

# VERDICTS & SETTLEMENTS

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## ADR academic

*Thomas Stipanowich works at different levels to find ways of moving settlements forward.*

By Don DeBenedictis  
Special to the Daily Journal

When Thomas Stipanowich sits as an arbitrator or mediator, he naturally thinks carefully about the facts and issues of the case before him. He also thinks about the process being used, its rules, protocols and best practices.

“I’m constantly thinking about these things as I’m engaged in dispute resolution,” he said. “I’m always working on a couple of different levels. I’m thinking about trying to do the best job I can as an arbitrator or mediator and also looking for new solutions.”

These things matter to Stipanowich because he is a leader in the academic study of arbitration and mediation. He has been the dean of the Straus Institute for Dispute Resolution at Pepperdine University School of Law, where he still teaches the subjects. He led the International Institute for Conflict Prevention & Resolution, a New York think tank. He is a co-author of a law school text on alternative dispute resolution and, while still a young law professor in Kentucky, co-authored a five-volume treatise on the Federal Arbitration Act.

“He is one of the leading scholars in arbitration,” said Richard C. Reuben, a professor at the University of Missouri

School of Law and himself an alternative dispute resolution casebook co-author.

Robert Davidson, the executive director of JAMS’ arbitration practice, calls him “one of the seminal figures in ADR” and “a thought leader” in the field. “He has vast experience. ... He’s on everybody’s short list if you have a substantial matter and you want it resolved in a wholly professional manner,” Davidson said.

Stipanowich specializes in large, complex construction and other commercial disputes, where his vast knowledge can be helpful in difficult mediations and arbitrations, the lawyers said.

Reuben pointed out that Stipanowich has a deep knowledge of arbitration law, including its most challenging issues. “To the extent that may be relevant in an arbitration matter, the parties could not be in better hands,” he said.

But he does not flaunt his expertise, according to Lowell J. Noteboom of Stinson LLP, who arbitrated a complex construction dispute before Stipanowich. “He is not at all professorial or pedantic. He’s a thoughtful listener who asks appropriate questions, collaborates with his fellow panel members and doesn’t wear all of his accomplishments on his shoulder.”



Photo courtesy of Pepperdine University

### Thomas Stipanowich

JAMS  
Los Angeles

**Areas of specialty:**  
construction, complex litigation

Stipanowich believes his sophisticated knowledge of the processes and methods available for resolving disputes is valuable to parties because it allows him to propose ways to increase efficiency and effectiveness. “I’m always ticking off the various possibilities for moving forward,” he said.

With his deep expertise, he can take a more active role in overseeing arbitration matters than some neutrals. “I try to be as proactive as possible and actively manage the process so that it will be as expeditious and cost-effective as it can possibly be while still providing the parties with a fair hearing.”

He also is willing, sometimes, to rule on preliminary motions, which many arbitrators won’t do, he said.

A native of Chicago, he initially trained as an architect. An interest in city planning and policy led him to earn a juris

doctorate from the University of Illinois College of Law in 1980. He then became a litigator with a major construction law firm in Atlanta, Smith Currie & Hancock LLP.

It was there that he found an interest in the nascent field of alternative dispute resolution. In fact, in 1981, he participated in what he believes was one of the first construction mediations.

In 1984, he joined the faculty of the University of Kentucky, where he taught contracts but also wrote a great deal about ADR. His writings led to work with the American Arbitration Association and with the conflict prevention and resolution think tank in New York. That work attracted the attention of noted contracts scholars Ian R. Macneil and Richard E. Speidel, who asked him to co-author their five-volume treatise on federal arbitration.

“I think the reason they drew on me was not just my legal knowledge but my understanding of practice and practical realities,” said Stipanowich, who was also of counsel to a regional law firm while a professor. “I’m not as much a theoretician as someone who is exploring the evolution of practice and where it’s going and how we can improve what we do.”

He did do some exploratory ADR work in Kentucky, such as serving as a project neutral to resolve problems as they arose during a construction project or leading project partnerings, in which all the key parties in a construction project would meet in advance to thrash out and forestall potential problems.

Stipanowich moved to New York in 2001 to be president and CEO of the think tank. He came to Pepperdine and the Straus

Institute in 2006 as academic director and then dean.

Along the way, he co-authored the text “Resolving Disputes: Theory, Practice, and Law,” now closing in on a fourth edition. He helped found the College of Commercial Arbitration and then was the editor-in-chief of its influential “Protocols for Expedient, Cost-Effective Commercial Arbitration.”

He is proud of that one. “It led a lot of organizations including JAMS to reevaluate their offerings, to develop streamlined or expedited rules, and to develop discovery protocols. A lot of arbitrators, I think, changed their way of thinking about a variety of issues.”

Currently, he and the group are looking at the interplay between mediation and arbitration such as mixed-mode processes that shift from arbi-

tration to mediation and back again.

Last year, Stipanowich stepped down from a leadership role at Pepperdine to take on more arbitration and mediation work with JAMS. He still teaches contracts and introductory ADR classes.

He also paints and draws, including a series of posters promoting the Straus Institute. And he is working on his passion project, a book he’s calling “The Lincoln Way” about how Abraham Lincoln developed as a manager of conflict.

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*Here are some attorneys who have used Stipanowich’s services or know him professionally:* Lowell J. Noteboom, Stinson LLP; Robert B. Davidson, JAMS; Michael McIlwrath, Baker Hughes; Richard C. Reuben, University of Missouri School of Law.