

VERDICTS & SETTLEMENTS

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A Natural Step

New as a mediator, T. Warren Jackson wins praise for handling tough cases.

By Chase DiFeliciano
Daily Journal Staff Writer

LOS ANGELES — T. Warren Jackson recalls being hard on neutrals in his former life as senior vice president and associate general counsel of DirecTV, which is now part of AT&T Inc.

Acknowledging he could be hard on his lawyers, too, Jackson said, “I think I’m pleasant enough. ... It’s just that I had my own sense of what a case was worth or what we had done.”

Jackson has become more sympathetic toward mediators since leaving his in-house role, he said, “but, also, I don’t think I employ some of the same tactics that mediators sometimes use, even though they can be effective.”

Jackson disliked the use of brackets — a range in which parties agree to negotiate — when he was in practice, he said, and while they have become popular, he’s cautious about using them in his mediation practice now.

Acknowledging they can be a useful tool at times, however, Jackson provided an example.

If just one party is asked “to come down to 500,000, well, they’ll say no,” he explained. “But if you pose it as a bracket — ‘They’ll go to two, if you go to five,’ — they’ll consider it.”

“Sometimes it’s about the midpoint that you select,” Jackson

T. Warren Jackson

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continued. “But it’s an interesting sort of experiment.”

The neutral is quick to confess he’s still developing his own style and figuring out what works.

“Some of it is because I’m not wedded to a particular [approach] — I’m receptive to new ideas,” he said.

The ability to see things from the clients’ perspective is an attribute Jackson said he brings to his mediation practice.

“Because I was so hard on mediators, I don’t get flustered. I don’t take any of it personally because it wasn’t personal for me,” Jackson explained. If counsel gets emotional “and they holler at me, I can chill and wait and then continue, and we’ll try [focusing] on what the message was [in] all the histrionics.”

Alexander Krakow & Glick LLP partner J. Bernard Alexander was on the plaintiffs side in Jackson’s first mediation and described him as a very approachable person with an easygoing personality.

“It was a small defendant from which we were seeking a substantial amount of money,

and those are the most difficult parties to deal with,” Alexander said. “For a newbie, he did a great job, and he can only improve from there.”

Noting he co-counseled the case with someone who was not easy to negotiate with, Alexander added, “Warren did a great job of maintaining patience [and] maintaining contact — meaning between our side and the other side.”

Jackson identified employment cases as difficult matters to mediate. Because a person’s profession can be such an integral part of their self-esteem and identity, Jackson said, “The loss of the job or some unfairness in connection with the job brings a set of emotions.”

In these cases, the lawyers and mediator must convince the plaintiff their life is separate from the litigation, Jackson said.

“Because they get intertwined, particularly when you’re thinking about emotional distress, punitive damages, those kinds of harms, ... they impact your life,” he explained. “Trying to unpack that

can be difficult and problematic and can fall on deaf ears.”

For that reason, Jackson said multiple sessions are often necessary in mediating these cases.

Mhairi L. Marsh, a labor and employment counsel at Qualcomm Inc. who has utilized Jackson’s services, described him as a “fantastic mediator.”

“I’ve only used him once so far, and frankly, I have sung his praises to a number of other in-house counsel,” Marsh said.

The case involved a former human resources employee Marsh didn’t think would be very reasonable in mediation, was not represented by a lawyer and refused to get one.

And Marsh admitted that, initially, she wasn’t a big fan of mediation herself. Not only did she think mediation was unlikely to work, she thought it would be a waste of time and money. But in the end, she said, “I couldn’t have been more surprised or pleased by Warren.”

Jackson helped Marsh resolve the case in a way that was positive

for the company, she said, noting he has an ability to really connect with people and to cut through emotions.

“Frankly, I think he did that very well with the employee we were mediating with, but honestly he did it well with me too,” Marsh said. “I wasn’t a very big fan of settling this case, and he got me to a place where I realized it really was the best thing to do.”

Speculating that Jackson’s in-house background may have played a part, Marsh added, “I haven’t seen many mediators with that background, so he was able to work with me really well to get me to where I needed to be.”

Noting a trial date is important in mediation and can be a motivating factor, Jackson said, however, one must give “the side that’s going to get paid” a reason to stand down when a trial date is rapidly approaching.

“It’s sort of like a horse knowing that they’re close to the corral, and they’re hellbent on getting there,” Jackson explained. “If someone only has to wait another, let’s say 30 days, to perhaps recover, some of the strategies you would use — like the time value of money — well, they don’t work or they’re less likely to work when a trial date is imminent.”

While an imminent trial date can clear the mind, it also means the parties have more invested, Jackson said.

“It can be a great motivator in terms of clearing the mind and having people realize it’s time to talk real numbers or it’s time to put this behind us,” he explained.

Meanwhile, cases that have been dormant for a while may be more difficult to resolve, because “people don’t have a lot invested,” Jackson added, “but if people

have a lot invested, the price tag will invariably have gone up.”

Lawyers for Justice PC managing attorney Edwin Aiwazian described Jackson as the quintessential neutral.

“His natural disposition is to be a neutral, and that is priceless when you’re dealing with a mediator who needs to be fair and impartial,” Aiwazian said. “The entire time my instincts were to call him, ‘Your honor,’ even though he doesn’t have any judicial background. That’s how much of a neutral he was.”

Aiwazian, who was representing a client against a nonprofit, said Jackson was also an incredibly quick study.

“He was able to absorb massive amounts of information we dumped on him in a quick amount of time, cut through the filibustering in our room and the other room, and he was able to

close the deal,” Aiwazian said. “Even though we walked away with a settlement that was less than what we thought we’d accept, he was able to push us and convince us to not delay justice and accept what was on that table.”

Aiwazian prefers to mediate with folks who will push him hard.

“If he’s not pushing us hard, he’s not pushing the other side,” he said of mediators. “So that’s why we will use [Jackson] again.”

Here are some attorneys who have used Jackson’s services: Rory C. Quintana, Quintana Hanafi LLP; Kaveh S. Elihu, Employee Justice Legal Group LLP; Howard Rosen, Rosen Marsili Rapp LLP; Damien P. DeLaney, Jackson Lewis PC; Robert D. Goldberg, Koletsky, Mancini, Feldman & Morrow; Don A. Hernandez, Zuber Lawler & Del Duca LLP.