

# JHM3 MEDIATION AND ARBITRATION SERVICES, LLC

6520 Westgate Dr.  
Dallas, TX 75254

James H. ("Hamp") Moody, III  
E-mail: [hamp@jhm3mediation.com](mailto:hamp@jhm3mediation.com)

Tel: 214-808-3630  
Fax: 214-871-2111

## MEDIATION AGREEMENT

Fee Per Party/Day				
	Zoom ( <i>all participants attend virtually</i> )	DFW Metroplex ( <i>in person</i> )	Austin, Houston, or San Antonio	Elsewhere in Continental United States
2 Parties	\$2,750	\$3,000	\$3,250	Call or E-Mail me for a fixed fee quote.
3 Parties	\$2,500	\$2,750	\$3,000	
4 Parties	\$2,250	\$2,500	\$2,750	
> 4 Parties	\$2,000	\$2,250	\$2,500	

**Definition of "Party"** - The mediation fee is stated on a "per party" basis. The number of parties is determined by counting all parties represented by the same counsel as one party. If one party is represented by multiple attorneys, that party is still considered one party. Related parties, even with aligned interests, are considered separate parties if they have separate counsel. A party and its insurers are considered one party unless significant time will be required to deal with purely coverage issues or disputes between multiple carriers.

**Payment** - Payment of the mediation fee is due upon receipt of the JHM3 Mediation invoice being sent to you with this Agreement, but in no event later than the commencement of the mediation session. All mediation fee payments shall be by cash or check. If paid by check, the check should be made payable to JHM3 Mediation and Arbitration Services, LLC, Tax. ID 47-4972030. Each party's attorney(s) shall be responsible for the timely payment of all fees specified herein. The Mediator reserves the right to refuse to commence the mediation session if all fees have not been tendered in an acceptable form. Once a mediation session begins, the full fee is deemed earned.

**Case Specific Considerations** - A different per-party fee may apply if extended pre- or post-session work is anticipated.

**Other Possible Charges** - The parties are responsible for charges that may be associated with in-person mediations not held at the office of one of the attorneys or, if

available, the offices of Quilling, Selander, Lownds, Winslett & Moser, PC in Dallas and Plano, Texas.

**What's Included** – Unless agreed otherwise, the fees quoted above include:

- A full day of the Mediator's time. Mediation sessions typically begin at 9:00 a.m., with a view towards concluding by 5:00 or 5:30 p.m. So long as progress is being made, however, the Mediator will stay as late as necessary.
- All pre-mediation preparation time, including pre-session conference calls with counsel if desired.
- Post-session follow-up, if necessary.
- The Mediator's travel time and expenses.
- Lunch served on site (except for virtual mediations).

**Cancellation/Rescheduling Policy** - There is no fee for cancelling or rescheduling a mediation. This will remain the policy so long as it is not abused. Out of courtesy, however, we would ask that you advise us as soon as it becomes apparent that the mediation needs to be cancelled or rescheduled.

**Pre-Mediation Submissions** - Please take the time to prepare a confidential issue paper for me and send it to me as soon as possible. It should be for my eyes only so that you can frankly and candidly share with me, in confidence, what your case is about and the critical issues from your perspective. Helpful information includes:

- A summary of the dispute;
- Your client's role;
- Contested issues (legal and factual);
- The status of discovery;
- Prior negotiations;
- Insurance policies;
- Prior coverage communications (ROR and denial letters);
- Non-insurance contracts impacting coverage (such as indemnity agreements);
- Live pleadings, pending Motions, and other critical documents;
- Dollar amount(s) and other relief being requested; and
- Name, title and e-mail address for all attendees (other than counsel).

**Opening Sessions** - I am not a big fan of opening presentations. That being said, I will not stop any party from doing an opening presentation if they feel it will be helpful to reaching a settlement.

**Attire.** Business casual. Wear a tie if you want to, but I'm not planning on doing so.

**Communications.** Please feel free to call, write or e-mail with any questions, comments, concerns, etc. prior to the mediation. If there is something important that I need to know about your case, it is better to know it before the day of the mediation.

**Agreement to Terms of Retention:** A confirmation e-mail will be sent with this Mediation Agreement to all counsel. If no objections are received within 3 business days following receipt of this Mediation Agreement, it will be deemed as consent to the terms set forth herein.

## **RULES FOR MEDIATION**

**Definition of Mediation** - Mediation is a process under which an impartial person, the Mediator, facilitates communication between the parties to promote reconciliation, settlement or understanding among them. The Mediator may suggest ways of resolving the dispute, but may not impose his own judgment on the issues for that of the parties.

**Consent to Mediator** - The parties consent to James H. ("Hamp") Moody, III as the Mediator in their case. The Mediator shall act as an advocate for resolution and shall use his best efforts to assist the parties in reaching a mutually acceptable resolution.

**Disclosures and Conflicts** - As soon as possible, disclose to the Mediator names of the parties and their representatives, non-party insurers and their representatives, the involved law firms and counsel, and any additional party or person who is significant to the dispute. The Mediator will disclose any significant relationships he has with the parties, their counsel, and any other person or company identified for purposes of conflicts. The Mediator will decline the assignment if there are any relationships that preclude him from serving in an impartial manner. The Mediator will ensure that Quilling, Selander, Lownds, Winslett & Moser, PC does not have any direct conflicts in respect to the parties only.

**Authority of Mediator** - The Mediator does not have the authority to decide any issue for the parties but will attempt to facilitate a voluntary resolution of the dispute by the parties. The Mediator is authorized to conduct joint and separate meetings with the parties, to offer suggestions to assist the parties in reaching a resolution, to recess or end the mediation, to declare an impasse, to assist fewer than all the parties on settlements that may exclude other parties, and to inform a court or arbitrator concerning the completion of mediation unless prohibited by the parties. The Mediator does not represent any party.

**Parties Responsible for Negotiating Their Own Settlement** - The parties understand that the Mediator will not and cannot impose a settlement in their case. The Mediator, as an advocate for resolution, will use every effort to facilitate the negotiations of the parties. The Mediator does not warrant or represent that a resolution will result from the mediation process.

**Authority of Representatives** - Party representatives must have authority to settle, and

except in the case of a Zoom mediation, all persons necessary to the decision to settle shall be present in person.

**Time and Place of Mediation** - The Mediator shall fix the time of each mediation session. The mediation shall be held online or at any convenient location agreeable to the Mediator and the parties, as the Mediator shall determine.

**Privacy** - Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the Mediator.

**Confidentiality** - Confidential documents and information disclosed to the Mediator by the parties or by witnesses in the course of the mediation shall not be divulged to others, except to other parties during the mediation as authorized by the disclosing party. The Mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum. Any party that violates this agreement shall pay all fees and expenses of the Mediator and other parties, including reasonable attorney's fees, incurred in opposing the effort to compel testimony or records from the Mediator. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding views expressed or suggestions made by another party with respect to a possible settlement of the dispute; admissions made by another party in the course of the mediation proceedings; proposals made or views expressed by the Mediator; or the fact that another party had or had not indicated a willingness to accept a proposal for settlement made by the Mediator.

**No Stenographic Record** - There shall be no stenographic record of the mediation process and no person shall tape record any portion of the mediation session.

**No Service of Process at or Near the Site of the Mediation Session** - No subpoenas, summons, complaints, citations, writs or other process may be served upon any person at or near the site of any mediation session upon any person entering, attending or leaving the session.

**Settlement of Fewer Than all Issues or by Fewer Than all Parties.** While the goal of mediation is global resolution, all parties should be aware that a multi-party mediation may involve settlements of fewer than all parties or issues. All parties should be aware that the Mediator may be asked to become involved in "settling around" one or more parties, or in facilitating agreements between multiple parties to the exclusion of others. The parties also should be aware that the Mediator's obligations of confidentiality may preclude the Mediator from advising a party that such discussions are ongoing.

**Not Legal Advice** - The parties acknowledge that the Mediator shall be serving as a neutral intermediary only and will act neither as an attorney nor advocate for any party, nor render any legal advice or legal services to any of the parties. Any suggestions by

the Mediator in respect to drafting settlement agreements does not constitute legal advice or the practice of law, and the parties and their counsel shall independently review and revise any such draft agreements at their own discretion. The parties and their attorneys are solely responsible for the accuracy and content of any settlement agreement.

**Preservation of Mediation Materials** - The Mediator will destroy all materials received shortly after a successful mediation, and within a year after an unsuccessful one unless otherwise requested.

**Interpretation and Application of Rules** - The Mediator shall interpret and apply these rules.