

VERDICTS & SETTLEMENTS

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Uncovering Essentials

Neutral Marc Marmaro works hard to reveal the roots of disagreements.

By Justin Kloczko
Daily Journal Staff Writer

LOS ANGELES — As a mediator, Marc Marmaro will often have 25 pages of notes. Then he takes notes of his own notes, trying to distill the issues to their essence.

“I try to write the story of the case,” said Marmaro, who will read briefs twice,

After much preparation, he goes into a mediation with a range for what a case should settle for.

“Should. Doesn’t mean it will,” he said. “I’ve seen how these cases play out in the real world of litigation. I have a sense for the range of damages in certain kinds of cases a jury will or will not award,” he said.

“If you think you have a great case and somebody says, ‘I can’t lose this case,’ I’ll say, ‘Have you been down to superior court recently?’ Even if you have such a great case you still have a 25 to 33 percent case of winning,” said Marmaro.

The former Los Angeles County Superior Court judge has litigated a negligence cases involving a fall at a fast food restaurant to a \$150 million securities case and everything in between.

He has touched all aspects of

the law over the course of his nearly 50-year career.

He started out in private practice before becoming an assistant U.S. attorney in the Southern District of New York. Later, while litigating cases on behalf of corporate clients, he climbed the ladder at Public Counsel. He resigned to take the bench in 2018 and spent eight years as a judge. He’s been a neutral at Signature Resolution for about a year.

“I always believed in public service. It is an important aspect of a lawyer’s career,” said Marmaro, who was inspired by Robert B. Fiske, for whom Marmaro was an assistant U.S. attorney under in the 1970s.

“Mark gets deeply into it. He actually says how a case is likely to be decided,” said Alan J. Weil, a Kendal Brill & Kelly LLP attorney. Out of the couple hundred cases he’s brought to mediation, Weil said he would rank Marmaro at the top of the mediators he’s hired.

“When I walked into the room to mediate the case, I thought chances of settling were very low, and through his efforts we settled,” said Weil, referring to a professional responsibilities dispute, confidentially settled.



Gary Wagner / Special to the Daily Journal

Marmaro likes to tell his clients that settlements are empowering and something in their full control. This isn’t a jury with 12 strangers deciding the fate of a case they just learned about. He enjoys helping people reach their own conclusions.

“You make the decision yourself. Nothing is going to happen that you don’t want to happen,” said Marmaro.

He likes “realistic” lawyers who are clear-eyed about their case.

“I think lawyers should be willing to persuade the other side. I like when they exchange their mediation briefs on the theory that you’re trying to educate the other side,” said Marmaro.

Dan A. Rozansky of Stubbs Alderton & Markiles LLP said he would use Marmaro in almost any complex case.

“I would put him on the Mt. Rushmore of mediators,” said Rozansky, who brought to

Marc Marmaro

Signature Resolution
(Los Angeles)

Areas of specialty:
Business and commercial
litigation, intellectual
property, entertainment,
securities, business
dissolution

Marmaro a protracted business dispute with many tangential issues and strong personalities.

“He came in and wasn’t just about ‘Let’s make a deal,’” said Rozansky. “He was able to create a dynamic where parties were able to engage in the process.”

The mediation started with an arbitration hearing looming. On the day of mediation, Marmaro stayed until 10 p.m. and was able to get parties to sign a draft term sheet.

Michael P. McNamara of Jenner & Block LLP said there

is nothing worse than showing up to a mediation and finding out a neutral doesn't know your case, but he said Marmaro was different.

"Marc is an evaluative mediator as opposed to processed," said McNamara.

Marmaro said he will often employ what is called a "soft proposal," where toward the end of the day he'll throw out a number he feels is acceptable to a party.

"Your job as mediator is to keep people talking. I tell people I am going to be the last person out of here," said Marmaro.

After starting as a federal prosecutor, Marmaro said, "I wanted to try cases because I thought that's what a lawyer did. I thought it would be interesting."

H i s b a c k g r o u n d understanding how contracts worked, how businesses worked, helped him at the

Southern District of New York.

"I sort of morphed into major white collar cases," said Marmaro.

One matter involved the failure of a major shipping company, one of the largest cases in the office at the time. It yielded four trials. The company received a number of bank loans via a series of false statements.

After moving to California and working at Manatt, Phelps, Rothenberg & Phillips, the Long Island native left the firm after a year to start his own shop, Jeffer, Mangels, Butler and Marmaro with colleagues Alan Rothenberg and Bruce Jeffer. The firm grew from 11 attorneys to over 150 today.

"One of the most rewarding things I have done was being a part of building that law firm. We started from scratch and built a brand name," recalled Marmaro.

As a lawyer, Marmaro may be best known for winning a \$570 million verdict in a months-long 2004 trial involving patent infringement and breach of contract claims against Medtronic Inc. related to its spinal fusion technology. The case ended in a \$1.35 billion settlement that included the purchase of his client's patent portfolio.

Marmaro spent eight years as a judge presiding mostly over general civil motions and trials. He told the Daily Journal in 2011 that having never been divorced and raising two daughters was his best preparation for overseeing family law cases.

One case that stuck with him involved a 2009 fatal accident involving a family that drove off the 210 Freeway and crashed into an illegally parked tractor trailer. A husband, wife and teenage son were killed while the two

other children survived. Later, one of the surviving children committed suicide.

The jury found both the father and truck driver negligent, ordering the trucking company to pay \$178 million. But Marmaro ruled the amount was excessive and granted a motion to retry the case. In the end, it ended up settling.

He said turning 70 was a good point to re-examine his career and make the shift toward becoming a neutral.

Here are some of the attorneys who have used Marmaro's services: David Eisen, Wilson Elser; Miles Cooley, DLA Piper; Ricardo Cestero, Greenberg Glusker Fields Claman & Machtinger LLP; Ian Herzog and Thomas Yuhas, Herzog, Yuhas, Erhlich & Ardell APC; Alan J. Weil, Kendal Brill & Kelly LLP

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