## **MEDIATION**

### **ALASKA WORKERS' COMPENSATION DISPUTES**

# **Lessons of Life from Calvin & Hobbes**

Looking proudly at his drawing, Hobbes declares, "There! Finished!

Calvin happily responds, "Hey, that's terrific! When we win first prize, I'll give you 25% of the winnings."

Indignant, Hobbes says, "What?! I did all the drawing! You should get 25%!"

Calvin insists, "But it was my great idea! We'll split 60-40."

Hobbes firmly replies, "50 - 50."

Calvin angrily exclaims, "Oh, all right, BE selfish!"

Scowling with a frown, Calvin's thought bubble teaches: "A good compromise leaves everyone mad."

## I. Preparation Prior to Mediation

### **Consider Conflict Resolution Options**

- Avoidance
- Negotiation
- Mediation
- Arbitration
- Litigation

### II. Who Should Attend

- Voluntary Participation
- Important Stakeholders
  - o Typical WC Disputes
  - o Misrepresentation Under AS 23.30.250
  - o Injury Sustained by Employee Working for an Uninsured Employer

#### **III. The Mediation Process**

#### • What is Mediation?

Mediation is any process for resolving disputes in which another person helps the parties negotiate a settlement.

#### Does Mediation Really Help?

In workers' compensation mediations, the parties typically find answers to at least some of their concerns and walk away relieved, with an agreement that will be approved by the WC board.

#### • What Happens in Mediation?

- o Welcome and introductions.
- o Issues are summarized by the mediator.
- o Ground rules are reviewed with the parties
- Mediation procedure is explained to the parties
- o Confidentiality
- Summarizing a successful resolution

# IV. Moving Towards Resolution

#### The Confidential Mediation Brief

- Introduction
- Facts
- Proof of Claim / Proof of Defenses
- Relevant Legal Proceedings
- Legal Analysis
  - o Strengths
  - Weaknesses
- Status of Settlement Negotiations Prior to Mediation
- Value of Case (Employee) / Exposure (Employer)

### V. Considerations Beyond the Bottom Line

#### • When Mediation Is Not Appropriate

In certain situations, mediation may be unsuccessful or even harmful. Mediation is not recommended if *any* of the following are true:

- There is a suspicion one party intends to use the mediation to escalate the dispute.
- One party seems incapable of listening to anything the mediator says, or seems otherwise too disturbed to negotiate a workable agreement.
- o The main issue cannot possibly be resolved through mediation.
- One or both parties may be better off having the issue resolved by the Workers' Compensation Board. (eg., Medicare Set Aside)
- o Key stakeholders, parties or participants are unwilling to engage in mediation.

#### • When Appropriate, the Advantages of Mediation

- No limits on the disputes that can be resolved.
- o Mediation is faster, less formal, less expensive and less adversarial than a formal hearing before the Alaska Workers' Compensation Board
- o Parties are in control of the resolution; how the case is resolved is not determined by the Alaska Workers' Compensation Board.
- Avoidance of protracted and costly litigation through the Alaska Workers'
  Compensation Appeals Commission and the Alaska Supreme Court.
- Alaska Workers' Compensation Hearing Officers have been trained to conduct mediation. Hearing Officers mediate workers' compensation disputes at no charge to the parties. The only cost is for travel expenses, if travel is necessary.