

VERDICTS & SETTLEMENTS

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The Ambassador

David Huebner seeks to avoid confusion when handling disputes as a neutral.

By Sean Kagan
Daily Journal Staff Writer

David Huebner, a former U.S. ambassador to New Zealand and Samoa, joined JAMS after 25 years of fulltime arbitration and intellectual property practice.

“Efficiency” is the key word for Huebner in his approach as a mediator and arbitrator.

“As a litigator and arbitration advocate before becoming an arbitrator, I saw and often suffered great inefficiency in certain dispute processes caused by casual or inattentive management by tribunals,” Huebner said. “Now that I am a neutral, I focus on preventing things from bogging down or going off track.”

Huebner said one of his first cases as an arbitrator was a health care reimbursement dispute involving some three dozen parties.

“It showed me just how many ways inefficiencies, redundancies and confusion can creep into even a carefully conceived process when party interests and counsel positions sort into multiple, shifting clusters,” Huebner said. “My current approach to procedural orders, meet-and-confer instructions, and preliminary conference preparation were all influenced by that case experience.”

Huebner said he is also a firm believer in making full use of preparatory calls in mediation.

“I always spend a good bit of time on the phone with counsel for each side separately in advance of the mediation day, so I get the best sense of what the dispute is about and the strengths and weaknesses on both sides,” Huebner said.

Before the individual calls, he invites attorneys for each party to submit briefs with their positions, arguments and where they think the opening might be for settlement. In arbitration, he sends out a detailed agenda in advance of the first conference call with counsel.

“I do that so when we hold the preliminary conference counsel have already considered the issues and made an attempt to reach agreement on as many procedural, schedule and structural matters as possible,” Huebner said.

“It is the first and best opportunity for setting the tone of the subsequent proceedings and orienting counsel expectations,” Huebner explained, adding he does not insist clients participate in the first preliminary conference, which



Thomas Kurtz / Special to the Daily Journal

can last an hour or two.

“I am sensitive to both the difficulty of a lawyer’s job and the personal and professional dynamic between lawyer and client,” he explained. “I do not chastise lawyers in front of their clients, and I look for opportunities to compliment counsel when their clients are present.”

Munger, Tolles & Olson LLP partner Grant A. Davis-Denny, who appeared before Huebner in an arbitration, said the neutral treated both sides fairly and issued a well-reasoned decision.

“During the hearing, he let both sides put on their evidence without undue limits,” Davis-Denny recalled, “and appeared to carefully listen to the testimony and the attorneys’ arguments.”

At the beginning of arbitration, Huebner said he makes comprehensive disclosures.

“My disclosures exceed what the law requires,” said Huebner, who frequently handles technology, life sciences and entertainment industry matters. “The sectors in which I practice are large and diverse, so I do not frequently encounter cases with parties or lawyers who have been involved in prior cases with me.”

During arbitration, Huebner also said he allows counsel to file dispositive motions.

“I take them seriously and look at them closely,” said Huebner, adding that he denies most of them. “In most of the ones I have faced ... there have been material questions of fact that cannot be resolved in the context of the motion,” he explained.

Todd M. Sorrell, of counsel at Anglin Flewelling Rasmussen Campbell & Trytten LLP, said Huebner served on an international arbitration panel handling a complex case for one of his clients.

“He seemed to have the best grasp of the voluminous documents and testimony presented in the matter,” Sorrell said. “He enjoyed what he was doing, understood the law, and was masterful at bringing together very different arbitrator styles and personalities to issue a unanimous award.”

Jones Day partner Steven L. Smith was before Huebner in an international commercial arbitration involving the termination of a distributorship covering Africa and the Middle East.

“Ambassador Huebner is one of the most capable international arbitrators available today on both the commercial and investor-state sides of the practice,” Smith said. “If he’s on your tribunal, you can count on a principled, rigorously analyzed and commercially sound outcome.”

Huebner said mediation becomes difficult when parties are heavily invested personally.

“The challenge is identifying the interests beneath the potentially emotion-driven positions and focusing parties on the intersection of those interests,” he said.

Another pitfall for attorneys is not ensuring that the right decision-maker is at the mediation and remains involved, he said.

“Making sure that your decision-maker is not only physically, but mentally present certainly advances the process — even

David Huebner

JAMS / Los Angeles

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if the principal at that moment on that particular day would rather be elsewhere,” Huebner said.

He also advised against the conversation going immediately to numbers.

“If people are anxious to jump to numbers when they walk in, they are arguing positions, not interests,” Huebner said. “It is always more productive to explore interests before slicing and dicing offers.”

Huebner said he invites each side into private session to explain the case to him and then asks rounds of questions to collect as much information as possible.

“The information I collect is not just what people are saying, but how to interpret and evaluate those words and what might be behind them,” Huebner explained.

Trial dates, meanwhile, are not always a powerful tool for resolution, according to Huebner.

“In my experience, most successful resolutions occur earlier in the process, when the two sides are wrestling with their positions and what the strengths and weaknesses might be,” he said.

Quinn Emanuel Urquhart & Sullivan LLP partner Robert M. Schwartz appeared before Huebner in an appellate arbitration last year.

“Each side got a fair and deeply-considered evaluation of the points they raised,” Schwartz said. “From start to finish, it was an impressive performance that even a three-judge panel of the California Court of Appeal would be hard-pressed to replicate.”

Here are some attorneys who have used Huebner’s services: Linda Burrow, Netflix Inc.; Michael J. Lyons, Morgan, Lewis & Bockius LLP; Grant A. Davis-Denny, Munger, Tolles & Olson LLP; Robert M. Schwartz, Quinn Emanuel Urquhart & Sullivan LLP; Steven L. Smith, Jones Day; Todd M. Sorrell, Anglin Flewelling Rasmussen Campbell & Trytten LLP.