



AAA Mediation.org™

**FN-2773463 MN-2773463 LN-2773463,  
Esq.**

**Wellesley, Massachusetts**

**Current Employer-Title** Kerstein, Coren & Lichtenstein, LLP - Partner

**Work History** Partner, Kerstein, Coren & Lichtenstein, LLP, Wellesley, 2016 - Present; Partner, Murtha Cullina LLP, 2001-2016; Partner, Hassenfeld & Lederman, 1995-2001; Associate (1987-1990)/Partner (1990 - 1995), Roche, Carens & DeGiacomo, 1987-1995; Associate, Corwin & Corwin, LLP, 1983-1987; General Counsel, Worcester MA Housing Authority, 1981-1983; Staff Attorney, Greater Boston Legal Services, 1979-1981; Clinical Instructor, Boston University School of Law, 1978-1979; Staff Attorney, Lake County Ohio Public Defender's Office, 1975-1978.

**Experience**

- Represent private and public owners, non-profits, construction managers, general and subcontractors, suppliers, building products manufacturers and design professionals.
- Serve as mediator and arbitrator.
- Represent parties before the Massachusetts State and Federal Courts and American Arbitration Association.
- Represent clients in mediations and public bid protests.
- Handle disputes involving breach of contract, negligence, warranties, defective work, disruption, delay, mechanic's liens, rights and obligations under performance, payment, lien and bid bonds, and Chapter 93A violations.
- Lecture and prepare written material on construction law issues for Massachusetts Continuing Legal Education, Inc. and Lorman Education Services.
- Conduct seminars to educate and assist construction industry clients and groups regarding legal and business related developments and issues.
- Represented general contractor in litigation and mediation to recover contract balance and payment for extra work on \$4.2M combined office and automobile inspection facility.
- Represented interior finish subcontractor in arbitration of claims by material supplier for extra work, delay, and excess manufacturing costs on large U.S. airport renovation Project.
- Represented major Boston-area developer of shopping centers, hotels, office buildings and medical facilities in preparation and negotiation of design and construction contracts, and in litigation with contractors and equipment suppliers.
- Represented owner of suburban shopping center in mediation of disputes with contractor over delays, extra work claims, backcharges and defective work on \$2M renovation project. Defended mechanics lien actions brought by subcontractors.
- Represented credit union in mediation of disputes with general contractor and designer arising out of warranty claims for leaking windows, roof failures, and improperly installed flashing and curtain walls.
- Represented Massachusetts charter schools in preparation of bid documents and defending public bid protests by disappointed filed subbidders.
- Represented electrical subcontractor in public bid protests challenging architects' decisions that certain work required by the electrical plans and specifications be performed by persons not employed by the electrical subcontractor.
- Represented general contractor in litigation and mediation of claims by site subcontractor for payment of subcontract balance and extra work.
- Represented Catholic diocese in mediation to recover from general contractor and designer cost to complete and correct church addition and renovation project.

- Represented roofing contractor in mediation of administrative claims by state department of labor for alleged failure to comply with safety and notice requirements on five projects.

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| <b>Mediator Experience</b>                            | Mediated construction dispute between general contractor and subcontractor. Issues included subcontractor's extras claims, owner's backcharges and delay.<br>Mediated construction dispute between owner and plumbing contractor. Issues included value of claimed extra work, alleged deficiencies in work, and time and amounts of payments claimed and due.  |
| <b>Representative Issues Handled as a Mediator</b>    | Issues included breach of contract, negligent construction, extra work, backcharges and delay.  |
| <b>Mediator Style &amp; Process Preferences</b>       | <p>The mediation process should permit the parties to fully express their positions, the facts and law supporting those positions, and any relevant business concerns and emotions. The role of the mediator in the first instance is to listen to the parties carefully and thoughtfully and develop a thorough understanding of the facts, the evidence, the issues, the parties' positions and goals, and applicable legal principals. The mediator's role then shifts to engage the parties in what's known as principled bargaining. (Fisher and Ury, Getting to Yes, Penguin, 1983) which includes (1) separating the parties from the problems, (2) focus on interests rather than on positions, (3) generate a variety of options before settling, and (4) to the extent possible, settle based on objective criteria. The mediator's role is to assist the parties in settling on terms acceptable to them.</p> <p>That said, I believe it is important for the mediator to offer opinions if requested to do so by the parties. I expect the parties to come to the mediation fully conversant with the facts and, if represented by counsel, familiar with the applicable legal principles. I expect the parties to have read and carefully considered each other's pre-mediation memos, if any. I expect the parties to come with open minds, full settlement authority, and a willingness to listen and be flexible.</p> |
| <b>Education</b>                                      | Case Western University School of Law (J.D. - 1975); Case Western Reserve University (A.B., American Studies - 1972).   |
| <b>Professional Licenses</b>                          | Admitted to the Bar: Ohio (1975), Pennsylvania (1976), Massachusetts (1979); U.S. District Court: Massachusetts (1982); U.S. Court of Appeals: First Circuit (1985).  |
| <b>Professional Associations</b>                      | American Bar Association, Forum on the Construction Industry; Massachusetts Bar Association; Boston Bar Association.  |
| <b>Recent Publications &amp; Speaking Engagements</b> | <p>Lorman Education Services: "Fundamentals of Construction Contracts: Understanding the issues" March, 2012; March, 2011; May, 2009; May, 2008; February, 2007.<br/>Next Street Financial, LLC "Contracts and Partnering" December, 2013; March, 2014;</p> <p>Presented seminars for clients and industry meetings on the following topics:<br/>Massachusetts Prompt Pay Act<br/>Construction Contractor's Audit to Insure Best Business Practices<br/>Critical Contract Terms<br/>Records: Indispensable Tool for Disputes and Litigation<br/>Email Communications: The Good, the Bad and the Ugly</p>  |
| <b>Mediation Rate</b>                                 | \$3,120 Per Day   |
| <b>Languages</b>                                      | English   |
| <b>Citizenship</b>                                    | United States of America  |
| <b>Locale</b>   | Wellesley, MA   |

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.