



AAA Mediation.org™

**FN-4236797 MN-4236797 LN-4236797,
Esq.**

New York, New York

Current Employer-Title Independent Arbitrator and Mediator

Profession Independent Arbitrator, Mediator, Attorney, Independent Director, Professor of Law

Work History Arbitrator and Mediator, 2012-Present; Of Counsel, Dewey & LeBoeuf, 2007-2012; Adjunct Professor of Law, Law School University of Montreal, 2011-present; Visiting Lecturer on Corporate Governance, HEC-MBA France, 2007-present; Senior Partner, LeBoeuf Lamb Greene & MacRae, 1992-2007; Partner, Donovan Leisure Newton & Irvine, 1984-1992; Partner/Associate, Windels Marx Davies & Ives, 1976-1984; Chief International Counsel, Carrier Corp, 1972-1976; Associate, Cadwalader Wickersham & Taft, 1970-1972.

Experience Many decades of experience advising multinational corporations and financial institutions, mostly French, German and Canadian.

Extensive experience in international and business law matters for corporations ranging from NYSE-listed corporations to family-owned corporations.

Proven capability to manage efficiently large teams of lawyers for assignments from M&A to multi-billion dollar arbitrations.

Spent 10 years on the board of a NYSE-listed steel company, sat on compensation committee, chaired the audit committee handling relations with outside auditors and with internal auditors, conducted internal investigations there and for other clients.

Energy:

Power generation, transmission, distribution and marketing. Represented major international utility in all aspects of its business: long-term power purchase agreements, asset-based financing of combined gas-cycle plants and transmission lines, Operations & Maintenance contracts for bulk transmission, experience with the Edison Electric Institute (EEI) Master Power Purchase and Sale Agreement and the EEI Collateral Annex. Experience with day-ahead, capacity and ancillary services markets and with congestion costs.

Financial Services:

Represented foreign banks in asset-based lending, structured products, equity derivatives, ISDA Master Agreement and Credit Support Annex transactions, variable-interest entities issues under FIN 46R.

Metals and Alloys:

Experience in carbon and stainless steel, non-ferrous alloys: M&A, technology transfer agreements, construction contracts for steel mills, long-term iron ore, chrome, ferro-chrome purchase

agreements, take-or-pay agreements, mining concession agreements.

Heavy Industry-Chemicals and Heavy Machinery:

M&A, joint venture agreements, joint development and manufacturing agreements, technology transfer agreements, transfer pricing issue in heavy machinery (compressors and turbines for chemical and petro-chemical applications) and chemical industry (organo-phosphorous compounds, explosive cladding).

Since 2007, teaches Corporate Governance to MBAs at HEC-Paris and Adjunct Professor, US Securities Regulations, University of Montreal Law School (2011-Present). Regularly serves as NYCBA Delegate to UNCITRAL Working Group II Dispute Settlement.

Mediator Experience

Mediates cases for the Commercial Division of New York Supreme Court, United States Bankruptcy Court for the Southern and Eastern Districts of New York, as Special Master for the Appellate Division First and Second Department, and for the Financial Industry Regulatory Authority (FINRA). Serves as mediator in private mediations.

Types of cases mediated recently:

- Breaches of contract,
- business divorces,
- fiduciary litigation in commercial and bankruptcy cases,
- disputes between JV partners,
- LLC members' disputes,
- corporate governance,
- construction disputes (owner/prime contractor, prime contractor/subcontractor, owner and construction manager, change orders, owner/surety, insurance subrogation issues),
- loan restructurings, commercial and residential lease restructurings following COVID,
- oil spill remediation liability,
- musician-publisher royalty disputes,
- author-ghostwriter disputes,
- IP disputes,
- not-for-profit tax exemptions,
- tax lien sales,
- denial of fishing rights,
- real estate tax assessments,
- shareholder-coop board disputes,
- medical malpractice.
- M&A (breach of warranties and representations, material adverse change clauses, non-compete clauses, earn-outs, collectability of receivables), - commercial landlord and tenant disputes.

-Multi-party experience:

Several cases involved three or more parties, especially in fiduciary litigation (Bankruptcy Trustee, Board Members, D&O Carrier), oil spill remediation (Owner, tenant of polluted site, polluter, carriers for each), construction (Owner, Contractor or Subcontractor, Insurance carrier, Surety), including one, a failed development project, with seven parties and six law firms.

For references: ADR Coordinators for First and Second Departments of the Appellate Division of NYS Supreme Court, for the Commercial Division of Bronx New York and Richmond Counties.

Representative Issues Handled as a Mediator

Construction:

Subcontractor-Owner apportionment of liability for injuries to subcontractor's employee, interplay between owner's strict liability under the labor law and the subcontractor's insurance policy. Owner-Contractor disputes relating to scope of work and approval of work orders, impact of stop work orders on completion schedule.

Owner-Construction Manager (CM) Guaranteed Maximum Price Contract:

Dispute over whether certain work constituted a change order, effect of wrongful termination of contract, liability for CM's lost profit, claims by owner for excess costs. Liability of surety of failed subcontractor to prime contractor for cost of completing the subcontracted work.

Banking:

Many cases involving residential and commercial real estate where either the borrower had stopped paying or the property had been acquired by an investor subject to the mortgage. These involve restructuring the credit with a combination of reduction of principal, change of interest rates structuring balloon payments and the duration. In some cases, there were issues of competing claims of lien seniority when investors had purchased tax liens on the property. A frequent issue is what constitutes acceleration and de-acceleration of the note for statute of limitation purposes.

Business Divorces and M&A:

Valuation of membership interest, interpretation of put and call clauses in operating agreements, conflicts between managing members, conflicts between operating members and financial members, apportionment of liabilities for unpaid taxes in sales or dissolution of the LLC. M&A claims of breach of warranties and representations, interpretation of material adverse event (MAE) or change (MAC) clauses. Disputes over earn-outs, collectability of receivables, non-compete clauses.

Oil Spills:

Liability under the navigation law for leaks of underground storage tanks, for spills by a fuel delivery company or by tank removal company, extent of remediation obligations and cost, interplay with New York DEC rules and regulations.

Insurance:

Subrogation rights of insurer of non-participating subcontractor in Contractor Controlled Insurance Program (CCIP) denial of coverage issues for failure by insured to notify carrier of litigation against insured. Liability of surety of a subcontractor when the insured goes bankrupt and the prime has to complete the work with another subcontractor. Chapter 7 Trustee and D&O carrier coverage dispute.

Tax:

Right to a charitable exemption for real estate taxes, disputed real estate tax assessments. Applicability of the hotel tax levied by certain counties to the reservation fees charged by internet travel companies. Bankruptcy of purchaser of tax lien on a commercial property and pre-bankruptcy resale of the tax lien to a third party for value, fraudulent conveyance issues.

Real Estate:

Disputes between coop corporation and tenant-shareholder, commercial landlord-tenant (force majeure, constructive eviction, access agreements, quiet enjoyment covenant breach) Fiduciary claims in bankruptcy and commercial cases.

Mediator Style & Process Preferences

I was trained as a facilitative evaluative mediator. I do think general sessions are worthwhile and will hold them before moving to caucuses. I ask parties to submit a confidential pre-mediation statement to me emphasizing the kinds of business solutions the party may envisage and I follow up with discussions with counsel prior to the mediation. During the general session I tend towards being facilitative and as we move into private caucuses, I may become more evaluative depending on the parties' desires. I use decision trees to help parties more realistically determine the range of values of their respective positions. I respect party autonomy in mediation and only share my views of the respective parties' positions as a neutral when requested or when it appears that it will assist with resolution.

Technology Proficiency

Have sufficient technology proficiency to discharge duties as arbitrator and as mediator efficiently and effectively. In the past 3 years, have conducted over 70 mediations and arbitrations via Zoom. Fully equipped in all residences to work remotely with redundant systems in each location.

Education

Harvard Law School (LLM-1970); University of Montreal (JD-1969); University of Besançon, France (B.Sc-1962).

Professional Licenses

Admitted to the Bar: New York (1975); US District Court: Southern District of New York (1982); Federal Circuit (1984); US Court of International Trade (1980); US Supreme Court (1977).

Professional Associations

New York City Bar Association ADR (chair Subcommittee in International ADR) and Arbitration Committees
New York State Bar Association, Dispute Resolution Section Mediation Committee (Chair, Subcommittee on Cross-border ADR), International and Business Law Sections, Commercial and

Federal Litigation Section

American Bar Association: Litigation Section, Dispute Resolution Section (Arbitration and Mediation committees), Business Law Section

Recent Publications & Speaking Engagements

Panelist NYSBA -AAA-ICDR Successful Approaches to Advancing Careers in Arbitration March 2024
Panelist, NYSBA -AAA-ICDR Use of AI in Mediation February 2024
Panelist, NYSBA -AAA-ICDR Starting an ADR Practice Jan 2023
Panelist, "Tough Calls and Recurrent Issues in Arbitration: Solutions from Experts", NYSBA Dec. 2022.
Speaker, "Why Mediate When You Can Litigate?" 42d Annual Housing Conf. of NY Council of Coops and Condos, Nov.2022
Moderator, Panel on Dispute Avoidance Prevention and Resolution Toolbox for Cross-border Agreements, NY Law School Nov. 2022
Trainer, :NYSBA Advanced Commercial Mediation Training (March 2021 and 2022) and Fall 2021 and 2022 and NYCLA Fall 2021 and Jan 2022 (Impasse-breaking Techniques)
"LIBOR 1967-2021? Questions Raised by LIBOR's Demise" Mélanges in Honor of Prof. Storck (2021)
Entrenchment Mediation Training, panelist NY County Lawyers Association (2020)
Speaker and Trainer Part 137 Mediation Training NYCLA (2020)
"Evident Partiality: Monster Energy a Case of First Impression" Jan-Feb 2020 issue of the ABA Arbitration Committee e-Newsletter vol.5
"Recent SEC Enforcement Actions and Insider Trading Court Decisions" Oct2019 Université de Montréal Law School 3-hour Advanced Seminar on Securities Laws Enforcement.
"Time?Bar Defenses in Enforcement Proceedings: Analyzing the Rusoro Decision by the Paris Court of Appeals" May 2019, CPR Alternatives
"The Fiduciary Relationship in American Corporate and Securities Law" in Mélanges in Honor of Professor Jean-Jacques Daigre (2017)
Panelist: "Securitization and the U.S. Bankruptcy Code", int'l symposium on securitization, Comparative Law Center University of Paris, 2016
Panelist: "Operational Risks in Banks after the BNP Paribas case" int'l symposium on "Bankers and Risks" U.of Strasburg Law School, 2014
Panelist "High Frequency Trading: Regulatory Challenges" Int'l symposium on "High Frequency Trading: A Canadian, American and European View" U. of Montreal Law School 2014
Moderator «Complexity of Financial Instruments: A Challenge for Regulators » International Symposium « Complexity and Financial Regulation », U.de Montréal Law School Sept. 2013.
"Shareholder Activism in the United States" Int'l Symposium "Governance: What is the Contribution of Institutional Investors?" U. de Montréal Law School Nov. 2012
"L'affaire MF Global et la refonte de la protection des fonds des clients des courtiers américains sur les marchés à terme," Joly Bourse (2012). (MF Global and the reform of the protection of customer funds at commodity futures brokers)
"Le dégorgement dans la loi Sarbanes-Oxley," Joly Bourse (2012). (Disgorgement under SOX)
"De Sarbanes-Oxley à Dodd-Frank : le rôle et les limites de la gouvernance dans la prévention des catastrophes financières," Paper presented in Nov.2011 at an int'l symposium organized by Lyon Law School for the 10th anniversary of Enron's bankruptcy. Sem. Juridique
Entreprise et affaires No 24 2012 p.20 (From SOX to Dodd-Frank: The Role and Limitations of Corporate Governance in the Prevention of Future Financial Catastrophes)
"US Legislative Responses to the Financial Crisis: 39th Annual Workshop on Com'l Law and Consumer Law, Montreal (2009).
Co-author, "Les évolutions récentes de la fiscalité des fonds de private equity aux Etats-Unis et en France" Magazine des Affaires, n° 40 (2009).
"Finance : deux arrêts rendus à New York invoquent l'inexécution anticipée comme motif de résolution unilatérale" Bulletin Joly Bourse (2008). (Finance: Two New York Cases on Anticipatory Breach)
"Relative Competitiveness of Legal Systems: An American Practitioner's View" U.de Montréal Law School (2008)
"Credit Derivatives Documentation and Changes in the ISDA Master Agreements: A Disaster Waiting to Happen?" Presentation to Int'l Banks Credit Policy Round Table (2002)

Mediation Rate

\$850 Per Hour

Languages

French, English, German

Citizenship

France

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.