

# VERDICTS & SETTLEMENTS

FRIDAY, JANUARY 4, 2019

## Relentlessly Persistent

*Mediator Robert Fairbank never gives up on resolution, attorneys say.*

**Meghann Cuniff**  
Daily Journal Staff Writer

**L**OS ANGELES — After more than 18 years at Gibson, Dunn & Crutcher LLP, Robert H. Fairbank embraced his entrepreneurial spirit when he opened his own firm and was soon tackling some of the country's biggest cases. Nearly 20 years later, that same spirit pushed him to become a mediator, which his wife said would best utilize his "friendly, cajoling personality" and deep experience in complex litigation.

"I've segued into the perfect profession," Fairbank said. "It's very satisfying, especially from the client's perspective, when you're able to take one of these unbelievably intractable cases and settle it. It's a feeling of satisfaction you never get as a trial lawyer."

Fairbank worked several major cases with veteran mediator Layn R. Phillips of Phillips ADR before setting off on his own as part of a long-term effort to build a national practice that specializes only in complex, multi-million dollar disputes that maximize his thorough approach and broad litigation experience.

He is one of few mediators who employs a full-time lawyer, Kimberly M. West, an O'Melveny & Myers LLP alumna whose deep-dive research sets the foundation for an all-encompassing analysis aimed at long-term success.

Attorneys who have worked with Fairbank say his dedication and experience stand out.

"He is very quick to grasp the key issues for both parties and presses both equally in mediation," John C. Hueston, co-founder of Hueston Hennigan LLP, said in an email. "That preparation and focus, combined with his tenacious efforts to settle well after the close of formal mediation, has been a key to settlement of several complex, high-stakes cases we have mediated with Mr. Fairbank."

Henry Weissmann, a partner at Munger, Tolles & Olson LLP, said Fairbank is "one of the most outstanding mediators practicing right now."

"His really main outstanding characteristic



Emilio Aldea / Daily Journal

is he just doesn't give up," Weissmann said. "He'll just keep after people until he can broker a deal."

Weissmann represented Southern California Edison in litigation over the 2012 closure of the San Onofre nuclear plant, which Fairbank settled as part of his mediation work with Phillips.

The deal, finalized last summer, revamps an earlier agreement that put the cost of the plant closure on utility customers, halting those payments and reducing utility bills by \$750 million.

Shortly after it was reached, plaintiff's lawyer Michael J. Aguirre of Aguirre & Severson LLP hailed the settlement as a "miracle" and said Fairbank "listened to everybody and made them feel like he understood their point of view."

Weissmann said the dispute "was a very complicated case with a lot of different parties" but said Fairbank's persistence and patience paid off. He's since used Fairbank

### Robert H. Fairbank

Fairbank ADR  
Los Angeles

**Areas of Specialty:** securities fraud and consumer class actions, derivative cases, breach of contract, environmental, patent and intellectual property, trade secrets, entertainment, antitrust, software license disputes, professional liability, employment

in another case that hasn't settled, but he said Fairbank's mediation session helped resolve "a number of issues" that could help spur a settlement later.

"Relentlessly persistent is kind of his hallmark," Weissmann said.

Phillips reiterated that sentiment, writing in an email that his friend "personifies a trait of all great mediators: He is relentless about resolution."

“He never gives up, never quits, always stayed positive and is always the optimist,” Phillips wrote.

Fairbank said he believes his extensive research and pre-mediation preparation, which often includes two rounds of briefing, is essential to solving the complex, multi-million dollar cases that are in his wheelhouse. “The whole credibility in those big cases is if you know in great depth the merits of the case,” Fairbank said. “Otherwise, you’re never going to persuade anybody.”

Fairbank was born in Amherst, Massachusetts, but he spent much of his childhood in northern California, where his father was a physics professor at Stanford University. He credits his parents with inspiring him to pursue his dreams because they always reminded him “it’s the satisfying, great work that matters.”

He earned his law degree from New York University School of Law in 1977 then moved to Los Angeles to work as an associate for Gibson Dunn, becoming a partner in 1984.

He said his lengthy tenure surprised his friends, who “knew me and how entrepreneurial I am,” but Fairbank loved working big cases and trials, and he did both at Gibson, focusing on takeovers on the plaintiff’s and defense side as well as securities litigation. He gravitated toward plaintiff’s work, and he eventually “found that I wanted to have the freedom to do any kind of plaintiff’s work” without the conflicts that accompany big law firms.

Fairbank said he always planned to open his own firm, so he enlisted his favorite Gibson associate, the late Dirk L. Vincent, and opened Fairbank & Vincent in 1996. He left a coveted client list at Gibson, which he said “turned out to be an incredible advantage because it forced me to go out and really market.”

He started landing larger cases then received what he calls “the opportunity of a lifetime” when mediator J. Lawrence Irving, a retired San Diego federal judge, in 2002 enlisted him as an independent adviser for the University of California in the Enron, Worldcom, AOL Time Warner and Dynegy federal securities cases.

The seven-year role versed him in complex mediation strategies and sparked his interest in pursuing the profession full time because Irving “always said that mediation is the most fun job,” Fairbank said.

Fairbank’s wife, U.S. District Judge Valerie B. Fairbank, also kept saying, “Look, you love doing this. This is your highest and best use,” he recalled.

“I’m very lucky to have such a supportive spouse and a spouse who knows the most about these cases,” Fairbank said.

Brian J. Robbins, co-founder of Robbins Arroyo LLP in San Diego, said he most appreciates Fairbank’s “multitude of experiences as an attorney” and said he’s someone who “will think outside the box and not give up.”

“He has a lot of different angles, and he’s able to connect well with each side and really

help them problem solve and communicate,” Robbins said. “He’s a very intelligent guy, but he is able to communicate with you where you’re not feeling attacked by him.”

Neal R. Marder, head of Akin Gump Strauss Hauer & Feld LLP’s consumer class action litigation practice, said Fairbank “will stay in the game until the matter is resolved.”

“His persistence and follow up are second to none,” Marder said in an email.

Outside of mediation, Fairbank enjoys art history, which he said he studies about an hour a day and “triggers creativity in the law.” He’s also interested in U.S. history, particularly the Depression and World War II, and he teaches a course at USC Gould School of Law about corporate and securities fraud that features lawyers discussing major cases.

*Here are some attorneys who’ve used Fairbank’s services:* Henry Weissmann, Munger, Tolles & Olson LLP; John C. Hueston, Hueston Hennigan LLP; Neal R. Marder, Akin Gump Strauss Hauer & Feld LLP; Moez M. Kaba, Hueston Hennigan LLP; Tamerlin J. Godley, Munger, Tolles & Olson LLP; Koji Fukumura, Cooley LLP; Michael J. Aguirre, Aguirre & Severson LLP; Meryl L. Young, Gibson, Dunn & Crutcher LLP; David Luttinger, Covington & Burling LLP; Brian J. Robbins, Robbins Arroyo LLP; Stephen Kravit, Kravit Hovel & Krawczyk; Kenneth B. Black, Stoel Rives LLP; John F. Lynch, Wachtell Lipton Rosen & Katz