



Mediation Issues and Claims Settlement Strategies

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What is Mediation?

Mediation is a process where a neutral 3rd party who has no authoritative decision making power intervenes in a dispute to assist the parties in reaching their own acceptable settlement.



What Mediation is not...

- › Mediation is NOT a trial, arbitration, settlement conference or a hearing on the merits.
- › Mediation is always within the control of the parties, and with the help of the mediator they decide themselves upon a settlement that each party can live with.



Ethical Guidelines for Mediators

- › Impartial
- › Confidential
 - Process and content
 - Limitations
- › Financial Arrangements
- › May vary by specific state



Why mediate?

- › Less expensive (usually)
- › Learn about the strengths and weakness of the other side's case
- › Opportunity to resolve and close claims
- › Can be scheduled and completed quickly if needed



Mediators Do not Decide the Case

- › What should the mediator know about the case
- › Information not advocacy
- › “Guided negotiations” which helps the parties communicate, identify the issues that are of real importance to the parties.



Pros and Cons of Mediation

- › Cheaper than litigation
- › Almost always faster
- › Can take place anywhere/anytime
- › Out come within the control of the parties
- › Won't get your day in court
- › Won't get everything you want
- › Won't win or lose



Poll Question

A mediator can force the parties to settle a case?

- > A. yes
- > B. no



Pre-Suit Mediation

- › Florida is the leading state by contract or by agreement
- › Generally not bound by rules of procedure
- › Narrows issues and focuses on results
- › Any kind of case or claim
- › Usually cost is shared by the parties



Mediation too early or too late

- › Not enough information/discovery available for decision making
- › All evidence has been presented so that one party or the other believes a favorable decision is inevitable



Define what is being resolved

- › Entire claim (suit)
- › Are any issues unresolved?
- › Get it in writing
- › Without prejudice to other claims
- › SSD/MSA issues



Risk Analysis

- › What is the potential verdict if case goes to trial
- › Can the likelihood of an adverse decision be quantified
- › Be prepared to discuss strong/weak points



Poll Question

With 8 Justices, is the current Supreme Court at full strength?

› A. yes

› B. no



Issues to consider for pre-suit mediation

- › What are your odds of winning the claim?
- › What will it cost?
- › How long will it take?
- › Are there are remedies?

How to select cases for pre-suit mediation

- › Where the parties have an ongoing relationship
- › Is all relevant information available (technical or medical information, financial records)
- › Is there a strategic advantage that may be lost if mediation goes forward
- › Liability conceded, question is damages
- › Parties do not want publicity of a lawsuit



Negotiation tactics

- › Define what is at stake
- › Set expectations in advance
- › Is there a standard set of basic facts
- › Should policy limits be disclaimed, if applicable
- › It is ultimately a business decision



Poll Question

What year was Medicare created?

- › A. 1936
- › B. 1946
- › C. 1956