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Presentation 1 – Frederick Alimoti

Biography and Research Paper

Frederick P. Alimonti
Litigator/Mediator



"RICK" ALIMONTI is the founding partner of Alimonti Law Offices PC, and Alimonti Mediation Services, based in Valhalla, NY. Since 1990, Rick has been defending airlines' passenger claims as well as aviation claims involving product liability, premises liability, and "general aviation" matters, as well as insurance coverage.

He has been an active member of the Mediation Panel for the U.S. District Court for the Southern District of New York since 2011 and began mediating case privately in 2018. He was an inaugural member of the Mediation Advisory Committee for the Southern District. Rick is admitted to practice in New York, the New York Federal Courts for the Eastern, Southern, and Northern Districts, and the U.S Court of Appeals for the Second Circuit.

Rick is the immediate past Chair of the ABA Tips Section's Dispute Resolution Committee and the current Scope Liaison to this Committee for the ABA (American Bar Association). He is a three-time past co-chair of the American Bar Association's Committee on Aviation Litigation and has held multiple positions in the leadership of the ABA TIPS and Litigation Sections.

Rick, an active private pilot, is often called upon as a speaker on Aviation Law, Legal Ethics, and Mediation. His published articles include *Some Lessons on What Not to Do in Observing the Mets/Alonso Negotiations* (ABA Tort Source June 2025), *Mediating the Employment Case 101: A Mediator's Perspective (ABA Tort Source May 2025), The Road to Becoming a Mediator, Including the Speed Bumps* (ABA TIPS August 2024).

Rick's CLE live and virtual presentations on mediation, mediation ethics, legal writing, and other topics have been favorably received by national and international audiences, including multiple presentations for the ABA, Avicon, the SMU Air Law Symposium, and online at Lawline.com.

Alimonti Law Offices, P.C. and Mediation Services

office (914) 948-8044 www.alony.com fpa@alony.com mobile (914) 309-2565

Select Essays on Mediation Advocacy: Advocate, Don't Alienate

In the Mediation of

Connors v. Allied Aircraft

A Hypothetical Aviation Accident, Litigation, and Mediation

LAWYER-PILOTS BAR ASSOCIATION
THE HISTORIC LAKESIDE INN, MOUNT DORA, FLORIDA
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A presentation of

Alimonti Mediation Services

And

Summit ADR Academy, LLC

www.ALOADR.com

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In this collection of essays, I discuss one of my favorite topics: Mediation Advocacy. As a Mediator who continues to practice as an advocate in Mediation, I continue to learn lessons from both perspectives. Set out below, in no particular order, are some reflections on how mediation advocates must soften some trial skills and focus on convincing, rather than defeating, an adversary.

We will examine how the participants in a Mediation related to a fatal aviation accident deploy these skills and where they come up short. As with so much in litigation and negotiation, there are many grey areas and for every "rule" there are exceptions.

Litigation v. Mediation: Differing Brands of Advocacy

Some opening thoughts in approaching your role as a mediation advocate:

Discard the "Winning" Trial Mindset. Mediation is not the place for attacks and withering cross-examinations. I am a strong proponent of the joint session and opening statements. But they must be approached with care. The opening statement in mediation is targeted to the other side, and they are not an objective recipient – they have very strong and probably differing views of the case. Note that I did not say that the opening is targeted to the Mediator. While it may help the Mediator, she is not the primary audience for the opening.

Since your adversary would never sit on a jury in your case, it makes little sense to open as you would before an unbiased jury. You are unlikely to convince the other side to agree with you. What you can accomplish is to respectfully set out your views and the risks to the parties in further litigation. I suggest you ALWAYS end with an olive branch – even if nothing more than an expression of your own open mind and willingness to listen, along with a thank you to the other side for embracing the mediation process.

It may well be that you have to make some arguments that the other side must reject and refute. It is always wise to temper these arguments with something conciliatory, such as recognizing the risks of trial and the jury process. The subject matter will vary from case to case, but the effect of these words can be transformative. Assuming you have agreed to mediate – as opposed to a mandatory court-annexed mediation, - your willingness to settle and compromise is a given. There is no harm in expressing it openly.

I have attended many a mediation in which a party took the approach of announcing this was a case they were "sure" to win. This is NOT an auspicious beginning.

Bring the Right People. The decision makers must be there. Meet with your client beforehand to discuss the upcoming mediation. Your client may have misconceptions about the process,

and perhaps their own agenda. It is important that you be on the same page. The uninitiated client should understand that this is a conciliatory process more than an adversarial one.

The Attorneys Should Confer. It is always preferable to go into mediation with some goal post offers and demands. In addition, if the relationship among counsel is a productive one, some joint preparation – often facilitated pre-mediation with the Mediator - can also add to the potential for success. Something as basic as being told by one attorney that the client is angry or upset can help the other side prepare for some emotional outpouring.

Prepare Yourself and the Mediator. The value of pre-mediation consultations cannot be overstated. Putting aside the technical benefits, these sessions enable the parties to build a rapport with the Mediator, and to address some of the potential obstacles to settlement. Perhaps the most important issue to address here is any issue with your own client.

On the plaintiff's side, it may be that your client has unrealistic expectations and/or is very emotional about the matter. Perhaps including the client in a pre-mediation session will smooth this out? Nonetheless, just knowing this is invaluable to the Mediator.

On the defense side, perhaps we need more money on the table? Maybe the case is under reserved, and a Mediator's imprimatur can help justify an adjustment. Many mediations involve negotiations both between and within the rooms. Knowing this in advance will, at minimum, avoid surprises.

Understand the Ying and Yang. Nearly all mediations, when we get to offers and demands, begin with the parties far apart. Often, each party considers the respective figures coming at them to be, at least initially, unproductive and perhaps even insulting. Be prepared and prepare your client for these discouraging beginnings. Particularly in the case of an emotional plaintiff, having reduced expectations for the early negotiations can take some of the edge off. I often tell the plaintiff that the other room is here to pay as little as possible to settle the case. That's their job, and you should not take it personally - just is it is your lawyer's job to recover as much as possible. This obvious and candid comment has never been poorly received. To the contrary, the parties often seem to find it refreshing.

Be Patient. Trust the Mediator to set the pace. Even if the parties seem relatively close in valuations, reaching a settlement may take time simply because each side wants to get the best "deal" possible. Progress is typically perceived as slow. The parties may be in different emotional places. Hopefully, the half day or day will be marked by productive discussions, effective input from the Mediator, de-escalating tensions, and finally a settlement.

To Open or Not to Open?

There has been a lot of discussion of late on whether mediations should begin with joint sessions. Although there may be the rare case in which the atmosphere is so poisoned that the parties must remain separated, in general, I propose that there is much more to be gained by the joint session than by its omission. Indeed, it might be precisely these emotionally charged cases that can benefit the most from a well-considered set of openings.

The worst time to make this decision is the day of the mediation. Rather, during pre-mediation conferencing with the parties, the Mediator should explore the issue of the joint session and properly vet it with counsel. The Mediator and the parties, working together, should determine whether an opening is appropriate and what approaches offer the most benefit. For both parties, the goal is to build bridges, not burn them. With the benefit of working with counsel ahead of time, the Mediator should have a good pulse on the emotions and can play a critical role in helping the parties craft an effective approach to the opening session.

I address below a few points for your consideration in evaluating the possible benefits of the opening session for the Plaintiff's team:

Allow Plaintiff a "Day in Court". The mediation is likely plaintiff's first [and perhaps last] opportunity to see her case presented. Don't waste it.

In certain cases, the plaintiff must be allowed to express his/her anguish, and the defendant needs to politely absorb it. This may be in the form of a direct statement from the plaintiff, through counsel, or both. From my experience both as Mediator and mediation defense advocate, some of the most compelling inducements to settle have been in the form of persuasive statements directly from the plaintiff.

Obviously, each case and each plaintiff are unique, but if you have a strong plaintiff, incorporate him/her into the mediation. Some cases are mediated before conducting a single deposition. Be assured that defendants will be evaluating your client as a witness, and this should be played to your advantage.

Conversely, if plaintiff's counsel is actively shielding his client from the parties and the mediation process, you may be telegraphing that you do not have much faith in your own client and, by extension, your case. Consider these options carefully, you may have a lot to gain in prepping your client for the mediation and considering the appropriate level of participation.

Plaintiff Should be Invested in the Process. Plaintiff must often be guided into the mindset to settle. As counsel, we have grown accustomed, perhaps hardened, to the concept of reducing even the most horrific losses to dollars.

This will not come easy to most Plaintiffs. In certain cases, considerable time may be needed for the Mediator to meet with the Plaintiff's side and allow the plaintiff to acclimate to this bargaining process. In some cases, non-monetary aspects may be more important to the

plaintiff in the beginning then the money aspects of the settlement. Beginning with these "softer" components to the settlement may help bridge the gap to the monetary negotiations.

This is a Chance to Show You're Serious. The opening is directed to the other party(ies), not the Mediator. If you follow my blog and articles, you know this is a mantra of mine. You need not be fire and brimstone, but you can show your commitment and preparation. A well-crafted and well-presented opening by counsel can send very important messages to the other side. The message you want to send might include: I am competent; I am likeable; I am ready to litigate this case to conclusion; I know my case; I have a strong client.; AND I am someone you can work with now to resolve this.

Perhaps this is the first impression you will make on defendants, and the rare one in which you have the opportunity to "dial direct" to the decision makers and the holders of the purse strings. Why would you thoughtlessly toss that away? You are at this mediation not to win, but to persuade, and the people you need to persuade are sitting right across the table from you.

Be Likeable in Your Opening. When I sit as a defendant in mediation and the Plaintiff delivers an opening, I am constantly grading my adversary. I am asking myself, "what will the jury think?" A brash, arrogant approach will alienate a future jury. Adopting a conciliatory tone that, despite all contrary inclinations, gives the defense team even an inkling that a future jury will find you both persuasive and endearing is adding value to your case. This bears directly on the risk management equations that most insurers bring to the table. And seriously, doesn't presenting a likeable persona to the people who will decide whether to settle [and for how much] make a lot of sense?

If the parties are properly prepared, the odds of counterproductive openings are dramatically reduced. Do not approach the opening as if the Mediator is a judge and opposing parties are irrelevant. Rather, a Plaintiff's opening, calibrated to persuade the adversary, could set the tone for a very productive day.

I endorse the joint sessions in all but the rare exceptions that, of course, prove the rule.

Empathy and Saving Face

"*All advocacy is, at its core, an exercise in empathy*"

Samantha Power

It's been said that empathy is the singular quality that distinguishes humanity from the lower animals. The ability to comprehend how our actions and outside events influence another is important in litigation and indispensable in mediation. Even the most adversarial of trial attorneys leaves his or her empathy at the door at his or her peril.

Consider the jury. As trial counsel, we want the jury to like us, and we would be doomed in this endeavor absent a keen sense of empathy. This empathy extends not only to understanding how the jury responds to us, as counsel, but also to how the jury perceives our treatment of others. An illustration:

> Some years ago, at a trial on a aviation-related wrongful death case, defense counsel cross-examined a first responder. This first responder gave a critical first-hand account of the condition and conduct of the decedent before he passed away. It was in defense counsel's interest to minimize the pre-death pain and suffering about which the first responder had testified very convincingly. He took the tact of attacking the messenger, even going so far as to question why he was wearing his EMT uniform when "not on duty" – apparently suggesting that he had "dressed up" for the plaintiff's benefit.

By any measure, this EMT was one of the good guys - a volunteer with little to gain beyond the satisfaction of helping others. A withering cross-examination of this good Samaritan could do little to advance the cause of the advocate. Moreover, the jury will clearly empathize with the witness while alienating the unempathetic interrogator. This did not bode well for the outcome. The case soon settled.

The goal of plaintiff's counsel could perhaps be distilled to generate a rich sense of empathy for your client in the hearts of the jury. The same is true for the defendant, but this is perhaps even more challenging, as our client is often institutional and difficult to personalize.

In mediation, the importance of empathy is radically multiplied. The party we must convince at mediation is none other than our adversary. Make no mistake about this. If we approach mediation as if our goal is to convince the Mediator, our opponent's reaction be damned, we're gonna have a very short day. While trying to make an ally of the Mediator can only help, she has no ability to bind you; all she can do is help you reach an agreement. Alienating an adversary serves no one's purpose. Do not be deluded into thinking a mediation is a mini trial.

Empathy's role in mediation begins with the fundamental understanding that you cannot vanquish your adversary. Both sides in mediation must attain an acceptable outcome; neither can be perceived as "caving," and neither can "lose face." Mediation is a facilitated negotiation; understanding the needs on the other side of the table is "Negotiation 101." Indeed,

the party in mediation that best understands the goals and needs of the other, not only has the greater chance of a successful outcome but may actually seize control of the mediation - in a manner that will be positively perceived by adversary and Mediator alike. As Mediator, when approached by a party intending to "win," I know I have my work cut out for me.

As an historical example, The Cuban Missile Crisis was resolved through an agreement that allowed both sides to save face. It was only by offering a public concession that the U.S. would not invade Cuba, and a secret deal to remove US missiles from Turkey, that Khrushchev agreed to remove the Cuban missiles. The Soviet Union could not be perceived as having cowered when confronted with US force and threats, and President Kennedy offered an exchange in which neither side "triumphed" over or humiliated the other.

In contrast, when President Trump announced before his first election that the U.S. would build a border wall with Mexico, and Mexico would pay for it, his "negotiation" was doomed from the onset, as it depended upon the total face-losing capitulation of another head-of-state. Political views notwithstanding, I cannot help but wonder how this particular cost-sharing negotiation might have turned out had Trump simply said something along the lines of: "We and Mexico have a common interest in a secure border, and I look forward to working with the Mexican President to attain this goal."

Negotiations seldom end with surrender. Rather, your goal is more akin to a peace accord, in which both parties leave with something to show for their efforts along with a mutually-desired end of hostilities.

I'm sure we can all recall an instance, perhaps in raising a child, in which we withheld something we would gladly have given because we could not reward the form of the "request." "May I please have," often goes much further than "give me."[1] The underpinning of mediation is self-determination, and neither the Mediator nor the opposing party can deprive a participant of choice. Demands, ultimatums, and "take it or leave it," approaches are unproductive and do not take into account the needs of opposing counsel and client.

[1] Sometimes, you have to "ask nicely." *See A Few Good Men*, © 1992 Columbia Pictures, Screenplay by Aaron Sorkin.

Empathy and the Opening. If you've stayed with me this far, you will not be surprised to hear that the key to the successful opening is empathy, which translates not only to being guided by empathy in your opening but also understanding what the other side may need to achieve in their opening – maybe even absorbing a few blows without retaliation.

Imagine this scenario – and it's a pretty common one:

There is "bad blood." Plaintiff feels her legitimate claim has been neglected, and she's been given the run around. She comes to the mediation angry. The defendant thinks little of the claim, has made minimal offers, and his counsel shares a similar view. In the minds of some Mediators, this is the classic case to avoid a potentially counterproductive joint session. In my mind, it may be the ideal case for just that.

A capable Mediator can guide the process. What defense counsel needs to understand in this vignette is that plaintiff may need her "day in court" to be psychologically prepared to settle. Some plaintiff venting at the mediation through a somewhat aggressive opening by counsel may serve the needs of *both sides of the table*, even if it seems like a bit of a browbeating to the recipient. Although it goes against the grain of us litigators to absorb punishment without firing a return salvo, this may be exactly what the Plaintiff needs to see. Venting to the Mediator, outside the presence of the defendant, is no substitute and will not serve as a much-needed pressure valve.

When not mediating a case as a neutral, I typically sit in the defendant's seat and have been called on to perform this function. It is important to remember our role here, and the big picture. Mediation is not a process of attack and counterattack. It may perhaps more accurately be described as a process of absorb, deflect, and disarm.

So, what is the role of the defendant during this perhaps visceral attack? Facing a jury, the general approach would be to defeat the argument, both responsively and proactively. In mediation, your goal is to reach a compromise. It is fear of the openings degrading into attack/counterattack that causes many Mediators to eschew the process – particularly in the emotionally charged [personal injury, wrongful discharge, discrimination, etc.] case. A little pre-mediation conferencing with the attorneys and Mediator may be all it takes to minimize risks. A defendant can still represent a client effectively in mediation - perhaps most effectively - without counterpunching every blow delivered by the plaintiff.

In addition to allowing the catharsis of the opening to have its way, a tempered response to this opening, including an expression of empathy and good faith will propel the mediation forward.

As elaborated in the upcoming section, this is not meant to suggest complete surrender. A responding party should address points of disagreement but nonetheless close with a positive message along the lines of approaching this mediation to "work together" and resolve this dispute despite these points. Of course, the attending defense attorney and client need to be on the same page and in agreement on strategy. Defense counsel cannot be seen to "lose face" in

the eyes of his client either. Again, some pre-mediation diplomacy by the Mediator may be indispensable here.

Well-considered opening statements and a joint session can begin to transform a previously acrimonious relationship into a productive and respectful one. And, after all, short of a court-mandated mediation, the parties are there by agreement with an implicit willingness to resolve the case together, by negotiation. A conciliatory message should be the norm, not the exception. The needs of the parties may require some imbalance in the early going, but fighting fire with fire will only burn the house down.

The Mediator's Role. The Mediator is there for only one reason: to help the parties reach an agreement and settle the case. Her role is to try and get both parties enough of what they need to agree to a compromised settlement. As such, she can serve as an empathy ambassador of sorts and may soften messages from one room to the next so as not to alienate either side. Similarly, the Mediator may explore non-monetary components of a settlement that may have great value to one side at little cost to the other.

The Mediator can also help in the "second negotiation" when there is perhaps some disparity in evaluation between counsel and client. A Mediator's input and evaluation may take some pressure off counsel and attain some more movement from the client. This is another "face-saving" component of mediation, in which the Mediator's persuasion can assist counsel with the challenging task of reevaluating his/her position without being seen as "caving" in the eyes of the client.

Empathy is essential to mediation. If it guides an opening statement, that statement has the potential to begin building bridges in even the most challenging of cases. This might seem very "touchy-feely" and not the firebrand form of advocacy on which we were raised, but keep the final goal in mind. We are mediating to achieve a favorable outcome for our client that includes the final resolution of the matter. If an increased understanding of what the other side needs helps us to achieve that end, it has not degraded our advocacy; it has enhanced it.

And if you are inclined to disagree, I understand how you feel.

Dealing with Divisive Issues

With all the above focus on empathy and a softened approach, we still DO need to advocate. But there are ways to tactfully deliver arguments in mediation that might otherwise alienate an adversary and torpedo the mediation.

So, what is one to do when approaching a mediation, well-armed with arguments that go to the law and the facts that you feel compelled to raise? The answer is not to "cut loose," "take no prisoners" and "let the chips fall where they may." Here are some thoughts on the best ways to take strong positions in mediation that will advance, not deter, negotiations.

Share Your Written Submission. A shared submission to opposing counsel is a relatively safe way to assert strong and potentially divisive arguments. While a scorched-earth approach is seldom productive, confrontational arguments, like credibility and malingering, may be best addressed in written submissions that precede the mediation itself. Opposing counsel will read the submission and, as a lawyer, brings a thickened skin to attacks on his/her case. Nonetheless, even here, a softer approach may still be appropriate, applying some of the suggestions below.

Remember, you have chosen to mediate. This implies a willingness to compromise, and this should be implicit in your overall approach.

Make Your Arguments in Caucus. One of the Mediators' jobs is to "massage the message." In caucus with the Mediator, the gloves can come off, and a good Mediator will relay your arguments to the other side in such a way as to convey them effectively without alienating. Allow the Mediator to determine the timing and the content of the message, and even what mix of participants from the other room are the right recipients.

Parse Your Arguments in Terms of Risks, Proofs, and "Others". Let's assume you have agreed on a joint session and want to use your opening statement to convey the strengths of your case and the weaknesses of your adversary's. Consider the following:

Use Concessions. We are mediating to manage the risks and attain certainty of outcome and closure. Addressing these shared risks at the onset can soften the blow of your criticism of the other side's case.

For example, a defendant's preface might sound something like this: "We are here to try to settle this case and avoid the risks both sides face in litigation. As such, we recognize that we cannot predict the rulings of a court and jury, and we certainly cannot assume that everything will go as we hope it will. I would like to share some aspects of this case that I believe will be challenging to Plaintiff".

"Deflect" to the Court and Fact Finder.

Compare these two statements:

> 1. In the course of his deposition, Mr. Smith contradicted himself many times; he was not honest and is not credible. We don't think a jury will believe him.
>
> - with –
>
> 2. On any given day, a jury may dislike and discredit even a witness testifying truthfully and to the best of their ability. In the course of his deposition, Mr. Smith contradicted himself several times. At trial, we will be compelled to point out these discrepancies to the jury, and the jury may choose to discredit Mr. Smith on this basis.

It is a common scenario in an employment discrimination case for the Plaintiff to argue discrimination while the employer argues discharge "for cause." This is often coupled with "hard feelings," and irrespective of the merits of the claim, the Plaintiff genuinely feels he/she was treated badly.

Compare these two approaches:

> 3. As is clearly borne out by Ms. Jones' performance reviews, she was underperforming at work. She was let go because she was a poor employee, not because of any discrimination.
>
> - with -
>
> 4. We understand that Ms. Jones feels she was treated badly at ABC Corp, and ABC Corp. is truly sorry for anything it could have done better that led to Ms. Jones feeling this way.
>
> ABC Corp. does not discriminate and has well developed, and well-enforced, policies against discrimination. In order to prove discrimination, Plaintiff must prove certain elements to her cause of action and, meaning no disrespect, if she cannot "check all these boxes," she cannot recover. We do not dispute that Ms. Jones is in a protected class, but she was not discharged for a discriminatory reason.
>
> One of the defenses available to ABC Corp. is to show that it had legitimate and non-discriminatory reasons for letting Eva go [use of first name may or may not be appropriate- that's a judgment

> call]. And she was let go for performance reasons, as set out in her quarterly reviews, and not because of her [age, race, gender, etc.].

In each of the examples, in the second approach, the advocate is distancing herself from direct confrontation. The deeper meaning will not be lost on the lawyers in the room, but it falls well short of an "in your face" assault.

In our first example on credibility, the second approach begins with a fair statement applicable to both sides, saying, in effect, that anyone can have a bad day in front of a jury. Our advocate than transitions to the facts, noting that the witness did contradict himself when deposed. He then transitions further to trial and being "compelled" to point out these discrepancies. Finally, he deflects the role of discrediting the witness to the jury, rather than directly accusing the witness of being dishonest.

Compare this to the direct confrontation example, in which the lawyer directly states that "we" don't think a jury will believe the witness. The witness is accused of outright dishonesty, and this is exacerbated by adding the lawyer's own belief to the mix.

I would submit that the direct/harder approach will quickly put the other side on the defensive and build a wall rather than a bridge. The second approach, even if not building a bridge, will not burn one. It points out, in a more measured manner, the weaknesses created by the witness's contrasting testimony. Another implicit message, "settle today and avoid this!"

Example three is a direct slap in the face of the Plaintiff. "She was a lousy employee." Employment cases often involve deep feelings, and broadcasting at the mediation that the discharged and, perhaps indignant employee "had it coming" will not bode well for the outcome.

Contrast this to number four, in which the employer opens not with an attack but with something sounding like an apology - first acknowledging the hurt feelings and then regretting anything that "could have been done better." The attorney then explains XYZ's non-discriminatory policies and walks us through the basic elements of Plaintiff's claim and the defenses available, including a non-discriminatory justification for the discharge. The lawyer has also subtly addressed the distinction between being treated badly and proving a claim of discrimination.

You will also note an important tactic in the softer responses is to "open with an olive branch." This can be both disarming and effective; it lowers tensions before launching into the more adversarial aspects of an argument. The softer arguments also have a more objective ring to them, even though advancing subjective positions.

Obviously, all mediations and controversies are different, and there is no one-size-fits-all approach. Hopefully, these examples provide some food for thought when mapping out a mediation strategy. And, of course, part of the role of the Mediator is to assist you in

determining how a message is best sent. This can be addressed in caucus and even earlier in pre-mediation conferences. The Mediator's job is to bring the parties together onto a common ground, and bouncing arguments off the Mediator in private cannot backfire.

Parties commonly ask me in mediation if a certain argument will be productive. We flesh this out and make a decision. Using the Mediator as a barometer for the other room can provide valuable insights as to how an argument might be received and whether it is best expressed, delayed, or perhaps jettisoned entirely. Maybe an advocate needs to make this argument to the Mediator for the benefit of the attending client. The Mediator may then take some of the edge off in both rooms.

Providing guidance that keeps the mediation moving, with both parties moving closer together, is the essential role of the Mediator. And employing his/her assistance in navigating these thorny issues is where the Mediator can add some of the most value.

In Conclusion:

Mediation continues to explode across our landscape, coming earlier in the cycle of litigation and even sometime pre-litigation to save time and expense. For a typical defendant, it may often be cost-effective to settle in mediation even before the facts are fully developed - knowing the cost of developing facts and the low frequency of the "smoking gun" that will dramatically alter the settlement landscape.

Many of the same efficiencies apply to the Plaintiff, with the benefit of financial and emotional closure often being critically important. Technology can spare us the logistical challenges of getting all the participants to the same place, also facilitating early and efficient mediations. I hope some of the tools and techniques discussed above might fit into your mediation toolbox!

FPA

Appendix A – NTSB Final Accident Report

On January 11, 2024, an Allied Aircraft “Gemini Twin” impacted the ground after a loss of control short of Runway 26 at McCallister International Airport in Mootville, New York. The pilot was executing an ILS approach, although visual meteorological conditions prevailed.

On one-mile final and while on glideslope, the pilot reported loss of power to his left engine but did not declare an emergency. When asked of his intentions, the pilot advised air traffic control that he would continue the approach. On short final, the aircraft was seen to nose-up violently and then wing over and impact terrain in a field about ¼ mile short of the runway threshold. The pilot and one passenger suffered fatal injuries.

Postaccident examination of the airplane revealed that neither propeller blade exhibited significant rotational signatures, which is consistent with both engines producing low-to-no power at the time of impact. The visual evidence indicated the left propeller was feathered at the time of impact, which was counter to emergency operating procedures after right engine failure but consistent with misdiagnosis of the failed engine. Examination of the left engine revealed no evidence of pre-accident mechanical malfunctions or anomalies that would have precluded normal operation. The right engine propeller was in the low pitch take-off/go-around position.

Engine tear down and inspection revealed a broken connecting rod in the right engine Number 4 piston/connecting rod assembly. Engine teardown and metallurgical exam revealed the right engine No. 4 connecting rod had failed due to fatigue. The left engine was manually rotated using a tool—continuity was established.

Probable Cause(s):

Failure of the right engine due to failure of the number four cylinder connecting rod, due to fatigue.

Failure of pilot to execute proper single-engine emergency operations procedures upon loss of power to his right engine

Contributing Factors:

- Pilot’s Failure to maintain control after engine failure, resulting in a stall/spin without sufficient altitude for recovery.
- The manufacturer's failure to issue a Service Bulletin, despite awareness of metallurgical deficiencies in the same production lot of connecting rods and two previous fatigue failures of connecting rods within this production lot.

Appendix "B" – Scenes and Lessons:

Connors v. Allied Aircraft

Mediation Advocacy: Pre-Mediation to Opening Statements

I. Scene 1 – Pre-Mediation Caucus with Manufacturer Defense Team
   a. What are the challenges
      i. Group Dynamics
      ii. Opening Statements
      iii. Who is missing?
   b. Next Steps?

II. Scene 2 – Adjuster Self Prepare
   a. What are concerns?
      i. Opening Statement
      ii. Emotional predisposition
      iii. Past dealings with Danny
   b. What are the realities?
      i. Tripartite Relationship
   c. The apology – good or bad?
      i. Selling that to counsel and client
   d. What are the goals
      i. Settle
   e. What are the crucial defense liabilities?
      i. Engine failure as a cause in fact
      ii. Service Bulletin Late (?) Issuance

III. Scene 3 – Team Meeting – Adjuster, Defense Counsel, Allied In-House Counsel
   a. What are the tensions?
   b. Who is the voice of reason?
   c. Apology Issue:
      i. Who gives it?
      ii. Who is the audience?
   d. Reluctance
      i. What are the components of an "apology"?
   e. What is the strategy?
   f. How is defense lawyer managing?
   g. What was the concluding strategy?

IV. Scene 4 – Opening Session
   a. Rate Performance
      i. Mediator
         1. Demeanor
      ii. Plaintiff's Counsel
         1. Opening – over the top?
         2. Service Bulletin
         3. Is theory sound?
         4. Anticipation of Argument of pilot error – effective?

iii. Rita Retainer
    1. Does apology work?
    2. Does she give away too much?
    3. Does she defer too much?
    4. How does her chain of events theory work along with the admission?
iv. Bill Edificio
    1. Does he offer an effective apology?
v. Adrian Smith
    1. As adjuster – believable?

V. Takeaways?