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## Why Risk It?

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### Keep Talking...the Advantages of Alternative Dispute Resolution

Posted by [cavignac](#) at 8/6/2013 11:37 AM CDT

Litigation is hugely expensive, time consuming and emotionally draining. Although litigation has its place, in most cases it is an ineffective way to resolve business disputes. In fact, 19 out of 20 litigated cases are not decided by a judge or jury, they are resolved prior to final adjudication.

Insurance companies pay millions and millions of dollars defending their policyholders and defending themselves. For some lines of coverage such as Architects and Engineers Professional Liability and Directors and Officers Liability, defense costs can equal or exceed what the industry pays in covered losses. Because of this, the insurance industry actively encourages alternative dispute resolution (ADR). Mediation is by far the most common form of ADR. Many insurance companies offering professional liability insurance will include a mediation provision in their policy. If a dispute is resolved through mediation, they agree to cut the insured's deductible in half, up to a maximum of as much as \$50,000! XL Design Professionals Insurance Company estimates that 85% of claims submitted to mediation are settled successfully. The claims costs in mediated matters are significantly lower than arbitrated or litigated matters and the disputes are resolved much more quickly.

Equally as important, a mediated matter is easier on the parties involved. Litigation and arbitration are considered adversarial. There is a winner and a loser and often times the process will destroy business relationships. Mediation, on the other hand, focuses on the straightforward objective of having parties who disagree resolve the matter themselves with the help of a mediator. Unlike litigation and arbitration where a third party will decide who is right and who is wrong, the mediator's job is to work with both parties so they can come to resolution. It is also important to recognize that if mediation doesn't work out, the parties have the option of either arbitration or litigation.

Litigation or arbitration only happens when the parties to a dispute stop talking and pay someone else to talk for them. In some situations, the parties are so angry or opposed that litigation or arbitration may be the only options. However, anyone that has ever been sued, deposed or involved with either litigation or arbitration knows how expensive, time consuming and challenging our legal process can be. The point here is this—if a matter is in all likelihood going to be resolved without the benefit of an adjudicator, then why litigate to begin with? Prior to "throwing down" and beginning the formal legal process, it is always best to consider alternative ways to resolve your disagreements.

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1 of 2

6/1/2015 2:42 PM