



**SSAM™**

Settlement Services, Arbitration and Mediation

# The Modern Mindset OF COMMERCIAL MEDIATION

March 29, 2022

Essential  
ADR  
Strategies  
From...

**Mediation  
Strategy When  
Litigants Have  
An Ongoing  
Business  
Relationship...**

...SSAM's  
Commercial  
Mediators



**TRACEE E. DAVIS, ESQ**  
SSAM ADR Commercial Mediator  
Partner | Seyfarth Shaw, LLP

"Now more than at any time with the ever-changing technologies, evolving markets and rise in ESG accountability, it is critical for commercial mediators to understand and be able to forecast how the parties' dispute, possible litigation and ultimately its resolution may impact future interactions and access to market opportunities. Mediators must assist the parties in resolving an instant conflict in such a way that they can develop best practices and negotiate contract provisions to preserve the relationship and avoid future conflicts in reaching their desired outcomes."



**EDWIN M. BAUM, ESQ**  
SSAM ADR Commercial Mediator  
Partner | Perkins Coie, LLP

"Several strong motivators toward settlement typically apply when the litigants have an ongoing business relationship: (1) both parties may feel a need to find a resolution and avoid the friction and animosity that often results from litigation, (2) from the mediator's perspective it can be easier to get the parties to recognize the collateral damage (the mutual "losing for winning") that can result from further litigation; and (3) there is greater potential to find a "win-win" negotiated resolution that includes new or adjusted business arrangements that both sides find beneficial. Especially for the third reason, it is important that the mediator of a dispute between parties who are continuing to do business together understand the business itself, so that the mediator can be creative in suggesting or brokering business solutions."



**ALAN HOWARD, ESQ**  
SSAM ADR Commercial Mediator  
Partner | Perkins Coie, LLP

"As an initial matter, I do not believe that the mediator's strategy should be different when the parties have an ongoing business relationship because the non-adversarial and constructive tone which is particularly beneficial to such parties should be adopted for all mediations regardless of whether the parties have an ongoing business relationship. An ongoing business relationship between the parties to a mediation, however, often affords the parties with opportunities for creative resolutions to their disputes. Accordingly, the mediator should be especially attuned to the nature of the parties' business relationship to help them identify commercial terms that may help bridge any gaps on the issues at hand and resolve the dispute."



Tracee Davis, Edwin Baum and Alan Howard are members of SSAM's Commercial Mediation Panel.

As practitioners of law at the highest level, SSAM'S COMMERCIAL MEDIATION panel brings a unique currency and state-of-the-art strategies and solutions, to complex commercial dispute resolution. This modern perspective of commercial mediation is informed by the demands, priorities, risks and cross-discipline complexities facing today's C-suites and corporate boardrooms.

**To work with the SSAM Commercial Mediation Team, please contact SSAM COO Lee Rosenbaum at [leer@ssamadr.com](mailto:leer@ssamadr.com)**

