



SSAM™

Settlement Services, Arbitration and Mediation

The Modern Mindset OF COMMERCIAL MEDIATION

April 5, 2022

Essential
ADR
Strategies
From...

**Broaching
Mediation With
an Adversary
Without
Intimating
Weakness of
a Case**

...SSAM's
Commercial
Mediators



LAURENCE (LARRY) A. LEVY, ESQ
SSAM ADR Commercial Mediator
Greenberg Traurig

"If the client and the adversary need to or want to be able to continue in a business relationship, avoiding the damage done by a scorched earth litigation is in the best interest of both parties must be understood. Opening a discussion at the earliest stages, pre-discovery, could signal the desire to reach a rapid resolution, rather than weakness. Current court calendars, especially in the era of Covid will likely take years to get a resolution. Such delay inures to the detriment of all parties; and, in many cases the potential for adverse publicity could translate into lost opportunities and reduced market share. Alternatively, as discovery progresses, opportunities to highlight reasons for mediation will likely present themselves. Even the strongest cases can be well served through mediation by sharing the strength of your position, simultaneously with presenting the negatives associated with protracted litigation, and/or the adversary's vulnerabilities."



MICHAEL STARR, ESQ
SSAM ADR Commercial Mediator
CEO, Michael Starr Mediation Services

"You can broach mediation the same way that you would have raised the prospect of settlement, that is, to suggest that counsel explore the possibility of an "amicable resolution" to avoid the costs and uncertainties of litigation for both sides, while still asserting firmly but calmly that you are confident that your client's claim (or defense) will succeed. It is even easier now that court rules require counsel to certify that they have discussed the prospect of mediation with their clients. You might say: "You know, John, I will be talking with my client in the next few days about mediation, as the court rules now require us both to do. I am inclined to suggest we give it a try. Can you think of any reason why mediation would not be appropriate for this case?"



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

"The same sea change in the importance of mediation in today's world of complex commercial litigation which mandates that advocates apprise their clients of the potential benefits of mediation at the outset of a dispute also means that there no longer is a disadvantage to being the party which broaches mediation with the opposing party. Among complex commercial litigators today there is a common understanding of the vital role mediation can play, and the suggestion to engage in mediation does not convey, nor is it now perceived to convey, weakness in one's case."



Laurence Levy, Michael Starr 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

