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Introduction

Those who hear of the Mediation Program—of ADR Services International, Inc.—and share the vision of what it can do for their law firm, often decide that indeed they want to set up such a program in their locale. Almost immediately, however, they frequently are somewhat baffled as to exactly how to start, and as to what tasks need to be performed in order to create a successful program. The purpose of this Manual is to respond to that need.

The ADRM has created a model program, which organizers can emulate or duplicate, and which has been implemented in Houston, Texas. Jerry Hall, the ADRM's President, can be contacted for these materials, as well as for brochures.

However, there is no one right way to organize and create a successful mediation program in a law firm. What has worked in Houston may not necessarily be the perfect formula. A statewide program will call for some creative and imaginative thinking in order to design a framework which will deliver the mediation program to all four comers of a state effectively and efficiently. In addition, the local legal culture, local "politics", and the local ADR culture call for modifications and adaptation of the ADRM model.

Although one can thus not simply "clone" the ADRM's model and transplant it to different states and cities around the country and expect instant success, there are nevertheless common considerations and factors which will be present in every locale and which need to be addressed. A discussion of them follows.

Benefits to the Law Firm - Synopsis

ADRS initial step would be to train all associated attorneys in the mediation techniques and to certificate each partner in the firm. This would provide added income during unproductive time for all associates. Taking dead office space and turning it in to a mediation center organized under another name such as ADR Services New York. This could then be rented to independent mediators as a community mediation center. Marketing benefits are numerous constant contacts with parties at your facility. This would help reduced overhead for unused office space. Next step would be to attract the top mediators in the area to become partners in the organization. Usually most successful mediators are so booked they turn down business, this way they could share in the profits when referring mediations to associates of the center. Like wise the firm would share in the profits as an initial partner. This could help in adding additional revenue to the firm. By attracting the top mediators you would also attract other well know mediators but not making them partners. You would administer the scheduling of all mediations and collection of fees and be reimbursed 25% of the mediators fees. Subsequently making your organization the most powerful and prestigious mediation center in the community.

First month start up would consist of 1-2 employees, phone line and minimal advertising and office space. A commitment from associates and partners for training would be required.

I. The Spearheading Organization

—Through a Local Reputable Law Firm

The ADRM model expresses a preference for a local law firm who is recognized as a leader in the community, as the nucleus around which a successful mediation program can be structured. The local law firm is preferred for a major metropolitan area of a populous state the reason this is critical for the success is that the partners in the firm are acquainted with the top mediators in the community. The local law firm would have immediate knowledge of civil court proceedings, and acceptance of mediation. The law firm would also have first hand knowledge of local judges position on mediation. Signatory companies may prefer to "sign on" for a large area rather than have separate and scattered local programs.

Why does the ADRM recommend local law firms as the leading organizational force for a mediation program? The reasons are several.

First, the local law firms have longevity and durability for a program. We should try to get the blessing of the local bar they may work against our organization. We should consider donating a percent to the local bar for education of mediation or whatever might entice them not to attack our organization.

Second, the bar association—usually led by its ADR committee or section— will approach the project for reasons of professionalism and public service. Profit making should not cloud their decision-making, which could lead to plan design features to suit the personal agendas of those who can profit from the program, but which may result in a program not delivered evenhandedly and fairly to all who should benefit.

Third, the bar association might provide volunteer people-power. With volunteers, the program could be considerably less expense to set up because some of the tasks are labor and time intensive.

Fourth, the bar association offers neutrality and legitimacy as a sponsor. Signatory companies, plaintiffs' lawyers, the business community and others need to feel comfortable that the pre-suit mediation program sponsor is someone not out to pick their pockets, but to render a quality service to all the users fairly and evenly. The bar association volunteers can thus open doors and get phone calls resumed that might not occur if the caller were "just another sales person".

Fifth, utilizing the bar association as the sponsor subtly draws into the "ADR movement" more of the mainstream practicing lawyers. One of the recognized obstacles to setting up any successful ADR program is educating lawyers and persuading them to use mediation as a means to solve their clients' problems. Utilizing mediation represents for many lawyers a change from the traditional court track. Lawyers are familiar with the courts and comfortable with how to guide a client's case through the court system. Not only does mediation represent something new which always evokes resistance among lawyers, but some mistakenly perceive it as a threat to

their practices or to the jury system. Indeed, the design feature of the ADRM's model program—might be that a signatory company will pay three-fourths of the cost of the mediation — to overcome the obstacle and to act as an inducement to lawyers (and clients) to use mediation in their practice before filing lawsuits. Thus, having bar associations act as pre-suit mediation program sponsors addresses the reluctance of lawyers to use mediation by involving the lawyers in the program and publicizing to their peers that pre-suit mediation is a valuable tool they can use to resolve their clients' disputes.

II. The Structure of the Committee

Because setting up a mediation program demands the commitment of a significant—but manageable—amount of time, the bar associations' ADR committee or section might create a special subcommittee, or a task force, to work on establishing the program. If the bar association forges a partnership with others (such as the local chamber of commerce or local insurance claims' club, a plaintiffs' bar association, or others) in order to create a mediation program, their representatives should be added to the subcommittee or task force.

III. The Factors or Elements of a Mediation Program

There are a number of elements of every mediation program which must be addressed. The following is a brief discussion of each.

A. *The "Position Statement"*. This is the cornerstone of the model program. The ADRM's model agreement should be studied to see if it needs to be modified to suit the local legal culture or ADR culture. However, while the model "Position Statement" is not inviolate, caution should be used in making any changes. The reason is that the model Position Statement took over four years to develop, and from an ADR systems design standpoint, everything in it is there for a reason.

For instance, one idea is that mediators' fees should be split equally between the parties because those attorneys who used mediation in their practices were comfortable with that customary split. The trade-off, however, is that many lawyers do not utilize mediation, and some of the inducement for those lawyers is now lost, and the mediation option is less attractive to them.

There are several large national insurers who will not sign the ADRM's model Position Statement unless a provision is added that they can reject a requested mediation within fifteen days after a Request to Mediate is received. Those companies are State Farm, Nationwide, Allstate and Farmers. We should be flexible and permit those companies to join our local program on that modified basis. They are national supporters of mediation programs and are a great asset to our pool of signatory companies. They will put their energies behind the program and have pledged not to reject cases arbitrarily. Many other companies will sign the Position Statement without that proviso, and despite the fact that it creates a "two tiered" program, we see

no evidence that it will hurt a local program. To the contrary, those companies will enhance our local program.

Secondly, there should be a separate "Position Statement" for corporations. Corporate signatories are non-insurers, such as local bus companies, hospitals, utilities, municipalities, taxicab companies and others who are self-insured or have large deductibles or retention's and who handle a lot of their own claims. The corporate Position Statement is identical to the insurer's, but leaves out mention of coverage questions or insureds.

There is no reason to limit the cases mediated under the program either by dollar value or type of claim. Mediation has been shown to work in all kinds of cases, big and small, and whether involving two parties or multiple parties.

B. Establish an Administrator for the Program. Someone needs to act as the "clearinghouse" for cases mediated. When a claimant's counsel sends in a "Request to Mediate" form (with a copy sent to the signatory company), a person at ADRM will scan the panel of mediators and Fax/Mail out to the parties the next five names on the rotation or qualified by request, from which the parties choose the mediator. Or they could tie directly into our computer system and view our files (This is just one suggested means of mediator selection. There are others.) **The program should insure the parties' freedom of choice of a mediator.** If they are not satisfied with any of the five, they should be given five more names or be free to choose anyone they wish.

The administrator at ADRM should be a person who is knowledgeable about mediation and the entire mediation program. He or she will need to answer person's questions about the program or about the mediation process itself, and mail out brochures, forms or packets of information about the program.

The administrator will schedule the mediator and the parties about the date set for the mediation, collect all fees and later determine the results of the mediation (from a Mediator's Report form), send out and collect back questionnaires from the parties and counsel (to gauge their satisfaction with the process, the mediator, and the program), and to keep and report statistics and program performance. The administrator also maintains a list of mediators and biographical data (and rates charged) on each mediator, which is shared with the parties. The administration fee charged to the mediator would range from 15%-25% of their quoted fees.

A new program will start out slowly, but the administrator may nevertheless be busy with organizational matters. ADRM, if volume dictates the need, may need to hire an additional person or designate the duties to one person and restructure our staff. This would be especially true in large cities. There has not yet been enough experience with the program in large cities to determine if the administrator will become a full time position or server in several capacities.

C. Publicity The committee or task force needs to plan for publicity including a "kick off celebration" or press conference for launching a new program. Bar Association publications are an excellent vehicle in which to publish the list of signatory companies and a description of how

the program works. Usually the local plaintiffs or trial lawyer's organization will have their own newsletter where similar publicity can be generated without cost. Bar association press releases can be effective, such as announcing the addition of new signatory company or performance statistics of the plan. The local media have reacted favorably to this project in various locales, and usually a business editor or television and radio broadcasters will find the idea intriguing. What should be recognized is that the public often views the legal profession as greedy and wanting to foment litigation. This program is an attractive news piece because lawyers are encouraging people to settle their differences out of court and sometimes before a lawsuit is filed. It is unselfish, aids the courts, saves taxpayers dollars, serves people, and enhances the image of lawyers, and it is those "angles" which catch media attention.

In bar publications, the committee should generate "testimonial" articles by counsel who have had a successful mediation (while protecting the confidentiality of the parties' identities and the amount or terms of the settlement). The ultimate cost to the parties of the mediation is a worthwhile fact to publicize, especially if a comparison could be made to what litigation of the case might have cost (in dollars, stress and time). Various signatory insurers and corporations may have "in-house" newsletters or publications in which the committee should encourage similar "testimonials" to be authored.

The committee may also want to share progress reports with the practicing bar and the signatory companies. Likewise, the companies should be strongly encouraged to "nominate" cases to the administrator and plaintiffs' counsel, even though plaintiffs' counsel can decline the invitation. The effect of such signatory efforts to generate more mediations is to keep the program and its benefits in front of claimants' counsel and in the minds of claims adjusters and risk managers.

D. Obtain Signatory Companies. On a national basis, supporters of Mediation Programs include USM, State Farm, Nationwide, GEICO, Allstate, Continental, Farmers, St. Paul and Utica National. Some of these companies are "decentralized in that the national home office does not dictate to a particular city, state or region how its claims offices in those locales should handle various ADR programs. Therefore, the claims manager in each office of those companies must be approached for our local program and convinced of the wisdom of becoming a signatory company. Nevertheless, the fact that their home office is a signatory supporter will carry a lot of weight, and they can help us identify the right person at each company to approach in our region, and can help persuade those companies to become signatories to our local program.

For other insurer signatories, we may want to obtain the roster of the local claims managers club or association, or use another directory. A letter describing the program and its benefits can be sent to the local claims manager along with the "Position Statement" to be signed. Advise the insurers and corporations that anyone in the claims department who is authorized within the company to sign the "Position Statement" can sign. This avoids long delays if they believe that only a CEO or high officer can sign.

Our letter can invite the claims managers to a meeting at our office or the local bar, where an ADR Committee representative (or the president of the bar, if he or she is willing and well

informed) will explain how the program works, why the bar is asking for their support, the benefits expected, and then be available to answer questions.

Corporate counsel or risk managers should also be invited for the same program. Other possible corporate signatories might include fast food franchises, bus or transit companies, taxicab companies, hospitals, retailers, utilities, and municipalities. We should call on lawyers within the bar who represent those corporations to enlist their aid in identifying within the company the right person to talk to and in getting the company to become a signatory.

We may have even better success with insurers if one particular carrier representative is willing to help us make telephone calls to his or her peers at the other insurers' offices. We may find them unwilling to do so, however, because of antitrust advice that has been given to them in the past. Many insurers are overly cautious (probably wisely so) about anti-trust concerns.

Nevertheless, a follow-up telephone program to enlist signatories is essential. While most insurers, we will find, are very receptive to the mediation program, signing up for the program will not be the most urgent thing on the claims managers' desk. The committee or task force should divide up the list of signatory candidates and make follow up reminder telephone calls. Questions will arise which need to be answered, and the hierarchy of the company will have to "give its blessing" before companies sign on. The time period to get some signatories can run from one week to six months.

The most frequently voiced concerns of insurers/corporations are (1) they would like to have the right to reject selected mediations, and (2) they would like to have the right to nominate cases for mediation, just like claimants' counsel.

If an insurer insists upon having the right to reject selected cases, we can offer them the option that State Farm, Allstate, Farmers and Nationwide have elected. This results in a "two tiered" system, which is not ideal, but is better than not having a company sign on at all. To persuade those that are wavering, we should point out that accepting all mediations will attain the goal of encouraging widespread use of mediation, and that the settlement rate will be about 80%. Thus, "taking the bad with the good" is definitely cost effective and wise. If a claimant's counsel has a requested mediation rejected by a particular carrier, it is quite possible that that counsel in the future will simply file suit with his or her claims with that company. The goal of breaking down the barriers to the use of mediation pre-suit to avoid lawsuits may thus be undercut.

We should also point out to the insurer that retaining the right to reject claims means that the insurer has not really made a "real" commitment. The insurer, by signing such a qualified "Position Statement", has merely said, 'We will go to any mediation if we agree to it'. That position is the situation we have without the ADRM's Mediation Program, so it does not appear to be much of a commitment at all.

Do not make those arguments, however, to Allstate, Nationwide, Farmers and State Farm because they have heard them before and rejected them. Our experience thus far is that those companies reject very few mediations, and have so far not significantly discouraged claimants'

counsel. The support of those companies for the Mediation Program could be so strong that they would help the spread of the program. Their stance could be taken in order to better sell the program to their claims personnel. They and the ADRM would watch the progress with interest to see if the selected rejection of certain requested mediations will hurt the success of the program.

As for the companies' right to nominate cases for mediations, it is strongly encouraged. Although the insurers would sign a "Position Statement" obligating them to accept all requested mediations, the plaintiffs' bar might not sign a "Position Statement" making a reciprocal obligation. It is impractical to get the entire plaintiffs' bar in a city to sign blanket "Position Statements". Thus, although carriers and corporations are encouraged to request a claimants' counsel to go to a mediation before suit is filed, the claimant's counsel can decline the invitation. Many times the claimant's counsel will, however, agree and having the carriers initiate a request for mediation will serve as a reminder to counsel of the availability of the program.

E Build Consensus and Partnerships Among All Interested Groups and Follow-Up Monitoring. An effort should be made to get all interested groups to the table, committed and involved in the formation of our mediation program. These groups include affiliated or other bars (minority, women's, defense lawyers, young lawyers section, etc.), the plaintiffs' bar (such as a local trial lawyers association), the business community, the insurance community, the ADR community, local law schools and the judiciary. Every effort should be made to involve each group as much as possible, in order to build a common ownership in the program, and to insure all that the program will be run evenhandedly and fairly, and not just for the personal benefit of one of those interested groups. If they all put work into the program's formation, they will all have a stake and an interest in seeing that it is a well run, successful program.

While the participation and support of the other groups is obviously important, the support of the plaintiffs' bar is key. It is the plaintiffs' counsel group which must convince its members to utilize the program and to request mediations. They must make a change to include mediation as a part of their practice, and change is not easily accomplished in a lawyer's life. Seminars to teach mediation skills and effective advocacy and negotiation practices in mediation should be planned and offered, and everything possible should be done to educate the plaintiffs' bar about how valuable a tool mediation can be for their clients. This was a lesson reamed in the Houston pilot program, which had a slow start even though over 30 signatory companies were "ready, willing and able" to go to mediation. Fewer mediations than were expected occurred because of an inadequate job of educating and informing the practicing bar, and that occurred even with a success rate of nearly 90% settlements. Increased publicity and seminar programs are now being instituted to correct those deficiencies, as well as a drive to add some key signatory companies.

Building consensus and partnerships with all interested groups and endowing them all with an ownership interest in the success of the pre-suit mediation program will pay great dividends in launching and maintaining a successful pre-suit mediation program.

Experience has shown that simply getting a well designed, well thought out program begun may not necessarily ensure success for an extended period of time. There is normal turnover in insurance and corporate claims departments, and new people may not be informed about or committed to the program. Attitudes can change, and both sides may begin to take a more blasé attitude toward each mediation, making it another routine step toward the lawsuit. In order to keep the program "fresh" and responsive to change, and to repair or address glitches or problems in the program's operation, it may be advisable to set up an "Advisory Council" to monitor the program and meet three or four times a year to review the program's performance. The Advisory Council can be made up of the bar association staff person assigned to the project, some insurer and corporate representatives, representatives of the plaintiffs' bar, and someone from the bar's ADR committee or section. They can deal with constructive criticisms of the program, and recommend changes to correct recurring problems. "Renewal" seminars may be needed or informed speakers sent to interested groups to publicize changes or correct miscommunications. The Advisory Council can help keep the plan focused on its goals of delivering fast, inexpensive and fair pre-suit mediations so that everyone who should benefit does benefit.

The follow-up questionnaires received from attorneys and parties following mediations as part of the monitoring and "quality control" mechanism designed into our program can provide some of the data to the Advisory Council to help them formulate recommendations for change. Other information will come "anecdotally" from various signatory companies, plaintiffs' counsel and the bar association staff person administering the program. Open, constructive and candid meetings to apply problem solving skills to those problems will go a long way toward continued success of the program.

F. Supplying the Mediators—Formation of the Panel. The policy of the ADRM's program is that we want to deliver a user-friendly program to the end users— the public and the signatory companies. For that reason, those parties should be provided freedom of choice of who should be the mediators for their disputes. The ADR community in a locale should be great supporters of the program. If a program design produces overly-stringent requirements for the mediators, such that only an elite group qualifies, not only will the parties' freedom of choice be seriously limited but a significant segment of the ADR community will be alienated. Those left out may become detractors and critics of the program, contrary to the goals of building unity behind the program.

On the other hand, having poor quality mediators can damage the parties' faith in mediation and create a lack of confidence in the program. Thus, some minimum qualifications should be set, which most mediators can attain. The monitoring of the program, the parties' responses to evaluation questionnaires, and the marketplace itself should reveal those mediators whose performance is unsatisfactory.

Some insurers in various locales have preferences for certain vendors of mediation services. Their freedom of choice should not be chilled by the design of the program. However, no plaintiffs' counsel should be required to accept a mediator from such a vendor, as the company

and counsel must both agree on the mediator. The credibility and neutrality of the mediator must be a view shared by both parties to the mediation.

Some mediators have "signed up" exclusively with a certain vendor. Permission should be sought for that mediator to be registered with ADRM Mediation Program panel. Cultivating a good working relationship with all vendors is a wise course to follow.

In Houston, the minimum qualifications for mediators were five years of law practice, having gone through ADRM or any accredited mediator training program, and having handled at least 10 mediations. ADRM should be prepared also to permit the parties to choose a mediator who is not on the panel, because it is inconsistent with their freedom of choice to require otherwise and because a case may call for it. It has also been a policy of ADRM to allow highly skilled non-attorney mediators to participate.

One related matter which is facially controversial is whether a claimant or an insurer or corporation should be "allowed" to attend a mediation *pro se*. Bar associations (and certainly the plaintiffs' bar) cannot reasonably be expected to advocate openly that claimants attend mediations *pro se*. The ADRM's model Position Statement deals with "claimant's counsel, and does not mention or suggest *pro se* representation. Recognizing that claimants would have a constitutional right to represent themselves at a mediation, the model program does not invite challenge by expressly requiring a claimant to be represented by counsel. Experience to date has disclosed not one case where a claimant has chosen to be unrepresented by counsel at a mediation.

The same considerations merit that the program not **require** an insurer or corporation to be represented by counsel at a mediation. Claims people and risk managers are trained, experienced negotiators who know how to evaluate a case. They do it every day, and settle claims every day (especially pre-suit), without a lawyer representing them. They would not be at a disadvantage or be the victim of a power imbalance at a mediation. Obviously, if insurers and corporations were required by the program's design to be represented by attorneys at mediations, the cost savings which make the program attractive to them would be lost. The companies will nevertheless undoubtedly retain counsel for special, selected mediations, as should be their choice.

G. Forms and Packets. Whenever anyone makes an inquiry about the program, the administrator must be prepared to provide that person with descriptive materials and forms necessary for an understanding of the program, how it works, and what to "file" if the party wants to become a signatory, initiate a pre-suit mediation, sign on as a mediator, or take any other action under the program. Some suggested forms have been, but we will want to use them as guides or references and not necessarily adopt them *in total*. Again, the local legal or ADR culture, or our organizational structure, may dictate that we change program descriptions and forms.

Likewise, some states statutorily or by court rule require a written mediator's contract. That agreement is between the mediator and the parties and need not necessarily be in our

"packet" of forms. However, we may choose for various reasons to include it. Some of the forms and literature in use which we may wish to incorporate into our plan are as follows:

1. Position Statement—see **APPENDIX A**;
2. Request to Mediate form—see **APPENDIX B**;
3. Mediator Biographical Form - on file with bar association administrator, but made available to parties—see **APPENDIX C**;
4. Suggested letters for signatory company to claimant's counsel to suggest case for pre-suit mediation — see **APPENDIX D**;
5. Program Evaluation Questionnaire — see **APPENDIX E**;
6. "Five Easy Steps" to a mediation —see **APPENDIX F**;
7. Mediator's Agreement —see **APPENDIX G**;
8. Mediators Closing Report —see **APPENDIX H**; and
9. A one to three page general description of how the program works and functions — see **APPENDIX I**.

H. Funding. Houston started the first program with a \$2,000, primarily to cover copying forms and postage. No new staff person was hired, we could use "in kind" donations from signatories to print attractive packet folders and to produce a promotional videotape.

There are a variety of sources of income and organizers will want to eye "startup cost" sources and ongoing funding sources after the pilot period has run its course. As to start-up costs, local corporations and insurers friendly to ADR concepts or to our organization (or to both) may be willing to make cash or in-kind donations. A local bar or other local foundation may also be a good contact. Obviously, signatory companies may be willing to make contributions, as well as specialized bars or their "PAC" funds. Where does a bar association raise money whenever it wants to start a public interest project? Those are some of the places to look now.

But there are other potential sources. ADRM will Charge the mediator a 25% fee for setting up the administration and scheduling of the mediation. This fee is only from mediators who receive case referrals under the program. Conceptually and for the long term, the ADRM has discussed not only per case administrative fees as a source for on-going funding, but having signatory companies pay an annual fee to be a signatory. A conscious decision has been made at this point not to attempt to charge any such fees. The reason is that the Mediation Program is still embryonic and in its conceptual form. It is in fact a grand experiment, although now proven "in the laboratory". The ADRM has not determined such set fees to be charged until much more experience has been generated with more results to demonstrate the value of the program.

At this point, plaintiffs' lawyers, mediators, signatory companies and bar associations could be partners in the laboratory. While ultimately it is recognized that the program will need to be self-sustaining financially, at this point we do not wish to discourage any user, but a need to establish a profitable organization will be required and expected by the start up organizations.

Finally, the production of seminars by ADRM regarding mediation and negotiation for counsel, insurance claims and risk managers, and for mediators, can be an income producing activity which can help defray costs of the program. Undoubtedly, creative minds in each locale can come up with imaginative and appropriate fundraising events or devices which serve to unite all the participants behind a fun and energizing public service project, and to raise funds to make the vision become a reality.

APPENDIX

- Appendix A Position Statement
- Appendix B Request to Mediate Form
- Appendix C Mediator Biographical Form
- Appendix D Suggested letters to claimant's counsel
- Appendix E Program Evaluation Questionnaire
- Appendix F "Five Easy Steps" to a Pre-Suit Mediation
- Appendix G Mediator's Agreement
- Appendix H Mediator's Closing Report
- Appendix I General Program Description

APPENDIX A

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Insurer's Position Statement on Mediation of Pre-suit Tort Claims

Company

Address

City, State, Zip

Telephone

In the event of a tort claim or claims against any of our insureds, excluding mass tort claims, once coverage disputes, if any, are resolved, and with the consent of our insured where required, which tort claim(s) is asserted on behalf of a client or clients by a claimant's(s), counsel, we are prepared to explore settlement of such tort claim or claims, before suit is filed, on the following terms:

- (1) If direct negotiations of the claim fail to produce a settlement, the claimant's(s) attorney may serve upon us a written Request for Mediation pursuant to this Position Statement. The service of such Request for Mediation by the claimant's(s) attorney, by the act of service, will signify the claimant's(s) and counsel's mutual commitment to the terms and spirit of this Position Statement.
- (2) We and claimant's(s') counsel will endeavor to agree upon a mediator.
- (3) Three-fourths (up to \$1,000.00) of the fee of the mediator will be paid by us, and one-fourth will be paid by the claimant(s). In the event that our \$1,000.00 limit has been incurred, the parties will split equally the mediator's fees beyond that point.
- (4) Each party shall provide to the other party (or parties) information sufficient to enable such other party (or parties) to adequately evaluate the merits of the claim, including liability and damages.
- (5) We (and the claimant(s) and counsel) agree to negotiate in good faith at the mediation hearing, and the claimant(s) and claimant's counsel agree to appear and attend the mediation hearing in person.
- (6) We (and the claimant(s) and counsel) will endeavor to see that the mediation hearing, unless otherwise agreed by the parties, would be held within 90 days after the Request to Mediate is received by us.

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- (7) If a Request to Mediate is received by us after suit has been filed against our insured(s), we may, but only at our option, agree to these mediation procedures. In such a mediation, the fees of the mediator will be borne equally by the parties.
- (8) The parties recognize and agree that mediation sessions are settlement negotiations and that settlement negotiations are inadmissible in any litigation or arbitration of their dispute, to the extent allowed by law. The parties agree not to subpoena or otherwise to require the mediator to testify or to produce records, notes or work product in any future proceedings.
- (9) The parties may, but only by mutual agreement, modify the procedures set out herein on the pre-suit mediation of tort claims, in order to provide flexibility and to effectuate the spirit and intent of the mediation process.

We understand that if the mediation process does not produce results satisfactory to either party(ies), either party(ies) may elect to proceed with litigation. This “Position Statement” is not a contract to engage in negotiations or alternative disputes resolution, and is not intended to create legally enforceable rights. This “Position Statement” is not intended to apply to mass tort claims or class action claims.

Company

Chief Executive Officer

Chief Claims Officer

Date

*Our major operating subsidiaries or affiliated companies are:

APPENDIX B

REQUEST TO MEDIATE

TO: Name and Address of Signatory
Insurance Company or Corporation

Attention: Claims Department

Re: _____

vs.

Claimant

Name of Insured or Company

Claim Number (if known or appropriate)

Date of Accident or Loss

Pursuant to ADRM's Pre-Suit Mediation Program, I hereby request that the above claim be submitted to mediation pursuant to that Program. I have checked and am advised that _____ [Insurance Company or Corporation] with whom or against whom this claim has been made, is a signatory member of that Program. I commit to abide by the terms of the Program and the Position Statement of the Signatory.

Attorney for Claimant(s)

Name(s) of Claimant(s)

Address of Attorney

Telephone Number of Attorney

A copy of the foregoing Request to Mediate has been mailed this _____ day of 20 _____ to ADRM.

Attorney for Claimant(s)

APPENDIX C
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Please type your response to the following questions. This form will be duplicated and on a rotating basis mailed or faxed to those who contact ADRM Mediation Selection Service.

Mediator Biographical Form

Name _____ Phone _____

Affiliation _____

Address _____

City _____ State _____ Zip _____

Undergraduate Degree _____ Year _____

Undergraduate School and Major _____

Law School _____ Year Admitted to Bar _____

My hourly rate for mediation service is \$ _____ (Rate will be disclosed to parties requesting Mediators)

Please check one:

- I primarily represent Plaintiffs
- I primarily represent Defendants
- I represent both Plaintiffs and Defendants
- I am an non-attorney mediator

The primary areas of my practice have been:

Significant past employers and positions have been:

APPENDIX C
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Other Relevant Background

I hereby Certify That I:

1. am licensed to practice law in the State of _____ and am in good standing with the Supreme Court of _____, including current with CLE requirements.
2. Have five (5) years of actual practice in the general areas of torts and insurance claims.
3. am a member of the _____ Bar Association.
4. Attended ADRM's mediation training program or a comparable or equivalent program of mediation training elsewhere. I have attached a copy of the certificate from the training agency.
5. have actually mediated at least ten (10) cases or will be paired with an experienced mediator for the first three (3) mediations. I also understand that in the latter case I will not be paid for this experience.

Signature

Date

I am interested in participating in the program, but cannot certify to the above statements. Please contact me in regard to what I can do to qualify for the program.

Signature

Date

APPENDIX D
Page 1 of 2

[TO BE PLACED ON SIGNATORY COMPANY'S LETTERHEAD]
SIGNATORY COMPANY'S SUGGESTED LETTER
TO CLAIMANT TO INITIATE MEDIATION

RE: ADRM Mediation Program

Dear _____ [Claimant or Claimant's Counsel]

As you are aware, the dispute between you and the undersigned or the undersigned's insured has not been resolved notwithstanding prior efforts to reach a settlement. In an attempt to avoid litigation, I would like to inform you that this company is a signatory to **ADRM Pre-Suit Mediation Program**. For your convenience, enclosed is a copy of the **Program Instructions** which includes a **Request to Mediate**.

Please give your sincere consideration to mediating this case pursuant to this program. If you decide to pursue this course of action, simply follow the Five Easy Steps to Mediation.

If we have the opportunity to mediate this dispute, this company is committed to negotiate in good faith to reach an expeditious and fair resolution.

Mediation is not intended as a substitute for litigation or trial by jury, but as a method of settling your claim before filing suit.

PARTICIPATING IN MEDIATION MAY AFFECT YOUR LEGAL RIGHTS REGARDING YOUR CLAIM AND YOU'RE RIGHT TO FILE A LAWSUIT AT A LATER DATE. ADRM RECOMMENDS THAT YOU CONSULT WITH AN ATTORNEY OF YOUR CHOICE PRIOR TO ANY PRE-SUIT MEDIATION. ADRM WILL FURNISH YOU WITH A LAWYER. UPON REQUEST, AND SHALL NOT BE RESPONSIBLE FOR THE RESULTS.

Thank you for your consideration.

Very truly yours,

APPENDIX D

Page 2 of 2

ADR SERVICES INTERNATIONAL, INC. TRANSMITTAL LETTER ENCLOSING LIST OF MEDIATORS

_____ [Name and address of
Claimant or Claimant's
Counsel]

_____ [Name and address of signatory company]

Re: _____ [Claimant]
_____ [Name of Insured or Potential Defendant]
_____ [Claim Number if known or Appropriate]
_____ [Date of Accident or Loss, if Appropriate]

To Whom It May Concern:

Dear:

Thank you for submitting the above-referenced matter to ADRM Mediation Program (“Program”). No doubt, mediation offers the potential for an expeditious resolution for both parties, which is seldom achieved through litigation. We sincerely hope that your dispute will be successfully resolved. If, however, your dispute is not successfully resolved, we hope that you will find the program worthwhile, efficient and well-administered and that you will consider utilizing it in the future.

Enclosed are biographical sketches and fee information for five potential mediators, selected from a rotating list. While there are no guarantees as to the effectiveness of these mediators, they have certified to ADRM that they have the qualifications established by the ADRM for mediators to participate in the Program. Please follow the Five Easy Steps to Mediation and the Program Information for selection of your mediator.

It is the mediator's responsibility to schedule the date, time, and place of the mediation and to notify ADRM of the same. If the mediation will be held at ADRM Mediation Center, it must be scheduled during the hours of 8:30 A.M. and 5:00 P.M., Monday through Friday.

Please call me if you need any additional information.

Very truly yours,

Jerry Hall
President

APPENDIX E
Page 2 of 2

Comments: _____

9. Would you use this procedure again? **YES** **NO**

If no, why not: _____

10. How would you rate the ADRM facilities?

EXCELLENT **GOOD** **FAIR** **POOR**

11. How did you hear about the Mediation Program? _____

12. Was the ADRM responsive when you called?

VERY RESPONSIVE **SOMEWHAT RESPONSIVE**
 NOT RESPONSIVE

13. What could ADRM do to make it easier for you or others to use the mediation process in the future?

APPENDIX F

FIVE (5) EASY STEPS TO MEDIATION

REMEMBER: *A claimant or claimant's attorney must initiate the Mediation*

1. Any party may complete the **Request to Mediate** form, but it must be signed by the claimant or claimant's attorney and mailed with a \$25.00 check made payable to ADRMediator, Inc.

MAIL TO:

Mr. Jerry Hall, President
Mediation Program
ADRMediator, Inc.
(888) 476 -4255 FAX
(866) 978-5123 Toll Free

The claimant/claimant's attorney must mail a signed copy of the Request to Mediate form to the signatory company representative.

2. After ADRM has received the \$25.00 fee from **each party and the signed Request to Mediate form**, ADRM will send by fax or mail a list of approved mediators to all parties.
3. When a party receives the list, the party should contact the other parties to select a mediator from the list or to select any other mediator agreed by the parties.
4. After the mediator is chosen, the parties should contact ADRM to inform them of the selection. ADRM THEN ASSUMES RESPONSIBILITY FOR SCHEDULING THE MEDIATION AND ALL RELATED MATTERS.

ADR SERVICES INTERNATIONAL , INC. RESPONSIBILITIES:

- a) ADRM shall notify the parties of mediator selection and the scheduled date for the mediation.
- b) After the mediation has concluded, ADRM shall provide each party an evaluation form with an envelope capable of being sealed. After completing the evaluation form, each party will deliver the form to ADRM or hand the form to the mediator who will do so.
- c) The mediator shall complete the Closing Report Form and deliver it to ADRM within seven (7) days of the scheduled mediation.

APPENDIX G

Mediator's Agreement

As participants in the **ADRM** Mediation Program, we agree to have _____ as mediator of the claim of _____ against _____ We further agree to pay within ten (10) days after the mediation selection and prior to the said mediation, his/her hourly rate and expenses for mediation services as required by the Program or as we otherwise agree. If the case is settled before the mediation hearing, or the hearing is canceled by anyone other than the mediator, **ADRM** shall return paid funds immediately.

The parties hereto agree that neither **ADRM**, the **ADRM** Mediation Center, nor the mediator shall be liable to any party for any negligence, act or omission in connection with the processing, administration or hearing of any mediation conducted under this Program.

The parties agree that the mediator is an independent contractor not employed by either **ADRM** or **ADRM** Mediation Center. The mediator will serve as a neutral party in the proceeding to assist the parties, if possible, in arriving at an amicable settlement of their differences. The mediator will not render any decision. The compensation of the mediator is not related to the success of the mediation hearing.

The parties further agree not to subpoena or otherwise to require the mediator to testify or to produce records, notes or work product in any future proceedings.

Dated this _____ day of _____ 19 _____

Claimant or Claimant's Attorney

Signatory Insurer or Corporation

Mediator

APPENDIX H
MEDIATOR CLOSING REPORT

Date of Mediation

Claimant

Claimant's Attorney, if any

Insured/Potential Defendant

Signatory Company

DISPOSITION OF CASE: (Check One)

- Settled
 - Unresolved
 - Partially Settled
 - Rescheduled
- New Date _____

Mediator's Name

- **NOTE TO MEDIATOR:** This form must be completed and delivered within seven (7) days of the scheduled mediation to:

Mr. Jerry Hall
ADRMediator, Inc.
(888) 476-4255 Toll Free FAX
(866) 978-5123 Toll Free

<<NO EXCEPTIONS>>

APPENDIX I

Page 1 of 2

ADR SERVICES INTERNATIONAL, INC. PRE-SUIT MEDIATION PROGRAM

PROGRAM INSTRUCTIONS

Introduction

ADRM is pleased to administer the Mediation Program. These instructions provide background information about the Program and a step-by-step guide.

Signatory Companies

A number of insurance companies and business corporations have agreed to explore settlement of claims through mediation before a lawsuit is filed. The identity of all participating companies is of record at the **ADRM**. The claimant's first step should be to determine whether the insurer or corporation involved is a Program participant. This information can be obtained from Jerry Hall or Laura Bunt at **ADRM** at (866) 978-5123.

Request to Mediate

The claimant initiates the process by completing and serving the Request to Mediate form, a copy of which is attached as Exhibit A. The original Request should be served upon the signatory company, with a copy sent to Jerry Hall at **ADRM** at the same time.

Designation of Potential Mediators

ADRM maintains a data base of names of potential mediators, attorneys who have indicated their willingness to serve in that role, and who have satisfied certain minimum qualifications, set forth on attached Exhibit B. Upon receipt of the Request to Mediate or Case Transmittal Form from claimant's counsel, **ADRM** will send by FAX and/or Mail to both claimant's counsel and to the signatory company names and biographical information for five (5) potential mediators. The biographical information has been supplied by each potential mediator, and includes the hourly rate charged by each potential mediator for the mediation services.

Selection of Mediator

The claimant and the signatory company, or their representatives, shall confer and agree upon a mediator within two (2) weeks of receipt of the list of potential mediators from **ADRM**. **ADRM** shall have the responsibility to contact the signatory company to begin this process.

If the parties are unable to agree upon a mediator within the two (2) week period, each party shall strike two (2) names from the list and then exchange the revised list with the other party within one (1) more week. The first name common to both lists will be the designated mediator. The parties are responsible for promptly asking the mediator to determine whether the mediator would have any conflict of interest in the case.

The parties are free to choose a mediator from any panel or other source, if they so agree.

Contact with Mediator

Once the parties have selected a mediator, the parties (or counsel), together with the mediator, shall sign the Mediator's Agreement, a copy of which is attached as Exhibit C. The Mediator's Agreement must be signed before the mediation conference begins.

Payment of the Mediator shall be at such dates and upon such terms as are agreed upon directly between the mediator and each party. ADRM shall be responsible for the collection of mediators' fees.

Scheduling the Mediation Conference

ADRM shall have the responsibility for scheduling the mediation conference at a date and time mutually convenient for the mediator, counsel and the parties. Should the parties wish to use the mediation conference rooms at **ADRM** Mediation Center, please call Jerry Hall at **ADRM** at (866) 978-5123 to advise him of the schedule. The mediation room cost is \$20.00 per hour. Most mediation conferences should last less than _____ (three) hours. The parties may agree to limit the duration of the conference. The office hours of ADRM are 8:30 a.m. to 5:00 p.m., Monday through Friday. All mediation conferences should be scheduled so as to be completed by 5:00 p.m.

APPENDIX I

Page 2 of 2

Cancellation Fees

The parties may resolve their dispute before the mediation conference, eliminating the need for the conference. The conference may need to be canceled for other reasons. In the event of cancellation, **ADRM** will charge a small cancellation fee, the parties must pay **ADRM** the sum of \$100.00 as compensation for time incurred in preparation for the conference.

Mediation Conference Results

ADRM is interested in tracking the results of the Program's mediation conferences, and will ask the participants to complete a brief questionnaire at the conclusion of the conference.

ADRM Contact Person

Your contact person at **ADRM** for information regarding this Program is Jerry Hall, who may be reached at (866) 978-5123.

Disclaimer

ADRM endorses this Program and believes that it will contribute to an improvement in the administration of justice. However, **ADRM's** role in the Program is merely one of facilitating the selection of mediators and scheduling mediation conferences. The parties, by voluntarily participating in this Program, accept and recognize that **ADRM** shall have no liability whatsoever with respect to any aspect of this Program.

Mediator Application

ADRMediator, Inc.
(866) 978-5123
(888) 476-4255 FAX

This form is scanned into our computer system and must be typed. This form will be used to access your resume and information for the selection of mediators. If selected, ADRM will contact you to schedule the location and time of the mediation.

Title: Mr. /Ms. /Dr. / Miss/ Mrs. _____

First Name: _____ Last Name: _____

Address _____

City _____ State _____ Zip Code _____

Home Phone (____) _____ Office Phone (____) _____

Pager Number (____) _____ Mobile Phone (____) _____

FAX (____) _____ Other Phone (____) _____

Social Security Number ____ - ____ - ____ Drivers License Number: _____

DLN Issuing State _____ Date of Birth _____

Attorney? Yes No Bar Card Number: _____ State: _____

Law School _____ Year Admitted to Bar _____

Method of charging :

Fixed rate per party: Amount \$ _____

Hourly: Rate per hour \$ _____

Fixed Amount for total mediation: Amount \$ _____

Other: _____

Areas of specialty or legal expertise: _____

Training/Education, Certifications, and Specialized Licensing: _____

I understand that I will make myself available when possible for ADRM scheduled mediations. Once I commit to a date for mediation, in the event that I must cancel the mediation, I understand that if costs are incurred, I shall be liable to reimburse all fees and expenses and indemnify ADRM. I also understand that ADRM, will bill the parties to the mediation and remit my fee directly to me within 10 days from the date of receipt of the parties payment with applicable ADRM fees deducted which will itemized. I understand that no taxes will be deducted and that I am fully responsible for all Federal, State and Local taxes that may be applicable, because my work is considered contract labor pursuant to the Internal Revenue Code. In the unlikely event of nonpayment by the parties to the mediation, I understand that I may not receive compensation until such time that the parties have paid for the mediation services. This is not and exclusive contract. You may reject any mediation without effecting your listing in our data base.

Signature

Date

Please return to ADR Services International, Inc. email to admin@adrmediator.com (888) 476-4255 By FAX.

CASE TRANSMITTAL FORM

FAX TO (888) 476-4255

ADR Services International, Inc.

Email: admin@adrmediator.com
(866) 978-5123
(888) 476-4255 FAX

Requested Mediator: _____
Phone & Fax #'s: _____
Your Identification No. _____
Case No. _____

PLAINTIFF INFORMATION

If additional parties please attach separate sheet with information

Plaintiff Name: _____

Plaintiff Attny: _____

Address: _____

Phone: _____

FAX: _____

Date: _____

Referring Party _____

Phone & FAX #'s _____

ADRM No.: _____

We Supply this number

VS.

DEFENSE INFORMATION

If additional parties please attach separate sheet with information

Defendant Name: _____

Defense Attny: _____

Adjuster: _____

Firm: _____

Claim No. _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Fax # _____

Fax # _____

Brief description of claim and/or issue: _____

Mediation

Last Demand \$ _____ Last Offer \$ _____ Is case in litigation? Yes No. Has other side agreed to mediate Yes No. Additional mediator skills or specialization requested:

Additional parties to be contacted and their role, including address, telephone and fax numbers
