

\$1 Billion Bankruptcy Court-Ordered Mediation—and COVID-19 Has Closed the Courts

The AAA Structured a Successful Virtual Mediation Solution

OVERVIEW

THE PROBLEM

When the courts closed due to the COVID-19 pandemic, this billion-dollar, multi-party bankruptcy case was about to begin court-ordered mediation.

AAA SOLUTION

After speaking with the AAA, the judge felt comfortable allowing them to administer the case as a virtual mediation. Numerous technical issues were involved in its successful execution.

RESULTS

The AAA facilitated a five-day, 10 a.m.-7 p.m., six-party, 40+ participant, two-mediator ZOOM mediation resulting in the resolution of several portions of the case and reduction of any open issues to a discrete few.

PROBLEM

Major financial-institution lenders were parties to a Chapter 11 bankruptcy-filing case slated for court-mandated mediation when the COVID-19 pandemic forced the indefinite closing of the courts. As with any bankruptcy proceeding, all parties involved felt an urgency to conclude the dissolution and associated conflicts.

AAA SOLUTION

Presenting the AAA to the court as best suited to administer this large mediation virtually

Prior to the pandemic, bankruptcy courts did utilize virtual mediation but required court-appointed mediators; due to the backlog in case dockets exacerbated by the court closures due to the pandemic, some bankruptcy court judges waived that requirement. The AAA pro-actively reached out to the judge in this case to educate him about the AAA's virtual mediation services. Once the judge felt comfortable that the AAA could administer this mediation, the judge recommended that the parties use the AAA. Not only has the AAA executed virtual mediations for years, its capabilities are platform agnostic. Many courts, as was this one, are limited to one platform.

The court issued an order for the AAA to administer the case with two AAA mediators.

Overcoming participant apprehension and inexperience regarding a virtual mediation

Some parties were daunted by the prospect of mediating their case virtually over Zoom, the platform selected, apprehensive that their inexperience with technology would prevent their full participation. Because this was a complex case with numerous parties, the AAA used co-mediators, one of whom was familiar with Zoom.

To allay those concerns, the AAA provided the necessary technological education. Calling the Zoom practice a "test run" rather than a "training"

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helped put participants at ease. In addition, although it is the norm for the mediator to maintain hosting rights, the AAA retained them in this case to ease the burden on the mediators.

The AAA took great care to introduce all parties and lay out expectations regarding everyone's roles—including exhibits, witnesses, and presentation and meeting schedules—while also providing assurances of available backup technical methods should there be a need.

AAA engendered such trust that the parties requested an extra day of deliberations.

Facilitating the proceedings, handling any glitches

Sessions exceeded the allotted time, which affected the precisely planned schedules the AAA had created. Lost Internet connection, frustrating for the involved parties, complicated the administration.

Notification of scheduling changes in a virtual arena necessitates electronic communication. Furthermore, contrary to an in-person hearing, where a mediator simply jumps in and out of the rooms to confer, in a Zoom hearing, the host had to enable such movement.

- Whenever a schedule needed adjusting, the AAA kept the mediation on track through emails and texts.
- The AAA listed all participants' names and companies on their online photos to enable visual confirmation that they were in the appropriate rooms.
- The above system allowed the AAA to see when a participant lost connection and to immediately text or email to keep communication active until it was restored. A backup dial-in method circumvented any problems due to lost Internet connection.
- The AAA offered technical assistance at all times.

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