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**Current Employer-Title** Principal, Jacoby Donner, P.C.

**Profession** Attorney - Construction and Business Litigation and Dispute Resolution; Arbitrator and Mediator.

**Work History** Jacoby Donner, P.C., 1995 to present; Managing Shareholder, 2002 to 2008; Partner, Bolger & Picker, 1980-1995; Deputy Attorney General, Pennsylvania Department of Justice, 1978-80; Law Clerk, Hon. Lois G. Forer, Court of Common Pleas, Philadelphia, Major Civil Trials, 1976-77.

**Experience** Over 30 years experience practicing commercial litigation and dispute resolution, primarily involving the construction industry (75%). **Construction Cases:** Represents developers, prime contractors, suppliers, manufacturers, architects, engineers and construction managers. Extensive experience handling multi-million dollar claims for delay, acceleration and other time related claims, construction failures, design defects and contractor termination. Particular experience with stadium construction, power facilities, site work and mechanical and electrical systems. **Commercial Cases:** General business and bankruptcy litigation including trade secret, restrictive covenant, preference actions, fraudulent conveyances and UCC litigation.

**Honors and Certifications** Certified Mediator, International Mediation Institute; Fellow, American College of Civil Trial Mediators; Fellow, Chartered Institute of Arbitrators; Mediation and Arbitration Panels for American Arbitration Association; Member, National Construction Dispute Resolution Committee; Since 2006, selected by peers for listing in *Best Lawyers in America*, (Woodward & White) for construction law and litigation.

**Education** Washington & Lee University, B.A., *cum laude*, 1971; Temple University School of Law, J.D., 1976;

## **Alternative Dispute Resolution Experience**

**Arbitration:** Served as an arbitrator since 1987 on multi-million dollar commercial disputes, including:

- Served as Chair of panel for \$400,000,000 dispute between two international joint venture partners concerning completion of tunneling project for the transportation authority of a major US city.
- Served on panel for \$40,000,000 claim for wrongful termination of a USAID road contract project in Africa.
- Served as sole arbitrator on multi-million dollar claim by international construction manager on a failed resort development in the Caribbean.
- Served as sole arbitrator on a \$70,000,000 claim for lost profits on breach of European distribution agreement.
- Served as Chairman for dispute between site contractor and owner alleging defective workmanship and delays.
- Served as Chairman in a million dollar claim involving termination of contract for construction of a recycling facility.
- Selected as sole arbitrator to hear evidence and interpret contractual provision relating to construction of a multi-million dollar national transportation facility.
- Panel member on multi-million dollar claim on leaking façade of office building.
- Sole arbitrator on million dollar claim on renovation of firehouse

**Mediation:** Served as mediator since 1994 on more than 250 cases; including.

- Multi-million dollar claim by owner of office campus against eleven parties and their insurers involving in the failure of building envelope system.
- Multi-million dollar claim by developers of Pittsburgh hotel against design professionals.
- Multi-party, multi-million dollar dispute involving public authority, contractor, design engineer and two subcontractors in central Pennsylvania.
- Dispute between condominium association and roofer regarding defects on a hi-rise re-roofing project.
- Multi-million dollar dispute between developer and construction manager on a new high rise condominium project, involving claims for extras, delays and alleged defective work.
- Multi-party ten year old \$2,000,000 dispute between contractor and a western Pennsylvania Municipal Authority arising out of termination of contractor on a water treatment plant involving delays allegedly caused by design professional and supplier.
- \$1,000,000 dispute between contractor and owner of bank concerning alleged delays, defective work and contract balance.
- Delay and disruption claims on a \$50,000,000 school project involving school district, three prime contractors, design professional and one subcontractor.
- Dispute between contractor, architect and public housing authority wherein owner claimed defective work and design.
- \$1,400,000 dispute between municipal parking authority and ten defendants who were involved in constructing a parking garage.
- Seven party dispute over delays alleged to have originated from site work and piling issues.
- Multiple building envelope and roofing disputes.

**ADR Education** Faculty, Expediting and Economizing Arbitration, Philadelphia, 2011; Faculty, Advanced Mediation Training, 2011; AAA/ICDR International Arbitrator Training, Washington, 2010; Advanced Mediator Training, Washington, D.C., 2010; AAA Arbitrator Ethics & Disclosure, 2006; Faculty, AAA Neutrals Conference, Philadelphia, 2005; Attended AAA Neutrals Conference (2003, 2005, 2007, 2010); AAA Construction Arbitrator II Training, Philadelphia, 2002; AAA Arbitrator Update 2003, 2001; attended AAA Mediator Conference, New Orleans, 2001; American Arbitration Association Basic Mediation Training (2 days, Denver 1999; 2 days; Phila. 1993; 3 days- Philadelphia 1998); American Arbitration Association Arbitrator Training (2 days Phila. 1995); Chartered Institute of Arbitrators- Special Fellowship Course (Vail, Colorado 1999); Chartered Institute of Arbitrators-International Commercial Arbitration Training (Charleston, S.C. 1997)

**Professional Licenses** Admitted to the Bar: Supreme Court of the United States, 1987; Third Circuit Court of Appeals, 1977; U.S. District Court, (1976); U.S. Court of Claims, 1990; Board of Contract Appeals, 1994; Pennsylvania Bar, 1976; New Jersey Bar, 1985;

**Professional Associations** International Bar Association; Chartered Institute of Arbitrators; American Bar Association (Forum Committee on the Construction Industry, Construction Litigation Committee, Fidelity & Surety Committee); Pennsylvania Bar Association (Construction Law Committee; ADR Committee) Philadelphia Bar Association (Federal Courts Committee; Commercial Litigation Committee; Construction Committee); American Arbitration Association (Commercial, Construction, Mediator and Large Complex Case Arbitration Panels); National Construction Dispute Resolution Committee; Construction Financial Management Association, (Philadelphia Chapter Board Member); National Bond Claims Association; General Building Contractors Association (Affiliate Member); Building Contractors Association of New Jersey (Associate Member); American Concrete Institute (Affiliate Member); American Institute of Architects (Affiliate Member); Pennsylvania Council of Mediators.

**Recent Speaking Engagements** “ADR, Taking Control of Disputes to Save Time and Money”, Webinar for Construction Financial Management Association (2013); “Getting Paid in a Down Economy”, presented to Philadelphia General Building Contractors Association and Building Contractors Association of South Jersey (2012); “Insurance Risks in Development” (2012); “Advanced Mediation Techniques” AAA (2011); “Mechanic’s Liens and Bond Claims” to Construction Financial Management Association and General Building Contractors Association, (2010); “Risk Issues in Green Construction” to Construction Financial Management Association, (2010); Multiple seminars to trade associations on new ConsensusDOCS and revised AIA construction contract forms (2008); Addressed the International Academy of Mediators at the Annual Conference in Philadelphia, PA (May 25, 2007); Panel Member/Presenter at the AAA Mediation Conference, Miami, FL on "Using Quantitative Evaluation Methods: Decision Trees in Construction Mediation" (March 30, 2007); Panelist, Dispute Resolution Division of the ABA Forum Committee on the Construction Industry on "Arbitrator Disclosure to Avoid Vacatur of Awards" (May 2006); Panelist, American Arbitration Association on "Best Practices in Complex Construction Arbitration" (June 2004)

**Education** Temple University School of Law (J.D.-1976); Washington & Lee University (B.A.-1971).

**Compensation:**

**Arbitration:** \$490 Per Hour plus reimbursement of all out-of-pocket disbursements/expenses. Hourly rate applies to all services rendered after initial engagement, including conference calls, study time & start-up activities, travel, deliberation and drafting.

**Mediation:** \$590 per hour. Hourly applies to all services described above except *no charge for travel time or expenses in North America..*

**Citizenship** United States

**Locale** Main office in Philadelphia, Pennsylvania but will travel anywhere.

**Mediation References**

Michael R. Libor, Esquire  
Morgan, Lewis & Bockius  
1701 Market Street  
Philadelphia, PA 19103  
(215) 963-4936

Lawrence Borda, Esquire  
1600 Market Street, Suite 1430  
Philadelphia, PA 19130  
(215) 446-8440

John G. McGowan  
Bond, Schoeneck & King, PLLC  
One Lincoln Center  
Syracuse, New York 13202  
(315) 218-8121

Howard Venzie, Esquire  
Kevin Amadio, Esquire  
Venzie, Phillips & Warshawer  
2032 Chancellor Street  
Philadelphia, PA. 19103  
(215) 567-3322

## **Representative Commercial Cases: Handled as Advocate**

- Represented wholesaler in an action against its software consultants who claimed proprietary rights in client's products and refused to supply source code necessary to support the products. Obtained TRO and preliminary injunction directing turnover of the source code. Defendants appealed asserting the complaint did not state a substantive RICO claim and that the court had no jurisdiction. After remand for further factual development, the District Court denied a motion to dismiss the amended complaint. The defendants ceased defending resulting in a permanent injunction and a judgment for \$22,000,000.00.
- Represented clean room design builder in an action against former employees who misappropriated trade secrets and proprietary information to set up a competing business. Obtained ex parte order directing Federal Marshall to seize computers of former employees by arguing that notice to opposing party and/or counsel would create danger of destruction of digital information. Case resolved with monetary payment and consent order for permanent injunction. Competing business was discontinued.
- Represented former owner of a manufacturing facility in a diversity action seeking final installment payments. Purchasers defended asserting counterclaims for environmental clean-up costs assessed by PADER. Obtained summary judgment in client's favor and defeated the counterclaim based upon contractual limitation period in sales agreement.
- Defended wholesaler and its principals in multi-million dollar RICO claim by a foreign supplier. Court entered summary judgment based upon the forum selection and choice of law clauses in the agreement between the parties.
- Defended Metropolitan Dade County in a multi-million dollar claim by manufacturer of mass transit rail cars. Succeeded in having trial court transfer the case to the Southern District of Florida, and defeated mandamus action in the Third Circuit seeking reversal.
- Represented investment banking firm seeking unpaid finder's fee for financing. Obtained judgment for full amount and counsel fees which was affirmed on appeal.
- Litigated numerous bankruptcy preference actions and injunctions involving claims for breach of restrictive covenants in employment contracts.

## **Representative Construction Cases Handled as an Advocate:**

- Represented Construction Manager in completion of award winning glass office building after window manufacturer became insolvent. Negotiated completion agreement with surety to obtain product and negotiated a favorable resolution of client's completion damages.
- Represented owner in claim against contractor and subcontractors for use of defective fill on strip mall. Recovered full \$1,600,000 of damages after litigation and successful mediation.
- Defended owner in claim by general contractor for extras and delay damages on a multi-million dollar historic renovation project in Philadelphia. After twenty-three days of arbitration, general contractor was awarded 25% of its claim and settled for approximately 15% of its claim, an amount less than that offered in settlement at the outset of the case.
- Represented HVAC contractor in a claim against its design engineer arising from errors and omissions in the preliminary design-build plans prepared for bidding on an Atlantic City casino. The case was favorably settled after a two-week trial.
- Represented twenty-one subcontractors in a case against the owner, general contractor and lender on a multi-unit, low income project in Reading. The case was settled prior to trial for the full amount of the claim plus interest.
- Represented owner of a suburban low-rise office and warehouse facility in a claim against a contractor and design professionals for defectively constructed facade and window penetrations. Negotiated remedial construction at no cost to owner.
- Successfully defended owner on mechanic's lien claim asserted by an architect after the architect had been terminated for failure to supply proper plans.
- Defense of architects and engineers in professional liability cases.

## Significant Transactional Representations:

- Represented Development Manager for construction of the Philadelphia Eagles' new football stadium (Lincoln Financial Field), including preparation and negotiation of client's contracts with owner, architect, and construction manager.
- Prepared Pennsylvania contract documents for use by publicly traded developer of major auto racing venues.
- Preparation and negotiation of contract documents for development of an extreme sports facility in Trenton, New Jersey.

## Reported Cases:

- *In re Blatstein*, 192 F.3d 88 (3d Cir. 1999)
- *Nova Ribbon Products, Inc. v. Lincoln Ribbon, Inc.*, 1995 WL 15479 (E.D.Pa.)
- *Marlee Electronics Corp. v. Eclectic Technologies Corp.*, 1993 WL 30081 (E.D.Pa.); RICO Bus. Disp. Guide 8221 (1993)
- *Nova Ribbon Products, Inc. v. Lincoln Ribbon, Inc.*, 1992 WL 392614 (E.D.Pa.)
- *Nova Ribbon Products, Inc. v. Lincoln Ribbon, Inc.*, 1992 WL 211544 (E.D.Pa.); RICO Bus. Disp. Guide 8148 (1992)
- *Marlee Electronics Corp. v. Eclectic Technologies Corp.*, 1990 WL 171532 (E.D.Pa.)
- *Seltzer v. Klein*, 1989 WL 51288 (E.D.Pa.)
- *Budd Company v. Mass Transit Administration and Metropolitan Dade County, Florida*, 1986 WL 3852 (E.D.Pa.)
- *Dynaforce Corporation v. Temp-Way Corporation*, 80 B.R. 699 (U.S.B.C. E.D.Pa. 1987)