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## **PROPOSED MEDIATION PROTOCOL**

### **INITIAL JOINT SESSIONS**

Counsel and clients meet with the mediator. Introductions are made. The mediator explains the mediation process, the role of the mediator, the confidentiality of the process, the expectation of working together, etc.

The mediator then gives the counsel an opportunity to present their clients position. Unless agreed otherwise, the plaintiff's counsel goes first. These statements are usually in the nature of much abbreviated summations without the inclusion of confrontational or inflammatory rhetoric.

The mediator then gives the parties an opportunity to make a statement. This opportunity is given in order to have the parties themselves to begin to participate in the process.

After the representations made by the parties, the defendant and defendant's counsel retire to a separate conference room.

Part of the mediation process will entail my posing questions to each party to explore and evaluate the strengths, weaknesses and costs of the claim and defenses and also discuss possible pitfalls that may be unforeseen by the parties.

### **CAUCUSES**

I will conduct individual caucuses wherein I will meet with one party and his attorney in a private room without the opposing party present to inquire as to areas of agreement and disagreement and to clarify those areas.

### **INITIAL INDIVIDUAL SESSIONS**

During these sessions the mediator will ask several open ended questions, seeking to explore the interests of the parties and potential options for settlement. These sessions are also used in order to give each side an opportunity to perhaps more fully explain their concerns and positions with regard to the dispute.



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### SUBSEQUENT SESSIONS

The following sessions may involve joint sessions, more individual sessions, sessions with counsel and the mediator, sessions with counsel without the mediator, or if appropriate, with the consent of everyone, a meeting between the parties without counsel or the mediator.

### IF A SETTLEMENT IS REACHED

The mediator will ask counsel to confirm the terms of the settlement. The mediator will ask counsel and parties if they are willing to waive the mediation privilege for purposes of memorializing the settlement. If so, the mediator will then proceed to tape record the entry of appearance by counsel and clients, the waiver of the mediation privilege for the limited purpose of producing the tape recording in court if necessary, and the terms of settlement. The mediator will then proceed to administer the oath to the parties and confirm their acceptance of the settlement.

It is hoped that the foregoing will be of assistance to counsel and their clients.