

VERDICTS & SETTLEMENTS

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Different Paths

Mediator Mark Loeterman does more than look for the middle ground.

By Steven Crighton
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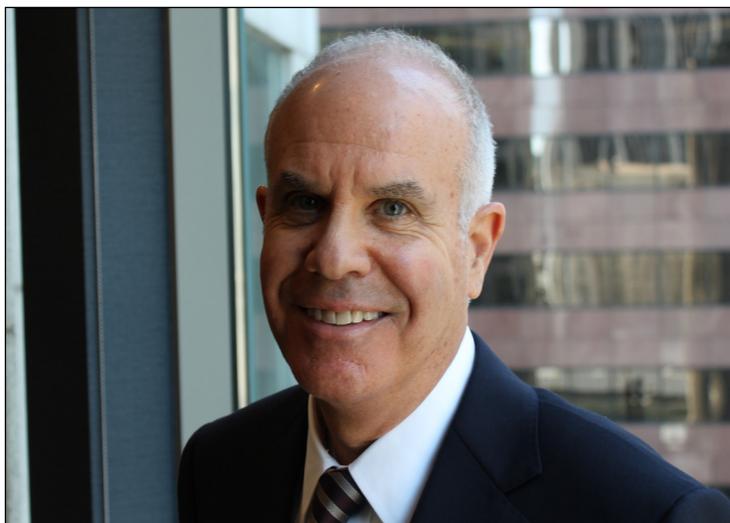
LOS ANGELES — Mark Loeterman's not just looking for some middle ground on the road to resolution that allows both sides in a mediation to go home happy — he's exploring paths they haven't traveled.

Loeterman often likes to speak to lawyers in advance of a mediation to help fill in any blanks their factual briefs might not address. He'll typically leave the questions open-ended, allowing attorneys a chance to identify any pesky mole hills they're worried might become mountains once mediation is underway.

"I like to ask, 'What are the obstacles you're facing?' That invites them to tell me whatever they want, and it's surprising sometimes what they'll say," Loeterman said. "I use these calls as supplements. With the information from the brief, it helps me develop a broader picture, hopefully illuminating what can be done to get this resolved."

Attorneys will often respond by telling him what their clients' expectations are, what they hope to accomplish, and what their relationship with the other party is like. Addressing hurt feelings or some perceived injustice is often more important in a successful mediation than finding a dollar figure that pacifies both sides of the dispute.

That's particularly true in the real estate, employment and business litigation cases that



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Mark Loeterman

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make up the lion's share of Loeterman's workload. In those matters, there's often a complex structural framework entangling the parties, constantly bringing them to blows.

"That really requires some analysis and understanding of what the potential options might be," he said. "That's one of the areas where I try to distinguish myself and add value for the clients that are coming in."

Lewis Adelson, an attorney at Costell & Cornelius LC, said Loeterman gives "a pretty good amount of time" in the informal pre-mediation teleconferences. Most of the calls go over half an hour, Adelson recalled.

"It's a chance for you to maybe

let him know that your client has certain sensitivities or other things you might not put in a brief," Adelson said. "He'll remember everything you'll tell him."

Chris Dueringer, a partner at Bryan Cave Leighton Paisner LLP, said the pre-meeting teleconferences let parties "hit the ground running" the second mediation begins, rather than with fits and starts as the context of the case is made clear to the mediator.

Even better, Dueringer said, it helps avoid uncomfortable moments early in the mediation in which a mediator and attorney might have to step out of the room to discuss something about the case privately, leaving the client alone. Keeping moments where the client is left out of the discussion limited helps maintain trust and makes clients feel like they're in control of the discussion.

"He doesn't have to ask, with the client sitting there, 'Hey,

Chris, can you talk to me in the hallway for a minute?' He's already had the call with counsel outside the presence of a client," Dueringer said.

Loeterman once had a mediation involving two brothers who were partners in a Napa Valley wine business. One brother operated the winery while the other ran a textile factory.

"It turns out the winery was a very successful business and very profitable. The textile business, after a few years, wasn't so profitable," Loeterman recalled. "It created hard feelings between them as to who should enjoy the profits."

The resolution Loeterman pitched managed to split the two businesses into separate enterprises, as the brothers no longer had an interest in doing business with one another. One brother was given control of the winery while the other was given control of the textile factory, but some adjustments were made in terms of compensation to ensure "they wouldn't be so entangled in one another's business anymore."

A more recent dispute involved two neighbors warring over an old easement. Both parties wanted to buy out the other's claim to the easement, and both were holding firm on that stance. Instead, Loeterman proposed granting each other reciprocal access to the easement.

"The apartment owner ended up getting access rights to the driveway and the walkway while the owner of the single-family home was granted a few parking spaces in the lot that served the

apartment — as he didn't have much space to park," Loeterman said.

Many of his other mediations have followed a similar theme. In a case in which tenants accused their landlord of failing to provide the proper facilities for their business, Loeterman inked a settlement where the landlord would provide the requested facilities in exchange for a longer lease agreement.

In a family estate battle between siblings over whether or not to sell the host of properties they collectively inherited, Loeterman worked out a deal that allowed those who wanted to sell to sell and those who wanted to keep the properties to keep them.

"I think people would be very disappointed if all we did was 'split the baby.' They wouldn't need to come here," Loeterman said.

Adelson said that's what makes Loeterman "one of the better mediators around."

"He actually gets into the case. He's not just shuttling back and forth with offers like many mediators unfortunately do," Adelson explained. "He'll tell you the good, the bad, and the ugly of the case, which sometimes you or your client really need to hear."

Though he only joined Signature Resolution Group in June, Loeterman's operated as an independent mediator for over 15 years. Prior to that, he worked as general counsel for two decades at Fred Sands Real Estate Company, which at the time was the largest real estate company in California.

When business began to wind down at Fred Sands, Loeterman said it was a "natural inflection point" in his career, and he began

to consider new options. The idea of mediating appealed to him, Loeterman said, and the long list of real estate attorneys he had formed connections with over the years provided him a natural springboard for a practice.

"At that point in time, the Fred Sands company had 2,000 agents independently affiliated with us and 400 salaried employees," Loeterman said. "A big part of my role in some form or another was dispute resolution or problem solving, besides the real estate, business litigation and employment issues that were a natural part of the business."

"Doing this work, you come to appreciate that neutrals approach these cases with different perspectives," Loeterman said. "As lawyers become more frequent consumers of mediation, it's required mediators themselves to prove their game and expand

their skills to show that we're always adding value."

Daniel Goodkin of Goodkin & Lynch LLP said, likely due in no small part to his years of general counsel experience, Loeterman is particularly effective at resolving his real estate disputes. "These often require understanding arcane laws, and having been counsel for a real estate company, he's had to deal with these sorts of things his entire career," he said.

The following attorneys have used Loeterman's mediation services: Chris Dueringer of Bryan Cave Leighton Paisner LLP, Geoffrey Gold of Ervin Cohen & Jessup LLP, Lewis Adelson of Costell & Cornelius, David DeCastro of DeCastro & Morrow, Brian Kesluk of Kesluk Silverstein & Jacob.