

## **MEDIATION PROCEDURES**

### **PRIOR TO THE MEDIATION**

With the cooperation of the parties, a mediator can take steps to increase the likelihood of a successful resolution of the conflict. Prior to the mediation, we may discuss by telephone the following issues:

**1. Who should participate in the mediation:** All parties participating in the mediation, including their respective insurance representatives, if any, should have settlement authority. If that is not possible, please advise the mediator prior to the mediation session. Experience has shown that the personal attendance of decision makers with settlement authority is almost always necessary for a settlement to be reached. At a minimum, out-of-state-insurance representatives should be available by telephone.

**2. Identification of participants:** The names of the people who will attend the mediation on behalf of each party, including the names of any experts or third party witnesses, and their respective roles in the conflict.

**3. Pre-mediation exchange of information:** Consider what information should be exchanged in advance of the mediation session to assist all parties in making realistic settlement decisions during the mediation.

**4. Demonstrative information during the mediation:** Do the parties anticipate the use of any audio or visual demonstrations at the mediation.

**5. Written briefs:** Please plan to send a mediation brief to the mediator at least 5 business days before the mediation. E-mail is the preferred way to deliver the briefs to the mediator (ron@rwmediation.com). To facilitate a successful resolution of the dispute it is recommended that briefs be exchanged in advance of the mediation.

### **DURING THE MEDIATION**

#### **1. Joint Session**

When appropriate, the mediation will begin with a joint session attended by all participants. Please come prepared to summarize your position during this session. You may utilize whatever presentation you believe most effective, including charts, audio-visual, and oral presentations by counsel and principals. The purpose of the joint session is not to prove your case nor demean the other side but to clarify your views of facts while educating the mediator.

The joint session is followed by private confidential caucuses between the mediator and each party. In caucus, you can discuss information which may assist in working toward a resolution, but which you would prefer not to disclose in direct negotiations. The mediator will help all parties gain the most balanced possible evaluation of the matter through questions and candid discussions. Finally the caucuses provide an opportunity to assess realistic options for resolution, without endangering any party's negotiating posture.

Caucusing will generally continue until an option has been developed which all sides feel is acceptable. At that point, the mediator will summarize the terms of the settlement. When this happens, it is recommended that you draft and execute a memorandum stating the key terms.

## **2. Separate Session**

When appropriate, the mediation will begin with separate caucus sessions. Caucusing will generally continue until an option has been developed which all sides feel is acceptable. At that point, the mediator will summarize the terms of the settlement. It is recommended that the parties draft and execute a memorandum stating the key terms prior to terminating the mediation session.

## **FOLLOW-UP**

If a resolution is not reached in the initial mediation session, the parties may elect to authorize follow-up. This can consist of telephone caucusing, further investigation or information exchange among the parties, and/or an additional mediation session.



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