

# VERDICTS & SETTLEMENTS

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## Search for the Win-Win

*Don Morrow seeks to forge outcomes both sides can live with, while acknowledging not everyone will be happy.*

By Carter Stoddard  
Daily Journal Staff Writer

**I**RVINE — As a business litigator at Paul Hastings LLP for 42 years, Don Morrow is no stranger to high-pressure disputes.

The longtime Orange County attorney said he tried 45 trials to judgment, both jury and non-jury, before becoming a mediator at JAMS a year ago.

One of the biggest cases of his career was representing the Irvine Company in its dispute against heiress Joan Irvine Smith, who argued her 11% stake in the company was worth more than the \$114 million she was offered in a share buyout. A 17-month trial in Detroit over her demand for \$300 million was the longest case of his career. It resulted in a payout just a few million dollars more than his client's original offer, he said. However, the payout to Irvine Smith came nine years later, and the company paid her \$250 million, with interest.

This kind of long-form litigation, characterized by stubborn holdouts and bitter disagreement left Morrow well-seasoned for mediation work, he felt.

Asked how he spent his free time in Detroit, Morrow said he put his rental car through its paces. "I'd go out when

it was icy and do [donuts] in the parking lot," Morrow said, referring to driving in circles and drifting, a winter pastime called "doing donuts" in Michigan.

At JAMS, Morrow has mainly handled fraud, breach of contract and real estate cases.

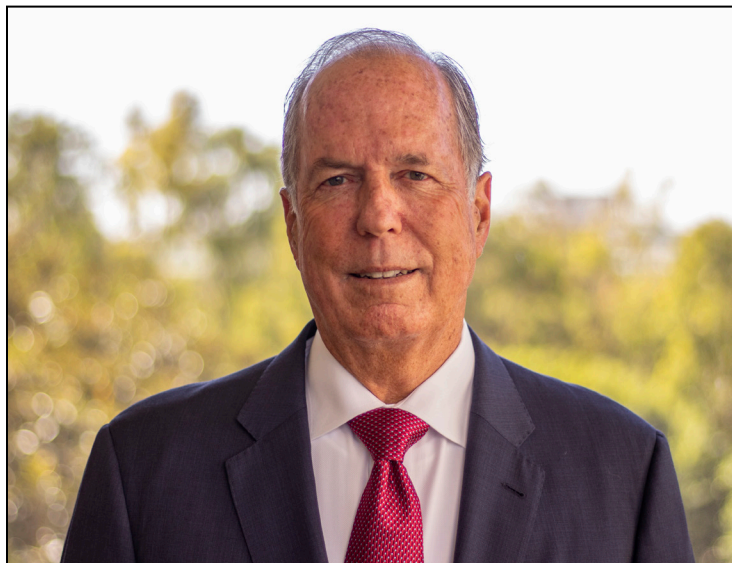
In particular, Morrow has comprehensive experience in an aspect of real estate law involving ground leases.

He described another case he handled for the Irvine Company that centered on the method. "The Irvine Company did thousands of ground leases, where they would ground-lease the property for 55 years; the ground tenant would build the building, rent it out. After 55 years, it goes back to the ground lessor," Morrow said.

If the parties can't agree on ground rent after 25 years, the matter goes to arbitration.

Most real estate disputes hinge on the assessment of appraisers, who typically serve as the only witnesses in those cases, Morrow noted.

"You're looking at other similar property, ... of a comparable size and nearby," Morrow said. "In my experience, you can have the same property, and a plaintiff and defendant — if you look at the appraisers — they're typically three times apart. If



Nicole Tyau / Daily Journal

one appraiser says it's worth \$10 million, the other will say it's worth \$30 million."

In addition to his mediation practice, Morrow is an avid golfer and student of the Civil War period. He spoke glowingly of a recent trip he'd taken with his wife and adult son to the site of the Battle of Gettysburg, laughing as he acknowledged assigning his family homework in preparation for their trip to Pennsylvania. The history buff spoke reverently of standing atop Cemetery Hill, where a massive infantry assault of 15,000 confederate soldiers dashed themselves against a superior union position in one of the bloodiest days of the conflict that came to be known as Pickett's Charge.

Much like understanding history, Morrow said negotiating the gap between parties takes an individual with experience and a knowledge of the industry.

"You want to look into their

### Donald L. Morrow

JAMS  
Irvine

#### Areas of Specialty:

Antitrust/competition, business and commercial, class action, mass tort, construction, intellectual property, professional liability

reports: What are they basing their assessment on? Are they using tried and tested methods or not?" Morrow said.

Vatche Chorbajian, a sole practitioner who hired Morrow to mediate an aerospace parts manufacturer dispute said, "Our case involved a multi-party business dispute. The parties had different needs and each participated with an agenda of their own, but Don was excellent. Immediately, he took control as mediator, did not waste time, and effectively zeroed in on the moving parts

and artfully and professionally resolved it.”

While equitable resolutions are ideal, Morrow said an even split is rarely his end goal.

“I’m not necessarily trying to get to the right number. I’m trying to get to the number where they’ll cut a deal,” Morrow said. “It’s very commonly not a number in the middle. You have to look at the strength of each party’s case, their financial wherewithal.”

Morrow mentioned work he’d done for Dow Chemical Co. as an attorney gave him critical insight into how the cost of litigation factors into a company’s or an individual’s decision making. By way of example, he said Dow has roughly 500 lawsuits against it at any given time.

“Litigation for them is part of their cost of doing business, whereas a lot of people have one case, and it’s the most important thing to that businessperson. So you need to assess that, and you need to share with them the risks,” he said.

Reminding parties each tried case has a winner and a loser, and that they may end up the loser is a key part of the mediation process, Morrow said. Included in those risks are the costs to get to a decision, which has become prohibitively high for many. Morrow also highlighted the frequency with which trials are delayed, another expense multiplier.

“Everybody always believes they’re going to win, but in most cases there’s a winner and a loser. I want to try to get people to understand that and see if there’s a win-win,” Morrow said.

“Don is personable, sharp, and prepared,” said Tyler Andrews of Greenberg Traurig LLP. “He was able to gain the respect of a particularly entrenched client and get him to see that the economics of continued litigation did not make sense given the amounts at stake, regardless of the principles involved.”

In dealing with captain of industry personalities common

to business disputes, Morrow relies on his past work in a given industry to try to back them down.

“I dealt with that when I was a practicing lawyer. I had clients who would tell me early on, ‘This case is about principle; money is not important.’ Well, six, eight months or a year later, after they’ve paid some bills, the value of the principle tends to decrease a bit, and reality sets in. So we talk about that,” Morrow said.

Lisa Gibson of Nelson Mullins Riley & Scarborough LLP spoke to the value of Morrow’s industry experience on an aerospace case. “Don’s expertise helped because, in private practice, he had worked on cases in the same industry and same area of law as was involved in our matter. Don did not give up. He pushed until the end. I must admit, I did not think that the matter would settle, but it did.”

Half of Morrow’s mediations are resolved on the first day, he said. If proceedings stretch

longer, Morrow said he will employ a mediator’s proposal to explain how he arrived at a given figure. He said he’s used a proposal three times and had it accepted twice.

“I try to follow up with my cases afterwards,” Morrow added, noting sometimes mediation is tantamount to expensive therapy. “They just want to tell their story, and well, they can tell it to me.”

*Here are some attorneys who have used Morrow’s services:* Steven Karic, Hamburg, Karic, Edwards & Martin LLP, Los Angeles; Stephen McNamara, Law Offices of Stephen M. McNamara, Irvine; Randolph Moore, Snell & Wilmer LLP, Orange County; Lisa Gibson, Nelson Mullins Riley & Scarborough LLP, Torrance; Vatche Chorbajian, Law Office of Vatche Chorbajian, Rancho Santa Fe; Tyler Andrews, Greenberg Traurig LLP., Orange County

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