

## **MEDIATION—ARBITRATION**

• If a dispute arises out of or relates to this contract or the breach thereof, and if said dispute cannot be settled through direct discussions, the parties agree first to try to settle the dispute in an amicable manner by mediation before [name mediator or] a Fellow of the College of Commercial Arbitrators.

Thereafter, any unresolved controversy or claim arising out of or relating to this contract, or breach thereof, shall be settled by arbitration [name arbitrator or] a Fellow of the College of Commercial Arbitrators, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the Award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

**[Comment by Ed Costello:** This clause eliminates negotiation as a first step. This could be for several reasons, but the most likely is that the parties know they will try negotiation first and, thus, do not feel that it is necessary to include it in the written agreement. Since mediation itself involves (assisted) negotiation, not much will be lost if the parties skip the negotiation step. Some executives have said that they dislike including the negotiation step in a clause because to do so "formalizes" negotiation in a way that they find counterproductive to the goal of early resolution. Others report that the negotiation step is left out because, in the words of one hospital executive, "If the other side is negotiating in good faith, you can always go along. If they are not, then you can invoke the mediation clause right away, avoid their ability to string things along, and get some help from the mediator." This clause also covers a larger number of disputes than those which contain the traditional "arising out of" language.]