

## DETERMINING THE MOST APPROPRIATE CDR TECHNIQUE

The following provides some useful information to help determine which CDR technique best suits the needs of a particular case:

### Mediation

*Mediation is appropriate in cases where:*

- the parties have or have had a significant business or personal relationship;
- there are communication problems between the parties;
- the principal barriers to settlement are personal and/or emotional;
- resolving the dispute is more important than the legal or moral principles;
- multi-faceted settlements are possible;
- the law governing the dispute is well-established and not challenged;
- subjective questions of fact (*e.g.*, state of mind, intent) or parties' interpretation of objective facts exists;
- the parties have an incentive to settle because of time, cost of litigation or other factors;
- the parties are not represented by attorneys;
- a valuation process (such as arbitration or judicial settlement conferencing) has failed to resolve the case.

Cases considered inappropriate for mediation are those in which:

- a party or parties are not able to negotiate themselves or with the assistance of counsel;
- there is significant resistance to settlement on the part of one or both parties;
- an independent evaluation of the relative strengths and weaknesses of the parties' evidence and legal arguments to settlement is needed.

### Arbitration

*Cases most appropriate for arbitration include those where parties:*

- require an independent decision to resolve the dispute;
- have full information, but seek the opinion of a third party respecting the extent of damages or the credibility of witnesses;
- are committed to litigating the case;
- have not had a relationship beyond a single incident and are disputing money damage issues only;
- dispute a relatively small amount and a quick third-part decision is of primary importance;
- have an auto negligence, personal injury, personal injury protection or commercial case that is not better suited to mediation.

*Arbitration may be inappropriate for cases in which:*

- the parties want to improve their communication, find common ground, or work toward a creative solution.

**Note:** If the parties wish a binding decision and wish to have a high/low agreement to control the parameters of the outcome, they should consider Voluntary Binding Arbitration.

### **Voluntary Binding Arbitration**

Voluntary binding arbitration has been found to be particularly effective in resolving cases having the following characteristics:

- the parties require an independent decision to resolve the dispute;
- the parties have full information, but seek the opinion of third parties respecting the extent of damages, or the credibility of a witness;
- the parties are committed to “litigating” and are not open to negotiation;
- the parties have no relationship beyond a single incident and the disputed issues involve only the amount of money damages; or
- the amount at stake is relatively small and a quick third-party decision is of primary importance.

*Voluntary binding arbitration is inappropriate for cases in which:*

- the parties do not wish a binding result;
- the parties want to improve their communication, find common ground, or work toward a creative solution.

### **Summary Jury Trials or Expedited Jury Trials**

*Summary jury trials or expedited jury trial are appropriate in cases where:*

- significant issues or substantial sums are at issue;
- the parties differ substantially in their opinion of how a jury will apply concepts such as reasonableness and ordinary care to the facts;
- one or more parties (or their counsel) appear to have an unrealistic view of the merits of the case even after hearing a reasonable presentation of their opponent’s arguments;
- one or more parties are reluctant to settle because they want their “day in court.”

*Summary jury trials or expedited jury trials are inappropriate for cases:*

- which could be tried before a real jury in a day or two;
- where more convenient and less expensive settlement techniques have not yet been explored.

**Note:** If the parties want to be bound by the result, subject to limited grounds for appeal, an expedited jury trial is more appropriate than a summary jury trial.

**Note:** For additional information on CDR refer to the Civil CDR Program Resource Book.