

Mediator's Corner



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Settling Complex Construction Cases in a Challenging Economy

by [Sarah F. Burke](#)

These days, now that I'm a full time mediator, I feel like someone emptied half the pieces out of the puzzle box before giving it to me.

Some of the challenges we're facing now include:

- Missing parties (suspended corporations, bankrupt or near bankrupt parties, or parties simply on the lam)
- Missing insurance carriers (liquidated carriers, CIGA involvement, exhausted policies)
- Coverage problems for insurers that remain (high self insured retentions that must be satisfied by parties and sometimes by missing parties, broad coverage exclusions, coverage battles among insurers, diminishing additional insured coverage, etc.)

It's a real challenge to put a settlement together under these circumstances. I find myself "following the money" all the time: looking for sources of funding and working to make settlements fit within the constraints of the case. I now spend a lot more of my time focusing on the insurance coverage issues than I suspect mediators of the past had to. It's a good thing I used to be a coverage lawyer and that I actually find insurance coverage issues interesting! I believe that understanding insurance coverage issues is really the key to settling complex CD cases in our challenging economic times.