



AAA Mediation.org™

FN-572 MN-572 LN-572, Esq.

San Francisco, California



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Current Employer-Title Ernest Brown ADR - Mediator/Arbitrator

Panelist Video <https://www.adr.org/videoresume?paramName=246830483>

Professional Summary Has developed a nationally recognized Construction ADR practice. Uniquely qualified to quickly understand, analyze, and act to resolve project disputes. Has a remarkable breadth and depth to serve large construction and real estate clients and advise ongoing global projects.

Profession Full-time Mediator/Arbitrator & Dispute Review Boards, Project Neutral.

Work History Arbitrator and Mediator, Ernest Brown & Company, 2016 – Present; Managing Principal/Special Counsel, Smith Currie & Hancock LLP, 2011 – 2016; Managing Principal, Ernest Brown & Company(merger of firms), 1989 – 2011; Senior Vice President and Executive Consultant, Hill International (NYSE: HINT), 2000 – 2002, Partner, Stradling Yocca Carlson & Rauth, 1986 – 1989; Partner, Natkin Weisbach & Brown, 1984 – 1986; Corporate Counsel, Fluor Daniel, 1981 – 1984; Litigation Attorney, Bronson Bronson & McKinnon, 1978 – 1981; Civil Engineer (Geotechnical & Foundations Specialization), Dames & Moore, 1975 – 1978.

Experience Retired Managing Partner and Executive Committee Member of law firm specializing in US and International construction projects. Forty years of Construction Litigation, Government Contracts and Environmental Practice.

Member of National Construction Panel since 1984. Chairman or Panelist on dozens of large A/E design, construction, real estate and aviation cases with dispute amounts ranging from \$500,000 to \$100 million.

Chairman of large and complex Construction Panels, including Mega-Projects in US and Internationally. Chairman for a \$100 million claim on a ski condominium project in Aspen, Colorado, a \$65 Million Claim on a Major Hospital Expansion in Sacramento, a \$100 million+ claim on a mixed use hotel and high rise office building in San Diego, and a \$100 million claim on cost adjustments in the manufacture of over 100 wide-body aircraft (Confidential).

An ADR Professional resolving over \$1 Billion in construction claims.

Industry Expertise

Powerplants:

- + Former Engineering Employee of Sierra Pacific Power Company (Nevada Power)
- + Counsel for Fluor Power on numerous powerplants and disputes in the US, including natural gas fired, coal fired & nuclear (WP & L) (1982 – 1986).
- + Chairman of AAA Panel on Utility v. Power Plant Designer on Gas Flare Design Defect Claims.

Alternative Energy

- + Principal in Honey Lake Energy Solar Complex, Honey Lake, California (3000 acres)
- + Advised Solar Power Plant Design/Constructors on Licensing and Regulatory Matters.
- + Mediator on multiple Solar Power Plant Design & Construction Matters.
- + Advised Developer of Geothermal Power Plant in Honey Lake, California on design, construction, regulatory and subsidence issues.
- + Chief Trial Counsel for developer of corn fueled power plant in Hamburg, Iowa.

Petrochemical

- + Division Counsel for Fluor Engineers & Constructors (1981-1986)
- + Project Counsel for Saudi Petrochemical Complex (\$3.4 Billion) (1981-1985)
- + Project Counsel for Petramina Refinery in Chilichap, Indonesia.
- + Numerous US and International Projects for Seven Sisters Oil Companies.
- + Led Technical and Legal Team to upgrade EPC Contracts for Abu Dhabi National Oil Company (2001-2002)
- + Independently Represented Chicago Bridge & Iron on construction disputes involving large steel tanks for projects in Los Angeles, Dubai, Thailand and numerous other locations.

Pipelines

- + Lead Trial Attorney for Ameron/Kiewit for Central Arizona Project Siphon Failures (1990-1994) \$146 Million in cost of repairs - Defense Verdict.
- + Lead Trial Counsel for Stearns Catalytic (UTC/Air Products) in June 6, 1986 explosion of the Mojave Power Plant in +Laughlin, Nevada (6 deaths, \$250 million in Economic Damages)
- + Associate Counsel for Techite Pipeline Product Failures (United Technologies) (1978-1981)

Transportation:

- + Chief Design & Construction Counsel for John Wayne Airport (\$300 Million)
- + Project Counsel for Carquinez Suspension Bridge (\$100 million) (2000-2004)
- + West Coast Counsel for Flatiron West (2000 - 2016) on more than 100 projects.
- ++As lead trial lawyer collected over \$100 million for Flatiron Claims
- + Counsel for Mid-Cities Exposition Project Light Rail (\$200 million) (2010 - 2015)
- + Counsel for Oakland Connector Project Light Rail (\$450 Million) (2012 - 2016)
- + Project Counsel for Public Private Partnership - P3 - Presidio Parkway (\$1.2 Billion) (2010-2016)

Current experience is 60% Arbitration, 20% Mediation, 15% DRB/Project Neutral & 5% Project Consulting.

Prior experience was construction litigation (80%), reviewing construction documents and project counseling (20%). Partner with Smith, Currie & Hancock. Experience with airport, casinos, sports arena, power plants, pipelines, transit systems, refinery, roadways and bridges, schools and universities, high technology, industrial, and treatment plants.

Adjunct Construction Law Faculty at UC Berkeley, UC Irvine, Stanford School of Engineering, and Cal Poly Pomona.

Mediator Experience

A highly experienced mediator who has resolved approximately 3,000 engineering, construction, public works and defect cases, ranging from residential construction to large and complex highway,

bridge commercial, petrochemical and industrial projects. Mediates approximately 65 engineering and construction cases per year in California, Nevada, Utah and Arizona. Mediations typically involve lawsuits with \$100,000 to \$100 million in dispute. Typical of construction disputes, cases range from two to twenty-five parties and counsel. These cases have generally required one or two days of formal presentations and intensive mediation efforts in order to settle.

Representative Issues Handled as a Mediator

Mediation expertise includes:

- State and Local Government Contracts
- Federal Contracting Disputes
- Major Failures and Investigations
- Site Injuries & Wrongful Death
- Delay, Acceleration, and Interference
- Construction Safety Disputes
- Mechanics' Liens and Stop Notices
- Overruns and Change Orders
- Construction Products and Defects
- Uniform Commercial Code Issues
- Engineer and Architect Malpractice
- Operation and Performance Problems
- Landslide and Subsidence
- Corrosion Problems
- Roof Leaks & Mold Issues
- Fires and Explosions
- Bankruptcy Workouts
- Insurance Coverage.

Mediator Style & Process Preferences

Successful parties and their legal counsel wisely employ mediation as an effective line of attack in resolving construction disputes. There are two basic rules regarding construction mediation: It is completely voluntary and the mediator's discussions are absolutely confidential. It is also a huge money saving tool. It offers great savings over the discovery and trial process.

There is a MAJOR assumption with mediation. Everyone always assumes that the necessary people, knowledge and documents will be readily available during the mediation proceeding. Unfortunately, during the course of many mediations, the parties and/or their legal counsel realize that an essential party, document or other piece of key information is not available. It can leave a gaping hole in the settlement process and keep the parties from reaching an otherwise acceptable agreement. In that case, a great deal of time and effort can be wasted. If a postponement occurs, the parties may discover another missing party, document or item of information. Mediation is an art and a terrific innovation for the construction industry, but counsel and the parties must fully understand its underlying philosophy and purpose, carefully prepare their mediation case, and then wholeheartedly engage in the settlement process.

THE MEDIATION PROCESS

Construction mediations are generally conducted over one or two full days.

1. Prior to the Mediation, counsel for the parties will submit a very brief (5-8 pages) on the main points of the dispute. It is extremely helpful if these materials include the critical documents, such as copies of letters, documents, checks, meeting notes or other helpful materials that will help the Mediator understand the issues.
2. The briefs should be submitted at least five days before the Mediation. If the parties have confidential information to present, they may do so informally during the Mediation. It is not necessary to copy other counsel, but many mediators find it helpful to the mediation process if the parties agree to do so.
3. The Mediator will generally circulate a confidentiality sheet with various terms and conditions for the Mediation that also serves as a sign in sheet.
4. The principal parties and any person whose approval is needed for resolution must attend unless other arrangements are made in advance with the Mediator. Failure to have the ultimate decision makers personally present will quite probably result in failure of the mediation.

5. The Mediator must disclose any prior relationships with the parties as well as the law firms, especially if the Mediator has conducted a mediation for either firm or party in the past.

6. The Mediation generally proceeds as follows:

First, there will be a joint session, in which the attorneys for the parties will introduce everyone and the Mediator will explain the process to the participants.

Second, the attorneys or their principals, will present a 15-20 minute presentation on their side of the case, with all parties present. At the conclusion of that session, the Mediator will summarize his understanding of the positions of the parties. The parties may also ask the other side key questions, as might the Mediator.

Third, the parties will meet separately with the Mediator for sessions of 30-45 minutes each. These are confidential sessions. It is however, important that any particularly sensitive information be discussed in the context that the material should not be revealed to the other side.

Fourth, the Mediator will eventually advise the parties whether the matter is ripe for settlement, and if the matter can be settled, upon what terms.

Fifth, the parties and their counsel will draft a simple, enforceable settlement agreement that the parties shall sign. A more formal settlement agreement may follow, but the fundamental points must be included in the settlement agreement.

Technology Proficiency

Civil Engineering
Geotechnical Engineering
Surveying
Project Management

Trial Practice (State and Federal Courts)
Trial Practice (Arbitration)
DRB Training (State of California & DRBF)
Special Master
Project Neutral

Microsoft Office 360
P6 Oracle
Google Workspaces
Zoom, MS Teams
Slack

Education

University of California at Berkeley (JD-1978; MSCE, Project Management-1978); Massachusetts Institute of Technology (BS, Civil and Environmental Engineering-1975); Harvard Law School (Graduate Study in International Law).

Professional Licenses

Admitted to the Bar: California, 1978; Registered Civil Engineer: California, 1980

Professional Associations

California Bar Association; American Bar Association (Forum on the Construction Industry); International Mediation Institute (IMI) Certified Mediator; California State Bar, San Francisco Bar Association. Past: California League of Cities, Associated General Contractors, American Society of Civil Engineers and National Society of Professional Engineers. Past: Associated General Contractors; California League of Cities; California County Counsel Association; American Institute of Architects.

Recent Publications & Speaking Engagements

CALIFORNIA INFRASTRUCTURE PROJECTS, A LEGAL HANDBOOK FOR SUCCESSFUL CONTRACTING & DISPUTE RESOLUTION, iUniverse - 2020 (461 Pages) & ALM - Recorder Books, 2012; CITIZEN'S GUIDE TO PUBLIC PRIVATE PARTNERSHIPS, iUniverse - 2020 (241 Pages); "The Construction Mediation Checklist," California League of Cities, 2010; "Managing Contracts and Resolving Disputes," CALIFORNIA PUBLIC WORKS, 2000, 2002; "Bidding, Performance, and Claims Resolution," chapter 12, CONSTRUCTION LAW HANDBOOK, pp. 369-458, Aspen Law and Business, 1999; "Underground Construction: Avoiding Accidents and Disputes," Associated General Contractors of California, 1999; "Architecture and Engineer

Liability: Claims Against Design Professionals," chapter 10, CONSTRUCTION LAW LIBRARY, John Wiley & Sons, Inc., 2nd ed., 1995; "Understanding Policy Reduces Aftershocks," ORANGE COUNTY BUSINESS JOURNAL, March 1994; PUBLIC WORKS: CONTRACTS AND LITIGATION, Continuing Education of the Bar, 1992; ARCHITECT ENGINEER MALPRACTICE IN CALIFORNIA, Cambridge Institute, 1992; "Expanded Contractor Liability Under CERCLA," Associated General Contractors of California, Inc., 1992; "The Earthquake Aftermath: Legal Guidance for Contractors and Owners," Associated General Contractors of California, November 1989; "Asbestos Abatement Work Entails Risk," CALIFORNIA PROFESSIONAL ENGINEER, September/October 1988; "Putting a Lid on Liability," CIVIL ENGINEERING MAGAZINE, July 1988; "The Engineer's Mechanic's Lien," CALIFORNIA PROFESSIONAL ENGINEER, January 1988; "What Lawyers Must Know About Asbestos," ABA JOURNAL, November 1987; "Earthquake Litigation," THE DAILY JOURNAL REPORT, October 1987; Opportunities and Risks in Asbestos Removal and Hazardous Waste," Professional Services Management Association, 1987; co-author, ARCHITECT ENGINEER MALPRACTICE, Federal Publications, 1980.

Locations Where Parties Will Not be Charged for Travel Expenses	California, Nevada, Arizona, Utah, Colorado, Oregon, New York, Washington State, District of Columbia
Mediation Rate	\$12,000 Per Day
Languages	English
Citizenship	United States of America
Locale	San Francisco, CA

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.