



Everybody Wins!

*WHEN SUCCESSFULLY RESOLVING PRE AND EARLY POST-SUITS
AND ARBITRATION ACTIONS THROUGH MEDIATION*

Presented By:

E. Speer Mabry, III

smabry@m-legal.com

**For a copy of the “Everybody Wins” presentation, visit:
www.henningmediation.com/Neutralspage/PDFEverybody.pdf**

**Henning Mediation & Arbitration Service
3350 Riverwood Pkwy, Suite 75
Atlanta, GA 30339
770-955-2252**

www.henningmediation.com

EVERYBODY WINS!

WHEN SUCCESSFULLY RESOLVING PRE AND EARLY POST-SUITS AND ARBITRATION ACTIONS THROUGH MEDIATION

Everybody wins when they successfully resolve disputes by pre and early post-suits and arbitration actions through mediation. This is much different from the early days of “the caveman” using clubs, and the concept of “an eye for an eye” referred to in the Bible.

In the early days the law concerning disputes was codified by the Code of Justinian which was a collection of imperial constitutions, compiled by the order of the emperor at that time promulgated in AD 529 to help resolve disputes in a more reasonable and consistent manner.

The jury trial eventually came into existence and became a part of the Federal Constitution as it existed in common law and provided for a body of twelve persons. However, the jury trial has turned out not to be perfect due to the different background beliefs and intelligence of the jurors. A modification was needed in the jury system for the parties to control and resolve a disputed claim before trial in an efficient and cost saving manner. This was the beginning of what we now know as mediation – a meeting by the parties to attempt to resolve a dispute between themselves prior to the trial.

In 2001 the Bureau of Justice Statistics in its Bulletin of Civil Trials in large counties, stated that civil suits settled at the rate of 97% prior to trial and construction arbitration actions settled at the rate of 64% prior to award. Settlement negotiations and mediation prior to trial were key elements in settling these disputes. As a result of mediation substantially contribution to the settlement of disputes, we now have a new concept within mediation involving early mediation of pre and early post-suits and arbitration actions.

Early mediation has become a favored resource for resolving disputes so as to save cost, time, and emotional distress that occurs before and during pre-trial and trial. It also has the following additional advantages:

1. The realization profit rate for the plaintiff's attorney is the highest it will ever be in the case;
2. The plaintiff receives early closure with a saving of litigation costs, which maximizes recovery and controls results; and
3. The defendant saves defense cost and can also control results.

The key components for early mediation to be successful are:

1. To have participation of all interested parties i.e., plaintiff/defendant, attorneys, claims representatives of insurer/TPA and risk managers of self-insured or companies that have high retention;
2. Collaboration between the parties to provide investigation, medical, expert reports and other special issue items to be resolved at or before mediation;
3. To provide the mediator prior to mediation liability and special issues, injuries and damages agreed upon or contested; and
4. To remember and comply with the "six P's" of mediation – prior proper planning prevents poor performance.
5. Select a mediator:
 - a. Who understands the purpose and benefits of early mediation;
 - b. Who can maintain control and purpose of the proceedings; and
 - c. Who is creative, flexible and can fashion a result (sometime with other than just money), that is satisfactory/beneficial to everyone.
6. Keep focused on the necessary elements to resolve the dispute by:
 - a. Sympathizing
 - b. Synthesizing
 - c. Being flexible, innovative and transparent
 - d. Taking the high road

In conclusion, Everybody Wins when a dispute is resolved at early mediation by employing the “six P’s,” selecting the right mediator, keeping your “cool” and focusing on the necessary elements to resolve the dispute early.

Also, I recommend you consider these quotations when mediating –

“One ship sails East, and another West,
By the self-same winds that blow,
Tis the set of the sails
And not the gales,
That tells the way we go.”

--Ella Wheeler Wilcox (American author and Poet; 1850-1919); and

“There are no endings. They are all beginnings.”

--Hilary Mantel (British novelist)