trader in stock exchange investigation of frontrunning; representation of executive employees in disputes with securities and financial firms; representation of turnkey supplier of cement plants in litigation with owners; representation of attorney in disciplinary matter and of teacher against disciplinary charges. TEST

Mediator Experience

Have mediated such disputes as the following:

- sales of portfolios of mortgage loans;
- alleged accounting malpractice;
- water damage to Brooklyn condominium;
- international camera supply agreement;
- accounting firm's termination of a partner;
- respective rights of discharged executives and former employers, including case involving whether general counsel of public company was terminated for cause and issues as to his contractual and legal rights upon termination;
- alleged breach by former officer of educational training company of non-compete and confidentiality obligations and alleged misappropriation of company assets;
- acquisition of securities firm by minority shareholders;
- termination of co-managing director/founder of a securities firm based on alleged thefts;
- contract rights of dealer for national company providing medical services to insurance companies in connection with sale of life insurance;
- respective rights of family members to portfolio of real estate properties in the New York;
- investment in real estate in Tbilisi, Georgia;
- \$30,000,000 of mortgages on a Manhattan residential building arranged by an allegedly unfaithful officer of the corporate owner of the property and his alleged theft of such monies;
- foreclosure on mortgage of over \$120 million on Manhattan real estate;
- hedge fund's \$3,000,000 claimed break-up fee based on letter of understanding with Manhattan real estate company;
- rights and obligations of inside and outside investors in film cutting business based on \$6,300,000 valuation of business upon business divorce;
- respective rights and obligations of owners of several hotels;
- amounts claimed under computer consulting and related services agreement;
- insurance coverage;
- respective rights of insurers and reinsurers;

- break-up/sale of family's manufacturing business allegedly worth some \$5 million;
- alleged \$1.2 million price for Japanese hotel chain's option on a developer's contract rights on a block of real estate parcels intended for construction of a hotel;
- sale of \$770,000 of assets of company engaged in manufacturing paint for private labeling;
- \$700,000 in attorneys' fees for services rendered to a co-op at the behest of the president of the co-op, who allegedly acted without authority;
- alleged \$840,000 over-drawing of capital accounts by former partners of law firm and nonpayment of their share of expenses;
- respective rights of majority and minority owners of Manhattan low income residential building valued at approximately \$4 million as to management of the building and possible buy-out;
- respective rights of artist and art dealer to various of artist's paintings and prints;
- delicatessen's alleged breach of contract permitting contractor to supply internet services in the delicatessen;
- joint venture by two pharmaceutical companies with respect to development of drug;
- bank's loss of contents of safety deposit boxes;
- respective rights and obligations of owner, general contractor and subcontractor over an alleged \$700,000 of construction work and related mechanics liens; and
- numerous fee disputes between attorneys and clients.

Have served as counsel in mediations, including in the securities, life sciences, and accounting fields.

Representative Issues Handled as a Mediator

Representative issues involved in cases mediated have included the following:

- valuations and economic viability of portfolios of mortgages and claimed contractual right of buyer to put individual mortgages back to seller;
- respective rights and obligations of unit owners and condominium concerning water damage to apartments and delays in re-construction;
- rights under international camera supply agreement;
- contractual issues concerning accounting firm's termination of partner;
- contractual and legal rights and obligations of discharged executives and former employers, including as to cause, compensation, severance, expenses, benefits, outplacement, stock options, pensions, confidentiality, proprietary information, non-competition, and non-disparagement;
- contractual and legal rights of partners, controlling shareholders and others within business entities and professional associations upon business divorces;
- valuations of business entities and investments;
- facilitating parties' negotiation of purchase and sale of majority interests in securities firm;
- enforceability of break-up fee provision in letter of understanding between hedge fund and real estate company;
- interpretation of contract language;
- bases for admission of parol evidence;
- legal prerequisites for liquidated damages;
- distinction between liquidated damages and penalties;
- legal significance of contract parties' course of dealing;
- waiver of contractual rights;
- statute of frauds;
- authority of corporate officer to bind company to mortgage where officer ostensibly had authority, but bank was allegedly on notice of red flags;
- impact of cultural differences on enforceability of oral agreements;
- lawyer's potential liability based on opinion letter as to authority of corporate officer, where lawyer allegedly was on notice of red flags;
- interpretation of coverage and exclusion provisions and conditions of insurance policies, underwriting intent, representations, custom and usage, industry practice, notice, waiver, and estoppel;
- effect of lawyers' delays in submitting bills on right to collect on them;
- authority of residential co-op's president to permit co-op's lawyers to engage in level of litigative activity exceeding estimates;
- question of whether it was malpractice in an arbitration for lawyer to demand attorneys' fees, exposing client to being charged with other side's attorneys' fees;
- impact on law partners' agreement as to their respective draws when the partners thereafter filed individual and partnership returns based on amounts actually drawn rather than on agreed amounts;

- whether law firm's conduct at the time two partners withdrew constituted firm's consent to terms of the withdrawal, waiving later claims for retroactive adjustments;
- enforceability of contract which small business owner who spoke limited English signed without reading;
- questions whether alleged deficiencies in providing internet services constituted legal basis for owner's withdrawal from services agreement; and
- legal advice given as to implications of various possible settlement approaches.

Mediator Style & Process Preferences

Mediation offers a powerful alternative to traditional dispute resolution. Having spent a lifetime litigating cases, taking and defending hundreds of depositions, reviewing or supervising the review of probably millions of pages of documents, dealing with e-discovery, briefing and arguing countless motions, trying cases, arguing appeals, and presiding over hundreds of arbitrations, I never cease to be amazed at the extent to which mediation offers a way for parties to come to grips with realities of a case and resolve it to their satisfaction without the time, expense, and inconvenience of continued litigation or arbitration.

I work closely with counsel in advance of the mediation to assure that, to the extent possible, all necessary people will be present, and each side will have the information it needs to evaluate and settle the case. These advance telephone calls with counsel and at times parties contribute greatly to the success of a mediation.

I get as up-to-speed on the facts and law of each case as available information permits. I listen carefully and remember that each case has its own unique facts, circumstances, and personalities.

In some cases parties have strong feelings about the dispute and need to tell the other side and the mediator what they think and feel in a joint session. Parties often want to hear the other side's statements of its view of the world and take stock of the situation. Joint sessions can be important in such cases before parties can move to the next level of assessing potential risks, costs, time-factors, and inconvenience of not settling.

There are also cases in which feelings run perhaps too high to start with a joint session or in which parties are fully cognizant of one another's views and evidence and eager to move directly to negotiating. In such cases, the new line of communication and independent perspective I bring to the table can be key to settlement. I conference questions as to approach with counsel in advance to understand the background and get a sense of where the parties are coming into the mediation.

Progress can often be made by going through the process of reality-checking and risk-analysis, aided hopefully by my independent perspective and experience. It is always helpful when opportunities—sometimes in surprising and unexpected ways—can be found to "enlarge the pie" for parties' mutual benefit.

I believe it best when resolution comes from the parties, but am prepared to be evaluative when it seems helpful and parties want it. I will not provide an evaluation or mediator's proposal in joint session unless both sides want me to do so.

When settlement is elusive, it is important to keep the conversation going. Many cases settle at the mediation session, but perseverance is important in ones that don't. I follow up and find that parties often reach settlement in the ensuing weeks or months based on continued discussion and time to reflect.

Technology Proficiency

Early advocate of need for cybersecurity and technology proficiency in ADR. Attuned to issues presented by artificial intelligence (AI) to arbitration practice and engaged in ongoing monitoring of the area. Actively engages with counsel to address issues as to ESI. Certified as Fellow of the College of E-Neutrals. Focuses on maintaining cybersecurity of arbitration-related materials, including through up-to-date security practices. Willing to engage in paperless or partially paperless arbitrations, when desired by parties. Has conducted many proceedings on Zoom. TEST

Education

Columbia University (JD-1969); Fordham University (MA-1966; BA-1965).

Professional Licenses

Admitted to the Bar: New York (1969); U.S. District Court: Southern and Eastern Districts of New

York; U.S. Court of Appeals: Second (1972) and Seventh (1984) Circuits; U.S. Supreme Court (1982). TEST

Professional Associations Chartered Institute of Arbitrators (Fellow); College of Commercial Arbitrators Associations (Fellow); New York International Arbitration Center (Member); New York State Bar Association (Co-Chair, Committee on Arbitration and ADR, Member of Executive Committee, Commercial and Federal Litigation Section) (Member of Executive Committee, Past Chair, Dispute Resolution Section) (House of Delegates, Past Delegate); American Bar Association (Dispute Resolution Section, Arbitration and Mediation Committees; International Law Section); New York City Bar Association (International Commercial Disputes Committee); New York County Lawyers Association (International Law Committee); ARIAS-U.S. (Certified Arbitrator); International Mediation Institute (Certified Mediator); CEDR Accredited Mediator; Commercial Division, Supreme Court, New York County (Mediation Panel); National Academy of Distinguished Neutrals (Member); Lawyers Committee for Nuclear Policy (Board of Directors).

Recent Publications & Speaking Engagements Co-author, “Understanding—and Avoiding—Vacatur and Applications for Vacatur,” DISPUTE RESOLUTION JOURNAL, American Arbitration Association (Fall 2023); Co-author, “Understanding the AAA-ICDR Virtual Hearing Guide for Arbitrators and Parties, NEW YORK DISPUTE RESOLUTION LAWYER (Summer 2020); “Some Tips for Conducting Muscular Arbitration Hearings,” ARIAS-U.S. QUARTERLY, 1st Quarter 2013; “Traps for the Unwary: Major Differences Between New York and Federal Arbitration Law,” NEW YORK DISPUTE RESOLUTION LAWYER (Spring 2010); “Beyond the ‘Discretion of the Arbitrator’: Applying the Standard of ‘Reasonable Necessity’ to Determine the Appropriate Scope of Discovery in Insurance/Reinsurance Arbitration,” ARIAS-U.S. QUARTERLY, First Quarter, 2009; “Discovery in Commercial Arbitration: How Arbitrators Think,” DISPUTE RESOLUTION JOURNAL, American Arbitration Association, Aug.-Oct. 2008; book and articles on international law and nuclear weapons.

SPEAKING AND TRAINING ENGAGEMENTS:

Faculty teaching Arbitration Law & Practice, Fordham Law School, 2011 to 2016, 2018 to 2020.

Faculty, designing and co-leading annual three-day Commercial Arbitration Training for the New York State Bar Association (NYSBA) and the Benjamin N. Cardozo School of Law, 2011 to 2023; Faculty, “Why Courts Vacate Awards—and How to Prevent It,” 2023 AAA/ICDR Panel Conference, Rancho Mirage, CA; Faculty, Advanced Arbitration Training, 2018. TEST

Faculty, designing and co-leading annual NYSBA/Fordham Law School ADR Conferences: “Arbitration and Mediation 2023: Fulfilling the Promise—Getting Matters Resolved in a Timely and Efficient Way in Today’s World” (2023); “Contemporary Arbitration and Mediation—How We Can Do Better” (2022); “Arbitration and Mediation 2021: Best Practices Working Through—and Beyond Covid” (2021); “Business Arbitration and Mediation 2020: How Arbitration and Mediation Will and Should Look in the Future” (2020); “Commercial Arbitration 2019—What Parties and Their Counsel Have a Right to Expect and Arbitrators Should Be Delivering: Arbitration at Its Best” (2019); and “The Litigative DNA—The Underutilization of Mediation in New York and What Can Be Done About It” (2018).

Moderator, CLE programs: “Arbitration of Cannabis Disputes” (2023); “Updates to the AAA Commercial Arbitration Rules and Mediation Procedures” (2022); “Practical Considerations in Navigating Emergency Arbitrations” (2022); “Virtual Arbitrations Are Here to Stay: What You Need to Know” (2021); “Missed Opportunities in Approaching Your Arbitration Case” (2021); “Best Practices: Roundtable on Different Approaches to Arbitration” (2021); “An International and Domestic Arbitration Roundtable” (2021); “Hot Topics in Dispute Resolution” (2021); “Cyber Security Boot Camp Training: What Must You Know in Your Arbitration” (2020); “Artificial Intelligence and Arbitration: The Computer as an Arbitrator—Are We There Yet?” (2020); “Insurance Arbitration in light of COVID-19” (2020); “AAA-ICDR Virtual Hearing Guidelines” (2020); “Best Practices of Counsel in Representing Parties in Arbitration from the Perspectives of Neutrals and Arbitration Institutions” (2020); “Arbitration in the Time of Coronavirus” (2020); “What Are the Typical Steps in Large, Complex Commercial Arbitrations: Peering into the Arbitrators’ Brain” (2020); “Arbitrators’ Questions and Other Proactive Steps in Arbitration: How Far Can Arbitrators Go?” (2020); “Peering into the Arbitrator’s Brain: How Is Your Large, Complex Case Evaluated?” (2019); “ESI and Arbitration” (2019).

Faculty, “Use of Rules of Evidence in Insurance/Reinsurance Arbitration,” “ARIAS-U.S. Fall Conference (2012); “Arbitration in the Accounting and Financial Industries,” New York State Society of CPAs (2009).

Mediation Rate	\$750 Per Hour
Languages	Dutch
Citizenship	United States of America, Denmark
Locale	New York, NY

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.