

Cerno

Distinguish; determine; resolve.

Date 25 November 2012

Welcome

Welcome to this newsletter from Cerno, a consultancy providing dispute resolution advice and services to the construction, engineering, industrial and maritime industries and related professions such as lawyers, architects and engineers.

The purpose of Cerno's newsletters is to provide information on matters of general interest and updates on latest the developments in the field of dispute resolution and related case law. In this article we take a brief look at Mediation and its benefits in the resolution of disputes on construction and engineering projects.

Mediation

What is Mediation? Mediation is a completely voluntary and confidential form of alternative dispute resolution. It involves an independent, impartial person (the mediator) helping two or more individuals or groups reach a settlement that is acceptable to everyone. Mediation is an informal way for people to resolve disputes with the help of a neutral who is trained to help others discuss their differences. Mediation is a guided process where an impartial or neutral third party helps participants to negotiate solutions.

Mediation is inherently consensual and differs from Arbitration, for example, in that the role of the neutral in arbitration is to consider the issues and make a decision in binding determination whereas in mediation the mediator does not have the function or authority to make any decisions for the parties unless the parties agree to that. It is always non-binding unless the parties decide otherwise; but the question must be asked "if you don't want to stick to what is agreed, why go through the process?".

Mediation is intended to provide a "win-win" solution.

Mediation has a number of benefits. It allows people to resolve the dispute in a friendly way that meets their own, unique needs. Very often it is quicker, cheaper and less stressful than court. Mediation works because it is the parties that retain control, including of their emotions in relation to the disputed matter.

Mediation styles

Mediation can take a number of different styles, from passive to highly directive and evaluative. Principally there is facilitative mediation, evaluative mediation, and transformative mediation.

In a facilitative mediation the mediator structures a process to assist the parties to reach a mutually agreeable resolution by asking questions and searching for interests behind the positions taken by the parties.

In evaluative mediation, which is modelled on settlement conferences held by judges, the mediator assists by pointing out to the parties the weaknesses of their case and predicting what a judge or jury would be most likely to decide.

Transformative mediation is the newest concept and is based on values of empowerment of each of the parties and recognition by each of the other parties' needs, interests, values and point of view.

When is mediation appropriate and who does what?

What does the mediator do?

The mediator remains neutral. Usually he, or she offers guidance only, not opinion on the issues; they do not take sides or judge who is right or wrong. The mediator may make suggestions or give information about how other people have sorted out similar situations but, usually, cannot tell the parties what they should do.

The mediator decides on the process unless the parties have agreed beforehand. This can involve talking with the parties jointly, or separately, allowing both sides to talk openly.

When should I use mediation?

Most kinds of disputes can be mediated provided those involved want to find a way forward. Unless there is a contract that provides for a dispute resolution process, mediation is nearly always an option.

Mediation may not be suitable if you want to enforce a legal right, or want someone to decide the 'rights and wrongs' of an issue for you but for other matters it can be used at any stage but is considered as most effective if used early on.

What should I do before a mediation?

Before embarking on mediation it is necessary to prepare, thoroughly.

The first stage is to ensure that mediation is the right method of dispute resolution and it is being used at the right time. As no settlement can be guaranteed, adjudication or expert determination, for example, may be more suitable.

As with any process of dispute resolution, it is necessary for each party to have an understanding of all the facts; you should, therefore, arm yourself with as much knowledge about your dispute and the other party as possible.

Give consideration also to what would happen if the dispute is not settled; and prepare a negotiation plan.

CIArb News

*News for members of
the Chartered Institute
of Arbitrators in Trinidad
& Tobago*

The Trinidad & Tobago chapter of the Chartered Institute of Arbitrators (CIArb) is a sub-branch of the regional, Caribbean Chapter and is looking to host regular meetings for its members; however it needs one or more venues.

If anyone can provide a suitable meeting place preferably with light refreshment facilities, to accommodate up to 50 persons, please contact Cerno.

Anyone interested in joining the CIArb can obtain information directly from the Institute (www.ciarb.org) or by writing to info@cerno.org.

Upcoming Events

It is intended that Cerno's newsletters will include details of local happenings and events of interest. Anyone wishing to have details of an event considered for inclusion here should write to info@cerno.org and provide relevant details.

22-23 & 26-27 November 2012: Hyatt Regency, Trinidad: "The Practical Use of the 1999 FIDIC Conditions of Contract for EPC Turnkey Projects & Comparison with the Plant & Design Build Contract " & "The Practical Use of the 2008 Conditions of Contract for Design Build and Operate Projects." For details and registration e-mail to jccfidic2@gmail.com.

24-30 November 2012: Mediation Week & 3rd Annual Mediation Symposium. For details and registration e-mail to Janelle Luke; jluke@ttlawcourts.org.

Contact Information

Cerno can be contacted by e-mail to info@cerno.org.

Subscriber Information & Participation

You are receiving this newsletter because you are included on the database of Cerno or a related company. If you do not wish to continue receiving the newsletter please e-mail to info@cerno.org, stating UNSUBSCRIBE in the subject line.

Subscribers are encouraged to contribute comment to the newsletter and to circulate it to others who may be interested in receiving a copy.

Back copies of News letters and a list of subjects covered can be obtained by e-mailing to info@cerno.org.