

## Top 10 Things to Like About Virtual Insurance Mediations

By **ANDREW NADOLNA**

**V**irtual mediation is the newest tool in the insurance alternative dispute resolution (ADR) toolbox, and it is here to stay. Here are 10 reasons to use virtual mediation for insurance-related matters.

### 1. Inventory reduction—now

Right now, there is a window of opportunity. COVID-19-related insurance cases are arising quickly. They will soon swamp lawyers, clients and insurance companies in multiple lines of insurance. These cases will take a disproportionate amount of time. Those working in claims for insurance companies, or as in-house counsel and risk managers, or for law firms working in the insurance space are seeing a massive influx of business interruption claims under property policies; but other lines, such as employment practices liability, directors and officers liability insurance and commercial general liability, are not far behind. The increase in volume will be monumental. In the meantime, every other case will be put on the back burner. Virtual mediations led by experienced neutrals can help. With no

need to travel, or even commute, it is much easier for even the busiest mediators to be available, and you don't need to schedule them months in advance. Go ahead. Settle some cases—virtually.

### 2. Scheduling convenience

Scheduling is a lot easier. Part of the reason for this is because you don't have to worry about travel. Once travel has been eliminated, you don't have to worry about the day before and/or the day after for participants or the mediator. You also don't have to worry about commuting. You also don't need to wait for an available room in a busy dispute resolution facility. Virtual rooms are virtually unlimited.

### 3. Ease of starting

See above: no commuting. I rarely hit traffic when I am walking down the hallway to get to my laptop. Virtual mediations tend to have everybody present and ready to go on time. Leveraging virtual platforms, there is the option to book as many as 50 rooms or only a few—at no additional cost. This means that matters involving complicated towers of coverage can have breathing room. Everyone gets their own room, and various participants



can be assigned easily to that room. Participants just need to dial in, and the administrator or mediator will instantly put each participant in the appropriate room.

### 4. Geography doesn't matter—so you can focus on skills

You can look nationally or even globally for the appropriate neutral with the kind of expertise you need, without any travel expenses. The participants can be anywhere. I've had cases with participants in four time zones. Many policyholder and insurer law firms have national (or international) practices aligned to the needs of their clients. Some mediators have a similar focus. Drawing on their skills is now easier than ever.

## 5. More meaningful mandatory ADR

There are now more mandatory alternative dispute resolution (ADR) clauses in more insurance policies (and other contracts) than ever before. If you are required to mediate, do it well and do it now, before you get inundated. A good mediator can help transform a session from a “check the box” exercise into a meaningful discussion and risk-analysis session. The worst-possible outcome is that your views of the facts, the law and the policy language will be thoroughly tested. The best thing that could happen is discovering that your idea of a reasonable settlement is not far off from the other side’s idea, so you settle. It’s worth a try.

## 6. Increased intensity of focus

There is something about being on camera that creates an unusual and helpful level of focus, but it can be extremely draining for any length of time. However, the benefit is that we tend to get to the point in a different—more considered and concise—way. Things are happening quicker in online insurance mediations. That isn’t necessarily always a good thing. Some cases require a more leisurely unfolding of events. Being aware of this can lead to more productive sessions.

## 7. Flexibility and creativity

The processes for conducting a virtual mediation will rapidly evolve. The global mediation community is now using online meeting platforms for mediation. We are engaged with the technology. We are thinking about how to do it better. We are thinking

about the range of processes and structures that might benefit our clients and our cases. There are many possibilities.

## 8. The efficiency of a disaggregated mediation

A mediation can be separated into segments over the course of a few days or weeks, and the time in between can be used for assessment. Maybe the magic of the day can be transformed into bite-sized pockets of magic. Why is this important? Many insurance mediations have become multi-day efforts, allowing each side the opportunity to regroup and consider what happened. Often there is a lot of downtime. Now we have the chance to have separate caucuses without keeping everyone else sitting in a room waiting for their turn. We can schedule it.

## 9. The new and improved opening session

We may be communicating more effectively now than ever before, which may mean that a substantive joint session can be productive and lead to negotiations. The strange intimacy of the technology—it can feel like you are very close to the people on your screen—enhances civility in discourse. With some guidance from the mediator—structured around a few issues and rules about time and types of discourse—we can get so much more accomplished at the beginning of a session. The other possibility is that the joint session becomes a two-part presentation over a couple days, and before the individual caucuses or bargaining begins, each side has the opportunity to consider whether there is anything new in

the other side’s presentation that requires an alteration to its mediation strategy.

## 10. Technology choices

Pick your platform. Although Zoom seems to be the default option given its range of mediation-appropriate features, cost and ease of use, there are many other options. Many clients prefer platforms such as Microsoft Teams, Cisco Webex, Endispute or BlueJeans. Similar to any other detail concerning the mediation process, the selection of a virtual platform and any additional communication modalities is a matter that can be tailored to the needs and specifications of the parties. The time it takes to master the controls of any of these platforms is minimal. Mediators can work through any technology issues by using the platform for pre-session activities and can arrange for a brief practice session to get everyone comfortable with the technology.

As you can see, this tool belongs in your case resolution toolbox.

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