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EFFECTIVE MEDIATION OF A CONSTRUCTION CASE

- I. Introduction – Why are construction cases different than other types of cases?
- II. When is the case ready for mediation?
 - A. What type of case – Defect/Delay/Dollars
Identify case issues
 - B. Do you have your case ready to present and persuade?
 - C. Do you truly understand your opponent's current and potential paths to victory?
- III. How do I select the mediator?
 - A. Temporal or financial constraints
 - B. Subject matter expertise
 - C. Ability to impact mediation outcome
- IV. How should I approach the joint session?
 - A. How to frame/what are optics to opponents?
 - B. One size doesn't fit all
 - C. Teach rather than attack;
Question rather than declare
- V. What about Experts, Power Points and Pictures?
 - A. How you can "lose" a mediation
 - B. Competence is Not coherence
 - C. Chance favors only the prepared mind-Rehearse and get input
- VI. How should I approach the Individual caucus sessions?
 - A. Negotiating styles
 - B. "I won't bid against myself"
 - C. How to react to brackets
 - D. What is counsel's true role in these sessions
 - E. When to introduce deal breakers
- VII. What if it seems impossible to settle?
 - A. Half a loaf is better than no bread at all
 - B. Define/frame what a resolution or settlement looks like
 - C. Define obstacles or constraints

VIII. What should I consider when settling?

- A. Punchlists/warranties/latent defects
- B. Confidentiality/non-disclosure
- C. Scope of release-what and who is being released

IX. Final thoughts and tips