



As I left a mediation last week at 8:30 at night, I realized something that I knew all along. Mediation works.

Why does mediation work? For several reasons that I can think of.

The first, and likely most important is that lawyers are expensive. In most construction cases, we charge by the hour and those hours build up, especially close to a trial date. A mediated settlement can avoid this sharp uptick in

attorney fees that *always* occurs in the last month before trial. Therefore the earlier the better.

The second is the flexibility to make a business decision. Commercial contractors and subcontractors are in a business, and they should be making business decisions. While one such decision can be to go to litigation; litigation is not always the best solution from a financial, or stress perspective. Construction professionals, with the assistance of construction [attorneys](#), can come up with a creative way to deal with a problem and solve it.

While sometimes trial is inevitable (yes, even with a mediation), mediation allows for more options. At trial, someone wins and someone loses. A judge must pick sides and leave someone (and possibly both sides) unhappy. Then there are appeals, collections, and other expensive issues to deal with. Mediation allows compromise and allows the parties to agree to terms that the Court (or arbitration for that matter) could not give them. Add to this the opportunity costs of protracted litigation and the idea seems to be a no brainer.

The third is that a contractor can leave a mediation satisfied that they took part in the process and in controlling their own fate. Let's face it, litigation is a foreign world for most construction professionals. Once that call is made to their lawyer, the process can seem to be out of their hands, and in many ways it is. A good mediator can change that. While the compromise may not result in complete satisfaction, trial can, and often does result in dissatisfaction. At least with mediation, one can feel as if he was in some control and not on a headlong charge to oblivion without a way to put on the breaks.

Don't get me wrong, mediation must be approached with a spirit of compromise and sometimes starting litigation is the only way to get there. If the parties aren't committed

to the process, no settlement can occur. Mediation does not work all the time, particularly if the parties present [hurdles](#) to the process.

In short, while litigation has its place and I am a construction attorney with the experience to pursue a case from start to finish, I would much rather help the contractors and subcontractors I represent continue to make money and avoid the stress, expense and monetary cost of litigation through contract review and mediation where possible. This is for one simple reason, mediation works.

Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.