“Substantive Best Practices”
Best Practices in Mediation/Arbitration

Click on any item to view associated materials

Biographies of Speakers

- The Honorable Sherry R. Fallon, Magistrate Judge, U.S. District Court
- Keith Edward Donovan, Esquire, Morris James LLP
- Colin M. Shalk, Esquire, Casarino Christman Shalk Ransom & Doss, P.A.

Program Materials *

- Program Materials
- Mediation Engagement Letter
- Mediation Teleconference Order
- Overview of Mediation/ADR Processes

* The forms included herein are samples only and may not be appropriate for any particular matter.
Sherry Ruggiero Fallon was appointed as a U. S. Magistrate Judge for the District of Delaware on April 25, 2012. She is formerly a Partner of the Wilmington, Delaware law firm of Tybout Redfearn & Pell, with a jury trial practice in all Delaware State and Federal Courts. Magistrate Judge Fallon’s primary areas of practice included insurance defense, insurance coverage and bad faith litigation, toxic tort, product liability, retailers’ premises liability, construction litigation, creditors’ claims in commercial bankruptcies, and defense of employment litigation claims. Prior to becoming a Magistrate Judge, she had been a member of Tybout, Redfearn & Pell since 1985.

Magistrate Judge Fallon earned her Bachelor of Arts Degree from the University of Pennsylvania in 1983. She is a 1986 Graduate of the Delaware Law School of Widener University, where she was a member of the Moot Court Honor Society, the Delaware Journal of Corporate Law and Phi Delta Phi Legal Fraternity.

Magistrate Judge Fallon has been admitted to practice in the States of Delaware and New Jersey, since 1986. Magistrate Judge Fallon is admitted to practice before the United States District Courts for the Districts of Delaware and, New Jersey, and is admitted in the Third Circuit Court of Appeals.

Magistrate Judge Fallon is a member of the Delaware, New Jersey and American Bar Associations. Magistrate Judge Fallon has been a member of the American Board of Trial Advocates (ABOTA), an organization for civil trial lawyers, in which membership is by invitation, from 2003 through the present. Magistrate Judge Fallon served as President of the Delaware Chapter of ABOTA, from 2009-2010. Magistrate Judge Fallon is a former member of the Defense Research Institute, Defense Counsel of Delaware and the Delaware Claims Association. Following her appointment as a Magistrate Judge, she became a member of the Rodney Inn of Court and the Technology Inn of Court. Magistrate Judge Fallon is a frequent lecturer on various aspects of civil litigation, trial practice and insurance coverage.
Keith E. Donovan is a partner in the law firm of Morris James LLP and his practice focuses on plaintiff’s personal injury and insurance cases. He is a frequent speaker on personal injury insurance issues and on trial techniques and strategies and he is often selected by his peers to serve as a mediator.

Mr. Donovan attended college at the University of Delaware earning a bachelor’s degree in Business Administration in 1988. He then earned a J.D., cum laude in 1991 from Widener University School of Law. He is admitted to the Delaware Bar, U.S. District Court, District of Delaware and U.S. Court of Appeals, Third Circuit. In 2008, Mr. Donovan became a certified mediator after successful completion of Superior Court Mediation Training.

Mr. Donovan is a member of the Delaware State Bar Association, American Bar Association, American Association for Justice and the Delaware Trial Lawyers Association where he serves as a board member and past president for 2011 - 2012. He was the 2010 President for the American Board of Trial Advocates and is the current Treasurer for 2011 - 2013. He has most recently been selected as the Kent County Bench – Bar Liaison for the Superior Court. He volunteers his time as a Board of Trustee member for the Blue Gold Basketball games, the National High School Mock Trial Championships and provides pro bono services as an appointed attorney through the Office of the Child Advocate.

Education: Ohio University; University of Delaware (B.A., with high honors, 1974); Dickinson School of Law (J.D., 1977).
AGREEMENT TO MEDIATE

This is an agreement by the parties and their attorneys (if applicable), whose signatures appear below, to submit to mediation in the above-captioned matter. We understand that mediation is a voluntary process, which we may terminate at any time.

By signing this agreement, we indicate our awareness that mediation sessions and all material prepared for mediation are confidential. Each party agrees to make no attempt to compel the mediator’s testimony against the other, nor to compel the mediator to produce any documents provided by the other party, nor to compel the other party to testify regarding statements made in mediation sessions. In no event will the mediator disclose confidential information provided during the course of the mediation or testify voluntarily on behalf of any party. The mediator may find it helpful to meet with each party separately; in this event, the mediator will not reveal what is said by one of us to the other(s) without permission.

We further agree that:

(1) All parties, including a representative of the insurance carrier, if applicable, and the attorneys of all represented parties will attend the mediation sessions. No one else may attend without permission of all parties and the consent of the mediator;

(2) The mediator will not function as the representative of or legal counsel to any party. Each unrepresented party acknowledges having been encouraged to consult with an attorney prior to signing any agreement;

(3) The mediator has the discretion to terminate mediation at any time if the mediator believes that the case is inappropriate for mediation or that an impasse has been reached;

(4) The only information relative to the mediation session(s) that will be reported to the Court will be:

(a) The fact that mediation session(s) was actually held; and

(b) Whether the parties have reached an agreement or, in the alternative, whether the case should continue routinely through the judicial process.

No other type of report will be prepared by the mediator and submitted to any Court in connection with this case.

(5) If a settlement is reached, the agreement shall be reduced to writing and, when signed, shall be binding upon all parties to the agreement. If the terms of the agreement are to remain confidential, the agreement will reflect that settlement was achieved and that a stipulation of dismissal will be filed with the Court.

(6) The parties and their attorneys and/or representatives agree to keep all matters discussed confidential.
Plaintiff

Attorney for Plaintiff

Defendant

Mediator

Insurance Representative

Date

Attorney for Defendant
IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

COUNTY: NEW CASTLE ☐ KENT ☐ SUSSEX ☐

Plaintiff(s) ☐ ☐ ☐

v.

Defendant(s) ☐ ☐ ☐

C.A. No.: __________________________

MEDIATION CONFERENCE STATEMENT

The Mediation Conference Statement is a confidential document intended to assist the mediator prepare for the mediation conference. It should be submitted to the mediator only, at least ten (10) days prior to the scheduled mediation.

1) State the facts of the case; and if applicable the nature of any equitable relief being sought.

2) With respect to the issue of liability, please complete the following:

   a) Does this case involve and affirmative defense? If yes, describe.

   b) State any facts that will bar or diminish any recovery by the plaintiff.

3) Provide a concise statement of any other claims (cross-claims, counter-claims or third party claims) and respective defenses thereto:
4) If this is a personal injury or wrongful death action, each plaintiff shall complete the following:

   a) Nature and extent of injuries and whether they are permanent.

   b) Nature of any surgical procedures recommended, scheduled, or performed.

   c) Total medical expenses to date: $ __________________

   d) Future medical expenses: $ __________________

   e) Loss of earnings to date - Amount: $ __________________

   For what period: __________________

   f) Future loss of earnings:

   Estimated Amount: $ __________________

   For what period: __________________

   g) Other special damages
      (specify nature and amount): $ __________________

   h) General damages
      (specify nature and amount): $ __________________

   1. Punitive damages: $ __________________

5. If this is not a personal injury case, each plaintiff shall state the following with respect to each alleged item of damages:

   Identify each item of damage and state whether it is supported by documentary evidence
   (type and amount):
6. Please list the amount of counsel fees incurred to date and out-of-pocket costs. (Please note if fees are subject to contingent fee agreement).

7. Please note any liens (e.g., workman’s compensation, medical providers, etc.) which will be asserted against any recovery obtained in this case (list any lien holder and amount).

8. If you are a plaintiff in this action, state the terms of your demands in order to settle this matter:

9. If you are a defendant in this action, state the terms of offer in order to settle this matter:

Dated: ________________

Attorney’s Signature

Attorney’s Name (Please Print)

Attorney For: ____________________________

Revised 8-21.03
Citation/Title
SUPER CT RCP Rule 16, PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

Superior Court Rules of Civil Procedure, Rule 16

WEST'S DELAWARE RULES OF COURT
DELAWARE RULES OF COURT
SUPERIOR COURT RULES OF CIVIL PROCEDURE
III. PLEADINGS AND MOTIONS

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RULE 16. PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

(a) Pretrial Conferences; Objectives. In any action, the Court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as:

(1) Expediting the disposition of the action;

(2) Establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) Discouraging wasteful pretrial activity;

(4) Improving the quality of the trial through more thorough preparation; and

(5) Facilitating the settlement of the case.

(b) Scheduling and planning. Except in categories of actions identified in this rule or any specific action exempted by the Court as inappropriate, the Court shall, at a time deemed appropriate by the Court, enter a scheduling order that either establishes or limits the time:

(1) To join other parties and to amend the pleadings;

(2) To file and hear motions.

(3) To complete discovery.

(4) To engage in compulsory alternative dispute resolution ("ADR"), the format of which is to be agreed upon by the parties. Such ADR may include, but shall not be limited to, non-binding or, if agreed to by the parties, binding arbitration, mediation or neutral case assessment. If the parties cannot agree on the format of ADR, the default format shall be mediation unless otherwise ordered by the Court.

(a) In the event the parties cannot agree on an ADR Practitioner, they shall file a joint motion with the Court within thirty (30) days of the issuance of the scheduling order requesting that the Court appoint an ADR Practitioner for the parties. The Court may impose sanctions upon a party or both parties if it determines that the parties have not attempted to agree upon an ADR Practitioner in good faith.

(b) The parties shall pay the ADR Practitioner in accordance with the allocation and amount of fees established by the ADR Practitioner and agreed to by the parties or ordered by the Court. The ADR Practitioner may apply to the Court for sanctions

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against any party who fails to comply with the terms of engagement established by the ADR Practitioner and agreed to by the parties including, but not limited to, dismissal of the action or default judgment.

*708 (c) The ADR Practitioner may not be called as a witness in any aspect of the litigation, or in any proceeding relating to the litigation in which the ADR Practitioner served, unless ordered by the Court. In addition, all ADR Practitioners, when serving as an arbitrator, mediator or neutral assessor, shall be immune from civil liability for, or resulting from, any act or omission done or made while engaged in ADR, unless an act or omission was made or done in bad faith, with malicious intent, or in a manner exhibiting a willful, wanton disregard of the rights, safety, or property of another. Each ADR Practitioner shall remain bound by any confidentiality agreement signed by the parties and the ADR Practitioner as part of the ADR.

(d) The following definitions apply to this rule:

(i) "Arbitration" is a process by which a neutral arbitrator hears both sides of a controversy and renders a fair decision based on the facts and the law. If the parties stipulate in writing the decision shall be binding, in which instance the case is removed from the Court's docket.

(ii) "Mediation" is a process by which a mediator facilitates the parties in reaching a mutually acceptable resolution of a controversy. It includes all contacts between the mediator and any party or parties until a resolution is agreed to, the parties discharge the mediator, or the mediator determines that the parties cannot agree.

(iii) "Neutral case assessment" is a process by which an experienced neutral assessor gives a non-binding, reasoned oral or written evaluation of a controversy, on its merits, to the parties. The neutral assessor may use mediation and/or arbitration techniques to aid the parties in reaching a settlement.

(iv) "ADR Practitioner" shall include the arbitrator, mediator, neutral case assessor or any other Practitioner engaged by the parties to facilitate ADR.

(e) The compulsory ADR set forth in this rule shall not apply to the following civil actions, unless otherwise ordered by the Court: matters subject to Superior Court Rules 23 and 81(a), replevin, foreign or domestic attachment, statutory penalty and mortgage foreclosure actions, and in forma pauperis actions.

(5) Any other deadlines or protocols appropriate in the circumstances of the case including, but not limited to, appropriate sanctions for failure to meet the deadlines and requirements established by the scheduling order to include, in the Court's discretion, dismissal of the action or default judgment.

The scheduling order may also include:

(6) The date, or dates for conferences before trial, a final pretrial conference, and trial; and

(7) Any other matters appropriate in the circumstances of the case.

(c) Subjects to Be Discussed at Pretrial Conferences. The participants at any conference under this Rule may consider and take action with respect to:

*709 (1) The formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the Court on the admissibility of evidence;

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(4) The avoidance of unnecessary proof and of cumulative evidence;

(5) The identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(6) The advisability of referring matters to a master;

(7) The possibility of settlement or the use of extra-judicial procedures to resolve the dispute;

(8) The form and substance of the pretrial order;

(9) The disposition of pending motions;

(10) The need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and

(11) Such other matters as may aid in the disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.

(d) Final pretrial conference. A final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at this conference shall formulate a plan for trial, including the presentation of a pretrial stipulation which substantially complies with the pretrial stipulation form approved by this Court. See Form 46. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

(e) Pretrial Orders. After any conference held pursuant to this Rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

*710 (f) Sanctions. If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party, or both, to pay the reasonable expenses incurred because of any noncompliance with this Rule, including attorneys' fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

CREDIT(S)

[Amended effective October 1, 1997; February 5, 2008, applicable to actions filed after March 1, 2008.]

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CH CT Rule 174, VOLUNTARY MEDIATION IN THE COURT OF CHANCERY

Chancery Court Rules, Rule 174

WEST'S DELAWARE RULES OF COURT
 DELAWARE RULES OF COURT
 CHANCERY COURT RULES
 XVI. JUDICIAL ETHICS, ATTORNEYS, ETC.

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RULE 174. VOLUNTARY MEDIATION IN THE COURT OF CHANCERY

The Chancellor or Vice Chancellor presiding in a case, with the consent of the parties, may refer any case or issue in a case to any other judge or master sitting permanently in the Court of Chancery, who has no involvement in the case, or to a designated mediator for voluntary mediation. Cases may be referred to voluntary mediation at any stage during the proceedings. Voluntary mediation is intended to provide the parties convenient access to dispute resolution proceedings that are fair, confidential, effective, inexpensive, and expeditious.

(a) Definitions.

(1) "Mediation" means the process by which a mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy and includes all contacts between the mediator and any party or parties, until such time as a resolution is agreed to by the parties or the parties discharge the mediator.

(2) "Mediator" means (i) a judge or master sitting permanently in the Court of Chancery, or (ii) an impartial person appointed by the Court or selected by agreement of the parties to a controversy to assist them in mediation ("a designated mediator"). A person is not eligible to serve as a designated mediator under this rule until the person has been a member of the Delaware Bar for 5 years, completed at least 25 hours of training in conflict resolution techniques, and has been certified pursuant to guidelines promulgated by the Chancellor. If authorized by the Chancellor, conflict resolution technique training for designated mediators may be provided in conjunction with training conducted pursuant to Superior Court Rule 16.2(g). A current listing of all persons eligible to serve as designated mediators pursuant to this Rule shall be maintained as a public record in the office of the Register in Chancery.

(3) "Mediation conference" means that process, which may consist of one or more meetings or conferences, pursuant to which the mediator assists the parties in seeking a mutually acceptable resolution of their dispute through discussion and negotiation.

*619 (b) Participation. Once mediation has been elected, at least one representative of each party with an interest in the issue or issues to be mediated and with authority to resolve the matter must participate in the mediation conference.

(c) Written Consent to Mediation. Prior to the commencement of the mediation conference, the parties to a controversy shall enter into a written consent that identifies the issues to be mediated and specifies the methods by which the parties shall attempt to resolve the issues.

Confidentiality. Mediation conferences are private proceedings such that only parties and their representatives may attend, unless all parties agree otherwise. A mediator may not be compelled to testify in any judicial or administrative proceeding concerning any matter relating to service as a mediator. All memoranda, work product, and other materials contained in the case

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files of a mediator are confidential. Any communication made in or in connection with the mediation that relates to the controversy being mediated, whether made to the mediator or a party, or to any person if made at a mediation conference, is confidential. Such confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding with the following exceptions:

(1) Where all parties to the mediation agree in writing to waive the confidentiality, or

(2) Statements, memoranda, materials, and other tangible evidence otherwise subject to discovery, which were not prepared specifically for use in the mediation conference.

A mediation agreement, however, shall not be confidential unless the parties otherwise agree in writing.

Civil Immunity. Designated mediators shall be immune from civil liability for or resulting from any act or omission done or made while engaged in efforts to assist or facilitate a mediation, unless the act or omission was made or done in bad faith, with malicious intent, or in a manner exhibiting a willful, wanton disregard of the rights, safety, or property of another.

Termination of Mediation Conference. The mediator shall officially terminate the mediation conference if the parties are unable to agree. The termination shall be without prejudice to either party in any other proceeding. The mediator shall have no authority to make or impose any adjudication, sanction, or penalty upon the parties. No party shall be bound by anything said or done at the conference unless an agreement is reached.

Mediation Agreement. If the parties involved in the mediation conference reach agreement with regard to the issues identified in the consent to mediation, their agreement shall be reduced to writing and signed by the parties and the mediator. The agreement shall set forth the terms of the resolution of the issues and the future responsibility of each party. The agreement will be binding on all parties to it and, upon filing by the mediator, will become part of the Court record. If the parties choose to keep the terms of the agreement confidential, a Stipulation of Dismissal may be filed in the alternative.

*620 If the mediator appointed is the Chancellor, a Vice Chancellor or Master, the mediator shall not be compensated. Instead, a filing fee shall be assessed against the parties as court costs in the amount of $5,000 for the first day of mediation and $5,000 for every additional day required. These fees shall be deposited into a separate account maintained by the Court of Chancery, which shall be used from time to time in the discretion of the Court for mediation training and/or refunds or any other purpose designated by the Chancellor. This mediation filing fee and the fee for each additional day of mediation shall be divided between the parties and may be waived or modified in the discretion of the presiding Chancellor, Vice Chancellor or Master.

Stay of Pending Litigation. Cases referred to mediation pursuant to this Rule may be stayed in the discretion of the Court pending the conclusion of the mediation process.

CREDIT(S)

[Adopted effective April 1, 1998; amended effective November 12, 2002; November 20, 2002; July 1, 2005; Aug. 1, 2009.]

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§ 7701. Short title; purpose

(a) This chapter shall be known and may be cited as the "Delaware Voluntary Alternative Dispute Resolution Act."

(b) The purposes of the Delaware Voluntary Alternative Dispute Resolution Act are to provide a means to resolve business disputes without litigation and to permit parties to agree, prior to any disputes arising between them, to utilize alternative dispute resolution techniques if a dispute occurs. An interpretation of the provisions of this chapter shall seek to achieve these purposes.

CREDIT(S)


HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

Section 2 of 70 Laws 1995, ch. 151, eff. Oct. 5, 1995, provides:

"This legislation shall become effective 90 days after its enactment into law [signed July 7, 1995]."

REFERENCES

LAW REVIEW AND JOURNAL COMMENTARIES


REFERENCES

RESEARCH REFERENCES

Forms

1 Alternative Dispute Resolution with Forms § 1:30, Statutes Mandating or Encouraging Alternative Dispute Resolution.

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DE ST TI 6 Sec. 7701, Short title; purpose

REFERENCES

UNITED STATES CODE ANNOTATED

Telephone Disclosure and Dispute Resolution Act, see 15 USCA § 5701 et seq.
§ 7702. Definitions

As used in this chapter, unless the context otherwise requires:

(1) "ADR" means the alternative dispute resolution method provided for by this chapter unless the parties to a dispute adopt by written agreement some other method of ADR in which event "ADR" shall refer to the method they adopt.

(2) "ADR Specialist" means an individual who has the qualifications provided for in § 7708 of this title to conduct an ADR proceeding.

(3) A "dispute subject to ADR" means any dispute that (1) involves at least $100,000 in contention, and (2) is not a summary proceeding under §§ 211, 215, 220 or 225 of Title 8.

(4) "Person" means any individual, corporation, association, partnership, statutory trust, business trust, limited liability company or other entity whether or not organized for profit.

CREDIT(S)


<HISTORICAL NOTES>

Section 2 of 70 Laws 1995, ch. 151, eff. Oct. 5, 1995, provides:

"This legislation shall become effective 90 days after its enactment into law [signed July 7, 1995]."
§ 7703. How ADR is selected

(a) Any person, by filing the certificate provided for in § 7704 of this title, shall be deemed to have agreed to submit all disputes subject to ADR to the ADR provided for by this chapter. Upon the filing of such certificate, the filer shall be bound by the provisions of this chapter until a certificate of revocation has become effective under § 7707 of this title.

(b) In addition to persons covered by subsection (a), any person who enter into a written agreement with a person who has filed the certificate provided for in § 7704 of this title, when such agreement incorporates (by reference or otherwise) the ADR requirements of this chapter, will be bound by the ADR requirements of this chapter with regard to disputes arising out of the subject matter of such written agreement. For purposes of compliance with this provision, it shall be sufficient for such writing to state: "The undersigned hereby agree to be bound by the provisions of the Delaware Voluntary Alternative Dispute Resolution Act with respect to any dispute which arises out of the subject matter of this agreement."

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HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

Section 2 of 70 Laws 1995, ch. 151, eff. Oct. 5, 1995, provides:

"This legislation shall become effective 90 days after its enactment into law [signed July 7, 1995]."

REFERENCES

LIBRARY REFERENCES

Arbitration § 7.4.
Westlaw Key Number Search: 33k7.4.
C.J.S. Arbitration §§ 10, 43 to 48.

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§ 7704. Contents of certificate

(a) The certificate of agreement to submit to ADR shall set forth (1) the name of the person filing the certificate, (2) the address of such person (which shall include the street, number, city and state) at which it shall be given notice of any dispute, and (3) the agreement of such person that by filing the certificate that person is bound to follow the provisions of this chapter and submits to the power of any court with jurisdiction over it to require it to participate in ADR with any other person who invokes the provisions of this chapter for any dispute subject to ADR.

(b) Any provision in a certificate that purports to limit the disputes that are subject to ADR shall be of no force or effect.

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<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

Section 2 of 70 Laws 1995, ch. 151, eff. Oct. 5, 1995, provides:

“This legislation shall become effective 90 days after its enactment into law [signed July 7, 1995].”

REFERENCES

LIBRARY REFERENCES

Arbitration ©12.
Westlaw Key Number Search: 33k12.
C.J.S. Arbitration §§ 26 to 30, 34 to 37.
§ 7705. Place of filing

(a) The certificate accepting ADR shall be filed with the Secretary of State of the State of Delaware and shall be executed and acknowledged by the chairman or vice-chairperson of the board of directors or by the president or vice-president of any corporation, by a general partner of any partnership, or by a person with equivalent authority in any other entity.

(b) The Secretary of State shall keep such records as are required to determine who has filed a certificate accepting ADR or revoking such a certificate, together with the date of any such filing.

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<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

Section 2 of 70 Laws 1995, ch. 151, eff. Oct. 5, 1995, provides:

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REFERENCES

LIBRARY REFERENCES

Arbitration 12.
Westlaw Key Number Search: 33k12.
C.J.S. Arbitration §§ 26 to 30, 34 to 37.
§ 7706. Filing fee

No certificate accepting ADR or revoking ADR shall be filed unless it shall be accompanied by the payment of $1,000 to the State, except that the filing fee shall be $100 for every corporation, limited partnership, statutory trust, limited liability company or other entity organized under the laws of the State.

HISTORICAL AND STATUTORY NOTES

Section 2 of 70 Laws 1995, ch. 151, eff. Oct. 5, 1995, provides:

"This legislation shall become effective 90 days after its enactment into law [signed July 7, 1995]."

REFERENCES

LIBRARY REFERENCES

Arbitration ⇔ 12.
Westlaw Key Number Search: 33k12.
C.J.S. Arbitration §§ 26 to 30, 34 to 37.
§ 7707. Revocation of ADR

A certificate accepting ADR may be revoked by the filing of a certificate stating that it revokes a previously filed certificate. A certificate of revocation shall be executed and acknowledged in the same manner as a certificate accepting ADR. A certificate of revocation shall be effective upon filing and payment of the filing fee, except with respect to disputes arising under contracts requiring ADR and which were entered into prior to the filing of the certificate of revocation.

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HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

Section 2 of 70 Laws 1995, ch. 151, eff. Oct. 5, 1995, provides:

"This legislation shall become effective 90 days after its enactment into law [signed July 7, 1995]."

REFERENCES

LIBRARY REFERENCES

Arbitration §12.
Westlaw Key Number Search: 33k12.
C.J.S. Arbitration §§ 26 to 30, 34 to 37.

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§ 7708. Qualifications of ADR Specialist

The ADR proceedings shall be conducted by any individual meeting one of the following criteria:

(a) Successful completion of 25 hours of training in resolving civil disputes in a course approved by the department or division of the government authority charged with responsibility over adult education in the jurisdiction where that individual resides, or

(b) Admission to the bar of the jurisdiction in which that individual resides, together with a minimum of 5 years experience as a practicing attorney.
§ 7709. Selection of ADR Specialist

(a) In the case of ADR proceedings that are to be held in the State, the party who initiates the proceedings shall select a panel of 3 ADR Specialists in Delaware to be considered by the parties. Unless the parties otherwise agree in writing, the ADR Specialist shall thereafter be chosen in accordance with the procedures set forth in subsections (c) through (f) of this section below.

(b) In all disputes not to be submitted to ADR in the State and unless the parties otherwise agree in writing, the ADR Specialist shall be selected by the following procedure:

(1) When there are 2 parties to the dispute, the party who initiates the ADR proceedings shall choose a panel of 3 ADR Specialists from those qualified persons who reside or have an office in either (i) the state of incorporation or domicile of the other party to the dispute, or (ii) the jurisdiction where the other party to the dispute resides as determined from the address stated on the ADR certificate on file with the Secretary of State.

(2) When there are more than 2 parties to the dispute, the party who initiates the ADR proceedings shall choose a panel of 3 ADR Specialists from those qualified persons who reside or have an office in the jurisdiction where the greatest number of the other parties to the ADR proceeding (i) are incorporated or domiciled, or (ii) reside as determined from the address stated on any ADR certificate on file with the Secretary of State. If no jurisdiction has the greatest number of parties then the person initiating ADR shall choose panelists from any of the states of incorporation, domicile or residence of the other parties.

(c) The identity of the panel of the ADR Specialists shall be included in the ADR notice provided for in § 7710 of this title.

(d) Within 14 days of receiving the ADR notice provided for in § 7710 of this title a person receiving such notice shall:

(1) Select one of the members of the panel of ADR Specialists contained in the notice by advising the person initiating the ADR in writing of the selection; or
*(8027)* (2) Advise the party initiating the ADR that none of the members of the panel are acceptable.

When more than 2 persons are involved in the ADR proceedings, the ADR Specialist shall be the person chosen by the greatest number of parties and in the case of a tie in a vote, the person initiating the ADR proceedings shall choose the ADR Specialist from the ADR Specialists who received the same number of votes.

(e) Upon receiving the selection of the ADR Specialist by the other person or persons to the dispute, the person initiating the ADR proceedings shall promptly notify the ADR Specialist of that person's selection and send copies of such notice to the other parties. If a party receiving an ADR notice provided for in § 7710 of the title does not select an ADR Specialist in a timely manner, or advise that none of the members of the panel are acceptable, the person sending the ADR notice (1) may select the ADR Specialist, or (2) in the case of more than 2 parties to a dispute, may cast a vote for the ADR Specialist on behalf of the party who
failed to respond to the ADR notice.

(f) If none of the ADR Specialists selected by the party initiating the ADR proceedings are acceptable to the other parties to the dispute, in the ADR proceedings that are to be held in Delaware the ADR Specialist shall be selected in accordance with the rules of the Superior Court of the State as may be adopted by that Court and approved by the Delaware Supreme Court. In ADR proceedings to be conducted outside of Delaware, in the case of a failure of the parties to agree on the ADR Specialist the Specialist shall be selected in accordance with such rules as may apply in the jurisdiction where the ADR proceedings are to be conducted or, if no such rules have been adopted, then by the American Arbitration Association.

CREDIT(S)


<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

Section 2 of 70 Laws 1995, ch. 151, eff. Oct. 5, 1995, provides:

"This legislation shall become effective 90 days after its enactment into law [signed July 7, 1995]."

REFERENCES

CROSS REFERENCES

*8028 Uniform Arbitration Act, see 10 Del.C. § 5701 et seq.

REFERENCES

LIBRARY REFERENCES

Arbitration ©26.
Westlaw Key Number Search: 33k26.
C.J.S. Arbitration §§ 92, 94.
§ 7710. Initiation of ADR proceeding

ADR proceedings are initiated by written notice to the other parties to a dispute who have filed an ADR certificate in accordance with § 7704 of this title or who have agreed to be bound by the ADR requirements of this chapter. The notice shall state in summary form: (1) the dispute is subject to the provisions of this chapter, (2) the nature of the dispute to be submitted to ADR and (3) the identities of the members of the panel of ADR Specialists chosen pursuant to § 7709 of this title. A failure to send such a notice to a person who has an interest in the dispute shall not prevent the ADR proceedings from going forward between or among parties who did receive such notice.

CREDIT(S)


<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

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REFERENCES

LIBRARY REFERENCES

Arbitration @⇒31.
Westlaw Key Number Search: 33k31.
C.J.S. Arbitration §§ 111, 114, 125, 128.
§ 7711. Participation by other parties

When not all the parties to a dispute have filed an ADR certificate or have agreed to be bound by the Delaware Voluntary Dispute Resolution Act, such other parties may be given the opportunity to participate in the ADR proceedings by delivering to them the notice provided for in § 7710 of this title. Parties to the dispute who are not bound to participate in the ADR proceedings may elect to participate in the ADR by selecting an ADR Specialist in accordance with § 7709 of this title. Such selection shall constitute the agreement of the party to be subject to the provisions of this chapter for purposes of the dispute in which the election to participate is made. After the passage of the time for selection of the ADR Specialist, the ADR shall proceed without further notice to or involvement by those parties to the dispute who have not elected ADR.

HISTORICAL NOTES

Section 2 of 70 Laws 1995, ch. 151, eff. Oct. 5, 1995, provides:

"This legislation shall become effective 90 days after its enactment into law [signed July 7, 1995]."

REFERENCES

Arbitration @⇒32.6.
Westlaw Key Number Search: 33k32.6.
C.J.S. Arbitration §§ 115, 120 to 121.
§ 7712. Scheduling of ADR proceedings

Promptly after notification of appointment, the ADR Specialist shall: (a) advise the parties of a willingness to serve as the ADR Specialist for this dispute, (b) notify the parties of the expected rate of compensation, and (c) set the time and date of the ADR proceedings which shall be within 60 days of notice of appointment unless the parties and the ADR Specialist agree to another date. Unless otherwise agreed, the ADR proceedings shall be held in the offices of the ADR Specialist.

CREDIT(S)


<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

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REFERENCES

LIBRARY REFERENCES

Arbitration $31.
Westlaw Key Number Search: 33k31.
C.J.S. Arbitration §§ 111, 114, 125, 128.
§ 7713. Compensation of ADR Specialist

(a) The ADR Specialist shall be reimbursed for all reasonable out-of-pocket expenses. The ADR Specialist shall be compensated on the basis of the Specialist's regular hourly fees for professional services for time spent during the day of the actual ADR proceeding and for any subsequent continuation of the proceedings agreed to by parties. In addition to this compensation for the actual ADR proceeding, the ADR Specialist may charge for up to 10 hours spent in preparing for the ADR proceeding, unless the parties agree to additional preparation time.

(b) The ADR Specialist may require the parties, on a pro rata basis, to advance the Specialist's fees for preparation and the actual proceeding within 10 days of the notice of the scheduling of the ADR proceedings.

(c) Unless otherwise agreed, the fees and expenses of the ADR Specialist shall be divided among the parties to the proceedings on a pro rata basis.

(d) The parties and the ADR Specialist may agree on any method or rate of compensation other than as set forth in this section, provided that such agreement is in a writing signed by the parties to the agreement.

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<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

2007 Legislation

Technical corrections were made to conform with revisions made by the Delaware Code Revisors (2007).

Section 2 of 70 Laws 1995, ch. 151, eff. Oct. 5, 1995, provides:

"This legislation shall become effective 90 days after its enactment into law [signed July 7, 1995]."

REFERENCES

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LIBRARY REFERENCES

Arbitration §41.
Westlaw Key Number Search: 33k41.
C.J.S. Arbitration § 110.
§ 7714. Conduct of the ADR proceedings

Subject to any agreement of the parties to adopt different rules of proceeding and the power of the ADR Specialist to modify these procedures in appropriate instances, the ADR shall be conducted as follows:

(a) No later than 7 days prior to the commencement of the ADR, each party shall submit to the ADR Specialist and the other parties a statement of its position in the dispute and such supporting documents as it deems appropriate, provided that such statement of position shall not exceed 25 pages in length.

(b) Upon the commencement of the ADR, each party shall have no more than 1 hour to present its position to the ADR Specialist in the presence of the other parties. This presentation may be made by counsel, by examining witnesses or by any other means that is reasonable under the circumstances. Upon conclusion of any party's presentation, the ADR Specialist may permit the other parties to have up to 1 hour to ask questions of the presenting party, with such hour to be divided among the other parties as determined by the ADR Specialist.

(c) Upon conclusion of the initial presentations of positions by all the parties and such questioning of the parties as thereafter occurs pursuant to subsection (b), the ADR Specialist as soon as possible shall attempt to resolve the dispute by meeting with the parties, either separately or as a group as the Specialist determines is appropriate. Such meetings shall conclude when the dispute is resolved or at the regular close of business on the day the ADR commenced, whichever first occurs.

(d) If the parties thereafter agree, the ADR Specialist may continue to discuss the resolution of the dispute with them, either separately or together, until any party notifies the ADR Specialist that such discussions are at an impasse.

CREDIT(S)


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HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

*8034 Section 2 of 70 Laws 1995, ch. 151, eff. Oct. 5, 1995, provides:

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REFERENCES

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Arbitration §31.
Westlaw Key Number Search: 33k31.
C.J.S. Arbitration §§ 111, 114, 125, 128.
§ 7715. Conclusion of ADR

Any settlement of the dispute submitted to ADR shall be reduced to writing as soon as possible after the settlement is reached, with such writing to be prepared by the ADR Specialist (unless the parties otherwise agree as part of their settlement that they will prepare the writing) and shall be signed by the parties to be valid and binding upon them. If no settlement is reached at the close of business on the day the ADR is commenced or after further mediation at the parties request until an impasse is declared, the ADR Specialist shall declare the ADR has concluded by advising the parties in writing.

CREDIT(S)


<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

Section 2 of 70 Laws 1995, ch. 151, eff. Oct. 5, 1995, provides:

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§ 7716. Confidentiality

All ADR proceedings shall be confidential and any memoranda submitted to the ADR Specialist, any statements made during the ADR and any notes or other materials made by the ADR Specialist or any party in connection with the ADR shall not be subject to discovery or introduced into evidence in any proceeding and shall not be construed to be a waiver of any otherwise applicable privilege. Nothing in this section shall limit the discovery or use as evidence of documents that would have otherwise been discoverable or admissible as evidence but for the use of such documents in the ADR proceeding.

CREDIT(S)


REFERENCES

Arbitration ☞ 31.
Westlaw Key Number Search: 33k31.
C.J.S. Arbitration §§ 111, 114, 125, 128.
§ 7717. Immunity

The ADR Specialist shall have such immunity as if the Specialist were a judge acting in a court with jurisdiction over the subject matter and the parties involved in the dispute that led to ADR.
§ 7718. Attendance at ADR

A person may be represented by counsel in all stages of the ADR proceeding. In addition to its counsel, each party must attend the initial ADR proceeding in which the parties make their presentations and submit to questioning and meet with the ADR Specialist. A person may attend through its chief executive officer (or person holding an equivalent position in such entity) or through any other person authorized in writing by the entity's governing body to so attend, provided such authorized person files a written authorization to attend with the ADR Specialist. The authorization shall state that the representative has the authority to settle the dispute (subject to any limits that are deemed appropriate by the governing body and which limits need not be revealed) and such person is charged with the responsibility of reporting to the party's governing body on what occurred during the ADR proceedings. Any such report shall be confidential in accordance with § 7716 of this title.

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<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

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REFERENCES

LIBRARY REFERENCES

Arbitration ⇔ 32.6.
Westlaw Key Number Search: 33k32.6.
C.J.S. Arbitration §§ 115, 120 to 121.
§ 7719. Enforcement of ADR rights

(a) The right to ADR provided for under this chapter may be enforced by any court with jurisdiction over the parties. Any person who files a certificate under § 7704 of this title thereby consents to the jurisdiction of the Court of Chancery of the State for the purpose of enforcing in a summary proceeding the rights provided for by this chapter.

(b) In addition to the right to compel ADR provided by subsection (a), any party to an ADR proceeding to be conducted pursuant to this chapter shall be entitled to reasonable attorneys' fees incurred in compelling ADR.

(c) Any party failing to pay the reasonable fees and expenses of an ADR Specialist shall be subject to suit by the ADR Specialist for 3 times the amount of such fees and expenses, together with the attorneys' fees and other costs incurred in such litigation.

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<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

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REFERENCES

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Arbitration & 85.
Westlaw Key Number Search: 33k85.
C.J.S. Arbitration §§ 192, 236, 240 to 242, 245 to 246.

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§ 7720. Tolling of limitations

The initiation of ADR under § 7710 of this title shall suspend the running of the statute of limitations applicable to the dispute that is the subject of the ADR until 14 days after the ADR is concluded in accordance with § 7715 of this title.

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<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

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REFERENCES

LIBRARY REFERENCES

Limitation of Actions § 108.
Westlaw Key Number Search: 241k108.
C.J.S. Limitations of Actions § 126.
§ 7721. Effect of commencing litigation

Other than a proceeding to require ADR under § 7719 of this title, this chapter and the procedures provided for herein shall cease to have any force or effect upon the commencement of litigation concerning the dispute that is the subject of the ADR proceedings. The parties to any such litigation shall be exclusively subject to the rules of the tribunal in which such litigation has been commenced and nothing in this chapter shall be construed to infringe upon or otherwise affect the jurisdiction of the courts over such disputes.

CREDIT(S)


<General Materials (GM) - References, Annotations, or Tables>

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REFERENCES

LIBRARY REFERENCES

Arbitration ☞31.
Westlaw Key Number Search: 33k31.
C.J.S. Arbitration §§ 111, 114, 125, 128.
Re:  CASE NAME

Dear Counsel:

You have agreed on behalf of your respective clients to have me serve as a Mediator in the above matter. As you know, mediation is a non-binding process in which an impartial, trained, neutral third-party (the Mediator) facilitates communication between the parties to a dispute in an effort to assist the parties in reaching a mutually acceptable and voluntary settlement of their dispute and to ensure that the parties memorialize whatever settlement they may have reached in a written settlement agreement. As a third-party neutral, the Mediator does not, and I will not represent any party to these disputes. My service as a Mediator in this matter does not create an attorney/client relationship between me, Blank Rome LLP and any of the parties to these disputes. Each party in this matter is represented by independent counsel. Please explain to your respective clients my role as a Mediator in these matters, and that I will not be representing them in this process.

By agreeing to participate in the mediation process, the parties and their counsel agree to cooperate and participate in good faith in the mediation. This does not mean that any party is required to compromise his or her position, or ultimately to settle the dispute. It does require, however, that each party cooperate with each other and with the Mediator in a good faith effort to negotiate a prompt and reasonable resolution of the dispute. There shall be no stenographic or other record made of the mediation proceeding. Neither the Federal, nor the State Rules of Evidence shall apply. Each party agrees to have a person or persons present at the mediation who will have the authority to reach an agreement in principle to settle the claims which are the subject of this dispute, subject only to the receipt of formal corporate approvals and the drafting and execution of a mutually acceptable written settlement agreement and release.

The mediation process in these cases shall be treated as a compromise or offer to compromise for purposes of the Federal Rules of Evidence and any applicable State Rules of Evidence. Nothing which occurs during the mediation process, as well as any submissions made to the Mediator, shall be offered as evidence in any proceeding or investigation for any reason or purpose. Any information, documents, discussions, statements by the parties and/or the
Mediator and any settlement or its terms resulting from the mediation process shall be and shall remain completely confidential and private.

As Mediator, I may not transmit any information received from any party to any third person unless expressly authorized to do so by the party. Moreover, without the mutual consent of each party to these disputes, I shall not communicate with the court having jurisdiction over these actions about any aspect of the mediation process. The Mediator, Plaintiff(s), and Defendant(s) all agree to keep all information, records and documents relating to the mediation completely confidential and private, and to return any such information to the party submitting it upon the completion or termination of the mediation.

By entering into this mediation, the parties agree that I will not be subpoenaed as a witness, consultant or expert in any pending or future matter, action or proceeding relating to the subject matter of this mediation. The parties further agree that they will not subpoena any information in my possession, custody or control relating to the mediation of these matters, and that all parties will oppose any effort to have me or any records in my possession, custody or control subpoenaed.

I will charge for my time in preparing for and conducting the mediation at my current mediation hourly rate of $______ per hour, plus any reasonable disbursements and other charges incurred in the performance of my services. The current hourly rates for those persons who may assist me in preparation for the mediation are from $______ to $______ for associates, $______ to $______ for paralegals, clerks and librarians. Fees, disbursements, and other charges will be billed monthly and are payable upon presentation. Interest at the rate of 1% per month will be charged on all invoices that are not paid within thirty (30) days. Should the mediation be cancelled with less than 2 business days notice, I will charge a cancellation fee of two (2) hours of time.

The mediation will be conducted on [DATE] at [TIME] a.m. in the law offices of Blank Rome LLP in Wilmington. The parties shall submit their respective Mediation Statement on or before [DATE]. The Mediation Statement should contain each party’s position[s] as well as the facts and law each party believes is applicable to the resolution of the matters in dispute. Each Mediation Statement may also contain documents or other material relevant to the merits of the dispute.

Would you please sign the acknowledgment where indicated and give your signed copy to me at your convenience.

I look forward to working with you and thank you for selecting me as the Mediator in these matters.
Very truly yours,

Vincent J. Poppiti

VJP:mes

On behalf of our respective clients who are parties to the above-referenced cases and are participating in this mediation proceeding, we acknowledge and accept the terms set forth above and agree that our clients are responsible for and will pay their respective share of the Mediator’s fee and expenses in this mediation as billed and when due.

Dated: __________________________

[COUNSEL]

Dated: __________________________

[COUNSEL]
ORDER

At Wilmington this _____ day of ____________, 200__.

Pursuant to Judge ____________’s Scheduling Order of ____________, this matter has been referred to the Magistrate Judge for the purpose of exploring possible settlement or resolution of this matter. Therefore,

IT IS ORDERED that a teleconference has been scheduled for _______________ at _____ __m. with Magistrate Judge Thynge to discuss the scheduling of, the procedures involved and the types of alternative dispute resolutions available, including mediation conferences. **Plaintiff’s counsel shall initiate the teleconference call.**

Local counsel are reminded of their obligations to inform out-of-state counsel of this Order. To avoid the imposition of sanctions, counsel shall advise the Court immediately of any problems regarding compliance with this Order.
Counsel and the parties are required to review and be prepared to discuss the attachment to this Order during the teleconference.

UNITED STATES MAGISTRATE JUDGE
TELECONFERENCE PREPARATION REQUIREMENTS

The following are some areas that the Court will focus upon during the teleconference, if applicable. Counsel are required to be prepared to discuss these areas and shall advise the Court of other issues that may affect ADR.

1. The parties’ interest in ADR and the type of ADR (e.g., mediation; arbitration, binding or non-binding, with or without high/low; neutral evaluation; summary or mini bench or jury proceeding).

2. The timing of any ADR process.  Note: Generally, the Court’s availability is approximately 100+ days from the teleconference date.

3. The availability of counsel, the parties and/or their decision makers.

4. The length of time needed for the scheduled ADR process (e.g., more than one day).

5. The identities of any non-parties who have an interest or influence on the outcome of the litigation, and whether they were notified by counsel or the parties of the teleconference.  For example, such non-parties would include health care or workers’ compensation lienholders, excess carriers, or unsecured creditors in bankruptcy adversary proceedings.  Note: If any non-party’s interest would likely prevent a resolution if not a participant in the selected ADR process, or whom counsel or a party feels may be necessary for an effective ADR process to occur, then counsel or the party shall advise the non-party or its representative of the date and time of the teleconference and their required participation.

6. Any ancillary litigation pending/planned which could affect the ADR process in this case, including companion cases filed in this Court or other courts, and
arbitration proceedings.

7. Previous efforts, if any, by the parties or their counsel to resolve this matter.

8. The identification of any outstanding liens, the amounts verified, and whether the liens are negotiable or limited by governmental regulations or statutes (federal, state or local).

9. The identification of other information required to appropriately and reasonably value this matter prior to the ADR process selected. If the information will not be available or completed by the time of the teleconference, counsel shall have an understanding of the type of information, reports, data and necessary discovery before ADR should occur.
OVERVIEW OF MEDIATION/ADR PROCESSES

The District of Delaware has adopted an ADR program, whereby it currently uses the Magistrate Judge to conduct mediation, settlement conferences, binding and non-binding arbitrations and early neutral evaluations on a case-by-case basis. Counsel and the litigants are encouraged by the Court to explore alternative dispute resolutions with the Magistrate Judge. All civil cases, except those filed by prisoners, are eligible for ADR. Generally, during the initial scheduling conference, the ADR options are discussed and the District Judge may include in the Rule 16 Order a referral to the Magistrate Judge for ADR. The parties may also stipulate to ADR.

CASE SELECTION

Eligible Cases: All civil cases, except prisoner petitions and habeas proceedings, may elect to use ADR. To date, it has been used by cases involving contracts, personal injury, employment discrimination and other civil rights matters, trademark, copyright, patent claims, securities, environmental matters, and adversarial matters in bankruptcy.

Excluded Cases: Unless otherwise assigned by a judge, prisoner and habeas petitions are excluded.

Referral Method and Notice to Parties: During the initial (Rule 16) conference, the parties are advised of the referral for alternative dispute resolution to the Magistrate Judge. The scheduling order as a result of that conference contains the referral. At the initiate scheduling conference, the District Judge will discuss ADR with the parties. Generally, all District Court Judges refer matters for discussion regarding ADR with the Magistrate Judge during the Judge’s Rule 16 Conference. Any civil action may also be referred on the Court’s own motion or by stipulation of the parties. Thereafter, the Magistrate Judge notifies the parties through an order as to the date and time of the teleconference to discuss the form of alternative dispute resolution to be used, the procedures to be followed and the timing of the dispute resolution conference, as well as the submission of materials to the Magistrate Judge for review prior to the dispute resolution conference. Dispute resolution conferences will not be scheduled prior to the Rule 16 scheduling conference, unless referred by the District Judge.

Opt-Out or Removal by the Court or Parties: Parties may opt out of participating in the ADR process only by consent of the Court.

TIMING FOR THE MEDIATION PROCESS

Timing for the Mediation Referral: See above.
Timing and Nature of Submissions Required Before the Mediation Session: Generally, the submissions by the parties are controlled by the settlement/mediation conference order. Usually, each party must provide the Magistrate Judge with a concise memorandum setting forth the party’s position, concerning the issues to be resolved through mediation, not less than ten (10) days prior to the scheduled conference. This mediation statement does not become part of the Court record, is not exchanged among the parties or counsel, and is not provided to the trial judge. The statement may be in memorandum or letter form and must contain the following information: a description of who the parties are, their relation, if any to each other and by whom each party is represented; a brief factual background clearly indicating those facts not in dispute; a brief summary of the law indicating applicable statutes and cases (any unreported decisions are to be included as exhibits); an honest discussion of the party’s claims and/or defenses, including the strengths and weaknesses of the party’s position; a brief description or history of prior settlement negotiations and discussions, including the party’s assessment as to why settlement has not been reached, any proposed terms a party wishes discussed or submitted and a description of how a party believes the Court may be able to assist in reaching an agreement. Crucial or pertinent documents or other documentary evidence or a summary of such documents may be submitted with the mediation conference statement. However, the quantity of those exhibits is limited.

Duration of the Mediation Process: In general, a mediation session is scheduled to last all day, approximately eight hours. Trial counsel and the litigants are encouraged to continue with the process with or without Court assistance within a short time after the first session. Depending upon the case, generally, one session is sufficient to determine whether or not the matter may be resolved through mediation. However, it is not uncommon for a subsequent session to occur, or for the Magistrate Judge to continue negotiations through e-mails and telephonic discussions.

KEY PROGRAM FEATURES

Status of Discovery and Motions During Mediation Process: Unless otherwise stipulated by the parties or ordered by the Court, pretrial matters, such as discovery, case dispositive motions and status reports and conferences proceed as pursuant to the scheduling order. Generally, litigation is not stayed.

Party Responsibilities: Parties or those individuals on behalf of the parties capable of negotiating a resolution and trial counsel are required to attend the mediation session(s). Parties who fail to appear may be sanctioned. Since all mediations are scheduled pursuant to a Court Order, a Rule To Show Cause may be issued for non-appearance.

Mediation Logistics and Location: The Magistrate Judge, in consultation with counsel and the litigants, establishes the time for the mediation. The mediation sessions take place at the Courthouse. The Magistrate Judge determines the length and timing of the sessions and the order in which the issues are presented.
**Filing of Mediation Outcome:** In general, the mediation outcome is not made a part of the Court record. Notification is provided to the assigned judge by the Magistrate Judge as to the outcome of the mediation process. If the first mediation conference does not resolve the matter, the parties are consulted at the close of the conference if further mediation or other forms of ADR would be appropriate. The date and time of an additional mediation session or other ADR is scheduled at that time. If settlement is reached on all issues during the mediation conference, a written agreement in principle as to the settlement is drafted at the close of the conference, or a record is made through a court reporter. If settlement is reached on some issues, the parties must file a stipulation as to those issues and identify the issues remaining in dispute. The Magistrate Judge maintains jurisdiction over any disputes that may arise in the drafting of the final settlement documents.

**Confidentiality:** Information disclosed to the Magistrate Judge by a party or counsel during the mediation session, including in any written submissions, is not disclosed to the other party without consent. All mediation proceedings are confidential, are not admissible as evidence in any other proceeding, and may not be recorded without prior consent of the parties and the Magistrate Judge.