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# ZETLIN & DE CHIARA<sup>LLP</sup>

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## Mock Mediation Led by Zetlin & De Chiara's Tim Hegarty Adds Dimension to Columbia University Graduate Course



On Wednesday, December 4, 2019, graduate students from Columbia University's School of Professional Studies – Master of Science in Construction Administration program visited **Zetlin & De Chiara LLP** in Midtown Manhattan to observe a unique end-of-semester tradition, a mock mediation featuring some of the construction industry's top engineers and attorneys.

Now in its 12th year, the event is a highlight of the course “Legal Issues in Building Construction,” taught by **Timothy F. Hegarty**, Partner at Zetlin & De Chiara LLP. The course provides students with in-depth analyses of New York construction and engineering case law and statutes. Mr. Hegarty also provides practical insights, advice and an insider’s perspective on the industry.

The mock mediation was structured as a dispute between plaintiff FrugalWear, a knock-off clothing manufacturer that built a new factory, and defendants TopKnotch Engineers, the structural engineer for the project; defendants Fly-By-Nite, the project’s general contractor who is now defunct; and S. Cam Surety of the Bahamas Inc., Fly-By-Nite’s construction bond underwriter.

FrugalWear retained TopKnotch Engineers to provide structural engineering services for their new two-story factory. However, once the machinery was installed on the second floor, FrugalWear became concerned that the floor was not properly supporting the machinery. To fix this issue, FrugalWear hired a second engineer who added additional trusses to support the floor. In light of the structural remediation and other issues, the project was delayed nearly ten months.



FrugalWear blamed TopKnotch for delays and extra expenses, claiming their engineering designs were negligently prepared. TopKnotch insisted that their designs were more than sufficient for the specifications they were originally given, and any issues that arose were due to either a lack of communication from FrugalWear or from shoddy contracting work. FrugalWear asked for \$5 million from TopKnotch for the added expenses and the 10-month delay. TopKnotch said it did not owe FrugalWear any money and issued a counterclaim against them for not fully paying \$177,000 in fees.

In the end, with the skilled assistance of Tim Hegarty in the role of mediator, the parties agreed to settle their disputes in an amicable way. FrugalWear agreed to accept \$2.25 million on the \$5 million claim, split between TopKnotch and S. Cam Surety. As part of the mediated settlement, TopKnotch dropped the counterclaim against FrugalWear.

On the plaintiff's side, **Elise Greenspan**, Corporate Vice President at AECOM, played Francine Frugal, the owner of FrugalWear. **Michael Zetlin**, Senior Partner at Zetlin & De Chiara, played the plaintiff's counsel. **James W. Feuerborn, Jr., P.E.**, Managing Principal & New York Wall Street Office Director at Thornton Tomasetti, played Mr. Wise, the plaintiff's expert witness.

On the defendant's side, **Tracy Wells**, Principal Law Clerk to Hon. Stephen J. Mignano, Judge of the Court of Claims, played Abby Honest, owner of TopKnotch. **James Terry**, Partner at Zetlin & De Chiara, played defendant's counsel, and **Marguerite J. Pinto, P.E.**, Vice President at Thornton Tomasetti, played the defendant's expert witness, Ms. Noah It-All.

To round out the cast, **John Hunt**, General Counsel at OC Development Management (OCDM), played James Bond, in-house counsel for S. Cam Surety of the Bahamas, Inc., while **Mr. Hegarty** took the role of the mediator.

**Mr. Terry** noted that mediators require a very different skill set from arbitrators. **Mr. Zetlin** agreed, saying, "A mediator's job is to bring the parties closer together, not to say who is right or wrong."

The mediation presentation allowed the students to see how a mediation works in practice and to talk to the attorneys and engineers about their experience with the process in real settings. As **Ms. Wells** put it, mediations are "more like jazz than classical music. They are very improvisational."

The mock mediation rounds out the class's section on alternate dispute resolution, while preparing the students for their own mock mediations as part of their final exams

### **About Zetlin & De Chiara LLP**

Zetlin & De Chiara LLP provides sophisticated legal and business counsel and advice to members of the construction community across the country including real estate owners and developers, design professionals, construction managers and contractors, and financial institutions.

