



Mediation Magazine

One Battle After Another ... Until Mediation: Winning Strategies for Settling Entertainment and Complex Business Disputes

By David Shraga



Hollywood mediations never follow the same script. Their drama is high, emotional arcs soar, and the protagonists are saints today and then villains tomorrow. For the cast of characters – clients, litigators, and mediators alike – the settlement process is a stage upon which they all play their part. On the one hand, this compelling ensemble performance is animated by the hope of catharsis that brings closure to their stories. On the other, tensions run high when a false step can find them washed up once again on the rocky shores of ongoing litigation.

These same dynamics are not limited to the awards season, of course, and extend beyond Hollywood's red carpet into mediations that involve business litigation,

employment law, and other equally riveting practice areas. Parallel plots inevitably arise when the clients are individuals, entrepreneurs, and corporate entities that involve diverse stakeholders. Seemingly routine contracts may be at the core of many of these cases, but other hidden issues often underlie these compellingly scripted disputes.

Despite their differences, a skilled mediator applies techniques that are transferable across disciplines to resolve a diverse range of business disputes. Likewise, there are many things sophisticated lawyers can also do to position their mediations for success. Both innovative techniques and classic approaches also occupy key roles in this theatre, from the use of AI tools to pre-mediation consults to joint sessions. This article offers an interdisciplinary perspective on techniques to maximize settlement opportunities for lawyers acting for talent or entrepreneurs, for in-house counsel repping the business, and for mediators working with players on the call sheet. Successful outcomes inevitably involve universal themes and propulsive storytelling, and when the magic happens, clients claim the prize and see that settlement dreams really do come true.

Scene I

“Prepare Your Client”

[10:03 AM – Plaintiff’s Mediation Room]

*Mediator said hello at 9:10 am. Gone for seemingly an eternity.
Antsy client not used to waiting. Lawyer checks clock, it’s spinning backwards....*

The key players in Hollywood mediations often come to the table with very different life experiences and expectations for what is about to take place. In disputes between a studio and an artist, this contrast is even more heightened. Yet the need to properly prepare both sides is equally essential.

Most talent hopefully has little to no experience with litigation, and even less with attending mediation. Properly preparing this client for the process to come is critical to creating the conditions for resolution. Clients need to understand that the mediator is an ally to help them evaluate and settle their case, that there is a method to the process, and that it can move slowly and seem tedious for artists used to a more dynamic working pace. Managing these expectations facilitates open-mindedness, engagement, patience, and stamina when needed. While unconventional, including the client in the pre-mediation conference call with their counsel is also a powerful tool. Why? It lays the groundwork to trust a mediator they’ve never met, begins demystifying the unknowns, and sets the table for a successful mindset.

In-house counsel, by contrast, are seasoned veterans of mediations, so preparing them is distinctly different. Inside the company, preparing may mean understanding which stakeholders to engage (often across multiple businesses in a diversified entertainment conglomerate), who “owns” the relationships with the other side, and what is needed to secure buy-in and sign-off (often involving coverage issues and adjusters as well). Outwardly facing, considerations include understanding their counterpart across the table. Is it a lawyer who practices in this area and knows what is customary? Or is it a wild card whose inexperience drives an atypical perspective on the merits or the case’s value? Preparing for these elements softens challenges that arise when demands are inflammatory and positions become entrenched. Including the corporate client in pre-mediation calls is equally uncommon yet equally useful. Why? It lets the mediator demonstrate competence and start instilling trust long before the road inevitably gets rocky.

Scene II

“Understand the Business”

[11:34 am – Defendant’s Mediation Room]

In-house counsel is getting frustrated. She’s been trying to explain her business reality.

They’re pushing her to move, but just not getting it...

In virtually every industry – but especially in Hollywood – the lawyers and mediators must understand the business dynamics present before a dispute can settle. The importance is heightened in entertainment cases because of the unique non-monetary issues typically involved. For studio clients, there may be concerns about precedent, talent relationships, or protection of intellectual property. Likewise, today’s artists are businesses in and of themselves, and their goals and objectives often involve comparable considerations. Effective counsel focuses on serving the goals of the business or client with an eye towards long-range strategic or personally significant objectives.

The best litigators and mediators, therefore, approach each new case with curiosity and a desire to understand the business and psychological nuances at play. Skilled litigators are, of course, aware of these drivers when preparing mediation briefs. Yet these submissions often focus on facts and merit arguments and not the critical business issues that often shape settlements. Effective mediators will therefore try to illuminate these more intangible elements as quickly as possible, ideally during the pre-mediation conference, and of course in both rooms throughout the day. Even if the case doesn’t settle, progress towards resolution occurs by helping both sides discover

what is important to the other side's business or career and driving their settlement posture.

The mediator's effective embrace of AI tools to conduct a deep dive into the business context can also facilitate core competence. Ask your preferred platform about the parties' histories, ownership, management, competitive positions, industry standing, and litigation track records. Dig into whether they have been in the press lately, if the business strategy is shifting, and where trends are heading in both the industry and their sector. This preparation enhances credibility and helps the mediator sniff out red herrings and solutions alike.

Scene III

“Let Them Process”

[1:16 pm – Plaintiff's Mediation Room]

*Client is back from lunch, knows they need to move, but is still taking it personally.
The mediator says sit tight, they're getting there, the breakthrough is coming...*

Hollywood is not known for being dull. Blockbuster hits, indie darlings, viral creators, and chart-topping podcasts involve years of emotionally driven dedication. Disputes arising from them can also stir passions, to put it mildly. The same can often also be said of complex business conflicts involving founders, high-stakes financial relationships, and bet-the-company cases.

Individuals and businesses alike may feel deeply offended by the accusations levelled against them. The decline of business relationships is often accompanied by hostility and animosity arising from significant commercial disruption. Hard-earned reputations are at stake, dialogue may have broken down and become unproductive, and sophisticated parties at an impasse engage mediators precisely for these reasons.

Mediations involving these charged elements can be a client's first and only opportunity to tell their story and feel heard. Many litigants at mediations spend hours explaining their side, defending their conduct, and airing their legitimate grievances before they can even think about settling. No matter how much a lawyer prepares their client, mediations need to create the conditions for expressing these sentiments and metabolizing the emotions. The mediator's acknowledgement and empathy can be a prerequisite to moving on, and that journey can take time. If you're in the other room, where the same process may not be necessary, just wait it out. Applying pressure or being aggressive is less effective than allowing the shift to happen and then capitalizing on the opportunity.

Scene IV

“Break Through the Noise”

[2:45 pm – Joint Session]

*Positions have softened, and reality has set in. These parties had a good history.
No one wanted to be here. Time to put them together, thoughtfully...*

Many entertainment disputes and founder-oriented commercial cases arise from relationships that were about more than business. They may involve close creative collaboration, time spent in the trenches, or even families building something together. These parties may come to mediation with more regret than animus. Regret that things devolved into a lawsuit, that someone feels injured, and that a relationship they still care about was damaged. In these cases, caucusing is often necessary to let the parties metabolize and temper strident positions before they can embrace their own agency to settle their case.

Once these elements combine, however, a well-timed and properly managed joint session can then shift the dynamic towards resolution. For example, where an agent has sued her former agency – now run by her old mentor – putting them in the room together can rekindle that feeling of being on the same side. Or when a music star is being sued by his cousin, a collaborator who never hit it quite as big, a sit-down can help reconnect them as family. Messages passed through a mediator can't land the same way. Direct dialogue also disarms that zealous advocate who may be impeding resolution. A joint session that reframes the “one day drama” of mediation can repair a frayed dynamic even if the case is not ready to settle.

Scene V

“Think Like a Dealmaker”

[4:27 pm – Hallway Caucus with Counsel]

*There's momentum, but issues still need solving. It's not about the merits now.
It's time to get creative, do what Hollywood does best, and close the deal...*

Mediations in Hollywood often have the good fortune – or perhaps the unique challenge – of involving agents, studio executives, and in-house lawyers who are professional dealmakers. Commercial mediations with seasoned counsel advising sophisticated businesses, of course, involve exceptional dealmakers as well. These negotiators know how to drive a hard bargain, but they also know how to make a deal.

That intersection of skills is an asset for litigators and mediators to recognize and exploit. Never forget that the client has the most expertise in their business, a unique perspective on opportunities for creativity, and is the secret weapon when nearing the finish line.

Crafting settlements in entertainment cases will also usually involve the interplay of multiple variables. There may be complex royalty streams, profit participations to redefine and continue accounting for, credits to accord, or intellectual property licenses to terminate. Complex business disputes also present layers of issues, including delayed deliverables, distribution relationships, financing obligations, and exclusivity considerations. Settlements in these cases will typically involve a monetary component, of course, but opportunities for creativity are countless when cutting checks and modifying relationships. Solutions may involve structuring payments, allocating revenue streams, advancing funds, and providing for recoupment, disposing of inventories, and winding up partnerships. When done best, the clients, litigators, and mediators collaborate to craft settlements that create value within the context of the dispute.

Entertainment types and entrepreneurs are also often early adopters of new technology, and the careful introduction of AI into the mediation can promote creativity while validating positions. When properly timed, presented to the receptive, and even playfully introduced, asking, for example, “Should we ask AI what it thinks?” can move a negotiation. When there is a lull in energy, it can create momentum. Where a potential framework is forming, it can help crystallize concepts. And for parties hesitant to stretch, AI’s prediction of likely outcomes and settlement ranges can assure the wary. Like any other tool in the mediator’s belt, this technique is, of course, not “one size fits all” and must be deployed with skill.

Scene VI

“The Grand Finale”

[6:05 pm – Mediator’s Lounge]

*Time’s up, deal’s signed, and the lights are going down.
Cue the applause, roll the credits...*

A great script always ties things up nicely at the end of the story, we hope. For entertainment and complex business mediations, key elements combine to deliver a satisfying resolution to the case. Techniques that create the conditions for success, both before and during the mediation, must also necessarily evolve to meet the needs of the parties. Of course, these elements may be present, and the fairy tale ending may

still not be ready for writing. In these cases, prepared parties who trusted the process, attended with open minds, and potentially even engaged with each other directly, will still be better positioned to settle their case moving forward. With the groundwork laid for the sequel, the prospects for resolution will have come into greater focus the next time the cameras roll.



David Shraga is an arbitrator and mediator specializing in entertainment, media & intellectual property matters, with additional expertise in complex business litigation and employment. With an uncommon background as a trial lawyer, studio executive, and dealmaker, he understands sophisticated litigation, how business actually functions, and the complex employment and operational dynamics within companies. As a mediator and arbitrator, he uniquely combines this expertise to adjudicate complex and emotionally charged disputes across industries and to craft practical settlements when called upon.