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Resolving A Dispute By Mediation.

Step 1 - Agreement to mediate

Initial Contact

Please contact me to discuss the situation that has led to consideration of mediation. I will be pleased to give impartial advice on how mediation works.

I will not contact the other party to the dispute without agreement, but will discuss with one or both parties the mediation services available. No charge is made for this initial consultation.

Once the parties have agreed to mediation.

The parties should send a joint statement to this effect including name and address details of the parties involved and any professional advisers. A brief summary of the nature of the dispute should also be included.

Step 2 - Preparing for Mediation

Following the appointment, I will liaise with the parties to arrange an appropriate date and location for the mediation and co-ordinate an exchange of case summaries between the parties and myself.

I will forward an appropriate Mediation Agreement for signature by the parties. The fees and costs of the mediation will be agreed at this stage, and must be paid before the mediation starts. An indicative scale is given below. A more informal procedure can be adopted in urgent cases or for preliminary meetings.

Step 3- The Mediation Process

One of the strengths of mediation is its flexibility to adapt to the circumstances of the parties and the dispute. There is therefore no rigid procedure. Mediation can be based on joint or separate meetings of parties and mediator; professional advisers and technical experts engaged by the parties can play a part. The stages below describe a typical commercial mediation, usually only requiring one day at the most.

The mediator will explain the procedure to be adopted at start of the first meeting with the parties. In most cases, mediation begins with an initial joint session with the parties during which each presents a summary of the case and how they see it. The mediator is often assisted by an assistant mediator, who will also have received formal mediator training.

After a period of questioning and some discussion chaired by the mediator, the mediator will meet each party privately to explore the case in confidence. Several sessions of this kind may take place to allow the mediator to be fully briefed on the background to the case and each party's views and interests. This will permit frank discussions to take place on possible options available to resolve the dispute. The mediator will explore these options and any settlement offers to be made, with each party, but will not disclose any information given in confidence without the relevant party's agreement.

If agreement is reached, Terms of Settlement are drafted with the assistance of the mediator. When finalised, these terms are normally signed by the parties with the intention of forming a legally binding contract.

Step 4 - Failure to Settle

If the mediator or any party comes to the view that agreement cannot be achieved, then the mediation will be ended or postponed to a future meeting. Any information imparted to the other party during the mediation is on a "without prejudice" basis, and cannot be used in subsequent proceedings.

The mediator may, if the parties agree, suggest Terms of Settlement to the parties as a basis for future negotiation. Such suggestions are based on the mediator's view of possible negotiated terms for settlement and are not a legal or expert opinion.

At the request of the parties, the mediator will draw up and issue a review report summarising the outcome of the mediation and the differences that remain unresolved.

How much will the Mediation cost?

Mediation fees are variable, depending on the anticipated length of time required for the Mediation process, and the sums involved. For example, fees per party might be from £250 for a smaller case of up to £25,000; £500 for a dispute between £25,000 and £100,000; and £750 for larger claims.

On receipt of outline information I will determine an appropriate fee, which will be payable by each party in advance of the Mediation date. This will normally include reading-in time and travelling time, and is subject to the addition of V.A.T.

The fee will be based on the assumption that the mediation will be concluded on the day it begins - a different rate may apply if the mediation is expected to go into a second day or beyond. It should also be noted that all incidental expenses such as costs of venue, extended travel and subsistence costs would be additional to the Mediation fee.

Possible Recovery of Costs

In the event of the Mediation being unsuccessful, the costs incurred by each party in relation to the Mediation (including the party's share of the Mediator's fee) will be part of the costs of the Dispute. These costs are, therefore, capable of falling within the scope of any costs order made by the court in litigation relating to the Dispute.

Jeffrey C Rosenthal

Mediation/General