

THE RESOLUTE SYSTEMS MED/ARB PROCESS (BINDING MEDIATION)

The Resolute Systems MED/ARB (Mediation/Arbitration) procedure involves both traditional mediation and, if necessary, an abbreviated form of binding arbitration. When parties select MED/ARB (sometimes referred to as "Binding Mediation"), they agree to attempt good-faith settlement negotiations through the traditional mediation process. However, if a settlement is not reached during the mediation phase of the MED/ARB, then a form of binding arbitration is initiated that will result in a final, non-appealable resolution to the dispute.

MED/ARB is an ideal form of ADR for two-party disputes where liability is not at issue (or at least not the primary issue), and the parties want a final resolution of their case (if they cannot come to a mutually-acceptable settlement). The MED/ARB controls risk by affording the participants the opportunity to reach a voluntary settlement. The process also reduces costs by eliminating the formal preparation and presentation of evidence associated with jury or bench trials and tri-panel arbitration.

In MED/ARB, high-low parameters are generally established at the last offer and last demand, and the parties begin the mediation at these numbers. Prior to the MED/ARB contract being prepared, the parties must agree -- and inform their Resolute Consultant -- whether these parameters and/or previous settlement negotiations will be disclosed to the neutral. If the parties elect NOT to disclose some or all of this information, then such a provision MUST be written into the contract. **IF THIS PROVISION IS NOT WRITTEN INTO THE CONTRACT, THEN HIGH-LOW PARAMETERS AND/OR PREVIOUS SETTLEMENT DISCUSSIONS MAY BE DISCLOSED TO THE RESOLUTE NEUTRAL.**

Preparation for the Resolute MED/ARB is quite similar to the preparation required in traditional arbitration and Mandatory Arbitration. Each side prepares a "90(c)" package. This package is submitted to the Resolute Judge and exchanged between the parties seven or 14 days prior to the hearing depending upon the preference of the participants. Although no formal presentation of evidence takes place at any point during the MED/ARB hearing, the neutral will review all submissions prior to the conference.

Please note that any evidence submitted or disclosed to the neutral must also be shared with the opposing side pursuant to the attached Resolute Systems Insurance Division Arbitration Rules (see rule 15).

The first phase of the MED/ARB incorporates mediation. The hearing begins with the Resolute neutral meeting jointly with the plaintiff and her/his attorney and the defense (the claim representative or defense attorney, or both). Each side is asked to make an opening statement regarding its position. After these statements are made, the parties are separated and the mediator meets with each side privately. In these private caucuses, the mediator discusses the strengths and weaknesses in each party's case, explores settlement options and makes recommendations regarding their positions. Nothing discussed privately with the mediator is relayed to the opposing side **IN THE MEDIATION STAGE**, so neither party bids against itself.

After several of these private caucuses, the mediator will either have the parties agreeing to a settlement figure or determine that the case cannot voluntarily be settled. If the parties agree to a settlement, the MED/ARB comes to a conclusion and the Judge enters the voluntary settlement as the award. The parties may also sign a Post-Mediation Settlement Agreement. If a voluntary settlement cannot be reached, then the arbitration phase of the MED/ARB commences.

The arbitration phase begins by the neutral calling the parties back together in the conference room. The Judge then asks each side to give a closing argument. Unlike conventional binding arbitration and Mandatory Arbitration pursuant to 90(c), the MED/ARB arbitration phase does not involve opening statements, direct and cross-examination. Rather, the parties simply offer their closing arguments to the Resolute Judge who will then render a final and binding decision based on these arguments, statements and the evidentiary submission package.

MED/ARB gives our clients the flexibility to negotiate a mutually-acceptable settlement to their dispute, with the assurance that if such an agreement cannot be reached, a respected judge will render a binding decision to settle the case. MED/ARB conferences generally last about one to two hours. It is an extremely efficient and cost-effective settlement procedure. For more information on the MED/ARB process or to discuss scheduling a MED/ARB, please call 800-776-6060 and ask to speak to a Resolute Consultant.