

MEDIATION GUIDELINES & ENGAGEMENT OF MEDIATOR

Each party, each party's Attorney, and any other person/entity participating in this Mediation Session and signing this document has agreed to and does hereby retain JAMES E. HOLMES to be the Mediator in the dispute between the parties. [_____ v. _____, _____ Court of _____ County, Civil Action No. _____.] [If any person is participating as an officer or representative of any corporation or other entity, then his / her signature represents and warrants that he / she has been duly authorized to participate in this mediation and to settle this matter on behalf of the represented entity.] In retaining Mr. Holmes and signing this document, each agrees to the following terms and stipulations:

1. The purpose of mediation is to attempt in good faith to find a mutually acceptable resolution of the dispute. The Mediator, as the neutral, will conduct the discussions and negotiations and assist the parties and counsels in endeavoring that all parties understand the facts asserted and the contentions of all parties.
2. If there is to be a reasonable chance to be successful and reach that mutually acceptable resolution of your dispute, open and honest communication and negotiation is absolutely essential. Thus, all parties agree to and commit to making complete and accurate disclosure of all matters relevant to the dispute and its resolution, including but not being limited to all relevant information that would be available through the discovery process in a legal proceeding. All parties are hereby informed and acknowledge that the deliberate withholding of information or the purposeful supplying of incorrect information could result in any resolution reached being set aside.
3. All participants agree to conduct himself or herself so as not to disrupt or hinder the discussions or the negotiations; each participant shall treat all others with respect and acknowledges each's right to state fully and without interruption his/her facts and contentions. Additionally, any remarks asserting blame of another participant or making any personal attack will not be made during any joint session, any such comments being reserved for a private session (a caucus) with the Mediator.
4. All information gathered in the mediation session(s) is confidential and privileged but for two exceptions – If ordered by the Court, the Mediator shall be subject to having to appear on the issue of whether a party(ies) failed to mediate in GOOD FAITH and/or whether he/she UNDERSTOOD what he/she was doing when the Mediated Settlement was signed; and (ii) If a party signs a Mediated Settlement Agreement and later decides that he/she did not understand what he/she was signing, the Mediator can be subpoenaed to state whether he thought that he/she did nor did not know what he/she was doing at the time the document was signed. This Mediator, the parties, the attorneys, and any other participants in the mediation specifically and expressly pledge to abide by this and to in fact treat all information gathered as confidential and privileged. If the Mediator decides to go into separate and private session with each side - referred to as a 'caucus' - confidential information asked not to be disclosed in such a caucus will not be divulged to the other party without the consent of the party making the disclosure.
5. The parties and their attorneys agree NOT to call this Mediator or any person he has consulted with

or engaged to assist him in the mediation process to testify as a witness in any proceeding or to subpoena or otherwise seek discovery of any written materials developed for or in the course of this mediation. And, in no event will this Mediator volunteer to testify or otherwise to provide evidence or assistance on behalf on any party.

6. All participants acknowledge and understand that the Mediator is not acting in the capacity of either an attorney or financial adviser and does not offer any legal, tax, or financial advice; all parties have been informed of and have been encouraged to retain independent legal counsel. Additionally, each party has been informed of the right to and has been encouraged to have counsel and/or an accountant or financial advisor review any agreement reached prior to signing the final document.

7. The Mediator is acting as a facilitator/evaluator to assist the parties as best he can to resolve their dispute. It is agreed that absent misconduct, fraud, or gross negligence, the Mediator shall not be subject to liability to the parties as a result of his services as the Mediator.

8. The parties agree to compensate the Mediator at the hourly rate of \$300.00 per hour. The Mediator shall be compensated for all time in the mediation session(s), for up to three (3) hours preparing for the mediation when reviewing documents or other material relevant to the mediation or submitted by the participants, and for all time preparing any agreement reached as a result of the mediation. Unless otherwise specifically agreed, the fee will be divided equally between the parties, and payment shall be due at the end of each mediation session.

9. By signing this document, all parties, attorneys, and other involved persons agree to participate in this mediation IN and WITH GOOD FAITH and to work toward that mutually acceptable resolution of some or all of the disputed issues. Additionally, by signing this document all who sign are affirming his/her/its ability to understand and to participate in these proceedings and to make rational judgments which are in his/her/its best interest.

This ____ day of _____, 2010

[Each Individual Party sign and then print name below. If Person is representing an entity, then below person's signature print name of entity.]

James E. Holmes, Mediator