



Leveraging our expertise – Gard Mediation and Early Neutral Evaluation facilities for dispute resolution in conflict cases

In an exciting new development Gard is now offering internal mediation, including informal intervention, and early neutral evaluation services to help resolve disputes in conflict cases involving two or more Gard members or clients. Such dispute resolution tools can be instrumental in reaching a compromise that promotes a continuing relationship between business counterparties while saving time and money for all.

Published 15 April 2021

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The benefits of internal mediation and informal intervention

Mediation is facilitated settlement negotiation in which the parties to the dispute voluntarily agree to bring in a neutral third person to assist in reaching a compromise and avoiding litigation. Mediation is highly successful with 90 per cent of cases reaching settlement during the mediation or shortly thereafter. The mediator does not take sides but helps the parties understand and focus on the issues at hand.

It sometimes happens that both parties to a dispute are insured by Gard, for example, a shipowner and a charterer both with Defence cover and a dispute under a charterparty involving hire or demurrage. Gard has robust conflict procedures that ensure that the Defence lawyers protect the interest of the respective member and client and maintain confidentiality. Other instances of conflicts involve differing Gard insurance products including P&I and Marine cover and any one event can involve multiple Gard insureds.

More often than not, Gard's involvement for two or more insureds leads to a streamlined and efficient resolution of claims but this is not always the case. In some instances, informal discussion between the claims handlers on each side is not possible or cannot yield a positive result on its own.

Gard, together with our insureds, has successfully used mediation services, normally provided by a lawyer or a commercial expert, who then conducts a formal mediation process with both parties represented by external lawyers. Such mediation services can be an expensive proposition. Could we not do better in conflict cases by leveraging our internal expertise to mediate disputes in-house at no cost to the member/client? Yes, we can through the Gard mediation procedures and internal mediator panel.

Mediation is voluntary and the choice to use the service is driven by the members and clients involved. In the new program, Members/clients can choose between informal intervention, a formal mediation procedure or a combination of these processes. This flexibility will allow the Gard mediator to offer a service that adheres closely to what is needed in the particular case in order to foster a swift and satisfactory outcome for all concerned. Providing a range of experience and expertise, the men and women serving on the mediators panel include a Master Mariner, Average Adjusters and lawyers qualified in various jurisdictions. Many of the panelists are also accredited mediators.

Gard Mediation can be started jointly by the two claims handlers/Members/clients, by jointly appointing a Gard mediator. Otherwise, a single claims handler or party may initiate an informal intervention by unilaterally nominating a mediator from the Gard panel, who will then contact the other claims handler or party on the other side to find out whether they will agree to participate in such a procedure. If there is a joint and mutual desire of two parties/claims handlers to mediate, but no agreement on whom to appoint as mediator, a member of the Gard Leadership Team can be asked to act and make the selection of mediator.

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In the same way as external mediation services, Gard mediators will not provide a legal opinion and the intention is not to predict the outcome of litigation but instead to facilitate a compromise solution driven by the parties' wish to settle the dispute and avoid time consuming and expensive litigation. Flexibility is key and the procedures are drafted to respond to the needs of the Members/clients and how the parties want to deal with the dispute.

Gard's Early Neutral Evaluation service (ENE)

Gard is also offering in-house Early Neutral Evaluation (ENE) for those situations where the parties agree that they would like a legal view of the prospects in litigation or arbitration. Gard's ENE service is an impartial process aimed at helping resolve conflict cases at an early stage. The parties ask a neutral evaluator to provide their legal opinion as to how a dispute, or a particular point in the dispute, is likely to be decided if it goes to an award or judgment. The evaluator is jointly appointed by the parties from Gard's internal panel of neutral evaluators. The Evaluation is not binding unless both parties expressly agree otherwise in writing. ENE is particularly suited to those disputes where there is a key area or areas of disagreement acting as a roadblock to a final settlement. It can help the parties to assess the risks and can encourage settlement discussions in appropriate cases.

Get ready to give our internal dispute resolution procedures in conflict cases a try

Gard is confident that these new procedures – internal mediation, early intervention, and neutral evaluation – will facilitate dispute resolution in conflict cases involving multiple Gard members and clients. Let's put our heads together to safeguard business relationships by avoiding lengthy, costly and acrimonious litigation.

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