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To the Party Bringing Suit in a Commercial Matter,

It may come as a surprise but the chances of resolving your commercial dispute through mediation are over 70%! There are a number of reasons why mediations are so successful. One reason is that mediation gives *you* an opportunity to participate in how the case is resolved. *You* will decide if the resolution is something that is best for *you*, given all of the circumstances.

After mediation, as the case goes on to be presented to a judge or a jury, others will be making decisions for you. If the matter is not resolved through mediation or another resolution process (*See the pages on this website entitled: Choices for Resolving Your Dispute*), you will not be a decision maker. Instead, you (or your attorney) will only be able to argue and present facts, evidence and witnesses to the decision-maker (usually a judge or jury). There is a chance that a judge or jury will be influenced by some information that you place little importance on. With mediation, the great advantage that you have is that **you** will decide how **your case** will be resolved. No one else will be making decisions for you.

When you reach a resolution at mediation, you will also be controlling when the case ends. Remember that even if a judge or jury rules in your favor, an appeal to a higher court is possible. Appeals can take years.

QUESTIONS TO ASK:

This mediation will likely be the first time the parties have actually sat down, face to face, to discuss the claims.

What is the Process?

Every mediation and every case is unique. However, I will usually begin the mediation with both parties in a joint meeting. I will explain the mediation

process and what I anticipate happening during the mediation. I may describe rules that I will expect the parties to follow. Then I will turn to the party initiating the matter (referred to as the plaintiff) and give him/her (or their lawyer) a chance to tell the reasons why their claims will prevail and the result they are seeking. After the plaintiff is heard, I will ask the defendant (responding party) to tell their story. When this is finished, I will normally place the parties in different rooms and work back and forth between the parties. This begins a process of gathering information, clarifying interests and generating options.

One purpose of a joint meeting between the parties is to give each side an opportunity to hear the arguments that will be made by the other side when the case goes to court. I may ask questions about your position and how certain facts and events will be portrayed before the court. These are questions that a judge or jury may be asking or thinking as your case proceeds. These are questions that you and your lawyer have probably already thought about, but when you hear an outside *neutral* ask these questions, it may give you a different perspective to evaluate how others may view the issues.

One of the goals that you should set for the mediation is to listen to help you evaluate your chances of success before a judge and jury. That evaluation and judgment, which is usually jointly reached by you and your lawyer, plays an important part in evaluating what you would likely see as a result.

What Mediation Is Not:

A mediator is decidedly not a judge. No one is going to rule on or decide the case at mediation. I will not be telling you what I think about your case or tell you how I think a judge or jury will rule. I will not predict what I think will happen when your case reaches a judge or jury.

Mediation is a voluntary process. Even when a mediation is court-ordered, no one will or can force you to agree to do anything. I am an experienced civil litigator. I have already determined that I have no “conflict” or interest in any of the parties or the outcome. I am a neutral facilitator and my role is to remain impartial through the process.

Who Should Attend?

Mediation requires that each party have a representative who has authority to resolve the case. If you are attending the mediation by telephone, you will be required to remain on the phone during the entire mediation. To maintain the confidentiality of the process, I will ask to be informed if any other person enters the room during the mediation. If any participant is not located in Florida, I will explain that all participants will be bound by and will be held to the confidentiality requirements for mediations in Florida.

Do I have to worry about what I say during the mediation?

All that occurs during the mediation process will be confidential and may not be revealed in any subsequent legal proceedings. All parties agree not to institute any actions based on the mediation or to testify or produce any records concerning what happened at the mediation and any future proceedings. Parties are required not to make any public statements concerning the mediation. All inquiries from the news media or other interested parties should be directed to me. If contacted, I will only acknowledge the existence of the mediation and report that the parties are attempting to negotiate an acceptable resolution to the dispute.

The entire mediation process is confidential. All offers, promises and statements, whether oral or written, made during the course of the mediation, by the parties or their attorneys, will be confidential. Offers, promises and statements will not be disclosed to any outside persons and I will not disclose to the other side any statements or information that you ask me to keep confidential.

How does the process work?

As I meet and discuss the case with each side, I will be listening for the issues that will be important when the case is decided. My role will be to assist the parties in identifying the issues, fostering joint problem-solving and exploring resolution alternatives. I will be listening, focusing and asking questions to try to determine what the parties really want. What are their concerns? I will explore what the parties are seeking through the litigation to see if there is a resolution available that is satisfactory to both sides.

I will also be trying to come up with creative ideas that might meet the different interests of the parties. Part of the process will be for the parties to select and assess different options. In addition, I will be looking for objective criteria or standards that can help both sides figure out what is a fair resolution.

How long will mediation take?

You should come prepared to devote the rest of the day to your mediation. If I believe that the parties are making progress, I will continue working with the parties. I have observed that commercial cases have emotions and, for this reason, the parties need time to express and digest their feelings.

During the process it may seem like I am spending an inordinate amount of time with the other side. Don't read anything into this or think that I am not giving your side of the case a fair hearing. Instead, I may just feel that more time is needed to work with the other side.

Remember, mediation is a voluntary process. There is no need for you to be stressed or concerned about mediation. No one at mediation is going to force you to accept a resolution.

What I ask of You:

When the relationship began, no one anticipated the events that happened. No one expected that we would be at mediation, faced with the issues that we have. None of us can change what has already happened. We can only deal with the situation as it is today, and go forward. I hope both sides are willing to lay the past aside and work together for a resolution that each side can live with.

I will ask that each party make an effort *in good faith* to reach a resolution. I will ask that you keep "an open mind" and "remain receptive" to what you hear during the process. Over the years I have negotiated many collective bargaining agreements (union contracts). Emotions often run high during the process. At the end, however, if one side leaves the table completely happy, this usually means that the agreement is one-sided.

As we approach mediation, I hope that you will consider that you may not get everything that you want. Remember also that in almost every case each party's satisfaction depends, to a degree, on making the other side

sufficiently content with the resolution so that they will *want to* live up to their agreement.

This letter complies with Rule 10.420 of the Florida Rules for Certified and Court-Appointed Mediators. If you need any special accommodation or special foods while at mediation, please let me know. I do not want any distraction to lessen your focus during our sessions.

I am confident that a resolution of your case can be reached on terms that you can live with. I look forward to meeting and working with you.

G. Thomas Harper
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