

From the Get-Go

JAMS neutral John Bates realized the power of mediation as a litigator

By **Fiona Smith**
Daily Journal Staff Writer

SAN FRANCISCO — John Bates was a successful litigator in the 1980s, who, while volunteering to help settle cases as a judge pro tem, realized the enormous potential of mediation to resolve legal disputes.

Working with litigants in the San Francisco County Superior Court, he used his intuition to hash out agreements with lawyers and their clients, consciously moving away from the style he'd seen judges use in his own cases. That style — meeting in chambers solely with the lawyers and giving their opinion on what a case was worth — would only leave parties more entrenched and alienate clients who were excluded in the process, Bates said.

But it was when a client offered to pay him his regular hourly rate to help mediate a dispute that a light bulb went off in his head. It dawned on him that mediation was not just enormously satisfying work, it was a huge, untapped business opportunity.

His mediation practice at Cooley LLP kept building, until he left to form a mediation firm with attorney Bruce Edwards.

The business exploded — after a year, the firm had five offices and the pair were flying all over the country to settle cases. In their second year, they joined forces with two East Coast attorneys also pioneering alternative dispute resolution, forming the firm Endispute. In 1994, Endispute merged with JAMS.

As a mediator for more than 25 years, Bates has handled around 5,000 mediations on a wide variety of cases. Central to his philosophy is empowering the parties to settle the case, Bates said.

“If you have two sides in a dispute it should be a two-sided negotiation,” Bates said. “I don’t think it’s appropriate in mediation to have a three-sided negotiation, in other words you have the two in the dispute and you have the mediator trying to

shoehorn people in to his or her view of where the case is. So I take a marketplace approach — there’s a market that’s created between the two parties and what they’re trying to negotiate and I work within that market to help them find a solution.”

Bates is an avowed generalist — noting that specializing can lead to second-guessing the parties, staleness or allowing similar cases you’ve mediated that week to push you to reach certain conclusions about the case at hand.

“If you’re just process-oriented, every time you come into a negotiation you have a fresh perspective and you have the requisite energy level,” Bates said. “These mediations are tough. You’ve got to give a ton of yourself at the front end to get people to buy into the process, to buy into you and then you’ve got to have something left at the end of a very trying negotiation to close it.”

Bates has had a lot of time to develop his thinking around effective mediation and the biggest challenge in every case is quickly building rapport and trust with everyone in the group, he said. Once he’s done that, he tries to work with the often high emotions in a case to get people thinking more rationally and so they can get educated on the other side’s position. To help diffuse the emotion in business disputes for instance, he frames it not as one-side winning or losing, but as the parties crafting a “business solution.”

“In litigation there’s a huge emotional, irrational component. You have to clear that hurdle but if you can get them thinking rationally, they would much rather control their destiny than run the risk of turning it over to someone else that’s what drives deals,” Bates said. “And if you’re sensitive to that in terms of how you manage the process ... it’s going to take care of itself.”

Dion N. Cominos, managing partner at Gordon Rees Scully Mansukhani LLP, said Bates is on the firm’s short list of go-to mediators.



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“John has a very calm and calming demeanor, he is a cool customer who is very good at reading people’s emotional states and dialoguing with them in a way that’s productive and getting them focused on resolution rather than litigation,” Cominos said. “He has a good intuitive sense of an achievable settlement ... and has the intrinsic ability to get people there even though it may not be in their immediate comfort zone.”

John doesn’t let up in trying to reach a settlement — including once resolving a case in a parking garage. It happened when he made a last-minute settlement suggestion to one side as the lawyers headed into the elevators at the end of the session. That suggestion was accepted and so he made a dash for the parking garage exit, stopping each attorney as they drove out to run it by them, sealing a deal.

Attorney Todd C. Theodora, who has used Bates over the last decade in a wide variety of cases including business and employment disputes, said he’s discreet and has a “lock picker’s touch” in resolving disputes.

“He has an incredible skill for reading the room and an innate, really uncanny ability, to say the right thing at the right time and in terms of his creativity, he amazes me with his problem solving ability,” said Theodora, chairman and CEO of Theodora Oringer PC. “He’s always thinking of not just the money solution, but the business solution, the public relations solution, or some other creative way to meet the needs of the parties.”

Bates can’t be characterized as defense or plaintiff-oriented mediator, said Michael D. Michel, a partner with

John B. Bates Jr.

JAMS

San Francisco

Areas of specialty: Business/Commercial, Civil Rights, Class Action/Mass Tort, Construction Defect, Employment, Entertainment and Sports, Environmental, Estates/Probate/Trusts, Financial Markets, Franchise, Governmental/Public Agency, Health Care, Insurance, Intellectual Property, Maritime/Admiralty, Personal Injury/Torts, Professional Liability, Real Property, Securities

Michel & Fackler PC who is a former plaintiff’s attorney who now does insurance defense.

“He’s a quick study, he prepares well, understands the issues,” said Michel.

Unlike a lot of mediators, Bates does not follow a set pattern in handling his mediations, Michel added.

“He tailors his approach to the attorneys, to the issues in dispute,” Michel said.

Here are some attorneys who have used Bates’ alternative dispute resolution services:

Dion N. Cominos, Gordon Rees Scully Mansukhani LLP; Sidney K. Ayabe, Ayabe, Chong, Nishimoto, Sia & Nakamura LLP; James J. Bickerton, Bickerton Dang LLP; Thomas E. Wallerstein, Venable LLP; Christopher B. Dolan, Dolan Law Firm; Michael D. Michel, Michel & Fackler PC; David I. Lefkowitz, Wilshire Palisades Law Group PC; Mark S. Anderson, Cozen O’Connor; Todd C. Theodora, Theodora Oringer PC; Angela M. Alioto, Alioto PLC; Michael D. Bruno, Gordon Rees Scully Mansukhani LLP; Jay Edelson, Edelson PC