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July 26  
By e-mail

To: XXX  
YYY  
ZZZ

Re: P v. D

Dear Counsel:

This will confirm that the mediation of this matter will proceed on October 4 & 5, 2022 at 9:00 a.m. at the offices of XXX, , 000 Main St., Ste. 0000, Salt Lake City, UT. Each participating party must have a representative present with settlement authority. Per Colorado Rule of Professional Conduct 2.4, please be advised that I do not represent any of the participants in the mediation process.

It is very important that the claims professionals who are being asked to defend and indemnify a party be prepared for meaningful participation in the mediation. That means that time on the risk issues, coverage disagreements and any other issue that is preventing the claims professionals for that party from coordinating their efforts should be addressed and, if possible, resolved before the mediation session. If I can assist in resolving such matters, please let me know and I will be pleased to become more involved before the mediation session.

I charge \$400 per hour for mediation services including time spent reading pre-mediation submissions, preparation time, telephone conferences and mediation sessions. I charge \$200 per hour for travel time. In addition to these fees the parties must pay all of my expenses associated with travel. The minimum charge for each one of the 2 days committed to this mediation will be \$1500. The attorneys listed above are responsible for paying my fees including any cancellation fee. It is my understanding that my fees will be shared as follows: the above listed attorneys are each responsible for one-third of the fees. Please advise me immediately if you are unwilling to participate on this basis.

Counsel are requested to make advance deposits to cover estimated fees and out of pocket expenses associated with travel. **Please deposit \$3000 per party (\$9,000 total) on or before September 4, 2022.** While every effort will be made to complete the

resolution process within the time estimates used to determine the deposits, the process may take longer. In that event the parties must pay additional amounts to cover the additional time needed to complete the process. The advance payments will be deposited in my trust account and dispersed only to pay bills sent to counsel or as refunds in the event that the matter is concluded without depleting the entire retainer balance. In addition to these fees the parties must pay all of my expenses associated with travel.

You must notify me in writing (e-mail will do) to cancel a scheduled case. If you cancel the mediation at least 30 days prior to the scheduled mediation I will bill only for time actually spent prior to receiving notice of the cancellation. If the case is cancelled after 30 days prior to the scheduled mediation and I am not able to fill the scheduled mediation time with another case, the party's counsel who cancels is responsible for paying for any time actually spent plus \$1500 per scheduled day. This means that if you cancel the mediation session you are responsible for any cancellation fee. If you believe that your fellow counsel should share the cancellation fee it is your responsibility to make sure that they communicate to me in writing (e-mail will do) their willingness to pay a portion of the cancellation fee. You will be responsible for paying a cancellation fee even if you scheduled the case for mediation less than 30 days before the scheduled date. If you have any questions about this cancellation policy please call me. While I will do my best to fill any cancelled day, you should understand that canceling a case with less than 30 days notice will likely result in your owing a cancellation fee.

**I request that each party submit a confidential pre-mediation statement to me on or before September 24, 2022.** These statements are to assist me in ensuring that the mediation will be as productive as possible. I will not disclose the contents of your statement to anyone unless I first obtain your consent. Please be candid in these statements.

Please include in your statement the legal and factual bases for your client's claims/defenses. You may include whatever pleadings, contracts, expert reports, deposition or other discovery excerpts, etc. that you believe will assist my understanding of this case. It is recommended that you highlight or otherwise indicate the portion of the supporting documentation that you regard as important so that I may efficiently focus my attention on these portions.

Please candidly disclose the strengths and weaknesses of your case and the cases of the other parties. Provide a description of the alleged damages. Explain how the damage figure is calculated. Advise me as to what, if any, settlement negotiations have occurred. Please provide or call to my attention any particularly relevant and pivotal statutory or case law. If there are insurance coverage issues or other special considerations which will influence the settlement negotiations please call them to my attention. I regard the pre-mediation statements as very important to a successful mediation session and I appreciate your time and effort in preparing them. If you have any questions about the pre-mediation statement please call me.

I regard working with you and your clients to be a privilege. I am keenly aware that this mediation session is an important moment in this case. I will do all that I can to maximize the opportunities for resolution made available to the parties through this process. Please let me know if you have any questions or suggestions.

Sincerely,

Steve A. Mains