

## **David Acton**

Attorney, Arbitrator and Mediator

233 Righters Mill Road

Gladwyne, PA 19035

610-649-4972

FAX: 610-649-7448

[davidacton@verizon.net](mailto:davidacton@verizon.net)

[www.davidactonlaw.com](http://www.davidactonlaw.com)

### **Mediation Resume**

**Profession:** Arbitrator, Mediator; Business Executive, Manager; Attorney - Commercial, Corporate, Construction, Real Estate

**Work History:** Attorney, Arbitrator and Mediator, Self-employed, 1985-present; Executive Vice President, Energy & Minerals Research Company, 1982-85; Vice President, Crockett Mortgage Co./General Manager, Hershey's Mill, 1977-82; Attorney, General Practice of Law, 1975-77; Vice President/General Counsel, K.S. Sweet Associates, 1971-75; Secretary/General Counsel, Leeds & Northrup Co., 1963-71; Associate, Krusen, Evans & Byrne, 1960-63.

**General Experience:** Attorney and business executive for over 25 years in real estate, construction, commercial, and corporate matters including contracts, antitrust, securities, human resources, intellectual property, and maritime matters, with considerable direct management experience. Arbitrator for the past 25+ years and mediator for the past 15+ years.

**Experience as a Mediator:** Has mediated a wide range of types of cases, including disputes involving the following:

(1) An asset purchase agreement dispute between the buyer and the seller of a business, which also involved a related transition services agreement; (2) two construction contract disputes, one between the owner and the general contractor and the other between the general contractor and a subcontractor; (3) two fee disputes, one between three law firms and one between a professional firm and its client; and (4) breach of contract disputes in the following areas: (a) A dispute under a software development agreement between the provider and the client; (b) a dispute under a media advertising contract between a sponsor and the radio station which sold the time; (c) two commission sales agreement cases, one of which involved international parties and issues; (d) an employment agreement case between an employer, an employee and an alleged co-conspirator with whom the employee formed a competitive business entity; (e) three manufacturing agreement cases, one of which involved international parties and issues; (f) a case involving licensing for manufacture and sale; and (g) a securities agreement case between an investor and a broker-dealer/financial advisor.

The most recent nine cases mediated involve amounts of money in dispute ranging from \$100,000 to \$2,000,000, with the average amount being \$575,000.

**Representative Issues Handled as a Mediator:** Construction cases mediated have included the following issues: delay damages, failure to perform, owner interference, and design errors. In commercial cases mediated, the following representative issues have arisen: (1) whether the conduct of the parties effectively changed the compensation arrangement from being one on a percentage-of-recovery basis to being one on a fixed-hourly-fee basis; (2) whether interference by the customer was the sole cause of late and incomplete delivery by the provider under a software development contract; (3) whether the frequent change of specifications by the customer was the primary cause of failure of a manufacturing device produced by the supplier to deliver the desired product; (4) whether an employee breached a "non-piracy" agreement with his employer and whether he was liable under RICO for theft, conversion of commissions and conspiracy with a codefendant to illegally convert commissions; (5) when a purchaser suddenly terminated its long-standing relationship with an exclusive supplier, how the cost of unusable finished inventory, raw materials, plates, dies and tooling should be allocated; (6) whether, under a license to manufacture and sell, the licensee has properly accounted for and paid royalties and other sums claimed by the licensor; and (7) whether a broker-dealer/financial advisor violated a duty to certain clients by recommending investments that were inconsistent with the clients' investment goals, history, financial condition, ages and stages in life.

**Multi Party Mediation Experience:** In a construction dispute between an owner and a general contractor, the errors of the owner's architect and engineer became a crucial factor in resolving the dispute once the owner and general contractor were shown that they had more to gain than to lose by working together to focus the claim for delay damages on the architect and engineer. A dispute between a general contractor and a subcontractor was successfully resolved once a third party supplier who had brought suit against both of them for failure to pay for supplies delivered to the project had been brought into the settlement negotiations.

In a case involving RICO and a claim for treble damages, the defenses of the codefendants placed them at odds with each other vis-à-vis the claim against them by the employer of one of them for theft, conspiracy and conversion of commissions.

In a dispute between three law firms over how to allocate among them the substantial fee ultimately earned by an attorney who had worked consecutively for all three of them on a protracted case, the issues centered on the respective amounts of time the attorney had spent on the matter while at each firm and, conversely on the related costs incurred, respectively, while working at each firm.

**Years of Practice as a Mediator:** 15

**Total Number of Cases Mediated:** 40-50 (most in the last three years)

**Mediation Philosophy:** I know of no process better than mediation for resolving the disputes that are brought before me for resolution in that manner -- and even, I might add, would have

been the best process for resolving some of the disputes that are brought before me for resolution through arbitration.

At the beginning of the mediation process, it is essential that the mediator gain the parties' trust in his or her impartiality and fairness, and confidence in his or her skill to get the job done. To accomplish this, the mediator must use subtle persuasion and tact -- with a reasonable dose of humor added to the mix at the appropriate times -- to gradually alter the initial mind-sets of the parties. If the process is managed correctly, the parties will be led slowly away from the firm positions with which they entered to more flexible, introspective attitudes in which -- perhaps for the first time -- they try to view the dispute from their adversary's perspective. It's not easy, and invariably the mediation will reach (maybe more than once) a temporary impasse, where the mediator will employ his or her own creativity to suggest novel, alternative ways to solve the problems at hand -- and urge the parties to do so as well. All present -- the parties, their counsel and the mediator -- should play an active role, and the mediator should have the sensitivity to read the psychodynamics among those present. In the final analysis, the mediator will have acted as a facilitator to employ the skills he or she has learned from training and experience to assist the parties in reaching their own settlement of the dispute.

In many cases, resolution will occur at the end of the day. However, in a number of cases, it becomes clear that final settlement cannot take place until some other event occurs: additional documentation is provided; further action by one or both of the parties is taken; a third party is brought into the process, at least informally; the outcome of a related legal proceeding becomes known; etc. In such event, the mediator must be patient but persistent, remaining in frequent contact with the parties and rescheduling a further meeting or meetings if necessary. It may take days or weeks, but the final result will be worth the delay.

**Mediation References:** Scott B. Allinson, Esq., [sallinson@thslaw.com](mailto:sallinson@thslaw.com) (610) 391-1800; Douglas H. Riblet, Esq., [thr@curtinheefner.com](mailto:thr@curtinheefner.com), (215) 736-2521; Louis W. Schack, Esq., [lschack@reedsmith.com](mailto:lschack@reedsmith.com), (215) 851-8280; Jeffrey C. Venzie, Esq., [jvenzie@venzie.com](mailto:jvenzie@venzie.com), (215) 567-3322.

**Alternative Dispute Resolution Training:** CIArb-CPR Advanced Arbitrator Training, 2007; ICDR, International Commercial Arbitration and Mediation Conference, 2006; AAA and ACR, Advanced Commercial Mediation Institute, 2006; AAA, Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics, 2005; AAA, Dealing with Delay Tactics of Parties and Advocates, 2005; AAA, National Neutrals Conference, 2005; AAA, Mediating Complex Cases, 2005; ALI-ABA, Communication Skills for Lawyers, 2004; AAA, Arbitrator Ethics and Disclosure, 2004; AAA, Arbitration Awards: Safeguarding, Deciding & Writing Awards, 2003; AAA, Arbitrator Update, 2002; AAA, National Mediators Conference, 2001; AAA, Construction Industry Arbitrator II Training: Advanced Case Management Issues, 2001; AAA, Commercial Arbitrator Training, 1999; AAA, Advanced Construction Mediator Training, 1998; AAA, Large Complex Case Panels Arbitrator Training, 1997; EEOC, Mediation Training, 1997; AAA, Construction Industry Arbitrator Training, 1996; PA Bar Institute, Labor-Management and Employment Law, 1996; PA Bar Institute, Ethics in Mediation and Arbitration, 1996; PA Bar Institute, Effective Legal Negotiation and Settlement, 1996; Phila. Bar Association, Compulsory

Arbitration, 1995; AAA, Construction Arbitration, 1995; AAA, Basic Mediation Training, 1994; AAA, Basic and Advanced Arbitrator Training, 1993; various other ADR training.

**Professional Licenses:** Admitted to the Bar: Pennsylvania, 1961; U.S. District Court, District of Pennsylvania, 1961.

**Professional Associations:** Philadelphia Bar Association; L'Ordre Mondial (Society of Wine Professionals); Mensa; Association for Conflict Resolution (ACR); International Institute for Conflict Prevention and Resolution (CPR); certified as a mediator by the International Mediation Institute in The Hague, the Netherlands.

**Education:** Yale University (BA-1955); University of Pennsylvania (JD-1960).

**Publications and Speaking Engagements:** Lecturer to litigation departments of major law firms on the role of mediation in dispute resolution.

**Fees:** \$450.00 per hour, except \$500.00 per hour for mediation of large, complex cases. Charges hourly for administrative and study time. Cancellation fee: \$3,000.00 if mediation is cancelled within seven days of scheduled date. Travel outside of Philadelphia area: negotiated.

**Citizenship:** United States of America

**Locale:** Gladwyne, PA