

# TUCKER | HESTER, LLC

## MEDIATION IN BANKRUPTCY

2001

A CLE Presentation

By: William J. Tucker

Attorney at Law

[bill@tucker-hester.com](mailto:bill@tucker-hester.com)

Tucker | Hester, LLC

[www.tucker-hester.com](http://www.tucker-hester.com)

Pennsylvania Center, Suite 100

429 North Pennsylvania Street

Indianapolis, IN 46204-1816

317.833.3030 | 317.833.3031 [fax]

### **NOTICE**

This is a CLE (continuing legal education) article, and it is not legal advice. This article was prepared for information purposes only for other lawyers only and deals with hypothetical or historical situations. The information is certainly not intended and should not in any way be construed as legal advice. Your receipt of this information does not in any way create an attorney-client relationship and cannot substitute for obtaining legal advice from an attorney. The author makes no claim about the correct interpretation of any law discussed in this article. The author does not make any claim about what the correct course of action might be in a particular matter. The author also does not make any claim that the information contained in this article is complete or correct. Finally, the information in this article may not be up to date. The contents of this article are not updated.

## I. History

Mediation is a relatively new tool in bankruptcy law. Although it has long been used in other areas of law, it is now only becoming prevalent in the bankruptcy context. One of the first bankruptcy courts to institute a mediation program was the Southern District of California in 1986, followed closely by the Middle District of Florida. Steven Hartwell & Gordon Bermant, *Alternate Dispute Resolution in a Bankruptcy Court: The Mediation Program in the Southern District of California*, 1 (1998).

One reason for the slow development of mediation in the bankruptcy arena was the lack of clear authorization to use mediation in the area. The early courts employing mediation in bankruptcy grounded their authority questionably in §105 of the Bankruptcy Code. In addition, the courts' inherent authority to manage and control their dockets provided a basis for requiring parties to participate in mediation. H. Slayton Dabney Jr. & Dion W. Hayes, *Bankruptcy Lawyers Better Tune Up Their ADR Skills*, 1999 *ABI JNL*. LEXIS 77, 10. However, in October 1998, Congress passed the Alternative Dispute Resolution Act giving bankruptcy courts the power to employ mediation. **See Attachment A.** Section 9019 was also added to the Bankruptcy Code. **See Attachment C.**

The Alternative Dispute Resolution Act placed several requirements on all district courts. First, each district court is required to authorize by local rule the use of ADR procedures in all civil actions, including adversary proceedings in bankruptcy court. Dabney, *supra*. Second, the local rules enacted by each district court must require litigants in civil cases to consider using ADR to resolve their dispute at an appropriate stage of litigation. *Id.* In addition, authorization is given to the district courts, and through them to the bankruptcy courts, to require mediation in civil cases, even without the parties' consent. *Id.*

In August 1998, the United States Bankruptcy Court for the Southern District of Indiana enacted local rules for ADR that became effective in January of 1999. **See Attachment C.** Although §9019 address both arbitration and mediation, the local rules of this district only mention mediation. Thus, the rules finally gave the bankruptcy judges and attorneys of this district the green light to proceed with mediation, but whether the use of mediation is authorized is unclear..

## II. Possible Areas for Using Mediation

Mediation has been defined as “a problem-solving negotiation process in which an outside, impartial, neutral party works with disputants to assist them to reach a satisfactory negotiated agreement.” Gary Goodpaster, *A Guide to Negotiation and Mediation*, 203 (1997). *Cf.* Cal. Evid. Code §1115(a).

Mediation, unlike other forms of ADR, is not a form of adjudicative proceeding. Instead, it is a process designed to maximize collective agreement. Ideally, “[m]ediation is informal, voluntary, forward-looking, cooperative and interest-based. A mediator helps willing parties craft an agreement that looks to the future, satisfies their needs, and meets their own standards of fairness.” Goodpaster, *supra*.

Although it may be used in other chapters, mediation has been found to be an especially useful tool in the context of structuring Chapter 11 plans. Dabney, *supra*. Mediation gives the debtor's attorney freedom in negotiating with creditors about the terms of the plan, while still focusing on continuing the operations of the debtor company. Lisa Hill Fenning, *Using ADR Tools To Resolve Litigation-Driven Chapter 11 Cases*, Norton Bankruptcy Law Advisor, Feb. 2001, at 5.

Dealing with disputed claims, prepetition lawsuits, and related adversary proceedings is a distraction. Resolving such disputes through traditional litigation – including contested objections to claims, fights over relief from stay demands, and defense of adversary proceedings—is often so costly and takes so long that the resources of the debtor and lead bankruptcy counsel can be taxed beyond their limits. *Id.*

Successful mediation of claims often provides a plan satisfactory to each side and therefore increases the chances of a speedy, smooth, and less expensive confirmation of the reorganization plan.

Mediation can be used to resolve a wide variety of bankruptcy-related issues. It can be used effectively for both simple and complex issues and cases. Mediation is used to resolve the interests of multiple creditors in estate assets. It can be used to negotiate the sale or transfer of an asset. In addition, mediation can be a less expensive means for performing many of the Bankruptcy Code's balancing tests, like the ones in §523.

There are particular bankruptcy-related issues that lend themselves to resolution through mediation. The resolution of unliquidated claims, especially personal injury and products liability claims, is an area where mediation has been found to be both effective and cost-efficient. By using mediation, a debtor can avoid the limitations of the bankruptcy court's finite claims resolution capacity and resolve claims outside of litigation. Dabney, *supra* at 6. In doing so, the debtor can avoid expensive and protracted discovery and litigation in non-bankruptcy courts that could severely delay distributions. *Id.* For example, the parties in *In re P.A. Bergner & Co. Holding Co.* credit the mediation program they used for resolving all but one of their 125 personal injury claims at a cost of less than 25% of their original litigation budget. Fenning, *supra*, at 10.

Even when reorganization fails, mediation can be helpful in quickly and inexpensively liquidating and distributing payments to creditors. *In re Best Products Co., Inc.* is an example of a case where mediation was extremely beneficial to those involved in the liquidation. "Thus was set in motion a fast and furious process of liquidating inventory, leases and other assets and resolving claims that resulted in a distribution to unsecured creditors totaling almost 98 cents on the dollar by the end of 1998, 27 months after the petition filing." Dabney, *supra*, at 2. The parties involved credit the mediation process for their ability to provide a high return to the unsecured creditors in such a speedy manner.

Mediation can also be used to determine the recoverability of preferences and fraudulent transfers. The first case mediated under the new local rules of the Indianapolis Division of the United States Bankruptcy Court, *MCM Enterprises Inc. v. Keystone Consolidated Industries Inc. and Valhi Inc.*, involved the recoupment of credit payments made to a creditor within 90 days of filing. Scott Olson, *Mediation Becomes Part of Bankruptcy Court Proceedings*, The Indiana Lawyer, July 7, 1999.

Although many who oppose mediation relating to bankruptcy claim it can not be used in complex cases, there are many for whom mediation has been successful. For example, *In re R.H. Macy & Co.* proceeded nearly two years without a confirmed plan. Macy's, who had only \$200,000 in cash but \$5 billion in liabilities, entered Chapter 11 with the goal of emerging from bankruptcy remaining an independent company. Its largest creditor, Federated Department Stores, wanted to merge with Macy's. (In fact, it had purchased \$500 million dollars in secured mortgage debt in December 1993 for that purpose). Within eight months of the mediator's appointment, a joint reorganization plan which provided for the merger was approved by the other creditors and confirmed by the court. Cassandra G. Mott, *Macy's Miracle on 34<sup>th</sup> Street*, 14 Ohio St. J. on Disp. Resol. 193, 208 (1998).

However, mediation is not the solution in all bankruptcy disputes. In a report by the National Bankruptcy Review Commission, it was noted that "there may be disputes in bankruptcy that are not amenable to mediation." *Collier* §11.04, *supra*. Mediation is not proper for disputes relating to the retention and payment of professionals; courts also can not order mediation in cases relating to motions for contempt, sanctions or other judiciary disciplinary matters. *Id.* In addition, mediation may also be abused by parties attempting to delay proceedings or use the sessions as a discovery device. *Id.* However, overall, mediation has proved to be a useful tool in many situations.

### III. Claims Resolution Facilities

In conjunction with mediation, many courts, particularly those in California, are advocating the use of claims resolution facilities when a debtor is faced with multiple unliquidated claims. Fenning, *supra*, at 5. These facilities provide a centralized method for dealing with disputed claims. Upon motion to the court, a single ADR firm is retained to handle the mediation or arbitration (where authorized) of multiple claims involving the debtor. *Id.* at 6. The firm handles the retention of professionals to act as

mediator/arbitrator and administrates coordination of the parties involved. *Id.* This type of service has the potential to substantially lessens the time and expense demands placed on the attorney's involved.

According to Lisa Hill Fenning, a former bankruptcy judge in California who is now a full-time ADR intermediary, claims resolution facilities are particularly useful with the following types of claims:

1. Non-insured warranty disputes and product returns due to defective products.
2. Mass tort claims arising from product liability problems that potentially exceed policy limits.
3. Routine litigation, such as slip-and-fall cases for retail chains, where the debtor is partially self-insured or liable for defense costs.
4. Environmental liabilities, especially regulatory claims. *Id.*

The use of these facilities was particular helpful in *In re Woodward & Lothrop Holdings, Inc.* In this case, over 150 personal injury claims were referred to mediation. All were resolved in less than two years, and none required litigation. *Id.* at 9. The case of *In re Sizzler Restaurants Int'l, Inc.* involved hundreds of personal injury claims. Claimants were required to participate in ADR; almost all settled through the use of mediation by a claims resolution facility. *Id.*

### III. Advantages and Disadvantages of Mediation in Bankruptcy

Many of the advantages of the mediation process come from its nature as an informal means of dispute resolution.

[M]ediation does not alter the duties or rights of any party under the Bankruptcy Code or Bankruptcy Rules. The parties retain control of the process, which ideally results in a consensual resolution. Because the parties are not bound by the results of the mediation, they may be more cooperative and feel more in control. Parties may feel more supportive of the outcome because the result is not forced upon them. Parties also appreciate that solutions can be achieved that are suited to their needs, which illustrates mediation's flexibility. Mott, *supra*, at 203.

Mediation may also reduce the hostility between parties, who in many circumstances need to foster and maintain continuing relationships. *Id.* The parties may have to continue in their joint parental responsibilities, or may desire to continue to do business together after Chapter 11 reorganization.

The individual mediator plays a key role in facilitating the fair and open discussion mediation encourages. *Id.* Mediators are not impeded by procedural or evidentiary rules. *Id.* "Open discussion is encouraged because of the mediator's confidentiality. In addition, a mediator puts the parties on equal negotiating grounds, which encourages open discussion and increases the likelihood of successful mediation." *Id.* In the open environment of mediation, the creditor is given an opportunity to be heard, and creditors may receive the opportunity to work collectively and pool their resources. *Id.* As a result, the informal, flexible approach of mediation is one of its key advantages to all parties involved.

Mediation also provides for more efficient resolution of disputes. *Id.* at 204. "Mediation is nonbinding, introduces rationality into the process, and avoids the unnecessary expense of protracted litigation." *Id.* It reduces the time and expense incurred relating to discovery depositions and litigation, thus reducing the administrative costs of reorganization or liquidation. *Id.* Most importantly, it reduces the caseload of the bankruptcy courts, allowing the judges to focus on other disputes. *Id.* at 194.

However, mediation is not without its disadvantages. Because mediation is non-binding, there is no guarantee that a resolution will result. The parties may still be forced to incur litigation expenses, even after paying for mediation.

In addition, there are some cases not suitable for mediation. Many cases settle without mediation, and thus it is up to the attorney whether to forgo mediation assuming the dispute will settle. *Id.* at 205. On the other hand, some cases will never settle, either because they are too complex or the parties are unwilling to negotiate.

Lastly, the importance of finding a qualified, experienced mediator can not be overestimated. Because mediation is new in the bankruptcy context, it may be difficult to find a mediator who is well versed in the substantive area involved and aware of the intricacies of bankruptcy law. "If you find someone who is not skilled in bankruptcy and litigation issues, you're going to be thoroughly disappointed in how the mediator performs." Olson, *supra*. However, as mediation becomes more prevalent in the area of bankruptcy, so will the existence of good mediators. In the end, the advantages of mediation clearly outweigh the disadvantages.

#### **IV. Enforceability of Mediation Agreements**

A split of authority exists regarding the enforceability of mediated settlement agreements prior to court confirmation of a plan. Those supporting pre-confirmation enforceability reason that "the absence of court approval does not mean that the parties did not agree to the settlement. It only means the court has not approved it." *In re Sparks*, 190 B.R. 842, 843 (citing *In re United Shipping Co.*, 1989 WL 12723 (Bankr. D. Minn. 1989)). While those opposing pre-confirmation enforceability base their reasoning on considerations of fairness to creditors not involved in the settlement.

There are several considerations relevant to a determination of enforceability. First, does a valid settlement contract exist? Second, what type of transaction is involved; does it require court approval? Lastly, should the compromise be approved by the court?

Whether a valid settlement contract exists is a question of state contract law. In the state of Indiana, oral contracts are generally enforceable. However, the Supreme Court has determined that policy reasons require mediated settlement agreements to be in writing in order to be binding. *Spencer v. Spencer*, 752 N.E. 2d 661 (Ind. App. 2001) (citing *Vernon v. Action*, 732 N.E. 2d 805, 810 (Ind. 2000)).

Notwithstanding the importance of agreements that result from mediation, other goals are also important, including: facilitating agreements that result from mutual assent, achieving complete resolution of disputes, and producing clear understandings that the parties are less likely to dispute or challenge. Requiring written agreements, signed by the parties, is more likely to maintain mediation as a viable avenue for clear and enduring dispute resolution rather than one leading to further uncertainty and conflict. Once the full asset of the parties is memorialized in a signed written agreement, the important goal of enforceability is achieved. *Id.*

Thus, the first step in creating a valid mediated settlement is memorializing the agreement in writing.

A question of enforceability can also turn on what type of transaction the agreement pertained to. *In re Stroud Ford, Inc.*, set forth a mechanical analysis based on how the action is treated under Section 363(b)(2) of the Bankruptcy Code, focusing on whether the transaction is "in the ordinary course of business". 205 B. R. 722, 726 (Bankr. M.D. Penn. 1996). First, the Court looked at whether §363(b)(2) authorizes the trustee or debtor-in-possession to enter into that type of transaction. *Id.* "If the substance of the agreement is in the ordinary course of business, then the debtor-in-possession is bound to its terms. *Id.* If the agreement involves matters outside the debtor's ordinary course of business, notice and a hearing is required. 11 U.S.C. §363(b)(2).

[I]f no objection is duly filed, then again the debtor-in-possession possesses the authority to do what is contemplated and can be bound to its terms. . . if a timely objection is filed to a noticed agreement to

perform an act out of the ordinary course of business then the debtor-in-possession does not have the authority to perform the action and cannot be bound to its terms until the objection is disposed of. *In re Stroud Ford, Inc.*, 205 B.R. at 726.

The *Stroud* Court's approach seems to balance the need to consider the agreements fairness to other creditors, while also encouraging the enforcement of valid settlement agreements.

However, one must still recognize that a court does have the ability to disapprove a compromise, if it is not in the best interests of the estate and fair and equitable. *In re Frye*, 216 B.R. 166, 174 (Bankr. E.D. Va. 1997). The *Frye* Court set out various factors that should be analyzed when evaluating a settlement agreement. "These factors include:

1. Probability of success in litigation;
2. The potential difficulties if any in collection;
3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
4. The paramount interests of the creditors." *Id.*

## V. Questions for Discussion

1. The Alternative Dispute Resolution Act as well as §9019 provide for arbitration as well as mediation. However, the local rules of this district mention only arbitration. Is the use of arbitration, by implication, not authorized for use in this district?
2. Who presents a mediated agreement for approval by the court? When the agreement is presented, how does this affect the confidentiality of the mediator?
3. What is the result if the mediated agreement is not approved by the court?

## VI. Procedure

The procedures for requesting mediation of a contested matter or adversary proceeding are contained in B-9019.2 of the Local Rules for the Southern District of Indiana. **See Attachment C.**

## VII. Forms

Motion and Order.	<b>See Attachment D.</b>
Letter to Participants.	<b>See Attachment E.</b>
Mediation Agreement.	<b>See Attachment F.</b>
Affidavit of Mediator.	<b>See Attachment G.</b>
Settlement Agreements.	<b>See Attachment H.</b>
Report of Mediator.	<b>See Attachment I.</b>
Oath of Mediator.	<b>See Attachment J.</b>
Application for Fees.	<b>See Attachment K.</b>

**Attachment A.**

**Alternative Dispute Resolution Act  
11 U.S.C. §651**

§ 651. Authorization of alternative dispute resolution

(a) Definition. For purposes of this chapter, an alternative dispute resolution process includes any process or procedure, other than an adjudication by a presiding judge, in which a neutral third party participates to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, mini-trial, and arbitration as provided in sections 654 through 658.

(b) Authority. Each United States district court shall authorize, by local rule adopted under section 2071(a), the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy, in accordance with this chapter, except that the use of arbitration may be authorized only as provided in section 654. Each United States district court shall devise and implement its own alternative dispute resolution program, by local rule adopted under section 2071(a), to encourage and promote the use of alternative dispute resolution in its district.

(c) Existing alternative dispute resolution programs. In those courts where an alternative dispute resolution program is in place on the date of the enactment of the Alternative Dispute Resolution Act of 1998 [enacted Oct. 30, 1998], the court shall examine the effectiveness of that program and adopt such improvements to the program as are consistent with the provisions and purposes of this chapter.

(d) Administration of alternative dispute resolution programs. Each United States district court shall designate an employee, or a judicial officer, who is knowledgeable in alternative dispute resolution practices and processes to implement, administer, oversee, and evaluate the court's alternative dispute resolution program. Such person may also be responsible for recruiting, screening, and training attorneys to serve as neutrals and arbitrators in the court's alternative dispute resolution program.

(e) Title 9 not affected. This chapter shall not affect title 9, United States Code.

(f) Program support. The Federal Judicial Center and the Administrative Office of the United States Courts are authorized to assist the district courts in the establishment and improvement of alternative dispute resolution programs by identifying particular practices employed in successful programs and providing additional assistance as needed and appropriate.

**Attachment B.**  
**BANKRUPTCY RULE 9019**  
**COMPROMISE AND ARBITRATION**

Rule

9019.

(a) Compromise. On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

(b) Authority to compromise or settle controversies within classes. After a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice.

(c) Arbitration. On stipulation of the parties to any controversy affecting the estate the court may authorize the matter to be submitted to final and binding arbitration.

**Attachment C.  
LOCAL RULES  
OF THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA**

**B-9019-2. Alternative Dispute Resolution.**

(a) Procedure.

(1) Motion. Any contested matter or adversary proceeding ("controversy") may be referred to mediation ("mediation") by the Court or upon motion filed by any party. If the motion filed by a party certifies that all parties to the controversy consent to mediation and have been served with the motion, and the Court finds the motion to be appropriate under the circumstances, the Court may grant the motion without further notice or hearing. If the motion filed by a party does not so certify, or if the Court finds that the motion is not appropriate, the motion shall be subject to the procedures for contested motions.

(2) Proposed Order. The motion of a party shall be accompanied by a proposed order which shall set out any filing deadlines or hearings that may need to be rescheduled to accommodate the mediation and shall make such reasonable scheduling changes as are necessary to allow the mediation to proceed. The proposed order shall also include provisions governing the confidentiality of the mediation process in accordance with Section (d) herein. If the parties have selected a mediator in accordance with Section (b)(2) herein, the proposed order shall identify the mediator and provide for compensation in accordance with the requirements of Section (b)(4) herein.

(3) Pendency of Matter. Unless otherwise ordered by the Court, the parties shall remain responsible for complying with all pleading, discovery, or Court-imposed deadlines and any other applicable scheduling requirement established for the timely disposition of the controversy.

(b) The Mediator.

(1) Qualification; Disqualification. Subject to approval by the Court, in its sole discretion, any person may be selected to serve as a mediator under this Rule. Any person selected to serve as a mediator may be disqualified for bias or prejudice in the same manner that a judge may be disqualified under 28 U.S.C. § 144. Any person selected to serve as a mediator shall be disqualified in any matter where 28 U.S.C. § 455 would require disqualification if that person were a judge.

(2) Selection. If a proposed mediator has been agreed upon by the parties prior to the filing of the motion of a party requesting referral, the motion shall designate the name of the proposed mediator and shall be accompanied by the affidavit required by Section (b)(3) herein. If the Court finds that the proposed mediator is qualified to serve, and the motion is appropriate, then the proposed mediator will be approved at the time of entry of the Order referring the controversy to mediation.

If the parties have not selected a mediator or the Court disapproves their selection, the parties shall have fourteen (14) days from the entry of the Court's order referring the controversy to mediation to file a motion for retention of a mediator accompanied by the affidavit of proposed mediator as aforesaid, certifying that all parties to the controversy have agreed to the selection, which motion may be granted without further notice or hearing. In the event the parties can not agree on a mediator or their new selection is not approved by the Court, the Court will designate three (3) mediators and each side, alternately, shall strike the name of one (1) mediator. The side initiating the controversy will strike first. The mediator remaining after the striking process will be deemed the selected mediator and the parties shall complete the striking process within seven (7) days of the Court's designation and shall file a notice of selection of the proposed mediator with the Court accompanied by the affidavit of the selected mediator. In the event that a mediator chooses not to serve, or becomes disqualified for any reason or the Court decides to replace the mediator, the selection process will be repeated.

(3) Affidavit. A person proposed for selection as a mediator shall prepare an affidavit disclosing any connections with the parties or counsel involved with the controversy which in any way could affect the neutrality or partiality of the mediator and setting forth any other reason which could result in disqualification under Section (b)(1) of this Rule. The affidavit shall summarize the qualifications and the anticipated rate of compensation and terms of payment of the proposed mediator. If the parties have selected a proposed mediator, the affidavit shall be filed with the motion of a party as referred to in Section (a)(1). Otherwise, the affidavit shall be filed with the motion for retention of the proposed mediator or with the notice of selection from the mediators proposed by the Court, whichever is applicable.

(4) Compensation. Subject to such other terms and conditions as the Court may impose, the mediator shall be compensated at his or her customary per diem or hourly rate for matters of comparable complexity, with such compensation and reasonable costs to be borne equally by the parties to the controversy unless otherwise agreed by the parties. Any disputes regarding the reasonableness of such fees and costs shall be determined by the Court upon motion of any party. In any controversy involving the debtor or the estate of a debtor as a party, the order referring the controversy to mediation may approve such party's share of payment to the mediator for up to fifteen (15) hours of time plus reasonable costs. Additional payment of compensation to the mediator by the debtor or the estate shall be subject to the approval of the Court upon application therefore; provided, however, that such application, and any objection thereto or any motion disputing compensation, shall not, in keeping with the confidentiality of the mediation as provided in Section (d) below, disclose the substance of confidential communications made during the course of the mediation.

(5) Oath. Before serving as a mediator, each person designated as a mediator shall take the oath or affirmation prescribed by 28 U.S.C. § 453, as if the person were a judge.

(c) The Mediation.

(1) Control of the Mediation. With appropriate consideration of the interests of the parties and counsel involved in the controversy, the mediator shall control all procedural aspects of the mediation, including but not limited to: setting dates, times, and places for conducting sessions of the mediation; requiring the submission of confidential statements; requiring the attendance of representatives of each party with sufficient authority to negotiate and settle all disputed issues and amounts; designing and conducting the mediation sessions; and establishing a deadline for the parties to act upon a settlement proposal.

(2) Failure to Attend. Willful failure to attend any mediation conference, and any other material violation of this Rule, shall be reported to the Court by the mediator and may result in the imposition of sanctions by the Court.

(3) Conclusion of the Mediation.

(i) If the mediation results in a settlement of the contested matter or adversary proceeding, the mediator shall promptly file a report so advising the Court, signed by all parties to the controversy and their counsel. Within a reasonable time thereafter, the parties shall submit to the Court an agreed order or judgment or motion for approval of compromise of controversy, as the case may be, and provide such notice as is otherwise required.

(ii) If the mediation does not result in a settlement, and the mediator, after appropriate consultation with the parties and their counsel, is reasonably satisfied that no further mediation effort is feasible at that time, then the mediator shall file a final report with the Court, serving all parties to the controversy, limited solely to that finding.

(iii) Upon the filing of the settlement pleadings under Section (c)(3)(i) or the mediator's report under Section (c)(3)(ii), the mediation shall be deemed concluded and the mediator shall be thereby relieved of all further duties or responsibilities other than approval of compensation as herein provided.

(d) Confidentiality.

(1) Protection of Information Disclosed at Mediation. The mediator and the participants in mediation are prohibited from divulging outside of the mediation, any oral or written information disclosed by the parties or by witnesses in the course of the mediation. No person may rely on or introduce as evidence in any arbitral, judicial, or other proceedings, evidence pertaining to any aspect of the mediation effort, including but not limited to: views expressed or suggestions made by a party with respect to a possible settlement of the dispute; the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; proposals made or views expressed by the mediator; statements or admissions made by a party in the course of the mediation; and documents prepared for the purpose of, in the course of, or pursuant to the mediation. In addition, without limiting the foregoing, Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule, common law or judicial precedent relating to the privileged nature of settlement discussions, mediation or other alternative dispute resolution procedure shall apply. Information otherwise discoverable or admissible in evidence, however, does not become exempt from discovery, or inadmissible in evidence, merely by being used by a party in a mediation. These provisions shall not preclude a party, its counsel or the mediator from responding in confidence to appropriately conducted inquiries or surveys concerning the use of mediation generally.

(2) Discovery from Mediator. The mediator shall not be compelled to disclose to the court or to any person outside the mediation conference any of the records, reports, summaries, notes, communications, or other documents received or made by a mediator while serving in such capacity. The mediator shall not testify or be compelled to testify in regard to the mediation in connection with any arbitral, judicial, or other proceeding. The mediator shall not be a necessary party in any proceeding relating to the mediation. Nothing contained in this subsection shall prevent the mediator from reporting the status, but not the substance, of the mediation effort to the Court in writing, or from complying with the obligations set forth in Section (c) of this Rule.

(3) Protection of Proprietary Information. The parties, the mediator, and all mediation participants shall protect proprietary information during and after the mediation conference.

(4) Preservation of Privileges. The disclosure by a party of privileged information to the mediator or to another party during the mediation process does not waive or otherwise adversely affect the privileged nature of the information.

**Attachment D. Motion and Order.**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE: )  
 )  
\_\_\_\_\_, )  
 Debtor. ) Case No. \_\_\_\_\_  
 )  
\_\_\_\_\_, )  
 Plaintiff, )  
v. ) Adversary Proceeding No. \_\_\_\_\_  
 )  
\_\_\_\_\_, )  
 Defendants. )

JOINT MOTION CONSENTING TO MEDIATION AND DESIGNATION OF  
AS THE PROPOSED MEDIATOR

\_\_\_\_\_, by counsel, and \_\_\_\_\_, by counsel, ("Parties") in support of the above entitled Motion state:

1. The above entitled adversary proceeding was filed on \_\_\_\_\_.
2. The undersigned state that they are all of the parties to the controversy herein.
3. The Parties consent to submitting this adversary proceeding to mediation, in accordance with Local Rule B-9019-2.
4. The Parties propose the following person to act as the mediator:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. Attached hereto as Attachment A is the Affidavit of \_\_\_\_\_, indicating his disinterestedness, qualifications, and requested compensation and terms of payment.
6. The Parties propose to enter into an Agreement on the designation of mediation, which Agreement is attached hereto as Attachment B.
7. The Parties tender herewith and attach hereto as Attachment C the Order For Mediation ("Order") proposed herewith for use by the Court in granting the Relief Requested herein.

**Request for Relief**

The undersigned parties respectfully request that the Court grant to them all just and proper relief on this motion and enter the Order.

Respectfully submitted,

\_\_\_\_\_, Attorney No. \_\_\_\_\_  
Counsel for Plaintiff

\_\_\_\_\_, Attorney No. \_\_\_\_\_  
Counsel for Defendant

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE:	)	
	)	
_____ ,	)	
Debtor.	)	Case No. _____
	)	
_____ ,	)	
Plaintiff,	)	
	)	
v.	)	Adversary Proceeding No. _____
	)	
_____ ,	)	
Defendants.	)	

**ORDER FOR MEDIATION**

\_\_\_\_\_ and \_\_\_\_\_, ("Parties") having filed herein their Joint Motion Consenting to Mediation and Designation of \_\_\_\_\_ as the Proposed Mediator ("Motion"), and it appearing to the Court that good cause exists for the granting of said Motion, it is accordingly ORDERED:

1. The above-entitled action is hereby submitted to mediation pursuant to Local Rule 9019-2 and the Mediation Agreement.
2. \_\_\_\_\_ ("Mediator") is hereby appointed to act as the mediator.
  - A. The Mediator and the Parties are authorized to enter into the Mediation Agreement attached hereto as Attachment "A" ("Mediation Agreement).
3. Provisions for the strict protection of the Parties' confidential information shall be made in accordance with Local Rule 9019-2(d).
4. \_\_\_\_\_ shall be compensated at an hourly rate of \$\_\_\_\_\_ per hour and reimbursed for all reasonable and regular out of pocket expenses incurred and advanced by him in connection with the mediation.
5. One half of the total compensation and reimbursement for \_\_\_\_\_ shall be paid by each Party upon receipt of billing for such compensation and reimbursement.

Entered: \_\_\_\_\_  
\_\_\_\_\_  
Judge,  
United States Bankruptcy Court

Distribution:

(All parties of Record.)

**Attachment E. Letter to Participants.**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Re: Mediation of \_\_\_\_\_

Dear Counsel:

Pursuant to our agreement, I have scheduled the mediation of the referenced matter for \_\_\_\_\_, \_\_\_\_\_, 200\_\_, to commence at \_\_\_\_\_.m, at \_\_\_\_\_.

A.D.R. Rule 2.7(B) (2) requires the presence at mediation sessions of all parties, attorneys and client representatives with settlement authority. In addition to having the real decision makers present, there are two other essential ingredients for a successful mediation. First, each side must be fully prepared and willing to recognize both the strengths and weaknesses of his case. Second, each side must be willing to really listen to what the other has to say.

I would like to have confidential mediation statements by \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_. Feel free to fax the statements. I will also review any other documents you submit which may have relevance to the case and the settlement process.

My fee is \$\_\_\_\_\_ per hour irrespective of the number of parties involved. The fee will be divided evenly among the parties unless I am otherwise instructed. Although I am hopeful that the case can be settled within a reasonable short period of time, I will be prepared to proceed as long as necessary to arrive at an agreement.

The mediation session will be informal. We will start with a joint session where I will make a few brief remarks and then call upon the attorneys to provide opening statements outlining their positions and the current status of settlement negotiations. I think it is productive to involve the parties directly in the mediation process, so I may ask your client questions or solicit comments, with counsel's approval. Following joint session we will break into separate sessions to seek mutually acceptable solutions. Because of the confidential nature of the proceedings, I encourage counsel and the parties to speak openly during private sessions.

As provided by A.D.R. Rule 2.12, all statements made by the parties and attorneys during the mediation session shall be regarded as settlement negotiations and are not admissible as evidence at any further stage of the proceeding. Each of the individual private sessions are confidential and nothing communicated during private session will be revealed to the other side except those matters which the parties want disclosed.

If there are any questions, please contact me. Otherwise, I will look forward to seeing you \_\_\_\_\_.

Sincerely,

**Attachment F. Mediation Agreement.**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE: \_\_\_\_\_ )  
 )  
 )  
 Debtor. ) Case No. \_\_\_\_\_ )  
 )  
 \_\_\_\_\_ )  
 )  
 Plaintiff, )  
 )  
 v. ) Adversary Proceeding No. \_\_\_\_\_ )  
 )  
 \_\_\_\_\_ )  
 )  
 Defendants. )

**MEDIATION AGREEMENT**

This Mediation Agreement is entered into by and between \_\_\_\_\_  
\_\_\_\_\_, as mediator ("Mediator"), \_\_\_\_\_ ("Plaintiff"),  
\_\_\_\_\_ ("\_\_\_\_\_"), and \_\_\_\_\_ ("\_\_\_\_\_")  
(\_\_\_\_\_ and \_\_\_\_\_, collectively, "Defendants") (Plaintiff and Defendants, collectively,  
"Parties"), and shall be effective on the date last executed.

**RECITALS**

Certain parties and items named in this Agreement have initially been identified by a defined term enclosed in parentheses and quotes, which is thereafter used in reference to them with initial capital letters.

On or about \_\_\_\_\_, Plaintiff initiated herein the above-captioned case against Defendants, which is now pending in the Marion County Superior Court under cause No. \_\_\_\_\_ ("Claim").

The Parties desire to Mediate the issues instant to the Claim and a resulting counterclaim ("Issues").

The Parties desire to engage the Mediator to conduct mediation of the Issues because of his experience, skill, expertise and knowledge in the area of law related to the Issues.

The Mediator desires to be engaged for the purpose of mediating the Issues.

The purpose of this Agreement is to memorialize an understanding reached by the Parties regarding the terms of the Mediator's services and the duties and responsibilities of Plaintiff and Defendants hereunder.

### **Agreement**

In consideration of the above-stated premises, the Parties, hereby agree as follows:

#### **1. RECITALS:**

The recitals set forth above are hereby incorporated as if set forth herein verbatim.

#### **2. RIGHTS, DUTIES AND RESERVATIONS OF THE MEDIATOR**

2.1 The Mediator shall:

- conduct a meeting of the Parties ("Mediation Meeting") and direct communication among the Parties at such meeting to assist them in exploration of developing a settlement of the Issues.
- conduct the Mediation Meeting in accordance with the terms of A.D.R. Rule 2.1. et seq.
- After the Mediation Meeting the Mediator, report the disposition of the Mediation to the Court by filing with it either advice that the Mediation Meeting was conducted and settlement of the Issues did not result or a memorandum of settlement signed by both Parties.

2.2 The Mediator may:

- Continue the Mediation Meeting if he determines such continuance would be beneficial to the settlement efforts of the Parties.
- Terminate the Mediation Meeting if he determines further efforts of the Parties are not likely to result in settlement of the Issues. The Mediator shall not be required to disclose his reason for terminating the Mediation, but may do so to the extent he deems appropriate.
- Require, before or during the Mediation Meeting, presentation of any items or information in any form or medium determined by the Mediator to be helpful to the Parties in their settlement efforts.
- Review all items and information presented before the Mediation Meeting and at the Mediation Meeting discuss nonconfidential items and information with the other Party.
- At the Mediation Meeting, engage in private, confidential conversations with the Plaintiff and Defendants to develop information about their contentions and objectives.
- At the Mediation Meeting engage in conversations among the Parties in joint sessions.

2.3. The Mediator shall not offer or provide to the Plaintiff or the Defendants any legal advice or services.

#### **3. RIGHTS AND DUTIES OF THE PARTIES**

3.1 The Plaintiff and Defendants shall:

- Prepare for and attend the Mediation Meeting with representatives having clear and specific settlement authority.
- Cooperate with the other Parties, during the Mediation Meeting in an effort to explore and achieve a settlement of the Issues.

- At the end of each private session with the Mediator, during the Mediation Meeting, clearly identify and communicate to the Mediator, what information should be retained by the Mediator in confidence and what information should be communicated to the other Party.
- In the course of the Mediation Meeting, provide the Mediator with clear detailed terms that are acceptable or not acceptable with regard to settlement of the Issues.

3.2 The Plaintiff and Defendants may:

- Request that the Mediator continue the Mediation Meeting with advice to the Mediator of the reasons for such request.
- Request that the Mediator terminate the Mediation Meeting with advice to the Mediator of the reasons for such request.
- Request, during the Mediation Meeting;
  - a private session with the Mediator;
  - a joint session with the Parties; or
  - a private session with the opposite party.
  - a private meeting with their counsel.

**4. MEDIATION MEETING TERMS**

4.1 The Mediation Meeting shall be conducted:

- On \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ .m. (Indianapolis Time).
- In the offices of:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

4.2 Three (3) calendar days before the Mediation Meeting, the Plaintiff and the Defendants may submit in writing to the Mediator only, a statement regarding the case and their position (“Confidential Statement”).

4.3. The Confidential Statement shall contain the following items of information:

- Background information regarding the Parties and the Issues.
- A clear statement of each Issue.
- The law pertinent to each Issue.
- A detailed itemization of the relief requested.

4.4 If, at the conclusion of the Mediation Meeting, settlement of the Issues has been achieved, the Plaintiff and the Defendants shall sign a written memorandum containing:

- Detailed terms of the settlement.
- A list of all documents and pleadings to be further completed and executed.
- Designation of the Party who shall prepare the initial draft of such documents and pleadings.

- At the schedule of dates designated for completion, execution and filing of such documents and pleadings.

## **5. TERMS OF ENGAGEMENT OF MEDIATOR**

5.1. The Mediator shall be compensated for his mediation services at an hourly rate of \$\_\_\_\_\_ per hour and reimbursed for all reasonable and regular out-of-pocket expenses incurred and advanced by the Mediator in connection with this Mediation (“Compensation”).

5.2 As soon as practicable after close of the Mediation Meeting, the Mediator shall present to the Plaintiff and the Defendants, through their counsel, a detail itemized bill for Compensation.

5.3 Such billing shall be paid upon receipt.

5.4. The Plaintiff and Defendants shall:

- Each be liable for and pay to the Mediator ½ of the total Compensation.
- Should payment of Compensation not be paid within thirty days of its billing, the Mediator shall be entitled to accrual and payment of interest at the rate of 1 ½ % per month on any such unpaid balance.

## **6. MISCELLANEOUS TERMS**

6.1 The Mediator:

- Shall not be called by the Plaintiff or the Defendants as a witness or as an expert in any pending or subsequent litigation or arbitration involving them or relating in any way to the dispute, which is the subject of the Mediation.
- Shall be disqualified as a fact or expert witness or expert in any pending or subsequent proceeding relating to the dispute which is the subject of the mediation.
- Is not a necessary Party in any arbitration or judicial proceeding relating to the Mediation or to the subject matter of the Mediation.

6.2 The Plaintiff and the Defendants:

- Hereby waive, and release the Mediator from, any and all claims they have or may have in the future against him in connection with this Mediation and his services related thereto.
- Shall defend the Mediator from any subpoenas from outside parties arising out of this Agreement and/or the Mediation.
- Shall indemnify and hold the Mediator harmless for all cost and expenses, including reasonable attorney’s fees, incurred by him in connection with responding to or defending any and all requests of or claims made against him in relation to this Mediation.

6.3 Communications during Mediation:

- Mediation is considered to be settlement negotiations.
- All offers, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, for purposes of the settlement negotiations, are confidential.
- Such offers, conduct and statements shall not be disclosed to third parties and are privileged

and inadmissible for any purpose, including impeachment, under Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule or common law provisions.

- Evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or not discoverable as a result of its use in the Mediation.

\_\_\_\_\_  
\_\_\_\_\_, Mediator

\_\_\_\_\_  
Attorney for \_\_\_\_\_

\_\_\_\_\_  
Attorney for \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, Mediator

**Attachment G. Affidavit of Mediator.**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE: \_\_\_\_\_ )  
 )  
 )  
 Debtor. ) Case No. \_\_\_\_\_ )  
 )  
 \_\_\_\_\_ )  
 )  
 Plaintiff, )  
 )  
 v. ) Adversary Proceeding No. \_\_\_\_\_ )  
 )  
 \_\_\_\_\_ )  
 )  
 Defendants. )

**AFFIDAVIT OF PROPOSED MEDIATOR, \_\_\_\_\_**

\_\_\_\_\_, being first duly sworn, deposes and says:

1. The affiant is a member with the law firm of \_\_\_\_\_. The affiant is a lawyer licensed to practice law in the State of Indiana and before the United States District Court for the Southern District of Indiana, Indianapolis Division.
2. The affiant is and has been a lawyer in good standing in the State of Indiana and before the United States District Court for the Southern District of Indiana, Indianapolis Division since 19\_\_.
3. The affiant has practiced law in the State, Federal and Bankruptcy Courts in Indianapolis Indiana in the areas of creditors and debtors' rights, commercial litigation and bankruptcy since 19\_\_.
4. The affiant has practiced law before the Bankruptcy Court for the Southern District of Indiana, Indianapolis Division as counsel for Chapter 7, 11 and 13 debtors, creditors and official creditors committees.
5. The affiant has appeared before this Bankruptcy Court as a Chapter 7 and 11 Trustee, and as counsel for Chapter 7 and 11 Trustees.
6. It is customary in bankruptcy adversary proceedings of this kind and complexity to request mediator/attorney's fees of \$\_\_\_\_\_ to \$\_\_\_\_\_ per hour plus reimbursement for out of pocket expenses.
7. It is affiant's opinion that the mediator's fees in the range of \$\_\_\_\_\_ to \$\_\_\_\_\_ per hour are reasonable in a case of the kind in this proceeding.
8. The affiant anticipates that less than \_\_\_\_\_ (\_\_\_) hours will be needed for this mediation.

9. To the best of the affiant's knowledge he has no connection direct or indirect with either of the Parties to this mediation that could prevent him from being a disinterested mediator herein.

10. The affiant is very familiar with counsel for the Parties to this mediation through past and continued association with them in various cases before this Bankruptcy Court. However, the affiant is unaware of any connection to such counsel direct or indirect that could prevent him from being a disinterested mediator herein.

11. The affiant knows of no connections or biases which would disqualify your affiant from serving as the mediator in this case.

12. The affiant shall require payment, by each party, of one half of the total billing for his services and for reasonable out of pocket expenses incurred in connection with mediation due upon billing.

DATED: January \_\_\_\_, 2000

\_\_\_\_\_  
\_\_\_\_\_, Mediator

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires:

\_\_\_\_\_  
\_\_\_\_\_, Notary  
Residing in Marion County

**Attachment H. Settlement Agreements**

**MEMORANDUM OF SETTLEMENT**

Session Date: \_\_\_\_\_ Location: \_\_\_\_\_

RE: \_\_\_\_\_

REF No.: \_\_\_\_\_

The parties concluded the mediation session with a compromise and settlement of all disputes arising from the above-referenced matter as follows:

1. The Parties enter into this settlement agreement intending it to be binding and to comply with ADR Rule 2.7 E. Final drafting of formal settlement documents will be done forthwith by lawyers representing the parties.
2. The Mediator has not given any legal advice to the parties in this matter or in preparation of this document.
3. Pursuant to ADR Rule 2.6, mediation costs shall be paid within 30 days after the close of the mediation session and the following parties shall be obligated to pay the following percentages of the mediation costs:  
\_\_\_\_\_.

4. Additional Terms: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Parties agree and accept the compromise and settlement this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

To be signed by parties and counsel (ADR 2.7 E).

_____	_____
_____	_____
_____	_____

**SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into as of \_\_\_\_\_, by \_\_\_\_\_, a[n] \_\_\_\_\_, and \_\_\_\_\_, a[n] \_\_\_\_\_, and is intended by the parties to settle all obligations, disputes and differences arising out of an action filed in the \_\_\_\_\_ Court, entitled \_\_\_\_\_, Cause No. \_\_\_\_\_ (“lawsuit”).

The parties to this Settlement Agreement now wish to compromise and settle their disputes and to terminate all of the litigation now pending or threatened between them.

In consideration of their mutual agreements, and other valuable consideration, the parties agree as follows:

1. Upon payment of the settlement sum, \_\_\_\_\_ will dismiss, with prejudice, all claims against \_\_\_\_\_ in the lawsuit.

2. \_\_\_\_\_ will pay the sum of \_\_\_\_\_ on or before \_\_\_\_\_.

3. \_\_\_\_\_ and \_\_\_\_\_ and each of their respective predecessors, successors, heirs, assigns, employees, shareholders, officers, directors, agents subsidiaries, hereby release and forever discharge each other from any and all claims, demands, liabilities, causes of action, obligations, and damages whatsoever, whether or not now known, arising out of the subject of this lawsuit.

4. Other terms of this settlement are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. The parties acknowledge that this Settlement Agreement is a settlement of disputed claims and is not an admission of liability by any of the parties.

6. \_\_\_\_\_ and \_\_\_\_\_ each acknowledge and represent that this Settlement Agreement is signed without reliance upon any agreement, promise, statement, or representation by or on behalf of any party, except as set forth in the agreement. Each of the parties acknowledges that no other party nor any agent or attorney of such other party has made any promises, representations or warranties, whether express or implied, which are not contained in this agreement.

Each party has read this agreement and the documents that will be signed in connection with it, and has had them fully explained by counsel, and is fully aware of their contents and legal effect.

7. This agreement has been knowingly and voluntarily signed by the parties on advice of their respective counsel, and assume all risks for claims which have arisen before or which arise thereafter, whether known, unknown, foreseen or unforeseen, arising from the subject of this agreement.

8. Although the Mediator has provided a basic outline of this Agreement to the parties' counsel as a courtesy to facilitate the final resolution of their dispute, the parties and their counsel have thoroughly reviewed such outline and have, where necessary, modified it to conform to the

requirements of their agreement. All signatories to this Agreement hereby release the Mediator from any and all responsibility arising from the drafting of this Agreement.

PLAINTIFF: \_\_\_\_\_ DEFENDANT: \_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

APPROVED AS TO FORM AND CONTENT:

\_\_\_\_\_  
Counsel for Plaintiff

\_\_\_\_\_  
Counsel for Defendant

**Attachment I. Report of Mediator.**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE: \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 Debtor. ) Case No. \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 Plaintiff, )  
 v. ) Adversary Proceeding No. \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 Defendants. )

**REPORT OF MEDIATOR**

\_\_\_\_\_, Mediator, pursuant to S.D. Ind. B-9015-2(3)(i), files his Report of Mediation.

1. The undersigned was appointed Mediator herein by the order of this court pursuant to S.D. Ind. B-9015-2.
2. Mediation was held herein on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Participants were \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_.
3. The issues originally presented to the Mediator included \_\_\_\_\_.
4. The mediation was successfully concluded with an agreed settlement, subject to approval of the Bankruptcy Court, in the amount of \_\_\_\_\_ to be paid by the Defendants to the Plaintiff.
5. Attached hereto as Exhibit "A" is the *Oath of Mediator*.

Respectfully submitted,

\_\_\_\_\_  
 \_\_\_\_\_, Mediator

Plaintiff:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

By: \_\_\_\_\_  
Attorney for Plaintiff

Defendant:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Attorney for Defendant

**Distribution:**

**Attachment J. Oath of Mediator.**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE:	)	
	)	
_____ ,	)	
Debtor.	)	Case No. _____
	)	
_____ ,	)	
Plaintiff,	)	
	)	
v.	)	Adversary Proceeding No. _____
	)	
_____ ,	)	
Defendants.	)	

**OATH OF MEDIATOR**

Pursuant to Southern District of Indiana Local Rule B-9019-2(a)(5), the undersigned files his oath as prescribed by 28 U.S.C. §453 as follows:

I, \_\_\_\_\_, do solemnly swear that I will administer justice without respect to persons, and due equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as Mediator under the Constitution and laws of the United States so help me God.

\_\_\_\_\_  
\_\_\_\_\_, Mediator

**Attachment K. Application for Fees.**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE:	)	
	)	
_____ ,	)	
	)	
Debtor.	)	Case No. _____
	)	
_____ ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adversary Proceeding No. _____
	)	
_____ ,	)	
	)	
Defendants.	)	

**APPLICATION BY MEDIATOR FOR PAYMENT OF FEES AND REIMBURSEMENT OF EXPENSES**

\_\_\_\_\_, Mediator, pursuant to S.D. Ind. B-9019-2(b)(4), seeks compensation for services rendered herein.

1. The undersigned was appointed Mediator herein by order of this court pursuant to S.D. Ind. B-9015-2.
2. The mediation performed by your applicant was in Adversary Proceeding No. \_\_\_\_\_, entitled \_\_\_\_\_.
3. On \_\_\_\_\_, 20\_\_, the Mediator filed his *Report of Mediator* in which he advised the Court that the issues assigned for mediation were successfully settled, subject to Court approval, through the intervention of the Mediator.
4. The total time expended by the Mediator in performing services herein was \_\_\_\_ hours. The Mediator requests compensation at the rate of \$\_\_\_\_\_ for a total of \$\_\_\_\_\_. The Mediator also incurred expenses totaling \$\_\_\_\_\_. The total fees and expenses requested by the Mediator is \$\_\_\_\_\_. Attached hereto as Exhibit "A" is a statement setting forth the details regarding the requested compensation and reimbursement of expenses.

5. \_\_\_\_\_ and \_\_\_\_\_, the Defendants in the  
aforementioned adversary proceeding, and the Debtor's estate agreed to divide equally the costs and  
expenses of the Mediator. Thus, the Mediator requests payment from the estate in the total amount of  
\$\_\_\_\_\_.

WHEREFORE, \_\_\_\_\_, the duly appointed Mediator herein, requests payment  
for services rendered and for reimbursement of expenses in the amount of \$\_\_\_\_\_ and for such  
other and further relief as is just and proper.

Respectfully submitted,

\_\_\_\_\_  
\_\_\_\_\_, Mediator  
Attorney No. \_\_\_\_\_