

United Arbitration, Inc.

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**PRESENTATION OUTLINE (CE / CLE Credits)
ALTERNATIVE DISPUTE RESOLUTION**

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THE ADR DECISION

Claim arises

- Investigate
- Evaluate
(If sufficient documentation)
- Negotiate

Result

- Internal Resolution
(Additional Negotiation)

- ADR / Civil Litigation

THE ADR PROCESS

IDENTIFY FILE FOR ADR COMPLETE ADR REFERRAL FORM / WORKSHEET
(Mail / e-mail / Fax / Phone)

FILE IS DOCKETED IN UA DATABASE & FILE IS CREATED
(Periodic Status Review)

UA Contacts ALL concerned parties (Attorneys / REP's) AND
SECURES AGREEMENT

UA W/PARTY INPUT SCHEDULES CASE (Judge Selection, Location and Date and
Time of Hearing)

CASE HEARD & RESOLVED

SELECTING THE APPROPRIATE PROCESS

To achieve the ultimate goals of ADR use, it is critical to understand the distinction between the two principal ADR processes.

MEDIATION

In mediation, two or more parties meet with a Neutral third party who facilitates guides and structures the negotiation process. The mediator makes no decision, but can communicate and help analyze offers, counter-offers, proposals and settlements. The resolution is a completely voluntary result, as defined and designed by the parties.

PRINCIPAL ADVANTAGES OF MEDIATION

Retain control- Parties define the problem and solution. The mediator is not given authority to make decisions.

Privacy- Parties can establish their own mechanism, participants and timetable. Mediation is the appropriate format for discussing topics which are germane to settlement while protecting the interests of the parties involved. Necessary information can be exchanged without public scrutiny and the process can be kept completely confidential.

Informality and Flexibility- Creative joint problem solving, no need to pick a "winner". Minimal rules and procedures. All participants can become skilled in the process in a minimum of time.

Cost effective/Time effective- Focus on Key issues, limit attorney and other transaction fees pinpoint and reduce discovery and minimize delay

Even if mediation does not resolve all issues, the parties will have reached a detailed understanding of positions and areas of non-accommodation.

DISADVANTAGES OF MEDIATION

Mediation is not appropriate where parties are seeking to "prove a point", take a policy stand or are not able to explore alternatives or compromise.

PREPARING FOR A MEDIATION

- Organize Your File
- Prepare to be Realistic and Flexible in your
- Evaluation of the File
- Prepare to be Candid and Forthright with the Judge in the Private Caucus
Do Not Conceal information or mislead the Judge

PREPARATION

- Bullet the Facts of the File
- Prepare Answers to Claims
- Prepare a Summation of your Position/Theory

SUMMARY OF MEDIATION

Non-Binding – Informal Negotiations – Compromise - Liability is acknowledged
Negotiations on Issues and/or Values Objective Evaluation from Hearing Officer

ARBITRATION

The dispute is submitted to a third-party Neutral. The arbitrator generally conducts a less formal version of a non-jury mini trial in the public court system. There are opening statements, but more commonly, the arbitrator presides over a quasi-judicial examination and cross-examination of witnesses, and submission of documents. Occasionally, the hearing may be conducted by the stipulation of certain facts and through the submission of documentary evidence alone. The arbitrator renders a binding decision (in the form of a brief written opinion).

ADVANTAGES OF ARBITRATION

Informal- Though not as informal as mediation, arbitration is significantly less formal than a public court trial.

Control and Flexibility- The arbitration will be conducted within the parameters agreed to by the parties using United Arbitration, Inc. "Rules of Procedure". The authority of the arbitrator can be limited and the "Rules of Procedure" may be amended by agreement of all parties.

Minimal Risk- Where High/Low arbitration is used the award will be limited to not exceed the High parameter nor be less than the Low parameter

Expertise- Arbitrators can be selected who have special subject matter expertise

Finality of Decision- A binding, non-appealable decision is provided to the parties; no compromise is needed.

Arbitrations, due to their binding nature, may be desirable in only selected circumstances. They are very difficult to overturn in Court; therefore, the process requires parties to spend time on necessary preparation. In cases where parties want or need a written decision but do not wish to be bound to the arbitrator's award, by stipulation, non-binding arbitration or mediation should be considered.

OTHER ADVANTAGES OF ARBITRATION

- Increased Control over Claim Disposition
- Benefits of Judicial Hearing without Burden Of Litigation
- Lower Transaction Cost than Litigation
- Expertise of Arbitrator
- Finality of Decision

SUMMARY OF ARBITRATION

Binding - Non-Appealable Decision is Based Solely on Merits of the Presentation

Also to be considered are:

- Binding Mediation - Baseball Arbitration
- Med/Arb - Neutral Evaluation

HIGH-LOW ARBITRATION

High Award Limits



Low Award Limits

Arbitrator is Not Aware of the High-Low Parameters
High-Low Parameters are determined by the Parties.

BASIC ADR TRIGGERS

- Disputes between insurers as to their respective liability.
- Plaintiff and Defendant have a break-down in negotiations.
- Plaintiff or Defendant attorney fails to provide adequate information to enable you to evaluate the case.
- Plaintiff attorney makes a demand or Claim Rep makes an offer that is unreasonable and then refuses to negotiate.
- Case goes over 60 days without some movement towards settlement.
- You are on the verge of an impasse in your negotiation Process (i.e., you made several offers / demands to settle but chances of acceptance are not good.
- Plaintiff's attorney is having difficulty getting the claimant to agree to reasonable settlement or follow his/her direction.
- Cases that will cause you to incur more legal expenses than the expected settlement value of the case.
- Cases that are likely to settle prior to trial, but negotiations up to this point have been unsuccessful.
- Attorneys, either plaintiff or defense, are engaging in Unnecessary and expensive discovery.

SUMMARY OF ADR TRIGGERS

Changes in Status - Window of settlement opportunity is open
Breakdown in Flow of Communications/Impasse -You will eventually settle rather than wait for a buildup in expenses - Early resolution - Doubtful Liability - Comparative negligence

You recognize exposure: jury decision is risky.

You want to communicate to your adversary the weaknesses of the case through the third party

ADR AGENDA

THE ADR DECISION (10min)

THE ADR PROCESS (10min)

SELECTING THE APPROPRIATE PROCESS

MEDIATION (15min)

PRINCIPAL ADVANTAGES OF MEDIATION (5min)

DISADVANTAGES OF MEDIATION (5min)

PREPARING FOR A MEDIATION (10min)

PREPARATION (5min)

ARBITRATION (10min)

ADVANTAGES OF ARBITRATION (15min)

OTHER ADVANTAGES OF ARBITRATION (5min)

SUMMARY OF ARBITRATION (10min)

HIGH-LOW ARBITRATION (10min)

BASIC ADR TRIGGERS (15min)

SUMMARY OF ADR TRIGGERS (10min)

120min without breaks or Q & A