

Representative Cases

Mediator Robert J. Kaplan, Esq. specializes in settling the most challenging cases.

Examples include:

Class Actions

- Wage & Hour
- Prevailing Wage
- Consumer Legal Remedy Act
- Insurance
- Mobile Home Habitability
- Other

Business & Employment

- Misappropriation of trade secrets and tortious interference with contract dispute in which the plaintiff business was represented by one of the top 5 largest law firms in California. The case settled in 1 full-day session.
- Wrongful termination case involving a relatively very little amount of money; yet, a lot of anger towards plaintiff's ex-employer and an individually named defendant (who felt she was wrongly brought into the fray.) After the case resolved, Mr. Kaplan received the following letter from the individual defendant:
 - **Dear Mr. Kaplan - I want to take a moment to thank you for all your hard work with both sides on our case. Closure for me means that the integrity of my name was preserved and that truth and honesty did indeed prevail. You are truly gifted in your field and in addition to all your hard work, I want to thank you for your fairness, your honesty and your true integrity.**
- Business fraud action (with alter ego allegations), a cross-complaint for slander and a related out-of-state bankruptcy action. This extremely complex multi-party case settled following a full-day session and a full-day (10 hrs) of telephonic follow-up.
- Wage & Hour mediation that started at 9am. Defendant employer literally started walking out the door at 7pm. The 664.6 Stipulation for Settlement was signed at 10pm.
- Investor Fraud case involving all elderly plaintiffs. Case settled after 2 full days of mediation plus a full-day (i.e., 8+ hours) of telephonic follow-up.
- Patent Infringement indemnification case involving 2 of the most prominent nationwide firms in the IP arena. Settled in a full-day session.
- Approximately half a dozen Franchisee v. Franchisor disputes involving one of the largest franchises in the world. On one of the cases, the parties asked Mr. Kaplan to conduct the mediation in the Franchisee's hometown of Bentonville, Arkansas. Although that case did not settle at the mediation in Arkansas, when Mr. Kaplan found out – months later -- that both sides battalions of attorneys had arrived in southern California; and, that the case was going to binding

arbitration following the upcoming weekend, he re-injected himself into the case, worked the phones throughout the weekend and got it resolved after 10+ hrs of telephonic follow-up.

- Wrongful Termination of an executive. Scorched earth litigation. The case settled for 3 million dollars after 12 hours of non-stop mediation.
- 30 year partnership dispute: \$2.85 million demand, zero offer and NO insurance -- with Defendant's first question to Mr. Kaplan being "How are you going to get this case settled if I'm not willing to pay that [expletive deleted] one stinking penny?!" Settled following one full-day session and approximately 15 hours of telephonic follow-up.
- Hotly contested attorney-fee dispute between two attorneys as to who was entitled to a \$1 million fee. Settled in one full-day session.
- Intellectual Property conversion case. A previous mediation with another mediator ended with the parties walking out in about an hour. This time, they stayed for the entire full-day session; and, the case settled.
- Prevailing Wage case that had previously been to four different mediators. Settled at 11pm on Sunday evening after an 'emergency' full-day Saturday session.
- Minority Shareholder dispute with both parties being represented by a Top 50 California law firm. The mediation began at 9am and the settlement was signed off on just minutes before midnight.
- A 'bet the farm' employment case involving high-tech company. Case settled after 2nd full-day session.
- High-stakes business dispute with complex underlying insurance issues. Case settled after a full-day session. In-house counsel from the Plaintiff multi-billion dollar publicly held company wrote the following email after the mediation:
 - **Rob - I just want to express my appreciation for your mediation services last Tuesday with respect to our lawsuit. You were one of the most effective mediators I've experienced and I've been through quite a few mediations as an in-house attorney. We are thankful to have this matter behind us and again, appreciative of your effective services.**
- A relatively small sexual harassment case with no insurance. It did not settle at the mediation. Mr. Kaplan kept calling counsel looking for some way to get it resolved. He ultimately sent an email to counsel entitled 'One last shot' – which presented the attorneys with an out-of-the box (face saving) idea that they both accepted.
- A patent dispute (involving 3 'Top 50' firms) with an underlying pivotal insurance coverage dispute. Mr. Kaplan did a Mediator's Proposal after a full-day session. 2 said 'yes' and 1 said 'no'. Notwithstanding the fact that each said that they would not budge another penny – Mr. Kaplan obtained each attorney's approval to send one final email which successfully convinced everyone to equally split the relatively small amount standing between settlement and no settlement.
- Wage & Hour class action in which right before the mediation, plaintiffs' counsel had significantly expanded the scope of the class. Defense counsel felt that mediation would be futile (and especially didn't want his client's General Counsel flying in from Kansas City under such circumstances.) Mediation went forward notwithstanding the above and the case settled at the conclusion of the full-day session.

- Wage & Hour class action involving a family run business hit hard by the downturn in the housing market – on the brink of going under. Union-related issue PLUS multi-million dollar demand. Everyone was ready to walk by 11am. When it became apparent that this case was not going to go the typical route, Mr. Kaplan assisted the parties in developing the following plan: Plaintiffs would dismiss their complaint (without prejudice) and enter into a 2 year tolling agreement which would thereby give the company a shot at surviving.
- A 1 in 100 employment pre-litigation (FEHA and Wrongful Termination) dispute that (notwithstanding plaintiff's attorney saying it is a 'non-starter') – the mediation actually resulted in plaintiff being re-hired (and the plaintiff and head of the company hugging!)
- Racial discrimination case. It settled for a 7 figure amount in a single full-day session.

Insurance

- One insurance carrier and 3 very well-known plaintiff firms who are collectively handling several hundred of the “underinsurance” claims arising out of the massive October 2003 southern California wild fires – agreed to have Mr. Kaplan do a “binding mediation” on their 4 most difficult cases.
- Disability Bad Faith case involving multi-million dollars of contract benefits and significant bad faith allegations. The case settled for the mediator's proposal made at the end of the first session. Following the mediation, plaintiff's counsel (former President of the California Trial Lawyers Association), wrote the following:
 - **When we began this mediation I thought there was a 10-20 percent chance of this case settling... Rob's grasp of the substantive law played a critical factor in assisting us in evaluating the case. But, the mastery really came from his intuitive sense and credibility that was essential if the parties were going to compromise their self-perceived value of the case.**
- Failure to accept policy limits case – i.e., the insured tortfeasor was exposed to significant personal liability and his insurance carrier to an inevitable “excess” bad faith case. This case settled in one full-day session.
- Bad Faith case in which plaintiff's initial demand was just shy of a million dollars. Case settled in a half-day mediation for a 5 figure amount. As difficult as it was to convince plaintiff and his counsel that his case was not worth anywhere near the amount demanded; later in the same week, another Bad Faith case (involving a completely different type of insurance) was mediated; only this time, the shoe was on the other foot. That case could have settled for 5 figures. However, new counsel (known for handling the specific kind of case in dispute) substituted in; and, the carrier had to be convinced that it made sense for it to settle for approximately 6 times the amount it could have settled just several months earlier. That case settled in a full-day mediation.
- Broker negligence/Bad Faith case in which the defendant insurance company, the premium finance company and one of the defendant brokers settled following a full-day mediation and 5 hrs of telephonic follow-up. The case went to trial as to the remaining broker defendant (who had NO E&O insurance.) The broker's defense attorney called Mr. Kaplan after the trial to inform him that although his client obtained a defense verdict – he thought that the stress of going thru trial “was literally going to kill his client...”. Defense counsel also indicated that “at the end of the day”, it ended up costing his client “more than 3 times” of what the case could have been settled for.

- Multi-million dollar Directors & Officers Liability insurance dispute. The case settled following a full-day mediation and a relatively small amount of telephonic follow-up.
- A hybrid insurance Bad Faith/Insurance Broker malpractice case in which each party and attorney flew into San Diego for a full-day session which resulted in a settlement. (They came in from Maine, Georgia, Alabama, Alaska, New York and San Francisco!)
- Numerous ERISA cases (mediated in San Diego, Orange County, Los Angeles and San Francisco.)
- Numerous Bad Faith and underinsurance Broker Malpractice cases arising out of the Southern California October 2003 and October 2007 wildfires.
- Bad Faith insurance case in which the parties were galaxies apart. The mediation was conducted entirely by telephone over the course of the week before trial was set to commence (involving attorneys and company personnel in 3 different states) -- and settled for an 8 figure amount on Sunday night -- 2 days before trial was set to begin.
- The City of San Diego sued its insurance carrier due to its failure to pay the City's significant 'Business Interruption' claim -- which arose when the City cancelled the Monday night (Chargers v. Dolphins) football game due to the City claiming that it had to make Qualcomm Stadium available for people who were evacuated due to the 2003 wildfires in San Diego. The case settled in a single full-day session, with Mr. Kaplan spending over 3 hours of that session on the telephone with the London-based insurance company executive having ultimate say so on the case.
- Disability Bad Faith case that Mr. Kaplan had been asked to mediate in Arizona. The case had been pending for nearly SIXTEEN years (going up to the 9th circuit 2 times and the United States Supreme Court once in connection with the ERISA issue.) It was fully and finally settled at the end of that single full-day session in Arizona.
- Bad Faith insurance case (serious enough to have the following people in the defendant insurance company's room: 2 partners from a Top 50 firm, the 1st name partner of another firm, high-ranking in house counsel from the parent company, head of the legal department from the target defendant insurance company, head of claims and the CEO of the target insurance company.) Lead Defense counsel told Plaintiff's counsel (who had recommended that Mr. Kaplan mediate the case) 'there is no way this case is going to settle at the 1st session...' The case settled at the 1st session.
- Excess Verdict Bad Faith case. Settled for \$10 million following 2 sessions (with people flying into San Diego from literally all over the world for the 2nd session) and hours of telephonic follow-up.
- Environmental (CERCLA) claim was settled in 1995. That settlement gave rise to a number of Arbitrations and nearly 7 years of inter-related coverage litigation. Mr. Kaplan did the 1st mediation in mid-2005. The parties came back for a 2 Day mediation session in the Fall of 2009. The case (FINALLY!) settled following the 2nd full-day session.

Serious Injury and Death

- Wrongful death case involving a shooting by a patron at a well-known restaurant and bar chain. Numerous challenging legal issues. The case settled in a one-day session.
- 14 plaintiff mediation involving 25 attorneys and insurance representatives (and a small army of structured settlement people.) Four of the most seriously injured plaintiffs were settled for an 8 figure amount following a 2 full-day mediation and 8 hours of telephonic follow-up.
- Helicopter crash case involving many defendants and a plaintiff who had irrational views of the value of her case notwithstanding the fact that her highly experienced lawyer had done everything he could to disabuse her of her beliefs. The case settled in one full-day mediation.
- Brain damage case in which the Plaintiff's counsel sent the following letter after that mediation:
 - **I represented the [seriously brain damaged] plaintiff in the mediation which began as scheduled at 9:00 a.m. [and] concluded at 11:00 p.m.! There were several parties, numerous attorneys, insurance adjusters, etc. Ultimately, through Rob's Herculean efforts, settlement was reached that was in the best interests of all concerned. . . I have participated in many mediations, with various mediators over the years. This is the first time that I have ever prepared and sent an unsolicited letter at the conclusion of a mediation.**
- Wrongful death products liability case: \$15 million demand. Zero offer. Settled in a full-day session plus approximately 8 hours of telephonic follow-up over the next several weeks.
- Wrongful Death case. Settled for \$6 million in 1 full-day session. The East Coast based claims person (who flew out to attend the mediation) subsequently wrote the following email:
 - **I believe Rob's insight, professionalism and neutrality was outstanding and produced a result simply not obtainable prior to his participation."**
- Within the same month that the above-referenced \$6 million Wrongful Death case settled, another Wrongful Death case that was, in many respects even more challenging, was settled for \$50,000.
- A serious burn injury case involving an amputation and brain damage as well. Many attorneys (and coverage battles between 2 primary carriers and between a primary and excess carrier.) It settled following 2 full-day sessions and approximately 5 hours of telephonic follow-up.
- A quadriplegic case, which involved novel foreign law issues and numerous other complex legal issues. It settled after 1 full-day session and approximately 8 hours of telephonic follow-up.
- A Civil Rights (section 1983) wrongful death case which settled following a full-day session and approximately 5 hours of telephonic follow-up. This case also involved divergent interests of 2 plaintiffs represented by separate counsel competing for the larger share of the final settlement amount.
- Ten (10) products liability cases (including 3 wrongful death actions) involving numerous plaintiffs' counsel, defense counsel, cumis counsel and insurance coverage counsel. They were all ultimately settled in a total of 13 full-day sessions.

- High profile wrongful death case involving a governmental entity in which several policemen on beach patrol ran over (and crushed to death) a woman who was sunbathing on the beach. The case settled following 1 full-day session and approximately 10 hours of telephonic follow-up.
- Civil Rights (section 1983 action) arising out of the death of a young man in the jail of an affluent seaside southern California town. The 'turning point' in the mediation was when the defendant's representatives reluctantly agreed to hear directly from the decedent's father, his heartfelt feelings as to how this tragic situation was allowed to occur.
- A seemingly simple slip & fall case turns out to be an extraordinarily complex and challenging mediation. First, there are complex medical issues surrounding Plaintiff's claim of RSD (Regional Sympathetic Dystrophy). Second, the Plaintiff is a teacher and the accident happened in her classroom – giving rise to a workers comp claim. Third, there are 3 defendants – the flooring company, the roofing company and the architect/construction manager. Fourth, the School District (who is a Plaintiff in Intervention) is taking a strong position that because it has express Indemnity Agreements with all 3 defendants, it is entitled to reimbursement of its nearly \$500,000 in self-insured comp benefits and attorney fees and costs it is out of pocket. Fifth, each defendant is saying that the school is the primarily culpable party and that there is significant comparative negligence on Plaintiff's behalf. The Plaintiff and the School have a BIG battle over who gets what from whatever pot of money is put together. The Architect's E&O Carrier takes the position that the Architect is an 'Additional Insured' under the Roofer's CGL policy (and the Roofer is responsible for all of his costs, etc. pursuant to an express Indemnity Agreement.) The Roofer's CGL carrier takes the position that (for a number of reasons) the Architect is not an Additional Insured under their policy. The Flooring company's CGL carrier is playing hardball and the Roofer's CGL carrier says, 'we won't pay 1 penny more than the Flooring company's carrier!' So... this case involved 2 full-day mediations and over 8 hours of telephonic follow-up! Day 1 was getting the 'case in chief' (which comprised all of the injured Plaintiff's claims and all of the Plaintiff in Intervention School District's claims) bracketed between 2 numbers that made all the parties at least willing to come back for a 2nd day of mediation. The second day involved a mediation between the 2 plaintiffs as to how any settlement would be allocated, a mediation of the workers comp case (to obtain a final C&R), a mediation between each of the 3 defendants as to the allocation issues, an 'equitable contribution' mediation between 2 of the carriers and the macro mediation – ie., getting to the right number that the 3 defendants would jointly be willing to pay and which the 2 plaintiffs would jointly be willing to accept. Session 2 ended with a 4 part Mediator's Proposal. The Flooring company's carrier (the one playing hardball) refused to pay the amount allocated to them. With permission of all the parties who said 'yes' to the Mediator's Proposal to continue negotiating and after numerous (8+ hours) of 'pull you hair out' telephone calls, emails and text messages -- we finally got it done!
- Excessive force brain damage case against the City of San Diego. This case came within 2 jurors of a Defense Verdict in the 1st trial. Second time around, plaintiff hit for nearly \$10 million (reduced to \$7.5 million.) Defendant City was asserting that the entire judgment should be reversed based on the City's governmental immunity defense. This case was mediated after the 2nd trial and was settled for \$3.5 million after a full-day session and hours and hours and hours of telephonic follow-up in the 7 months following the mediation.

Professional Liability

- Legal malpractice case arising out of the manner in which the defendant law firm defended a governmental entity and several city officials in an underlying action that involved highly publicized alleged defamation and other bad acts by those officials. Settled in a single full-day session.
- A pivotal insurance carrier who was not even a party to legal mal case (who, however, recognized that it would be a defendant in a subsequent Bad Faith case) attended the mediation and ended up essentially funding the entire settlement (thereby resulting in the defendant law firm's E&O

carrier not having to contribute anything.)

- Dental malpractice case arising out of an alleged “botched root canal” and the defendant dentist's alleged concealment of material information from the plaintiff. Case settled in a full-day session.
- Very early mediation of legal malpractice case that carrier’s counsel called “a monster and nightmare.” Settled at end of second full-day session.
- Insurance Broker malpractice case. At first, the insured refused to consent to settlement. Later he was convinced that it was in his best interest to consent; and, the case settled shortly thereafter.
- Legal Malpractice case arising out of a medical malpractice case. Plaintiff’s counsel sent the following letter after the mediation:
 - **Rob - I wanted to thank you again for your persistence in resolving our case. We had been to five previous settlement conferences and had never gotten close to a settlement before we came to you. This case involved a stubborn doctor, a dying plaintiff, an angry wife, and one very angry law firm. I take my hat off to you for the unique manner in which you effected settlement of the most difficult case I can remember being involved in.**
- Legal Malpractice case against a Top 50 California law firm involving a complex underlying international patent dispute. Case settled in 1 full-day session.
- Legal Malpractice case in which plaintiff’s counsel came in saying, ‘We aren’t settling for less than an 8 figure amount...’ After a full-day session, the case settled for \$100,000.
- Legal Malpractice case mediated in San Francisco against major law firm arising out of dispute pertaining to one of the most expensive houses built in northern California. Settled via a Mediator’s Proposal shortly after the full-day session.
- Legal Malpractice case against one of the largest law firms in the country (alleging 8 figures in damages) plus a counter-claim asserted by the law firm claiming nearly 1 million dollars of unpaid legal fees. The case settled at the conclusion of a single session with a (surprising yet very wise) agreement by both sides to do a ‘walk-away’.

Real Property Related Matters

- The largest Housing Discrimination case brought by the U.S. Department of Justice in the United States. The Defendant was one of the largest owner of apartment buildings in Los Angeles (high-profile owner of the L.A.Clippers -- Donald Sterling.) Four attorneys from the DOJ's office (in Washington D.C.) flew out for this 5 day mediation that began in January 2009 and ended in October 2009. There were also several private plaintiffs who had sued as well (giving rise to allocation issues as among the DOJ and the private plaintiffs.) There were many disputes between the defendants' primary and excess insurance carriers and vis-a-vis the carriers and the defendant insureds. There were 9 law firms involved (not counting the DOJ attorneys.) During the 3 consecutive full-day sessions in January 2009, 1 entire day was devoted to dealing with a multitude of issues in a nearly 20 page proposed Consent Order & Decree. Issues surrounding the Consent Decree and the insurance disputes derailed the prospects of reaching a settlement shortly after the initial round of mediations. There were 180 depositions taken before the parties returned for a 2 day mediation session in October 2009 (i.e., sessions 4 & 5.) After scores of

telephone calls and emails following the 5th session, the case finally settled (for the largest amount that the U.S. Government has ever obtained in a housing discrimination case.)

- Sub contractor v. General contractor dispute arising out of an 8 figure Los Angeles “mixed use” residential/commercial development project. Both parties claimed multi-million dollars in damages. Case settled at end of a 12 hour non-stop full-day plus mediation.
- Inverse condemnation case. Both counsel proclaimed that if Mr. Kaplan was able to settle the case, he should be “crowned Mediator of the Century”. The case settled; however, there was no coronation.
- Intensely litigated mold case (over a 2 year period) having been to 2 prior mediations with a different mediator. Contractual indemnity claims asserted by the Property Manager defendant against the Owner defendant. Contribution claims by Property Manager's CGL carrier against Owners CGL carrier (and visa versa.) Bad faith claims asserted against the 2 carriers and Buss reimbursement claims asserted by both carriers against their insureds. We were able to achieve a GLOBAL settlement in a half-day session.
- Plaintiff buyer alleged that a person who he had considered to be a quasi-friend – i.e., the defendant seller (who was an uninsured Real Estate broker) -- committed fraud by failing to disclose numerous defects and by failing to disclose that he was “double escrowing” the house in issue and as a result, putting nearly \$200,000 in his pocket in connection with the house in issue. The case settled following a half-day (5 hour) mediation
- Multi-million dollar mobile home park case which had previously been mediated with a highly prominent mediator. The case settled in one full-day mediation.
- Easement dispute/fraud case (and cross-complaint) -- which had been to 2 mediators before the case went to trial (wherein plaintiffs had obtained a verdict of both compensatory and punitive damages.) Before coming to Mr. Kaplan, the case had been to a 3rd mediator. The case settled following an 11 hour non-stop session.
- Habitability case against a prior and current owner of the alleged ‘slum’ apartment building (who collectively had 4 different liability insurance carriers – each pointing the finger at the other.) The case settled after a full-day session and several hours of telephonic follow up.
- Habitability case scheduled for a full-day mediation in L.A. Having previously worked with all the lawyers and the insurance companies in another habitability case -- we were able to get this one settled in less than 3 hours!

Other

- A Federal Magistrate Judge ordered the parties and their counsel from all over the United States (involved in 5 inter-related actions in Connecticut, Florida, Mississippi and California) to appear before Mr. Kaplan in a 2 day mediation. The cases involved 8 (and potentially 9) figure claims; and, among many other things, claims of extortion, RICO, missappropriation of trade secrets, a divorce action and employment law violations. Each of the parties and every attorney - without exception - came into the mediation saying that there was no way the case(s) were going to settle. At nearly 11pm on the 2nd day of the mediation a Global settlement was reached. Following the mediation, one attorney wrote the following letter:

- **"Our recent mediation with Robert J. Kaplan, Esq. involved five civil cases from various states and federal court districts. And a divorce action. And administrative proceedings. And parties with intensely powerful emotional investments who were asserting purportedly principal 'money is no object' contentions on all sides. A neutral who used the wrong approach at any point would have quickly driven one or more of the various parties or their counsel away from the bargaining table. Mr. Kaplan's manner, character, personality and persistence combined to craft a solution to a veritable blizzard of disputes that seemed (to the lay and professional people involved, and even to the federal court judge who referred us to Mr. Kaplan) simply insoluble. I almost still don't believe he did it. "**
- Sexual assault case by a woman of high social standing against an extremely high profile company. Plaintiff's attorney is considered one of the top attorneys in handling sexual assault cases and the lead defense firm is considered one of "the boutique" employment firms. This highly emotionally charged case settled in one full-day session.
- Sexual assault case involving (by her own attorney's admission) an "irrational" plaintiff and numerous serious insurance coverage disputes. Everyone involved thought, "this one is going to trial..." The case settled in one full-day session. After that mediation, plaintiff's attorney (one of less than 100 California attorneys who are certified by the National Board of Trial Advocacy as a civil trial specialist) wrote the following:
 - **I had a contentious [sexual assault] case with multiple defendants, complex coverage issues, liability disputes, and an exceptionally disturbed, irrational plaintiff with unreasonable expectations. I figured it was going to trial. . . . Rob pushed all the right buttons. He listened, he perceived the obstacles to resolution, he candidly shared personal experiences with the plaintiff to develop rapport and then he relentlessly did everything necessary to achieve settlement. His services were a bargain. In the jargon of car salespersons, he is truly a 'closer.**
- \$35 million probate dispute in which a name partner in a prominent defense firm disclosed to Mr. Kaplan (after the case had settled), "I told my client before the mediation that I honestly felt this case had less than a 10% chance of settling." Settled in a full-day session.
- Class action pertaining to (among other things) resold, converted and polluted graves in well-known cemetery PLUS 429 individual claims (and a myriad of underlying insurance coverage disputes.) There was a 2 day mediation followed by 6 weeks of extensive telephonic follow-up (which included a total of 18 counter-offers, each with multiple sub-parts) -- which culminated in a Global resolution of all Class-related claims and all of the individual claims.
- A highly contentious family trust dispute involving numerous complex legal and financial issues, which required telephoning 2 family members in a small village in Italy and involved a very stubborn Trustee. The case settled at approximately 6pm (3am in Italy) on the 2nd full-day of mediation.