

Whatever It Takes

To settle cases, Michael Ornstil takes an active role

By **Fiona Smith**
Daily Journal Staff Writer

SAN FRANCISCO — Michael Ornstil has always been an avid athlete and competitor and that mindset follows him in his work as a mediator.

“I feel like I’ve failed if I haven’t settled the case,” Ornstil said. “I feel like it’s my job to do whatever’s necessary to get a case settled.”

“Oftentimes that means not just being a messenger, but as I call it, poking, pushing, prodding and challenging and taking some risks,” Ornstil said.

“So I’m not afraid to tell folks at the appropriate time... ‘Hey I don’t necessarily agree with you,’ or ‘Here’s something I think you’re missing,’ or ‘I think here’s what the defendant’s closing argument is going to sound like,’ or ‘Here’s what a cross-examination of your witness is going to sound like, be prepared for that.’”

Ornstil has had years to develop his mediating skills — starting out in 1994 when alternative dispute resolution was not the big business it is today. He spends most of his time on personal injury, wrongful death, landlord-tenant matters and business disputes. He has become so busy with mediations that he decided this year to stop doing arbitrations.

Ornstil’s approach is informal and he aims to put people at ease — particularly those who are not familiar with mediations. He never wears a suit and says he tries to make time to talk about things not related to the mediation, so that people don’t feel under the gun all day in a stressful situation.

Each case has unique aspects and he adjusts his approach based on the personalities involved in the mediation, Ornstil said.

“It’s really important that folks are heard and be asked questions and you listen to them, because if you listen to them I think they’re much more likely to trust you and much more likely at the end of the day to listen to your advice or to your pushing,” Ornstil said.

Over the years, he’s handled many

disputes involving high profile athletes and musicians, cases involving terrible tragedies and others that are just downright weird.

He is currently mediating a settlement with families of the five women who were killed when the limousine they were traveling in caught on fire on the San Mateo Bridge in 2013. The group was out for a bridal shower when the car caught fire, trapping the bride and several others in the vehicle.

One mediation he handled involved a party that a well-known rock band threw in its tour bus in San Francisco. One of the band members decided to see how hard he could hit all the parties in the rear end with his hand.

Everyone was having a good time until he hit one particular man in just the wrong spot and ended up rupturing his anus. He was seriously injured and sued — with the case ending up before Ornstil.

In what he calls his most bizarre case, he learned how fragile the human psyche can be. It involved a retired man from Modesto who after eating some bad-tasting raisins, realized that the package had maggots, Ornstil said.

The man returned the raisins to the store and then went to the emergency room to see if he should have his stomach pumped. After the hospital told him that there was no harm from ingesting the maggots he went home.

“He gets home and his life changes abruptly and dramatically and potentially permanently,” Ornstil said.

“He out of the blue has this reaction, it’s not a physical reaction, it’s a mental reaction,” Ornstil added. “He becomes a basket case — he’s consumed by the fact that he’s ingested maggots. He ... stops communicating with his wife, becomes a recluse and his whole personality, his whole life changes.”

Doctors and psychiatrists were unable to cure him and his wife sued the supermarket and the raisin producer in order to fund additional medical help to try to return him to normal.

Lawyers who have long used Ornstil said he’s widely respected by all sides and that he has a special touch with people.

He’s able to get people to let their guard down, said William B. Smith, a partner with Abramson Smith Waldsmith LLP.



Fiona Smith / Daily Journal

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Areas of specialty: personal injury/torts, landlord/tenant disputes, business, real property, construction defect

“He has a way of getting people to talk from the heart as human beings and that’s what it takes to settle a case sometimes,” Smith said.

Attorney David J. Samuelson remembers a mediation in which he represented a woman who had caused a crash of more than 20 vehicles, killing three people and injuring 10.

“Mike did a masterful job of bonding with the represented and unrepresented individuals in an effort to achieve an unthought-of global settlement,” said Samuelson, a partner with Bennett, Samuelson, Reynolds, Allard, Cowperthwaite & Gelini PC.

“It was masterful how he got all these people to see the wisdom of settling their cases,” Samuelson said. “I’ve never been in a mediation where somebody had so many moving parts and was able to wrap it up.”

Despite thinking they had no chance to settle, Ornstil worked the phones after the mediation and settled everything. “There could have been 15 lawsuits as a result of [the accident] and no one filed a suit, it was amazing,” Samuelson said.

Christopher J. Nevis remembers being astounded at Ornstil’s ability to settle one case he worked on that involved, on the defense side, four insurance companies battling it out amongst each other and all facing two plaintiff’s attorneys.

Everyone “was strident in their positions and didn’t want to budge and he was able to get people to move,” said Nevis, a partner with Lewis Brisbois Bisgaard & Smith LLP.

“He’s not someone who just picks a number and tries to drive people to that number,” Nevis said. He takes the time to really work through the numbers with both sides and “as a result people like working with Mike and trust Mike

and they have a lot of respect for his opinions because they’re thought out and not rushed.”

Ornstil moved into mediation after working for 12 years as a trial attorney at Sedgwick LLP, where he largely handled tort and personal injury defense. He saw his colleague Bruce Edwards leave the firm to start an ADR practice, and Ornstil joined him two years later.

Outside of the law, Ornstil enjoys sports. Nowadays he coaches and referees youth soccer, but in his younger years he played everything from baseball and basketball to football and tennis, as well as enjoying swimming and diving.

Here are some attorneys who have used Ornstil’s alternative dispute resolution services:

Raquel Fox, Tenderloin Housing Clinic; Chantel L. Fitting, Law Offices of Galine, Frye & Fitting; William S. Weisberg, Weisberg & Miller; J. Kevin Morrison, Jones Clifford, Ian A. Fraser-Thomson, Cesari Werner and Moriarty; Spencer J. Pahlke, Walkup, Melodia, Kelly & Schoenberger; Jeane Struck, Severson & Werson PC; Hilary E. Youngblood, Davidovitz & Bennett LLP; Andje M. Medina, The Veen Firm PC; Richard E. McGreevy, Leach & McGreevy LLP; Matthew S. Conant, Lombardi, Loper, & Conant LLP; Tad S. Shapiro, Shapiro, Galvin, Shapiro & Moran