



# Lozowicki ADR

DISPUTE RESOLUTION

**Edward Lozowicki**  
ARBITRATOR & MEDIATOR

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## Legal Career

- Full-time Arbitrator and Mediator, 2013-current
- Partner, Sheppard Mullin Richter & Hampton LLP, 2005-12 & Of Counsel, 2013-16
- Partner, Coudert Brothers LLP, 1995-2005
- Partner, Pettit & Martin LLP, 1978-95
- Senior Counsel, Owens-Corning Fiberglas Corporation, 1971-78.

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## Legal Experience

**LITIGATION AND ARBITRATION:** Over 40 years experience as trial counsel litigating and arbitrating construction, energy, real estate and commercial disputes. Served as panel chair, panel member or sole arbitrator in many arbitrations involving same fields of law. Acted as counsel or mediator in same fields. Tried numerous cases before federal and state courts, juries, arbitration tribunals, and administrative agencies, some with damages in high eight figures.

**CONSTRUCTION:** As trial counsel litigated or arbitrated claims for delay, disruption, acceleration, extra work, differing site conditions, construction defects, default termination, equitable adjustments, mechanics lien and bond claims, bid protests, "Spearin Doctrine" claims, prevailing wage and False Claims Act allegations. Negotiated and litigated contracts on major projects such as the Trans-Alaska Pipeline, the Haj Pilgrimage Terminal, the CEM Zinc Mining Facility, and Santa Clara Hall of Justice. Represented clients in international arbitration of claims on infrastructure projects under ICC, ICSID and CIETAC rules. Negotiated cost-plus, design-build, EPC, GMAX, turnkey, public-private partnerships (P3), and other forms of contracts. Advised clients on regulatory issues such as OSHA citations, Davis-Bacon compliance, and environmental regulations. Project experience includes highways, bridges, tunnels, prisons, hospitals, universities, oil refineries, chemical plants, pipelines, power plants, condominiums, shopping malls, office buildings, residential subdivisions, and luxury homes. Prior to private practice was corporate counsel for an international corporation representing it in construction claims, energy cases and employment matters.

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## Legal Experience

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**ENERGY & UTILITIES:** As trial counsel litigated issues such as contract termination, plant de-rating, price escalation, “claw back” provisions, output (“take or pay”) clauses, and unfair competition. Represented clients in gas and electric ratemaking and rule-making cases before Public Utilities Commission. Negotiated power purchase, wheeling, fuel purchase and interconnection agreements. Advised clients on PUC and FERC regulations, tariffs of the ISO, and permit requirements. Relevant projects included fossil, nuclear, geothermal, solar, wind, biomass, cogeneration, LNG, CNG and hydroelectric plants.

**COMMERCIAL:** Litigated as trial counsel such issues as contract termination, breach of warranty, UCC security interests, unfair competition, letters of credit, injunctions, specific performance, trade secrets, business fraud, interference with prospective economic advantage and other business torts. Negotiated vendor-purchaser, marketing and license agreements, purchase orders and other commercial agreements.

**REAL ESTATE:** Litigated as trial counsel issues including breach of contract, specific performance, rights of first refusal, options, joint venture disputes, commission claims, and defense of mechanics lien and stop notice claims. Negotiated purchase and sale agreements, leases, letters of intent and joint venture agreements.

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## Alternative Dispute Resolution Experience

Member of the following Panels:

- American Arbitration Association (1983-current): Large Complex Case, Construction, Commercial, Energy and Real Estate Panels
- Financial Industry Regulatory Authority (FINRA), Public Arbitrator Panel
- International Institute for Conflict Prevention and Resolution (CPR), General Commercial Panel
- California Office of Administrative Hearings, Panel for Public Works Disputes.

Over 35 years' experience as Panel Chair, panel member or sole arbitrator in numerous construction, commercial, energy and real estate cases through hearing and award such as:

- **Cogeneration Plant:** Chair of panel in dispute over tax and contract issues between the Seller and Purchaser
- **Biomass Power Plant:** Panel Chair in dispute regarding performance guaranty and rescission
- **Energy Marketing Contract:** Panel Chair on dispute over termination of power supply contract between Energy Service Provider (ESP) and customer

## Alternative Dispute Resolution Experience

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- **Light Rail Subway:** Panel member in dispute over claims and counterclaims involving tunnel boring machines (TBM)
- **Gas Fired Merchant Plant:** Panel member in dispute over termination and damages between EPC contractor and subcontractor
- **Shopping Mall:** Panel member in dispute between owner/builder and contractor regarding claims for delay, disruption and acceleration
- **Interstate Freeway Project:** Sole arbitrator in dispute between contractors regarding claims of delay and environmental contamination damages
- **Juvenile Detention Center:** Sole arbitrator in dispute over claims and damages for unpaid change orders, delay, disruption and acceleration
- **Geothermal Power Project:** Sole arbitrator in contract termination dispute between owner and developer of geothermal wells
- **County Medical Center:** Sole arbitrator in dispute over claims for lost profits between parties to a Teaming Agreement
- **Real Estate Option Agreement:** Sole arbitrator in disputes between seller and buyer regarding exercise of option to purchase real estate and related damages
- **Big Box Superstore:** Sole arbitrator in dispute between general contractor and subcontractor regarding termination and construction defects
- **Real Estate Development Contract:** Sole arbitrator in dispute over residential development losses between joint venture partners
- **Luxury Residence:** Sole arbitrator in dispute between owner, general contractor and subcontractors regarding claims and cross-claims for construction defects
- **Shopping Center:** Sole arbitrator in dispute over change in site conditions and multiple change orders between contractor and developer.

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## Alternative Dispute Resolution Training

- ABA 13th Annual Arbitration Training Institute, 2020
- ABA 12th Annual Arbitration Training Institute, 2019 (Faculty)
- AAA Construction Conference, Techniques for Managing the Growing Complexities of Construction Disputes (2019)
- AAA Construction Conference, Adapting Dispute Resolution Strategies to Today's Complex Construction Projects, 2018
- ABA 10th Annual Arbitration Training Institute, 2017 (Faculty)
- AAA Construction Conference: Navigating the Unique Aspects of Construction Arbitration, 2017

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## Alternative Dispute Resolution Training

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- AAA International Arbitration Summit, 2016
- AAA Consolidation and Joinder In Construction Arbitration: Ignorance Is Not Bliss, 2016
- AAA Clarity in Award Writing, 2016
- AAA/ICDR Mediation.org Panel Conference, 2016
- AAA Arbitrator Use & Misuse of Experts, 2015
- AAA Crossing the Line: New Developments in the Law of Arbitral Jurisdiction, 2015
- AAA Roundtable – Arbitration Panels, 2015
- AAA Developments in Arbitration Law: Testing the Boundaries of Court Intervention, 2015
- AAA Sanctions in Arbitration: Everything You Might Not Know that You Should Know, 2015
- AAA Handling Pro Se Parties in Arbitration, 2015
- AAA Construction Conference – Keeping Arbitration Lean, 2015
- AAA Damages for Neutrals, 2014
- AAA E-Discovery 2.0, 2014
- AAA Guided Choice: Innovations in Mediation to Get Better Settlements at Less Cost, 2014
- AAA “Exceeded Powers”: Recent Trends in Challenging Arbitrator Authority, 2014
- AAA Managing the Costs of Exchanging ESI, 2013
- AAA Essential Mediation Skills for the New Mediator, 2013
- AAA What’s a Respondent Like You Doing in a Place Like This? Confronting Arbitrability and Jurisdiction Issues in Arbitration, 2013
- AAA Managing the Arbitration Process for Efficiency & Economy Following the Preliminary Hearing, 2012
- AAA Maximizing Efficiency & Economy in Arbitration: Challenges at the Preliminary Hearing, 2012
- Various other ADR training, 1981-2011

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## Honors & Awards

- Fellow, College of Commercial Arbitrators
- Fellow, Chartered Institute of Arbitrators
- Fellow, Construction Lawyers Society of America
- Distinguished Service in Pursuit of Justice Award, St. Thomas More Society
- Adjunct Professor of Alternative Dispute Resolution Law, School of Law, Santa Clara University
- Rated AV-Preeminent, Martindale Hubbell

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## Professional Licenses

- Admitted to the Bar: California, 1970
- U.S. District Court, Northern, Central, Southern and Eastern Districts of California, 1974
- U.S. Court of Appeals, Ninth Circuit, 1984
- All state courts in California.

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## Professional Associations

- Co-Chair, Arbitration Committee, ABA Dispute Resolution Section (2017-19)
- Member, Governing Council, ABA Dispute Resolution Section
- ABA Construction Industry Forum
- Past Chair, Legal Advisory Committee, AGC of California

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## Education

- St. Joseph's University (AB)
- Santa Clara University (JD).

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## Select Publications and Speaking Engagements

### BOOKS

- Mechanics Liens, Construction Bonds and Stop Notices, Sheppard Mullin, 2012
- "Energy Contracts: Negotiating Strategies for Added Value," Energy Law Client Strategies: Leading Lawyers on Litigation, Negotiation and Industry Regulations, Aspatore, 2007
- "Contracts, Claims, and Dispute Resolution," Construction Accounting Deskbook, CCH, 2005
- Presenting and Defending Construction Claims in California, Lorman, 2004
- Design-Build/Turnkey Construction in California, Lorman 2002
- Binding Arbitration of Contract Disputes in California, American Arbitration Association, 1988

### SELECT ARTICLES

- "Second Circuit Reaffirms Manifest Disregard As Ground for Vacature," New York Dispute Resolution Lawyer, 2017
- "American Arbitration Association Revises Construction Arbitration Rules, ABA Litigation Section, Alternative Dispute Resolution Newsletter, 2016
- "Parsing Arbitration Provisions in Construction Contracts", Law 360, 2012

## Select Publications and Speaking Engagements

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- “Special Advisory: New Mechanics Lien Act in California”, Sheppard Mullin, 2012;
- “A Model Litigation Plan for Construction Claims”, Managing Construction Litigation, Aspatore 2009
- “Public Private Partnerships and Public Works Law”, Construction Superconference, 2008
- “Can the Spearin Doctrine Survive in a Design Build World”, Journal of the American College of Construction Lawyers, Winter 2008
- “Electricity Restructuring – A New Ball Game,” Geothermal Energy Association, 1997.

### **SELECT SPEAKING ENGAGEMENTS**

- Special Power of the Commercial Arbitrator, ABA Dispute Resolution Section, Spring Conference, 2020
- Dispelling the Myths of Arbitration, ABA Webinar, 2019
- Revamping Arbitration to Meet Client Needs, ABA Dispute Resolution Section, Spring Conference, 2019
- Does the Arbitrator Have Jurisdiction and Who Decides, ABA Dispute Resolution Section Spring Conference, 2018
- Award and Post Award Issues, ABA Arbitration Institute (Faculty), 2017
- Tricky Business: Avoiding Pitfalls in Drafting Awards”, ABA Dispute Resolution Section Spring Conference, 2017
- Dispositive Motions in Arbitration, ABA Dispute Resolution Section Spring Conference, 2016
- Game-Changing Cases in Arbitration: Impact on Construction Claims, AAA Webinar, 2015
- Dispositive Motions in Commercial Arbitration, AAA, 2015
- Recent Developments in Arbitration Law and Impact on Commercial Cases, AAA, 2014
- “Recent Developments in Arbitration Law and Impact on Construction”, AGC of California 2013
- “Pitfalls of Public Works Contracting”, Sheppard Mullin 2010
- “Public Private Partnerships: The New Wave in Infrastructure Construction”, Construction Superconference 2008
- “Mechanics Liens, Stop Notices and Construction Bonds: Special Remedies in California,” Associated Builders & Contractors Seminar, 2007
- “Defective Specifications: Can the Spearin Doctrine Survive In A Design-Build World,” CLE International Public Works Seminar, 2007