
HAPLESS HARVEST
MEDIATION
PRE-PRELIMINARY CONFERENCE

Mediator Information

An experienced litigator in a boutique firm for nearly three decades, you have built a practice with a mix of plaintiff's and defense work. To avoid professional fatigue with "same old, same old," several years ago you began to mediate and arbitrate as a neutral. You also have also taken opportunities to teach tort law from time to time, filling in for professors on Sabbatical or on parental leave at the local law school. You pride yourself on your ability to embrace both neutral and academic perspectives and to establish rapport with mediation parties and with law students.

You are on the mediation panel of the city's bar association (CBA). Under the CBA Mediation Panel rules, the parties (usually through the lawyers) either jointly select one of its mediators or the CBA administrator appoints one. The mediator is not told how that selection was made. After selection, mediator receives a copy of the complaint and answer filed in litigated cases, and or a copy of the CBA's intake case claim form and response in pre-litigation cases.

The CBA Mediation Panel administrator recently contacted you to mediate a case between Jan Hapless and Harvest Plenty. For conflict check purposes, you were provided with names of counsel, parties, and likely participants. After confirming the absence of any conflicts, you received a copy of the complaint and answer in this fairly mature case (filed approximately nine months ago).

You can see that the plaintiff, Jan Hapless, is represented by a well-respected attorney in a small but established plaintiff's law firm. Harvest Plenty's insurer, Total Insurance, has undertaken the defense. Their lawyer is from a well-regarded insurance defense firm.

The pleadings indicate that Jan Hapless was injured while shopping at Harvest Plenty, a health-oriented grocery store owned by a national chain. Jan was walking in an aisle before slipping and falling on spilled carrot juice. Jan fell against the shelves and then backwards, sustaining serious injuries. Jan sued Harvest Plenty for negligence, alleging that they knew or should have known of the dangerous condition in the aisle, and that the aisle was unsafe due to poor lighting, distracting displays, excessive clutter, dirt, and other conditions. Harvest Plenty maintains the carrot juice had been spilled just moments before by a child in a cart. It describes standard and acceptable aisle conditions, names Jan's inattentiveness as the cause of the accident, and asserts lack of notice or opportunity to clean it up.

The complaint seeks a round \$1 million in medical and other expenses, lost income, damages for pain and suffering, loss of income earning capacity, and loss of quality of life and future enjoyment.

First, conduct a preliminary conference call with counsel to prepare for the mediation.