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## John M. Barkett, Esq.

Miami, Florida

**Current Employer-Title** Shook, Hardy & Bacon LLP - Partner

**Profession** Attorney, Arbitrator, Mediator

**Work History** Partner, Shook, Hardy & Bacon LLP, 2000-present; Founding Shareholder, Coll Smith Salter & Barkett, 1987-00; Partner/Associate, Steel Hector & Davis, 1976-87; Law Clerk, Hon. David W. Dyer, 1975-76.

**Experience**

ANTITRUST: Sherman Section 1 and 2 claims including price fixing, tying, and exclusive dealing; relevant product or service market issues; and relevant geographic market issues, and damages issues; Robinson-Patman Act claims

CORPORATE/COMMERCIAL: shareholder agreements; a wide variety of contract drafting and interpretation issues; non-compete and non-solicitation agreements/issues; accounting issues; independent investigations; review and interpretation of private placement documents; licensing questions; rights of first refusal; material breach; duty of good faith and fair dealing; arm's length issues; issues related to puts and calls; dispute resolution clauses; partnership agreement issues; joint venture issues; jurisdictional questions; confidentiality agreements; non-disclosure agreements; letters of intent/proposed acquisitions; successor liability issues; release and indemnity contracts/claims/issues; insurance requirements in contracts; fraud, fraud in the inducement, and negligent misrepresentation claims; franchising contracts and claims; unfair and deceptive trade practices claims; utility contract disputes.

ENVIRONMENTAL/TOXIC TORT: Superfund/CERCLA, RCRA, Clean Water Act, Clean Air Act, Toxic Substances Control Act, FIFRA claims; nuclear power plant siting; occupational safety and health; emergency planning and community right-to-know; remedial investigations; feasibility studies; risk assessments; remedial design and remedial action issues; operation and maintenance issues; allocations; indemnities; insurance coverage questions; successor liability; parent liability; groundwater contamination; soil contamination; vapor intrusion; chemical exposure claims through inhalation, adsorption, or ingestion; common law and contractual water rights; contaminant fate and transport; mining agreements.

HEALTH CARE: CMS regulations; confidentiality and non-compete, non-solicitation; and non-disclosure agreements; physician service agreements; network agreements; general corporate needs for Medicare Advantage HMO.

INSURANCE AND REINSURANCE: insurer and insured coverage claims (property, casualty, injury, death, products liability, life); insurance contract interpretation issues.

INTELLECTUAL PROPERTY: trade secret claims, trademark and service mark infringement claims; trade dress claims; false advertising; counterfeiting and piracy; fair use; unfair and deceptive trade practices claims; copyright claims; domain names.

INTERNATIONAL: design of an international dispute resolution system for resolution of claims for a State's claim of damage to biological diversity from the release of a living modified organism,

utilizing the Permanent Court of Arbitration in The Hague and including rules for fact-finding and conciliation; partnership disputes; joint venture disputes; merger and acquisition agreement disputes; puts and calls; reinsurance; precautionary principle; environmental cleanup issues; Latin American contract issues for telecommunications company.

LABOR/EMPLOYMENT: employment contracts; separation agreements; Title VII claims (termination, promotion, retaliation, harassment, among others) and analog state and local human rights law claims; wage and hour claims; age discrimination claims; ADA claims; ERISA and other benefits issues; non-compete and non-solicitation contracts/claims/issues.

REAL PROPERTY/CONSTRUCTION: buyer-seller disputes; environmental due diligence; trespass; nuisance; easements; sales contracts; AIA and contracting issues; indemnity, release, and insurance issues; dispute resolution processes; Chinese dry wall; leases; landlord-tenant commercial and residential issues; condominium association disputes.

TECHNOLOGY: biotechnology issues involving living modified organisms; vendor contracts; hosting contracts; software licensing contracts; e-discovery.

MERGERS AND ACQUISITIONS: Issues under stock or asset purchase agreements.

E-DISCOVERY: Developing protocols and resolving disputes.

## **Mediator Experience**

Has mediated a large number of disputes involving complex contractual, environmental, allocation, statutory interpretation, insurance coverage, or product liability issues. Many of the cases have been brought under federal or state environmental statutes or involve buyer-seller agreements or other types of private contracts, indemnities, successor liability questions, and a wide variety of damage issues. The amounts of money involved are typically quite large, ranging from \$500,000 up to more than \$400 million. The parties involved have included Fortune 100 companies, non-U.S. companies, individuals, privately held companies, small businesses, sole proprietorships, state agencies, federal agencies, an Indian tribe, a law firm, insurance companies, mining companies, paper companies, electronics companies, and toxic tort plaintiffs.

## **Representative Issues Handled as a Mediator**

They include: (1) issues relating to the interpretation or scope of clauses in a contract; (2) the breadth or scope of an indemnity; (3) liability determinations under various federal environmental and state statutes and local ordinances; (4) successor liability questions; (5) general causation and specific causation in a toxic tort suit; (6) the nature of remedies to clean up soil or groundwater contamination; (7) attorneys fees and costs attributable to vexatious conduct; (8) the scope of contribution liability; (9) claims of unjust enrichment; (10) commercial landlord-tenant issues; (11) insurance coverage-related questions; (12) a franchise dispute over royalty payments; and (13) a wide variety of damage issues.

## **Mediator Style & Process Preferences**

My mediation philosophy is simple: I believe firmly in the principle of self-determination - parties settle cases. But I also know parties expect the mediator to help them achieve this goal. I am very well prepared for the mediation and try to be in a position to argue any participant's side of the case as well as or better than the participant. I help parties contour the strengths and weaknesses of their position and work hard to ensure that parties understand alternatives to a negotiated settlement and the costs associated with those alternatives. I expect lawyers to come to mediation prepared and accompanied by a client representative who has authority to resolve the matter. I realize practically that isn't always the case with large corporations but having persons present with full settlement authority maximizes the likelihood of a successful outcome to a mediation.

## **Education**

University of Notre Dame (BA-1972); Yale University Law School (JD-1975).

## **Professional Licenses**

Admitted to the Bar, Florida, 1975.

## **Professional Associations**

American Bar Association (Section of Litigation, Council Member, Division Director; Environmental Committee, Co-Chair; Section of Alternative Dispute Resolution; Section of Environment, Energy and Resources, Natural Resources and Environment Magazine, Editorial Board); Florida Bar Association; Dade County Bar Association; Yale Law School (Executive Committee, Past Vice-President).

Has published a number of articles or books including: "Burlington Northern: The Super Quake and

## Recent Publications & Speaking Engagements

Its Aftershocks," CHEMICAL WASTE LITIGATION REPORT, May 2009; THE ETHICS OF E-DISCOVERY, First Chair Press, Chicago, January 2009; E-DISCOVERY: TWENTY QUESTIONS AND ANSWERS, First Chair Press, Chicago, October 2008; chapter author, "Production of Electronically Stored Information in Arbitration: Sufficiency of the IBA Rules?" ELECTRONIC DISCLOSURE IN INTERNATIONAL ARBITRATION, JurisNet LLC, New York, 2008; "From Canons to Cannon," ABA Section of Litigation Canons of Ethics Centennial, April 2008; "Tipping The Scales of Justice: The Rise of ADR," 22 NRE 40, Spring 2008; "Orphan Shares," 23 NRE 46, Summer 2008; "E-Discovery For Arbitrators," 1 DISPUTE RESOLUTION INTERNATIONAL JOURNAL 129, International Bar Association, Dec. 2007; "Forward to the Past: The Aftermath of Aviall," 20 NRE 27, Winter 2006; "The Battle for Bytes: New Rule 26," E-discovery, Section of Litigation, February 2006; "The Prelitigation Duty to Preserve: Lookout!," ABA Annual Meeting, Chicago, 2005; "Bytes, Bits and Bucks: Cost-Shifting and Sanctions in E-Discovery," ABA Section of Litigation Annual Meeting, 2004 and 71 Def. Couns. J. 334, 2004; "The CERCLA Limitations Puzzle," 19 NRE 70, Fall 2004.

SPEAKING ENGAGEMENTS: Co-moderator, "Supreme Court Review," ABA Annual Meeting, 2006-2009; "Fool's Gold: The Mining of Metadata" and "More on the Ethics of E-Discovery," ABA Presentation, Chicago, May 22, 2009; panelist, "Mediate Better!!!," ABA Annual Meeting, August 10, 2008; "Admissibility of Electronic Evidence," Florida Bar CLE Seminar, Tampa, Florida, May 16, 2008; "e-Discovery in Arbitration," JurisNet Conference, New York, January 31, 2008; "e-Discovery in Arbitration," LCIA's European Users Symposium, September 15, 2007.

## Mediation Rate

\$5,000 Per Day

## Languages

English

## Citizenship

United States of America

## Locale

Miami, FL

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.