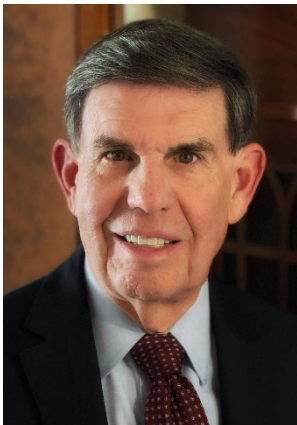


Mediation: When Is It the Right Tool to Resolve an Insurance-Related Dispute?

Dale G. Larrimore, Esq.

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While alternative dispute resolution has ancient roots, professional mediation has become a modern and increasingly favored method of resolving legal disputes. It offers a structured process for parties to communicate, negotiate, and reach a resolution that meets mutual interests—often avoiding the delays, costs and adversarial tone of litigation.

The key to successful mediation is not just how it's conducted, but *when* it's initiated. Below are three common points in a dispute's life cycle where mediation can be highly effective.

Early Mediation: Resolving Disputes Before They Escalate

When a claim is in its infancy—before litigation begins and before significant legal expenses accrue—early mediation can foster resolution in a collaborative atmosphere. It's particularly useful when the parties are neighbors, business associates, or otherwise have an ongoing relationship worth preserving. At this early stage, parties are often still open to non adversarial dialogue. Unlike court proceedings, which are typically about “winning,” mediation focuses on finding solutions that work for everyone involved. It is generally quicker, less expensive and conducted privately, reducing fear of embarrassment or emotional strain.

Illustration: A unit in a condominium suffers water damage from a pipe or leak originating from a unit above. The damaged party's insurer seeks recovery from the insurance carriers for the condo association or the owners of units above. Where there is a close relationship between the parties, a prompt acceptable resolution is far superior to extensive litigation. Rather than involving multiple attorneys and protracted discovery, early mediation allows adjusters or claims supervisors to discuss the facts, review reports, and propose resolution—all in a private, non-adversarial setting.

In such cases, mediation offers confidentiality, flexibility, and efficiency, and it supports continued cooperation among residents and the association—relationships that litigation can permanently damage. Mediation is private and it encourages a collaborative approach—ideal for parties who must continue living or working together.

Pre-Litigation Mediation: Bridging the Gap Before a Suit Is Filed

When early efforts at resolution fail, many disputes still lend themselves to pre-litigation mediation. Most personal injury claims go through a period of investigation lasting 12 to 18 months, during which plaintiffs' counsel gathers medical records and evaluates damages, while insurers examine liability and conduct their own assessments. At this point, significant time may have been spent evaluating the claim, but litigation costs for proving liability are still minimal.

Illustration: A serious injury occurs in a two-car accident. The plaintiff's attorney compiles medical documentation and wage loss evidence. The insurers for both drivers conduct parallel investigations. Before filing suit, the plaintiff suggests mediation.

At this juncture, the parties are informed but have not yet incurred litigation costs. Mediation provides an opportunity to resolve the case efficiently and confidentially. It spares the plaintiff a public trial and allows insurers to manage risk without the unpredictability of a jury.

From the injured person's perspective, while mediation may remove the possibility of a large jury verdict, it also eliminates the risk of a nominal award. Most importantly, the parties retain control over the outcome—a sharp contrast to trial, where a jury decides liability and damages under strict evidentiary and procedural rules.

At this stage, the plaintiff is typically represented by counsel, while insurance carriers often continue to handle negotiations without outside attorneys. Mediation can proceed

with claims representatives or supervisors, minimizing expenses. Settlement discussions can be handled by experienced employees of the insurance carriers and a knowledgeable attorney for the plaintiff. Liability issues are often straightforward and can be resolved without court intervention.

Pretrial Mediation: A Last Best Chance for Resolution

Once litigation is underway, the case becomes more complex and expensive. Discovery is completed, experts are retained, and costs are mounting. Both sides have invested substantial time and money in evaluating the claim. Yet, mediation can still be highly productive, particularly in complex or multi-party litigation, often leading to resolution in a single day without the added costs of deposing experts for trial.

Illustration: A tree falls onto a roadway, landing on a car and causing catastrophic injuries to the driver. While investigating the horrific incident and aware of *Harris v. Felouzis*, 331 A.3d 919 (Pa.Super. 2025), the attorney for the driver notifies the owner of the property next to the road, the township in which the property is located and PennDOT, as it appears that the road is a state highway. An arborist is hired to opine on the condition of the tree before it fell onto the car. A surveyor is retained to determine if the tree was within the township or PennDOT's right-of-way. The plaintiff files suit against the adjacent property owner, the township, and PennDOT. During discovery, it's revealed that a tree management company had been retained prior to the incident, and they are added as a defendant. Experts have been engaged on liability, causation, medical expenses, and economic loss.

This complex, multiparty case is well-suited for mediation. The exchange of expert reports can be done in a less formal setting but, if needed, expert testimony can be presented during mediation. A skilled mediator can help parties evaluate conflicting expert opinions, understand each other's positions, recognize their risks and address liability apportionment. A mediator might assist in crafting creative settlement solutions and explore structured settlement options, such as ongoing payments for future medical expenses. All of this can be accomplished without incurring additional trial-related costs.

Effective pretrial mediation requires decision-makers to be present. Plaintiffs and their counsel must attend. Defendant participation is important, but more critical is having an insurance representative with meaningful authority present or readily available. Settlements are only reached when those responsible for payment and those receiving compensation agree.

Mediation also allows parties to focus on substantive issues—such as whether future medical costs are justified—without being bogged down in procedural complexities. A mediator experienced in personal injury matters can grasp the nuances better than lay jurors. Private sessions with each side often help parties recognize the strengths and weaknesses of their positions.

A skilled mediator can guide parties through key issues, help manage expectations, and suggest creative resolutions. The process remains confidential, focused, and far less taxing than a multi-week trial. Rather than face an inflexible court-imposed trial date, parties can work toward a mutually acceptable resolution on a timeline they control. Even if several sessions are needed, mediation is typically more efficient and less stressful than a full trial.

Final Thoughts

Mediation is not a panacea, but it is a proven and powerful tool for resolving disputes—often more efficiently, privately, and collaboratively than litigation. Whether pursued early in a dispute, during presuit negotiations, or on the eve of trial, mediation offers parties a chance to control outcomes and reduce risk.

As with all forms of alternative dispute resolution, mediation helps conflicting parties communicate and negotiate to a mutually acceptable agreement. Attorneys and insurance professionals alike should consider mediation not as a fallback, but as a primary strategy when the facts and timing align. Choose a mediator with the expertise and experience to handle the specific issues involved and understand that while mediation in complex cases may take time and effort, it still offers significant advantages in resolving cases in a fraction of the time and cost of courtroom proceedings.

Dale G. Larrimore *is an attorney and mediator with ADR Options in Philadelphia. He has been a civil litigation attorney in Pennsylvania since 1976, was senior partner of Larrimore & Farnish since 1994, and is now of counsel to the firm of Haggerty, Goldberg, Schleifer & Kupersmith. To schedule your matter for mediation/ arbitration with Dale Larrimore contact ADR Options at 215-564-1775 or email contact@adroptions.com.*

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