

David Acton

Attorney, Arbitrator and Mediator

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Arbitration 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 an Arbitrator: Has arbitrated a wide range of types of cases, including disputes involving the following:

- (1) A dispute between two corporations involving termination of a multimillion-dollar agreement calling for one party to develop and maintain a national network of healthcare providers and the other party to market the network;
- (2) An international dispute between an exporter of European wine and its U.S. importer involving questions of whether either party fraudulently induced the other to enter into an importation and distribution agreement and whether the importer used its best efforts and good faith to market the exporter's products;
- (3) A dispute between a general contractor on a \$120 million project to build a paper recycling plant and its principal subcontractor (a mechanical equipment supplier/installer) involving the question of whether acts of the former were the proximate cause of losses incurred by the latter, and whether the "total cost recovery" theory of damages applied;
- (4) A dispute between a supplier of a state-of-the-art computer software system and an insurance company involving the allocation of responsibility for large cost overruns and substantial delays in performance;
- (5) A dispute between an insurance carrier and its insured under a \$10 million directors' and officers' liability policy involving whether certain endorsements and exclusions under the

- policy precluded coverage for both indemnity and defense costs in a case where the individual insured controlled a complex network of medical billing companies (only one of which was insured) and the federal government sued him and the network for alleged Medicare fraud (which case was settled for the policy limits);
- (6) A long-standing dispute between two municipal authorities arising out of a service agreement between the parties;
 - (7) A dispute between two half-owners of a successful medical practice with over 75,000 patients, 75 employees and four offices over how to equitably divide the practice and how to allocate fault for conduct which led to the need for such a division;
 - (8) A dispute between a delivery service, which hired its drivers as “independent contractors,” and one of its former drivers, who claimed that he was really treated as an “employee” and was terminated because he was held to impossible standards of performance in the difficult territory to which he was assigned;
 - (9) A dispute as to whether a court-appointed assignee for the benefit of creditors had standing to sue an insurer of the assignor seeking recovery of allegedly excessive collateral security which the insured was required to provide and, if so, what portion (if any) of such collateral security was excessive; and
 - (10) A dispute as to whether there was coverage under a Professional Liability Insurance Policy issued by one insurance company (the “insurer”) to another (the “insured”) in a case where the insured failed to defend, or to provide coverage for, one of its policy holders in a product liability suit, which led to the insured ultimately being found guilty of bad faith and liable for substantial punitive damages, which the insured then sought to recover from the insurer in spite of its alleged failure to provide the insurer with proper notice of the underlying claims.
 - (11) A dispute over payments allegedly due the site development contractor under a real estate construction contract calling for the contractor to turn raw farmland into an improved site ready for the property owner to commence construction of a large shopping center; the dispute involved issues such as acceleration, disruption and delay costs.
 - (12) A dispute between a building owner and a contractor who was to design and build mechanical, electrical, plumbing, HVAC and fire protection systems for a large industrial building which was being converted into Class A office space; the dispute involved the contractor’s attempt to collect payments under oral change orders and other promises that had allegedly been issued or made by the owner, and the owner’s claims for various setoffs and back charges.

Alternative Dispute Resolution Training: AAA, Dealing with Delay Tactics in Arbitration, 2010; ABA (Section of Dispute Resolution), Advanced Mediation & Advocacy Skills Institute, 2009; AAA University, Advanced Mediator Training, 2009; AAA Construction Conference: ADR Works, 2008; 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).

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.

Arbitration References: E. Harris Baum, Esq., ehbaum@zarwin.com, 215-569-2800; Carl G. Roberts, Esq., cgroberts@ballardspahr.com, 215-864-8120; Bernard Chanin, Esq., bchanin@verizon.net, 215-977-2396; Howard D. Venzie, Jr., Esq., hvenzie@venzie.com, 215-567-3322; Robert A. Korn, Esq., rkorn@kaplaw.com, 610-941-2512.

Fees: \$450.00 per hour, except \$500.00 per hour for arbitration of large, complex cases when serving as sole arbitrator or chair of arbitration panel. Charges hourly rate for administrative and study time, including preparation and deliberations. Travel outside Philadelphia area: negotiated. Cancellation Fee: \$3,000.00 if hearings canceled within 7 days of scheduled date.

Citizenship: United States of America

Locale: Gladwyne, PA