



Bernice K. Leber, Esq.

Practice	25
Cases	100
Languages	Hebrew, French

Work History

Arbitrator and Mediator, 1995-Present; Partner, Arent Fox LLP, 1994-Present; Partner, Epstein Becker & Green, P.C., 1991-1994; Partner/Associate, Summit Rovins & Feldesman, 1980-1991; Associate, Graubard Moskowitz, 1978-1980.

Experience as a Mediator

Since 1997, has mediated over 100 disputes covering: broker-dealer disputes, securities claims, commodities futures issues, licensing, unfair competition, breach of employment disputes, trademark infringement and declaratory judgment disputes in the music, liquor, food, publishing, accounting and advertising industries, copyright infringement in music industry, patent litigation in computer, shredder industry; executive employment agreements, environmental tax credit joint ventures, insurance coverage disputes (both primary and third party coverage, as well as syndication issues). Has also mediated trust disputes over real property as well as accounting matters involving real and personal property. Examples of range of damages in mediations: securities disputes from approximately \$500,000 to \$150M; patent disputes from approximately \$25M to \$250M; trademark and copyright disputes from approximately \$3M to \$250M; coverage disputes from approximately \$50M to \$500M; accounting, breach of contract, breach of fiduciary duty and negligence from approximately \$5M to \$150M; employment disputes from approximately \$150,000 to \$5M.

Representative Issues Handled as a Mediator

Representative issues in mediations include: allegations concerning violations of "know-your-customer" rules, the applicability of certain securities regulatory exemptions to transactions and violations, securities fraud violations under the '33 and '34 Act and related rules; allegations over trademark infringement including the scope of the trademark (both common law and statutory; both in U.S. and in foreign countries), breach of contract involving licensing fee, trademark validity and adequacy of disclosures to the PTO; assignability of trademarks; patent issues have involved state of the art and related disclosures in patent filings; amount of damages recoverable; copyright issues have involved ownership, assignment, and rights under both statutory and common law as well as damages; trust cases have involved the validity of the trust, the construction of the trust, fiduciary and non-fiduciary claims, breach of contract claims over trust agreements; trust accounting and damages relating to claims of breach of trust; real estate mediations involve damages due to property losses and economic losses as well as bidding disputes and damages recoverable, breach of fiduciary and breach of contract over real estate managing director; accounting claims in the real estate and professional service industries involving damages recoverable, applicable industry standards and rules applicable especially relating to common-law law firm partnerships; joint ventures in environmental tax credit litigation involved rights and remedies including future profits and damages. Trade secret mediations have included whether the claims involve a trade secret and the amount of lost profits recoverable for an established product line as well as a new venture.

Years of Practice as a Mediator

Total Number of Cases Mediated

100

Mediation Experience as an Advocate or Party

Since 1997, virtually every case in the SDNY and, since early 2000s, every case appeared in at Commercial Division of New York, has included mediation.

Mediation Philosophy

I view the mediation process much like I view the arbitration process: lawyer-friendly. I like and trust lawyers and, from having practiced for 30 years, understand the kinds of issues which they often confront. I try to be very fair to both/all sides. I tend to be direct with the lawyers and their clients about meeting and controlling expectations. The more experienced lawyers and clients who have participated in mediations for the most part tend to be more open and candid about the specific difficulties to reaching a settlement whether they are substantive or practical; they also tend to ask a mediator to act more as an advocate with the other side. Some lawyers use a mediator to make a realistic assessment of their cases for clients, typically having already presented the same issues to the client. I conduct confidential discussions with each side or sides of lawyers and clients - this often results in a quicker resolution of the issues - and disclose only those conversations after agreement with each side. Creative ways to settle cases are well worth the time and, depending on the case, I like to explore those issues as well.

Mediation References

Jane Booth, jeb@gc.columbia.edu, (212) 854-0286; Alan Klinger, aklinger@stroock.com, (212) 806-5818; Judith Archter, jarcher@fulbright.com, (212) 318-3342.

Alternative Dispute Resolution Training

NYSBA (CLE) 2020: Using Zoom Technology for ADR; Cutting Issues in ADR; AAA 2019: Managing Costs of Arbitrations; 2018: Drafting Awards; 2017: Avoiding Ten Common Missteps Arbitrators Make; AAA Scope of Arbitrator Authority - Granting Interim & Final 2014; AAA 2016: Dealing with Difficult Attorneys; AAA Webinar, What's a Respondent Like You Doing in a Place Like This? Confronting Arbitrability and Jurisdiction Issues in Arbitration, 2013; AAA Maximizing Efficiency & Economy in Arbitration: Challenges at the Preliminary Hearing, 2012; AAA Webinar, RESULTS - Effective Construction Arbitration on a Budget, 2012; AAA Arbitration Awards: Safeguarding, Deciding & Writing Awards (ACE001), 2010; AAA Arbitration Fundamentals and Best Practices for New Arbitrators, 2010; Arent Fox LLP, Bargaining for Advantage in Mediation, 2007; Arent Fox LLP, ADR Overview, 2005; Arent Fox Kintner Plotkin & Kahn, How to Avoid Ethical Perils in Mediation, 2003; CPR, Mediation Training for U.S. District Court, 1995.

Professional Licenses

Admitted to the Bar: New York, 1979; U.S. District Court: Southern (1979) and Eastern (1979) Districts of New York; U.S. Court of Appeals, Second Circuit, 1984; U.S. Supreme Court, 2009.

Professional Associations

New York State Bar Association (Immediate Past President; Commercial & Federal Litigation Section, Chair; Commercial & Federal Litigation Section, Arbitration Subcommittee, Chair); New York City Bar (Committee on Courts of Superior Jurisdiction; Committee on Judicial Administration; Committee on Civil Courts); American Bar Association (State Delegate to House of Delegates; Representative and Observers to UN.; Commission on the Impact of the Economic Crisis on the Legal Profession); American Law Institute.

Education

Columbia University (JD -1978); Mt. Holyoke College (BA, with distinction - 1975).

Publications and Speaking Engagements

Presentation with UN Head of Global Communications, General Counsel and UNCTAD, June 2020 to ABA Section of International Law on Winning Case Strategies for Sustainable Development; Presentation to UN, March 2019 on Sustainable Development Goal 17 (Peace, Justice, Strong Institutions) on Role of Women in Government; Presentation to ABA House of Delegates, February 2019 Presentation of Report "Emergency Medical Funding in Armed Conflict"; and Report August 2018 "Guantanamo Update";

Presentation of Report to NYSBA House of Delegates, November 2017, "If Not Now, When: The State of Women In ADR and Law Firms"; "Creating a Brand for Yourself", NYSBA Commercial and Federal Section, Annual Meeting 2017; Conducting the Cross-Border Arbitration: Anatomy of a Case, written and presented to the International Section of the ABA," Toronto Canada, Fall, 2011; "Ethical Issues In Arbitrations, Including Applicable Ethics Rules," as member of International Trade Representative Committee of ABA; "Protocols for Discovery in Arbitrations," written in conjunction with NYSBA ADR Section, 2009; chapter author, "Res Judicata, Collateral Estoppel," FEDERAL CIVIL PRACTICE, West 1997, 2000, 2006; chapter author, "Merger, Consolidation, Severance," COMMERCIAL LITIGATION IN NEW YORK STATE COURTS, Thompson West, 1999, Supplements 2002.

Legal Updates for Judges of Southern, Eastern District Federal Court, Commercial Division of the State Supreme Court on the advantages and appropriate uses of cy pres awards (2007-2009); CLE Program for the Bar Association of Spain, lawyers and clients on changes in corporate due diligence, corporations law, professional liability resulting from Sarbanes Oxley (2005-2006); Legal Updates for 300 New York State Supreme Court Judges at NYS Judicial Institute on arbitrations with respect to differences in federal and state law and treatment of claims, jurisdiction, punitive damages (1997, 2001, 2005); Statewide CLE lectures regarding changes in legal ethics to the NYS Bar Association (2009, 2008, 2007), City Bar (2008), Committee on Professional Responsibility for the NYS Bar Association (2009), NYS Assn of Disciplinary Attorneys (2006), Ulster City Bar Assn (2007), Brooklyn Bar Assn (2006), and Queens City Bar Assn (1999, 2006); Lecturer, PLI "Federal Civil Practice: Complaints and Defenses" (1999-2003).

As Immediate Past President of NYS Bar Association, gave more than 50 addresses on legal developments in a wide variety of issues before House of Delegates (both ABA and NYS Bar Association), to 15 County Bar Associations, to Federal Courts in EDNY and SDNY, to Association of Supreme Court Justices and testified before NYS Legislature, including on the issue of developments in the law on arbitrations and alternate dispute resolution

Compensation

\$6,000 Per Day

Languages

Hebrew, French

Citizenship

United States of America

Locale

New York, NY

The AAA provides mediators to parties on cases administered by the AAA under AAA mediation procedures. Mediations that proceed without AAA administration are not considered AAA mediations, even where parties select a mediator who is a member of an AAA mediation roster.