

Section 12: Preparing and Participating in Mediations

The financial costs of fighting out a claim in court are extremely high so mediation is often a preferred route to settle disputes. Mediation is the attempt to settle a legal dispute through active participation of a third party (mediator) who works to find points of agreement and make those in conflict agree on a fair result. Generally, mediations are not determinations of whether the agency is anything wrong and do not constitute an admission of liability. While not every mediation is successful, it can serve as a valuable way for defense attorneys to better understand plaintiff theories and facts allowing for a more targeted defense if the dispute does go to trial. Your defense counsel may or may not want you to attend mediation proceedings.

Supporting the adage that the truth usually lies somewhere in the middle, a good mediation is one in which both parties leave unhappy but the case is ultimately resolved. Here is some advice from the panel counsel for Swiss Re Corporate Solutions for preparing for and participating in a deposition:

- ✓ Be honest
- ✓ Tough skin - Be open-minded and non-confrontational especially when listening to the plaintiff's introductory comments
- 🚫 While mediators encourage interactive dialog, don't offer information or observations unless requested to by counsel
- ✓ Patience – it can be a slow process and immediate results don't happen; bring your i-Pad
- ✓ Meet with your attorney in advance of the mediation to understand the maximum and probable exposure to liability and potential damages outcomes to make sure you have the same goals for the process
- ✓ Prepare your negotiation strategy in advance of the mediation, including at which point you walk away and go to trial,
- 🚫 Do not bring the customer file or other documentation to the mediation unless specifically asked to do so by your attorney
- ✓ Know your E&O deductible and be prepared to expend it to resolve the case, even if your E&O policy provides first dollar defense