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Building Consensus

Former plaintiff's litigator Ross W. Feinberg taps relationship-building skills to bring together many parties in complex construction-defect disputes

By Susan McRae
Daily Journal Staff Writer

ORANGE — It's not every day a plaintiffs-side construction-defect litigator decides to become a mediator — but Ross W. Feinberg isn't your everyday plaintiffs' lawyer.

In his three years since joining JAMS, Feinberg, who spent two decades representing homeowners' associations, has become one of the mediators of choice when it comes to complex construction-defect litigation.

Feinberg, 52, credits his success to the importance he placed as a litigator on forging strong relationships with the defense bar that represents developers and subcontractors, and with insurance industry claims adjusters.

He even led seminars for builders' organizations, something unheard of at the time. But, he said he thought it was important that everyone get an understanding of the other's position.

Now, as a mediator, he is booked solid for three months in advance, mainly due to his diligence and efforts as a lawyer in resolving complex construction-defect cases. And it's often the defense side that requests his services.

"To me, credibility and integrity are everything in what we do," Feinberg said.

As a plaintiffs' lawyer, rather than being adverse to the defense lawyers and insurance carriers he saw on regular basis, he worked to develop high levels of credibility with them. That way, he said, when he felt he had a strong issue at stake, they would respect it. When he didn't, he



Susan McRae / Daily Journal

would let them know, and they appreciated that, as well.

As a neutral, he continues that approach.

Feinberg said he looks at each mediation as an opportunity to make a new relationship or, more often, to improve on those he already has made.

"It's not at all about keeping score," he said. "There's just a lot of trust there."

Feinberg joined JAMS in September 2007 and only does mediation. He works three days a week in Southern California, mainly out of the Orange County office, and the other two days in Las Vegas, Nev., where his former firm has a branch office.

He said he always knew he would end up as a mediator one day. It just happened sooner than he expected.

As a litigator, Feinberg said he realized he had a knack for resolving particularly complex cases and began directing his efforts in that area. A few years into his practice, a judge, whose courtroom he appeared in frequently, took him aside and told him he should think about a career settling cases full-time. Feinberg was only 30 at the time, but the idea stuck with him.

He said he thought he might become a mediator when he reached 60. But the timing worked out so that he was able to do it much sooner.

His firm, Feinberg, Grant, Mayfield, Kaneda & Litt in Newport Beach, had grown, with offices in California and Nevada. By 2007, in the space of two weeks, Feinberg resolved two significant cases that he had been working on for two years. Suddenly, he had a window of time to contemplate what he enjoyed doing best: resolving cases.

Over time, he developed many good, working relationships with developers, subcontractors and insurance adjusters. He also knew the practice from the plaintiffs' side. He met with a few of the developers and asked if they would be comfortable working with him as a mediator. Most of them said "absolutely," he said.

Feinberg then talked it over with his wife, Kimberly, and their two high-school-age children. And, at age 48, he made a decision to leave his practice and become a mediator.

"And I couldn't be happier," he said.

Lawyers who use his services appear to feel the same way.

Bjorn Green, a partner at the Long Beach defense firm Demler, Armstrong & Rowland, met Feinberg 15 years ago. He said, as a lawyer, Feinberg was very results-oriented and able to resolve cases quickly without a trial.

Neutral Builds Consensus

He described him as trustworthy, honest and practical and said those skills have translated well to his present role.

Green recently settled a multimillion-dollar construction-defect case before Feinberg. He said the case had gone through 10 mediation sessions before Feinberg took over.

“He corralled everybody and got it settled pretty quickly,” Green said. “He is just very organized. He understands what motivates the parties to settle. He’s good at understanding the personalities, the legal issues and what insurance companies need.”

Plaintiffs’ lawyer Rob Gilliland Jr. of Guralnick & Gilliland in Palm Desert, who represents homeowners’ associations, agrees.

“One thing about Ross, even as a plaintiffs’ attorney, he had high respect from both the plaintiffs’ and defense bar,” he said. “He’s spoken many times at defense seminars.”

Gilliland said he has brought four cases to Feinberg as a mediator, and he settled them all. In one particularly complex case, he said, Feinberg went above and beyond the call of duty by visiting the construction site, walking around it and talking to both sides. He then convened the mediation in the building where the project was located.

“No matter how well you describe it, when you actually have a mediator see for himself what the issues are, it removes the posturing and now you can talk about what it takes to get the case resolved,” Gilliland said.

Visiting construction sites is not unusual for Feinberg. His highly complex cases often take several sessions to resolve. He’s always on call. Even when he took a week off earlier this year to take his family on vacation to the Bahamas, he said he spent much of the time on the phone and e-mailing trying to put together a case involving a subcontractor with five different insurance carriers and five separate lawyers. He uses spreadsheets to keep track of the



Ross W. Feinberg

JAMS
Southern California,
Nevada

Age: 52

Areas of Specialty:
Construction defect,
complex commercial

various offers.

One of his most complex cases involved a homeowners’ association that was suing a master developer and six separate builders, each with a set of subcontractors, all with their own lawyers. In addition, some of the subcontractors crossed over into more than one development. In all, there were about 100 different relationships.

Feinberg said it was a case that no one, including himself, thought could be settled. He had spreadsheets for each of the projects, if for no other reason than to keep track of “who’s on first.”

It took six formal mediations and countless phone calls and outside meetings, but the case finally resolved. In rare instances, such as this one, Feinberg had everyone go to court and, one-by-one, put their settlement agreement on the record.

Born in the Inglewood suburb of Los Angeles, Feinberg, the middle of five siblings, is the son of a surgeon father and a homemaker mother who is a nutritionist. His older brother also became a surgeon. Another brother, Michael R. Feinberg, is a lawyer at Schwartz, Steinsapir, Dohrmann & Sommers in Los Angeles and, Feinberg said, became his inspiration to becoming a lawyer, too.

He earned his undergraduate degree from USC and his law degree from the University of San Diego School of Law.

Describing himself as a Reagan Republican — meaning he’s big on supply-side economics, left on personal choices but against over-involvement of government in one’s personal life — Feinberg has an array

of outside interests.

He’s a big USC fan, naturally. He lifts weight four days a week (his father was a professional boxer before becoming a surgeon). He’s a World War II history buff and a motorcycle enthusiast. He has several motorcycles. But his main one is his Harley-Davidson, which he takes out on weekends. He also entered it into a series of motorcycle shows, where he’s won best in show five years running for his decorative World War II theme of battle sites and landmark decisions airbrushed on the bike’s body.

He also meditates twice a day and ascribes to various spiritual teachings, which he said calms his mind and prepares him for the day’s mediation sessions.

Some of his cases, he said, bring satisfaction beyond mere resolution. In one case, the parents sued, claiming their 15-year-old son had been made ill by alleged mold in the home. The boy, who was from Russia, attended the entire mediation session and kept talking about wanting to become a lawyer.

As the case neared resolution, the boy’s parents said their son would agree to the settlement only if he could have lunch with Feinberg afterward to talk about the best way to go about becoming a lawyer.

“I agreed,” Feinberg said. “The case settled, and I was able to provide the young man with my thoughts on his educational path to become a lawyer.”

Here are some of the lawyers who have used Feinberg’s mediation services: Marlon J. Green, Laguna Hills; Robert Clausen, Newport Beach; Bjorn Green, Demler, Armstrong & Rowland, Long Beach; Richard Glucksman, Chapman, Glucksman, Dean, Roeb & Barger, Los Angeles; Ryan Baldino, Hammons & Baldino, Torrance; David Pursiano, Pursiano Barry Lavelle, Las Vegas; Diane Palumbo, Palumbo Bergstrom, Irvine; Rob Guralnick & Gilliland, Palm Desert; Erik Musurlian, Koeller Nebeker Carlson & Haluck, Irvine