



FEDERAL EMPLOYER IDENTIFICATION NUMBER EIN 20-4061856

MEDIATION RETAINER AGREEMENT

Borough of Red Bank

v.

**Riverview Medical Center, RMC-Meridian Health,
Meridian Hospitals Corporation, and
Meridian Health Realty Corporation**

Docket No. Mon-L-360-19

FAB/FILE #0031-20

The undersigned parties agree to use mediation services provided by Benchmark Resolution Services LLC, Judge Frank A. Buczynski, Jr., retired, as mediator in order to resolve the aforementioned matter.

(1) Fees shall be paid in accordance with the attached Benchmark Resolution Services Mediation Fee Designated Schedule A, and as further explained in Schedule B, both of which are incorporated herein.

(2) The parties acknowledge that mediation is a voluntary settlement process. The Mediator's role is to facilitate settlement of the dispute, not to judge the respective positions of the parties or to make findings of fact or conclusions of law. In order to encourage settlement, the mediator may, from time to time, make reference to relevant statutory or case law for the

purpose of suggesting a pertinent, independent standard against which the parties may evaluate their respective positions. However, reference to such legal authority should not be interpreted as legal advice by the mediator. The mediator's role is to encourage and facilitate settlement, NOT to advise the parties as to the law and their respective legal positions. Further, the mediator may address the individual parties, with the consent of their attorneys, concerning the strengths and weaknesses of their cases for the purpose of achieving settlement. He may also, from time to time, exchange mediation communications with parties or their attorneys. Such communications shall be deemed privileged, and the mediator or any party may refuse to reveal, and may prevent the mediator from revealing such conversations or communications. See Uniform Mediation Act (Act), L.2004, c. 157, § 1 (effective Nov. 22, 2004) (N.J.S.A. 2A: 23C-1 to -13). The parties' counsel agree to provide their clients with copies of the cited authority along with this agreement. The mediator and the parties may expressly waive their privilege, subject to the provisions of the Act. The privilege is also subject to the exceptions of the Act. Further, all statements or communications made by the parties and/or their attorneys during the mediation sessions shall not be admissible in any judicial or administrative proceedings.

(3) Unless agreed otherwise representatives on behalf of all parties having authority to resolve an issue in dispute or to settle the entire controversy shall be present during the mediation sessions for consultations with the attorneys.

(4) The parties acknowledge that the mediator may have individual sessions and/or communications with less than all of the parties. **The parties agree that the individual sessions or communications with less than all of the parties shall not alter the obligation of all of the parties to pay for services in accordance with the attached fee schedule.**

(5) In the event a party is added after the undersigned is initially retained, that party is

responsible for the services provided by the undersigned from the date that the undersigned is advised of that party's entry into the case.

(6) In cases involving three or more parties, a settling party will not be responsible for additional fees for the services provided for in this agreement after the date that party has settled and has confirmed the settlement with Judge Buczynski in writing or recorded. Thereafter, the obligations of the remaining parties shall be adjusted to reflect the removal of the settling defendant from any obligation to pay for additional fees incurred thereafter. Please see attached Schedule B for a detailed explanation of Benchmark Resolution Services' Billing Policy which is made a part of this agreement.

(7) In the event there is a dispute concerning the terms of the agreement reached by the parties, the parties agree that the mediator shall not be subject to subpoena for the purpose of testifying as to the settlement terms.

(8) Upon conclusion of the mediation sessions and agreement as to settlement of the dispute, a written Memorandum of Agreement and/or an audio recording shall be prepared by the parties.

(9) The parties agree that the signatures of the attorneys on their agreement shall be binding upon the client.

(10) The parties further agree that faxed or scanned signatures shall be binding.

(11) The Parties hereto agree that the services provided by the Mediator fall within those services protected by the Litigation Privilege. Hawkins v. Harris, 141 N.J. 207, 213 (1995), citing, Erickson v. Marsh & McLennan Co., Inc., 117 N.J. 539, 563 (1990). Notwithstanding the application of the Litigation Privilege, in the event it is determined that there is any liability attributable to the Mediator, arising from the services provided herein, it is hereby agreed that the

liability of the Mediator is limited to the lesser of \$50,000.00 or the total fees collected by the Mediator.

(12) In the event any party to this agreement asserts a claim against the mediator named herein, the party asserting a claim against the mediator named herein agree that the dispute shall be referred to mediation. The mediator shall be selected by mutual agreement of the party asserting the claim and the mediator named herein. If the parties are unable to agree, each party shall select a mediator and the respective mediators will make the final determination by selecting a third independent mediator. The cost of the mediation shall be borne equally by the party asserting a claim against the mediator named herein.

In the event mediation of the claim described in the preceding paragraph is not successful, the party asserting a claim against the mediator named herein and the mediator named herein agree that the dispute shall be referred to binding arbitration. The arbitrator shall be selected by mutual agreement of the party asserting the claim and the mediator named herein. If the parties are unable to agree, each party will select an arbitrator. Those arbitrators shall, in turn, select an independent third arbitrator to decide the matter. The arbitrator's decision shall be final and binding. The party asserting a claim against the mediator named herein and the mediator named herein waive the right to appeal the decision of the arbitrator.

(13) The parties agree and acknowledge that the Mediator shall destroy all the Mediators' notes and documents submitted by the parties at the time the matter is settled, or at the time mediation is terminated, or six months after the last mediation session, in the event there is no settlement and no formal termination of mediation.

Dated: September 10, 2020

/Frank A. Buczynski, Jr./

Judge Frank A. Buczynski, Jr. retired for
Benchmark Resolution Services

Dated:

Please Print Client Name

Please Print Attorney Name

Attorney Signature

The following entity _____ shall be responsible for the client's portion of the mediation costs.

Dated:

Please Print Client Name

Please Print Attorney Name

Attorney Signature

The following entity _____ shall be responsible for the client's portion of the mediation costs.

Dated:

Please Print Client Name

Please Print Attorney Name

Attorney Signature

The following entity _____ shall be responsible for the client's portion of the mediation costs.



SCHEDULE A

FRANK A. BUCZYNSKI, JR.

MEDIATION, ARBITRATION OR SPECIAL MASTER SERVICES FEE SCHEDULE

Unless otherwise agreed, the following fees are to be divided between the parties in equal proportions for services rendered with regard to any mediation, arbitration, or special master services.

- a. \$500.00 per hour for all sessions, site inspections and telephone conferences
- b. \$500.00 per hour for review of pleadings, relevant documents, discovery, and expert reports.
- c. \$500.00 per hour for preparation and review of emails, letters, documents, stipulations or other submissions.
- d. \$500.00 per hour for travel time.

PAYMENT WITH REGARD TO ARBITRATION MATTERS

Upon conclusion of an arbitration matter, but prior to the issuance of the Arbitrator's Decision and Award, the parties agree that Benchmark Resolution Services, LLC shall submit a statement of services reflecting the monies due from each party in accordance with this fee schedule. Upon the submission of the statement of services, Benchmark Resolution Services, LLC shall withdraw from the Benchmark Resolution Services Retainer Account the retainer amount and apply the same toward payment of the final statement of services. Upon payment of the balance due on the statement of services, the Arbitrator will immediately issue the Arbitration Decision and Award and an invoice reflecting payment in full.

ADVANCE PAYMENTS FOR MEDIATIONS AND ARBITRATIONS

Each party is expected to pay a \$2,500.00 advance payment upon signing of the agreement providing for mediation, arbitration, discovery master, or case management services as reflected in the retainer invoice which is included with this communication. The deposited monies shall be credited against billing which shall be computed in accordance with the fee schedule set forth above. The monies deposited shall be placed in the Retainer Account of Benchmark Resolution Services, LLC. Thirty days after depositing the Advance Payment, the parties agree that Benchmark Resolution Services, LLC shall submit a Statement of Services reflecting the monies due from each party in

accordance with the above fee schedule. Upon the submission of the Statement of Services, Benchmark Resolution Services shall withdraw from the Benchmark Resolution Services Retainer account a sum necessary to satisfy each party's obligation to Benchmark Resolution Services, LLC, as reflected in the Statement of Services. Within twenty days after receipt of the Statement of Services the parties agree that each party shall forward to Benchmark Resolution Services LLC a further deposit equal to the amount of money withdrawn from the Benchmark Resolution Services Retainer Account as reflected in the most recent submitted Statement of Services. The parties agree that the intent of this provision is that, during the period of time that services are rendered by Benchmark Resolution Services, the parties shall always maintain \$2,500.00 in the Retainer Account of Benchmark Resolution Services LLC to satisfy the fees due to Benchmark.

LATE PAYMENT ASSESSMENT

Benchmark Resolution Services, LLC reserves the right to assess a late charge of 1.5% per month for any bill not paid within ninety (90) days of its rendering. In the event that arbitration or suit is necessary for collection, the firm shall receive attorney's fees equal to 20% of the recovery plus interest at the rate stated above.

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SCHEDULE B

THIS NOTICE IS BEING PROVIDED TO AVOID ANY CONFUSION REGARDING BENCHMARK RESOLUTION SERVICES' BILLING POLICY FOR CASES INVOLVING THREE OR MORE PARTIES.

Upon receipt of the Mediation Agreement, all participants are required to sign the agreement and return it to Benchmark Resolution Services along with the retainer.

All participants will share equally in all charges incurred during the mediation process from the time they orally consent to enter mediation up until their settlement is recorded with the mediator(s) or the parties have executed the settlement documents as required under Willingboro Mall, LTD v. 240/242 Franklin Avenue, LLC, 215 N.J. 242 (2013), whichever comes first. Charges will include the time devoted by the mediator(s) up to the date the party settles regardless of whether or not that party appears at one or more of the mediation sessions.

The order in which a party is invited to appear at a mediation session is determined by agreement of the parties and is a function of who is ready to proceed. Multi-party cases are complex, requiring multiple phone calls, review of multiple mediation statements, and examination of a myriad of exhibits and expert reports. It is not possible to isolate and record time spent by a mediator in the course of a session specifically devoted to a specific litigant. The issues discussed oftentimes apply to several parties, whether present or not. Ongoing mediation sessions, email exchanges, phone conferences and additional document review make it possible to mediate overlapping issues promoting settlement opportunities for multiple parties regardless of their physical presence at a mediation session. In some instances one party must settle out before the plaintiff can agree to settle with another party.

Once a defendant has settled, the invoice is calculated up to and including the date of settlement and divided equally among all the active parties including those who have not settled and remain participants in the ongoing mediation process. Charges incurred thereafter are equally divided among the remaining parties until the next litigant settles and the invoice is calculated again to reflect the cutoff date for charges to the settling party.

We recognize the sooner a defendant can settle the less the mediation costs for that defendant. We try to meet with everyone who is ready to go forward as soon as possible and reduce their mediation costs whenever possible.