

# Mediation Magic

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Mediation, when viewed as a serious step in the dispute resolution process by the parties (or even if not), can be the best way to achieve a successful outcome to a litigated matter.

Often, mediation is approached with a lesser degree of preparation without developing a clear and well-supported picture of damages, a solid response to the other party's damage claim, or support for one's own counterclaims

Our experience has shown us that the chances of a successful mediation outcome are greatly improved if a near "trial-like" mentality is applied to the preparation process, including the decision as to how and when to involve your experts/consultants.

A couple of recent SHL engagements demonstrate what can happen when the above principles are applied:

- **Know your facts, strength and weaknesses**
- **Prepare trial-quality presentation materials**
- **Bring your expert / consultant**

### *I. Real Estate / LLC Matter*

Our client, owner of a sizable food-processing company, was a member of the LLC that owned the company's plant, along with a number of other commercial properties. Another party was the managing member of that LLC, and the parties were also jointly involved in several agricultural businesses.

Among the many points of dispute, our client claimed that the managing member of the LLC had taken excess management fees over a number of years. SHL, in addition to providing analysis on all issues in dispute, prepared a comprehensive comparison of the fees taken by the managing member to norms and averages from several reliable sources, as well as from our own research and survey

A mediation was held, and a substantial, though not acceptable, offer was made to our client to settle all claims. The parties became stalemated. Counsel for our client then made available to the mediator, as well as to the adverse party, our analysis of management fees, demonstrating that millions of dollars in excess fees had been taken over several years.

Our presentation was "trial-ready" and included graphic representation of the fees versus industry norms, as well as complete reference to sources of information.

The mediator came back with an additional \$2 million, and the case settled. Was our analysis responsible for that extra \$2 million? We'd like to think so.