

INTEGRATED MEDIATION SURVEY RESULTS

The term “integrated mediation” is used to refer to the concurrent mediation of an underlying claim and the related insurance coverage dispute in a single mediation process. A basic survey of attorneys’ experiences with integrated mediation was made available to hundreds of insurance coverage attorneys through two Linked-In groups: the Armadillo Club and the Insurance Coverage Group. The survey sought participation by attorneys both with and without experience with integrated mediations.

Only 14 attorneys responded, but the respondents appear to be highly experienced coverage attorneys with significant exposure to integrated mediations. Nine of the fourteen respondents had participated in six or more integrated mediations and four had participated in between two and five such mediations. Thus, the survey results might be characterized as “deep,” if not broad. The survey provided the following perspective on integrated mediation by those experienced in the process:

Which would best describe your experience with the process itself:

Very unsatisfactory	0
Unsatisfactory	1
Acceptable	2
Positive	9
Very Positive	1

Which would best describe your opinion of the outcome of the process

Very unsatisfactory	0
Unsatisfactory	2
Acceptable	4
Positive	8
Very Positive	0

What do you consider to be the major challenges for conducting a satisfactory or very satisfactory integrated mediation:

Conflict between insurer and insured	2
Lack of adequate facts regarding coverage	1
Complexity of mediating multiple issues	8
Getting parties to agree to integrated mediation	2
Other	1

Which would best describe your willingness to participate in integrated mediation:

Very reluctant	0
Reluctant	0
Open	3
Willing	5
Very willing	6

In addition to the multiple choice questions, the survey also asked certain open-ended questions. The first question asked participants to identify what they considered to be the major challenges to a successful integrated mediation. The answers varied but the one general theme was “getting the parties to understand the position of the other participants.”

The major benefits of an integrated mediation were identified as “getting all the issues on the table” and the potential for a global settlement ending all disputes. Asked to identify what they thought is necessary to make integrated mediation successful, the respondents identified the need for pre-mediation preparation, participation by experienced counsel and a mediator both knowledgeable in coverage and capable of handling the complexity of multiple issues.

CONCLUSIONS

The limited participation in the survey from a large cohort of coverage counsel suggests that the use of integrated mediation is currently not widespread. However, counsel with significant experience with integrated mediation showed a positive view of both the process and the outcome. Almost 80% of respondents indicated that they would be willing or very willing to participate in an integrated mediation. None of the experienced participants indicated that they would be reluctant to participate in an integrated mediation.

The major challenge identified for a successful integrated mediation was, not surprisingly, the complexity of dealing with multiple issues. The survey responses suggest that the complexity challenge can be addressed by a combination of preparation, participation by experienced counsel and a mediator knowledgeable in coverage and capable of helping the parties work through the multiple issues.

In short, integrated mediation appears to be a positive, and currently underutilized, tool. The positive perspectives of a group of experienced attorneys suggest that more parties should be open and willing to wade in and engage in integrated mediation.

Thanks to those who took the time to participate in the survey. While the response was limited in numbers, hopefully the results of this basic survey will encourage both further discussion of the process and increased use of integrated mediation. As always, comments and suggestions are welcomed.

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