



GEORGIA COMMISSION ON DISPUTE RESOLUTION
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ATLANTA, GEORGIA 30034-5900
OFFICE: 404-463-3808 FAX: 404-463-3790 WEB: www.godr.org

Professional Liability Insurance Information for Neutrals

GODR, through Complete Equity Markets, Inc., offers Georgia registered neutrals a professional liability insurance program for neutrals at low association rates.

What is Professional Liability Insurance for?

For costs (including legal fees) or damages resulting from allegations of negligent acts, errors or omissions in the conduct of arbitration proceedings or dispute resolution services.

What kind of coverage is available (\$500 deductible per claim):

- \$100,000 per claim/\$300,000 aggregate
- \$250,000 per claim/\$500,000 aggregate
- \$500,000 per claim/\$1,000,000 aggregate
- \$1,000,000 per claim/\$1,000,000 aggregate

What will it cost?*

As low as \$230 annual premium for \$100,000/\$300,000 coverage for a mediator of non-family cases who mediates less than 20 hours/week.

As low as \$340 annual premium for \$100,000/\$300,000 coverage for a mediator who handles family cases and mediates 20 hours/week or more.

As low as \$390 annual premium for \$100,000/\$300,000 coverage for an arbitrator/mediator.

*Your insurance premiums may be tax-deductible business expenses.

Is this a deal?

Similar coverage is likely to cost several times more if you buy it as an individual.

What's special about this coverage?

- Unlicensed/Unauthorized Practice of Law coverage at no extra cost;
- Coverage regardless of which state you live or work in, as long as you are a Georgia- registered neutral;

- Prior Acts Coverage for claims as long as there is no prior knowledge of any pending claims and/or circumstance which may give rise to a claim against the Assured at inception date;
- Staff covered at no additional costs (includes secretaries, file clerks, etc.);
- Lower rates for part-time arbitrators/mediators;
- Volunteers can be included for coverage;
- Combination policies available for lawyers with mediation/arbitration practices;
- Defense coverage provided even where the insured is found at fault;
- Optional extended claims reporting period available.

Why do I need liability insurance?

Because across the country, neutrals are being sued and accused of misconduct more often these days. Defending against even false claims can cost a lot of money and cause a lot of anxiety.

Yes, Georgia-registered neutrals serving in a court-annexed or court-referred program are immune from liability “for civil damages for any statement, action, omission or decision made in the course of any ADR process.” But they can still be liable if, “that statement, action, omission or decision is 1) grossly negligent and made with malice or 2) is in willful disregard of the safety or property of any party to the ADR process.” (Georgia Supreme Court ADR Rules, VII(C)). And even defending yourself from a baseless lawsuit can be daunting and expensive. This liability policy can give you that extra peace of mind.

Complete Equity Markets, Inc. is an insurance brokerage firm providing professional liability insurance to select professionals for over 35 years. CEM works only with associations that offer this insurance as a benefit for members. This insurance is underwritten by Lloyd’s of London.

For more information contact - Kaitlyn Hassall

Complete Equity Markets, Inc.

1190 Flex Court
Lake Zurich, IL 60047-1578
Toll-free Phone 800-323-6234 ext. 426
E-mail:khassall@cemins.com
Fax 847-541-0444
www.cemins.com

Additional information included here:

- Application Form
- Wording for GODR Association Policy
- Unlicensed/Unauthorized Practice of Law Endorsement
- Mediator Liability Article

ARBITRATORS, HEARING OFFICERS AND MEDIATORS PROFESSIONAL LIABILITY INSURANCE

(This is an application for a claims-made policy.)

1. Full Name of Assured: _____

2. Address (**MUST** be a Physical Address): _____

(City)

(State)

(Zip)

Phone Number: (____) _____ Fax Number: (____) _____ Email Address: _____

Mailing Address: _____

3. If Assured is not an individual, specify whether: ☐ corporation ☐ partnership ☐ other (explain)

4. List branch offices, if any: _____

5. Describe the purpose, general activities, and functions of your operation and date established (use a separate page if necessary):

Not all activities listed are covered by this insurance. Please refer to policy wording

6. Name of Executive Director or Chief Administrator, if any: _____

7. Names of individuals conducting arbitration proceedings or dispute resolution services (mediation) or hearing officer services, including all arbitrators/hearing officers/mediators employed by or working in conjunction with the Assured (use a separate page if necessary):

Name

Degree

Arbitrator, Hearing Officer or Mediator

Volunteer or Salaried?

8. State the average number of hours per week spent and average number of cases handled monthly by each individual listed in Question 7 during the past 12 months (use a separate page if necessary):

Name

Avg. Hours/Week

Avg. Cases/Month

9. State the total number of cases and/or files handled or processed annually (an estimate may be given if accurate count is not available):

10. (a) Classify the subject matter of each case arbitrated/mediated by the Assured during the past 12 months (i.e. community disputes; divorce). In the event the Assured has operated for less than 12 months, state the estimated number of cases the Assured will handle in each category during the first 12 months of operation (use a separate page if necessary):

Category

Number of Cases

10. (b) State whether the numbers specified in your answer to Question 10(a) are estimated figures: ☐ Yes ☐ No
11. Has any professional liability claim or suit been made against the Assured or any individual listed in Question 7 arising out of the conduct of arbitration proceedings or dispute resolution services or hearing officers services? ☐ Yes ☐ No
If Yes, give name of person involved, name of claimant, date and disposition of the case:

12. Does the Assured or any individual listed in Question 7 know of any circumstance, act, error, omission, or personal injury that could result in a claim or suit against him/her or the Assured named in the application? ☐ Yes ☐ No
If Yes, give name of possible claimant, date of account and other details:_____

13. Describe the management of the Assured's operation (Sole Proprietor, Trustees, Board of Directors, Titles of Officers, etc.):

14. How is management selected?_____
15. Does the Applicant or Applicant Firm conduct Arbitration Proceedings or Dispute Resolution Service or Hearing Officer Services in countries other than the US, its Territories or possessions, or Canada? ☐ Yes ☐ No
If Yes, please list the countries.
16. Does the Applicant or Applicant Firm require coverage to extend to acts committed overseas subject to the suit or the threat of a suit being filed being brought within the US, its territories or possessions, or Canada? ☐ Yes ☐ No

I/We am currently a paid up member of association _____ ☐ Yes ☐ No

It is understood that the insurance applied for will issue on the 1st day of the month following receipt of the premium and the acceptance of the application by the Underwriters. I/We hereby declare, based upon my/our knowledge and upon reasonable investigation, the above statements are true and that I/we have not suppressed or misstated any material facts and this application shall be the basis of the contract with Underwriters at Lloyd's, London.

****SIGNING THIS FORM DOES NOT BIND THE ASSURED OR THE UNDERWRITERS TO COMPLETE THE INSURANCE.****

Date:_____

Return completed application to:

Complete Equity Markets, Inc.
In California dba Complete Equity Markets
Insurance Agency, Inc. (CASL#0D44077)
1190 Flex Court
Lake Zurich, IL 60047
(800) 323-6234 Toll-free in US & Canada
(847) 541-0900 in Illinois FAX (847) 541-0444
www.cemins.com

Name of person completing application (print)

Signature

Title

This Master Certificate ("Certificate") is issued in accordance with the limited authorization granted under Contract to the Correspondent by certain Underwriters at Lloyd's, London, whose names and proportions underwritten by them can be ascertained by reference to the said Contract which bears the Seal of the Lloyd's Policy Signing Office and is on file in the office of said Correspondent (such Underwriters being hereinafter called "Underwriters") and in consideration of the premium specified in the Declarations issued to the members of the National Association of Salaried Professionals Purchasing Group, Inc. by endorsement hereon, Underwriters do hereby bind themselves each for his own part, and not one for another, their heirs, executors and administrators.

ARBITRATORS AND MEDIATORS PROFESSIONAL LIABILITY INSURANCE

issued to

SPECIFIED MEMBERS OF THE

National Association of Salaried Professionals Purchasing Group, Inc.

(This is a claims made policy)

Whereas the National Association of Salaried Professionals Purchasing Group, Inc. (hereinafter called "ASSOCIATION") is a duly organized not-for-profit corporation with administrative offices in Illinois and each individual, firm, or corporation specified by endorsement hereon is a member of the ASSOCIATION and has made a written application to Underwriters to participate in the insurance provided herein, which application contains statements that are the basis for this insurance, Underwriters, in consideration of the premium charged, agree to insure the said ASSOCIATION and Specified Members subject to the terms, conditions, limits and exclusions stated herein.

I. INSURING AGREEMENT

Underwriters hereby agree to indemnify the **Assured** for all sums in excess of the deductible which the **Assured** shall become legally obligated to pay as damages to a claimant as a result of claims first made against the **Assured** during the period of this insurance by reason of any negligent act, error or omission in the conduct of **Arbitration Proceedings** or **Dispute Resolution Services** by the **Assured**.

II. DEFINITIONS

"**Assured**" means the ASSOCIATION and any individual, firm, or corporation or other entity specified by written endorsement to this Certificate and shall include any employee or volunteer (as disclosed on the application and for whom a premium has been paid) engaged in conducting **Arbitration Proceedings** or **Dispute Resolution Services** on behalf of the **Assured**.

"**Arbitration Proceedings**" means the submission by two or more parties of a dispute to the **Assured** as an adjudicator who, after a hearing at which all interested parties have an opportunity to be heard, or following the submission of evidence or written argument, renders an award which the parties have agreed in advance to accept, or are required to accept, as a final settlement of the dispute. "**Arbitration Proceedings**" includes an administrative agency proceeding conducted in accordance with federal, state, or local statutory law in which proceeding the **Assured** serves as a hearing officer.

"**Dispute Resolution Services**" means the rendering of professional services by the **Assured** as a neutral administrator involving the submission, negotiation, mediation and settlement of disputes.

"**Costs of Defense**" means:

- (1) reasonable fees charged by any lawyer designated or approved in writing by Underwriters, to defend the **Assured**;
- (2) all other reasonable fees, costs and expenses resulting from investigation, adjustment, defense and appeal of a claim against the **Assured**, if incurred by the **Assured** with Underwriters' approval.

However, **Costs of Defense** do not include legal fees or salary charges of employees of the **Assured** or of employees or agents of the Underwriters or of any supervisory counsel retained by the Underwriters.

"**Period of Insurance**" means the period set forth in the Declarations page of the endorsement adding the **Assured**.

III. DEDUCTIBLE

The applicable deductible amount stated in the Declarations page of the endorsement adding the **Assured** shall be paid by the **Assured** and shall be applicable to (1) loss payments and (2) **Costs of Defense** incurred by Underwriters pursuant to Section V in the event a suit is commenced against the **Assured**, whether or not any loss payment is made. The applicable deductible amount that is due shall constitute the first monies paid as respects the settlement of any loss, the satisfaction of any judgment or the payment of the **Costs of Defense** incurred by Underwriters and Underwriters shall not be liable to pay any amount hereunder until the **Assured** has made full payment of said deductible amount.

Underwriters may, at their option, pay all or part of the **Assured's** deductible amount to satisfy a claim and, upon notification, the **Assured** shall promptly reimburse Underwriters for such part of the deductible amount as has been paid by Underwriters.

IV. LIMITS OF LIABILITY

The applicable Limit of Liability of Underwriters for each claim shall not exceed the amount stated in the Declarations page of the endorsement adding the **Assured** for "each claim" and, subject to that limit, the applicable total Limit of Liability of Underwriters for all claims made against the **Assured** during the **Period of Insurance** specified in the Declarations page of the endorsement adding the **Assured** shall not exceed the amount stated therein for the "aggregate."

The Limits of Liability shall first be applied to the payment of **Costs of Defense** incurred by Underwriters. Only the reduced amount of coverage remaining, if any, after the payment of all **Costs of Defense** incurred by Underwriters shall be available for the payment of judgments or settlements.

The inclusion hereon or by endorsement of more than one **Assured** or the making of claims or the bringing of suits by more than one person, firm, corporation or organization shall not operate to increase the limit of Underwriters' liability. Two or more claims arising out of a single act, error, or omission or a series of related acts, errors, or omissions shall be treated as a single claim.

V. DEFENSE AND SUPPLEMENTARY PAYMENTS

Underwriters shall defend any suit against the **Assured** seeking damages, even if any of the allegations of the suit are groundless, false, or fraudulent, but Underwriters shall not be obligated to defend any suit after the applicable limit of Underwriters' liability has been exhausted by the payment of judgments, settlements or **Costs of Defense** or if the payment of said applicable limit has been tendered. **Costs of Defense** incurred by Underwriters shall reduce the respective amounts of coverage available under the limits for the payment of judgments or settlements.

VI. OPTION TO EXTEND CLAIMS REPORTING PERIOD

If Underwriters or the **Assured** cancel or refuse to renew the insurance provided by the endorsement adding the **Assured**, then upon payment of an additional premium calculated at 120 percent of the **Assured's** full annual premium shown on the Declarations page of such endorsement, the **Assured** shall have the right to extend the claims reporting period, subject otherwise to the terms, Limits of Liability, exclusions and conditions of this insurance, to apply to claims first made against the **Assured** during the 12 calendar months immediately following the effective date of such cancellation or non-renewal, but only for claims resulting from an incident, act, error or omission which occurred before the applicable termination or expiration date and otherwise covered under this insurance. This interval shall hereinafter be referred to as the **Optional Extension Period**.

As a condition precedent to the **Assured's** right to purchase the **Optional Extension Period** coverage, all premium and any deductibles due from the **Assured** must have been paid. The **Assured's** right to purchase the **Optional Extension Period** coverage must be exercised by notice in writing not later than 30 days after the cancellation or termination of the **Assured's** coverage under this insurance and must include payment of the premium for the **Optional Extension Period**. If such notice and premium payment are not given to Underwriters, the **Assured** shall not at a later date be able to exercise such right.

At the commencement of any **Optional Extension Period**, the entire premium therefor shall be deemed earned, and Underwriters shall not be liable to return to the **Assured** any portion of the premium paid for the **Optional Extension Period** if the **Assured** terminates the **Optional Extension Period** before its term for any reason.

The fact that the period during which claims must first be made against the **Assured** under this insurance is extended by virtue of the **Optional Extension Period** shall not in any way increase Underwriters' Limits of Liability.

VII. EXCLUSIONS

This insurance shall not indemnify the **Assured** in respect of any claim:

- (a) For libel or slander;
- (b) Brought about or contributed to by the dishonest, fraudulent, criminal, or intentionally wrongful act of the **Assured**. Notwithstanding the foregoing, the Underwriters shall defend the **Assured** under the terms of this insurance as to claims upon which suit may be brought against the **Assured** by reason of any alleged dishonest, fraudulent, criminal or intentionally wrongful act or omission, unless a judgment or other final adjudication thereof adverse to the **Assured** shall establish that the act or omission was in fact dishonest, fraudulent, criminal, or intentionally wrongful. No dishonest, fraudulent, criminal or intentionally wrongful act of one **Assured** shall be attributed to any other **Assured** for purposes of determining the applicability of this exclusion;
- (c) For punitive or exemplary damages, except that if a suit is brought against the **Assured** on a claim falling within the coverage hereof, seeking both compensatory and punitive or exemplary damages, then Underwriters will afford a defense to such action, without liability, however, for such punitive or exemplary damages;
- (d) For bodily injury, sickness, disease or death of any person, including but not limited to, any obligation which the **Assured** or its insurer may be liable under any workers compensation law, employers liability

law, disability benefits law or under any other similar law;

- (e) For loss and damage to or destruction of any property;
- (f) For loss to property held by the **Assured** as fiduciary;
- (g) For liability arising from any actual or alleged breach by the **Assured** of any contract or agreement;
- (h) Arising from any incident, act, error or omission disclosed in the **Assured's** application for this insurance, or which should have been disclosed because the **Assured** had knowledge thereof at the time the application was completed;
- (i) Arising out of any act, error or omission in the conduct of professional services for which the **Assured** is alleged to be not properly licensed where such license is allegedly required by applicable law or regulation;
- (j) Arising out of any act, error or omission in the **Assured's** capacity as a fiduciary under the Employee Retirement Income Security Act of 1974 or amendments thereto;
- (k) Arising out of any act, error or omission in the conduct of medical, psychological or psychiatric treatments by the **Assured**;
- (l) Directly or indirectly brought about by, arising out of, or attributable to any actual or alleged violation by the **Assured** of the Racketeer Influenced and Corrupt Organizations Act, 18 USC Section 1961 et seq., and any amendments thereto, or any rules or regulations promulgated thereunder;
- (m) Based upon or arising out of discrimination by the **Assured** on any basis, including, but not limited to: race, creed, gender, religion, ethnic background, national origin, age, disability, sex or sexual orientation.
- (n) Seeking no damages, including disciplinary proceedings, suits seeking injunctive relief only and subpoenas.

VIII. CONDITIONS

- (a) The coverages afforded by this insurance do not apply to professional services other than those performed by the **Assured** in conducting **Arbitration Proceedings** or **Dispute Resolution Services**.
- (b) ASSOCIATION have no right of indemnity or defense hereunder except for matters arising out of the activities of a member for which said member is insured by an endorsement to this Certificate.
- (c) Prior to providing **Arbitration Proceedings** or **Dispute Resolution Services**, the **Assured**, if he or she is an attorney, shall provide a written statement to all the parties, explaining his or her role as a neutral intermediary and stating that he or she may not act as an advocate for either party.
- (d) In cases where the **Assured** assists in preparing a written settlement agreement in connection with the provision of **Arbitration Proceedings** or **Dispute Resolution Services**, the **Assured** shall advise each participant in writing to have the settlement agreement independently reviewed by their own counsel before executing the agreement.
- (e) **Consent of Underwriters.** The **Assured** shall not admit liability for or settle any claim or incur any costs or expenses in connection therewith without the written consent of Underwriters who shall be entitled at any time to take over the conduct of the defense of the claim in the name of the **Assured**.
- (f) **Assured's Cooperation.** The **Assured** shall cooperate with Underwriters and, at Underwriters' request, shall submit to examination and interrogation by Underwriters' representative, under oath if required, attend hearings, depositions and trials, give a written statement and provide documents and copies of its files to Underwriters' representative, meet with such representative for the purpose of investigation or defense and assist in effecting settlement, securing and giving evidence, obtaining the attendance and statements of witnesses and in the conduct of suits, all without charge to Underwriters.
- (g) **Refusal to Settle.** Underwriters shall not settle any claim without the consent of the **Assured** against whom the claim is made. If, however, said **Assured** shall refuse to consent to any settlement recommended by Underwriters and shall elect to contest or continue any legal proceedings in connection with such claim, then Underwriters' liability for all **Costs of Defense** plus any later settlements or damage awards arising from such claim shall not exceed the amount for which the claim could have been so settled plus the **Costs of Defense** incurred up to the date of such refusal. No **Assured**, other than the **Assured** against whom the claim is made, shall have the right to refuse a settlement to which the **Assured** has consented.
- (h) **Appeals.** If the **Assured** elects not to appeal an adverse judgment, Underwriters may elect to conduct such an appeal at their own cost and expense and shall be liable for the taxable court costs and interest incidental thereto. In the event Underwriters elect to conduct such an appeal, Underwriters' total liability shall not exceed the applicable Limit of Liability stated on the Declarations page of the endorsement adding the **Assured**, which shall include the **Costs of Defense** and interest related to such an appeal.
- (i) **Other Insurance.** There shall be no liability hereunder in respect to any claim for which the **Assured** is entitled to any indemnity under any other insurance.

- (j) **Notice to Underwriters.** The **Assured**, as a condition precedent to its right to be indemnified or defended under this insurance, shall give to Underwriters notice as soon as practicable:
- (1) of any claims made against it;
 - (2) of the receipt of notice from any person of an intention to hold it responsible for any loss covered under this insurance; or
 - (3) circumstances likely to give rise to a claim under this insurance, and shall, upon request, give to Underwriters such information as Underwriters may reasonably require. Such notice shall be addressed to Underwriters, c/o Locke, Lord, Bissell & Liddel, 111 South Wacker Drive Suite 4200, Chicago, IL 60606, with a copy to Complete Equity Markets, Inc. 1190 Flex Court, Lake Zurich, IL 60047.
- (k) **Discovery Clause.** If, during the insurance period or any **Optional Extension Period** purchased hereunder, the **Assured** shall first become aware of any incident, act, error or omission occurring prior to the termination or expiration of the insurance period which may subsequently give rise to a claim against it for any loss covered under this insurance and shall, during the **Period of Insurance** or any **Optional Extension Period** purchased hereunder, give written notice to Underwriters of such incident, act, error or omission, then any such claim which is subsequently made against the **Assured** arising out of that incident, act, error or omission shall for the purpose of this insurance be deemed to have been made or instituted during the **Period of Insurance**.
- (l) **Subrogation.** In the event of any claim under this insurance, Underwriters shall be subrogated to all the **Assured's** rights of recovery therefor against any person, firm, corporation or organization and the **Assured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Assured** shall do nothing after loss to prejudice such rights. Underwriters shall not exercise any such rights against any persons, firms or corporations included in the definition of "**Assured**." Notwithstanding the foregoing, however, Underwriters reserve the right to exercise any rights of subrogation against an **Assured** in respect of any claim brought about or contributed to by any dishonest, deliberately fraudulent, criminal, malicious or intentionally wrongful acts or omissions of such **Assured**.

IX. CERTIFICATE PROVISIONS

1. **False or Fraudulent Claim.** If the **Assured** shall proffer any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this insurance shall become void as to such **Assured** from the date the fraudulent claim is proffered.
2. **Signatures Required.** Neither this Certificate nor any endorsement hereto shall be valid unless signed by the Correspondent.
3. **Correspondent Not Insurer.** The Correspondent is not an Insurer hereunder and is not liable for any loss or claim whatsoever. The Insurers hereunder are those individual Underwriters at Lloyd's, London, whose names can be ascertained as hereinbefore set forth.
4. **Cancellation.** The insurance provided by any endorsement to this Certificate may be cancelled on the short-rate basis stated herein by the **Assured** insured under the endorsement at any time by written notice or by surrender of the endorsement to the Correspondent issuing the endorsement. The insurance provided under any endorsement to this Certificate may also be cancelled with or without the return of tender of the unearned premium, by or on behalf of Underwriters by mailing to the **Assured**, at the last mailing address known by Underwriters, written notice stating when the cancellation shall be effective. The Correspondent shall maintain proof of mailing of such notice on a recognized U.S. Post Office form, and a copy of such notice shall be sent to the **Assured's** broker. Notice of cancellation must be mailed at least 30 days prior to the effective date of cancellation. However, where cancellation is for non-payment of premium, 10 days' notice shall be given. If the insurance provided to an **Assured** under an endorsement to this Certificate is cancelled by or on behalf of Underwriters, Underwriters shall retain the pro rata proportion of the premium thereunder. The mailing of such notice as aforesaid shall be sufficient proof of notice and this insurance shall terminate at the date and hour specified in such notice.
5. **Service of Suit.** It is agreed that in the event of the failure of the Underwriters to pay any amount claimed to be due hereunder, the Underwriters, at the request of the **Assured**, will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States district court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon Locke, Lord, Bissell & Liddel at 111 South Wacker Drive Suite 4200, Chicago, IL. 60606, and that in any suit instituted against any one of them upon this contract, the Underwriters will abide by the final decision of such court or of any appellate court in the event of an appeal.

The above named are authorized and directed to accept service of process on behalf of the Underwriters in any such suit and/or upon the request of the **Assured** to give a written understanding to the **Assured** that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, the Underwriters hereby designate the Superintendent, Commissioner or Director of

Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney, upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Assured or any beneficiary hereunder arising out of this insurance and hereby designate the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

6. **Assignment.** Neither this Certificate nor any endorsement hereto shall be assigned either in whole or in part without the written consent of the Correspondent endorsed hereon.
7. **War Exclusion.** This Certificate does not cover loss or damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition, or destruction or damage to property by or under the order of any government or public or local authority.
8. **Assured's Insolvency.** The insolvency or bankruptcy of the Assured shall not release Underwriters from their obligations under this insurance.
9. **Complaints.** If you have any complaints concerning your insurance, please contact the Correspondent.

X. TERRITORY CLAUSE.

This insurance applies to acts, errors or omissions which take place in the USA/Canada and its territories, provided that the claim is first made against the Assured within the United States of America, its territories or possessions, or Canada during the Period of Insurance or Optional Extension Period when purchased in accordance with Clause VI.

LII 14 (05/07) <CEM DBA>
1995 Complete Equity Markets, Inc.
medforms**92 (03/07 01/08 PG) <CER NUM>

<AE/CER> NO.: <CER NUM>

ASSURED: <INS>

EFFECTIVE: <EFF> to <EXP>

UNAUTHORIZED PRACTICE OF LAW (UPL) ENDORSEMENT

LIMITS OF LIABILITY: \$40,000.00 Each Claim \$500.00 Deductible each Claim
\$40,000.00 Aggregate

I. INSURING AGREEMENT

In consideration of the Assured's payment of the premium set forth on the Declarations, it is hereby understood and agreed that under <ae/cer> No.: <CER NUM>, the Underwriters hereby agree to indemnify the Assured for the Costs of Defense in excess of the deductible amount incurred by the Assured in UPL Proceedings first initiated against the Assured during the policy period which result from the Assured's conduct of Arbitration Proceedings or Dispute Resolution Services.

II. LIMITS OF LIABILITY AND DEDUCTIBLE

The applicable Limit of Liability of Underwriters for Costs Defense for each UPL Proceeding shall not exceed the amount stated above for "each claim" and, subject to that limit, the applicable total Limit of Liability of Underwriters for all UPL Proceedings first initiated against the Assured during the policy period shall not exceed the amount stated above for the "aggregate." Subject to the Limits of Liability stated herein, the liability of Underwriters for each claim for Costs of Defense covered by this endorsement shall be excess of the deductible amount stated above.

It is expressly understood and agreed that the total amount of Cost of Defense payments made under this endorsement, including payments made or which should have been made by the Assured under the co-insurance provisions of this endorsement but excluding deductible payments, shall apply to reduce the aggregate Limits of Liability specified on the Declarations page.

III. DEFENSE NOT PROVIDED

This insurance indemnifies the Assured for Costs of Defense only. Underwriters shall not be obligated to actually defend or arrange a defense for the Assured in any suit or proceeding for which coverage is provided by this endorsement.

IV. SELECTION OF ATTORNEY

The selection of an attorney to represent the Assured in a suit or proceedings for which coverage is provided by this endorsement shall be made by Underwriters subject to approval by the Assured.

V. EXCLUSIONS

All exclusions set forth in Section VII of the insurance provided to the above-named Assured under the Amendatory Endorsement Number specified above shall apply to coverage provided by this endorsement.

VI. DEFINITION

For purposes of this endorsement, "UPL Proceeding" shall mean any judicial proceeding or any proceeding before the entity or entities established by constitutional provision, statute or court rule to investigate, review or impose disciplinary sanctions for the unauthorized practice of law by persons who are not duly licensed attorneys.

VII. CONDITIONS

Except as otherwise provided herein, the coverage provided by this endorsement is subject to all the terms and conditions of the insurance provided to the above-named Assured under the Amendatory Endorsement Number specified above.

All other terms, conditions, limits and exclusions remain unchanged.

Attached to and forming part of <canusa> No.: <CEM>

UNDERWRITERS AT LLOYD'S, LONDON

Dated: <D>

Complete Equity Markets, Inc.
<CEM DBA>

SAMPLE

199**43 (<CUS NUM> 9/07)

Mediator Liability: A Snapshot

*Robert A. Badgley, Esq.**

Virtually everything new comes with undesired side effects. Thus, as ADR, and mediation in particular, has become more prevalent, claims against mediators have become more frequent. In most cases, the claims are baseless. However, because one of the parties to the mediation may be dissatisfied with the result or the process, a claim may well follow.

When confronted with the specter of a potential claim, many in the mediation community invoke quasi-judicial immunity -- the kind of near-absolute immunity enjoyed by arbitrators -- as a basis to avoid liability. However, not all jurisdictions recognize immunity for mediators, and most that do restrict such immunity to court-annexed mediation. Moreover, the protection is typically not absolute even where immunity is available. The mediator may still be vulnerable to suit predicated upon a wide variety of causes of action that fall outside the scope of the immunity, inclusive of gross negligence, breach of contract and breach of confidentiality. In addition, other forms of redress that are not barred by immunity, such as state disciplinary or grievance procedures, may be pursued by a disgruntled party. Finally, it is critical to note that, even if mediator defendants ultimately escape liability, they can nevertheless incur significant defense bills.

The following survey of recent claims makes clear that mediators will continue to face challenges to their conduct.

Recent Developments in Mediator Liability

Family Law

One area where the use of mediation continues to proliferate is family law. Couples seeking a divorce can do so more quickly and inexpensively through mediation than via the traditional court process. When mediators do commit errors in the mediation process, they become vulnerable to attack. Moreover, the emotionally-charged context of a divorce produces situations in which, even where a mediator has seemingly done everything right and taken necessary precautions to protect both parties, he is still open to claims.

● **Post-Mediation Murder.** In California, a family mediator has been sued for the death of a wife stabbed by her husband in the building in which the mediation session occurred. The divorcing couple had met a week earlier at the mediator's office for an initial mediation session, which ended without incident. After the second meeting, held a week later and in the evening, the husband left the mediator's office. The wife remained for 20 minutes and spoke with the mediator. The wife then left and, on the first floor of the building, was fatally stabbed by her husband, who had gone to his car and returned to the building with a pair of scissors.

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The suit is still in its early stages, and factual information is being developed regarding issues whether the husband had a history of and/or propensity toward violence, and whether the mediator had reason to suspect anything. Issues concerning the mediator's legal duty, if any, to maintain a secure premises or take other safety precautions for her clients will be examined, perhaps as a matter of first impression. It also bears noting that many professional liability policies do not afford indemnity for bodily injury or death. (2006)

● ***Bias and Misstating Credentials.*** In one case in the Midwest, a family mediator was appointed by court as a "Parenting Time Expeditor and Custody Evaluator." In that capacity, the mediator directed the parties to participate in an evaluation with a psychologist. The plaintiff father alleged that, even though the psychological evaluation was never completed, the mediator issued a report to the court recommending that the children be moved from the father's home to the mother's. The psychologist allegedly disagreed, and the court declined to accept the mediator's recommendation. Subsequently, the mediator submitted a final report to the court, again recommending that the mother have sole legal and physical custody of the children. The presiding judge in the custody dispute found the mediator biased toward the mother. Ultimately, the court awarded custody to the plaintiff father. The mediator billed the father \$8,600 for her services, and a dispute arose regarding his alleged non-payment. The mediator initiated proceedings to collect her fee, and the father responded by suing the mediator. The father alleged bias and misrepresentation by the mediator. The latter claim was based on the father's allegation that the mediator did not qualify as a "Custody Evaluator" and misrepresented to the parties and the court her qualifications for that role. The father's bias allegations were based in part on the claim that the mediator had spent too much time with the mother and the children together, including a weekend getaway with them.

In October 2005, the trial court denied the mediator's motion to dismiss. The court agreed that statutory absolute immunity shielded the mediator for any liability in her capacity as Parenting Time Expediter, but held that she did not enjoy immunity for her role as Custody Evaluator. This ruling is currently on appeal. That fact alone suggests that this claim has already been an expensive one to defend. For good measure, the plaintiff father has also filed a disciplinary complaint against the mediator, which is also being defended. (2004)

● ***Faulty Settlement Agreement.*** A divorce case resulted in liability on the part of an organization providing family mediation services in New York. In connection with their divorce, a wife and her husband retained an attorney from the organization to prepare a Separation Agreement. After the divorce was final, the husband remarried and later passed away. The former wife asserted rights to her deceased ex-husband's pension but the Separation Agreement failed to address properly the distribution of the pension funds. The former wife sued the organization and multiple other defendants and sought compensatory damages plus interest and attorney fees. The organization ultimately settled the claims against it and incurred over \$25,000 in loss inclusive of defense costs. (2004)

Labor and Employment

Labor and employment is another area of law which frequently involves ADR. Mediators and arbitrators in these areas have witnessed an explosion of claims in the past several years.

- ***The Cost of Preserving Confidentiality.*** A heated (and expensive) discovery dispute arose out of a mediator's unsuccessful attempt to protect the integrity of the mediation process. The mediator was appointed as an independent third party in an administrative proceeding to address the propriety of an employee's termination. The termination decision was upheld and the former employee filed suit against her former employer for wrongful discharge. In the lawsuit, the former employee subpoenaed the mediator to testify about the administrative proceeding. The mediator declined to answer certain questions on grounds that a confidentiality statute pertaining to dispute resolution protected against the disclosure of such communications. The former employee filed a Motion to Compel based upon the inapplicability of the statute and sought sanctions against the mediator. The Trial Court declined to award sanctions but otherwise granted the Motion. The mediator appealed. The California Court of Appeal ultimately ruled that the administrative hearing did not constitute a dispute resolution proceeding subject to confidentiality under the statute. At the end of the day, the mediator incurred costs approaching \$10,000. (2004)

- ***The Cost of (Allegedly) Breaching Confidentiality.*** In contrast, another claim raised questions as to the mediator's potential breach of confidentiality in a labor matter. The employee was a lineman for the local power company who purportedly endured verbal abuse from his boss. When the employee reported the abuse, the company offered to mediate the dispute. Two days before the mediation, the company requested that the employee submit to a medical examination to be evaluated for his mental and physical fitness for his job duties. The employee authorized the doctor to furnish his medical records and reports to the mediator. The mediation was held, and the next day the company informed the employee of its preliminary decision that he was not fit to return to his job as a lineman. The company then requested the employee to submit to a psychological evaluation. Based upon the report from the psychologist, the company permanently removed the employee from his lineman duties. The employee challenged the company's determination, but was unsuccessful in his efforts to return to his former job. He then obtained a copy of the psychologist's report which made reference to confidential medical information derived from the examination held prior to the mediation. The employee contended that he had not authorized the release of this information to anyone other than the mediator and certainly not to the psychologist.

The employee filed a Complaint in state court against his employer, the mediator, and others in which he alleged breach of confidentiality as to his medical records, invasion of privacy, professional negligence, and intentional infliction of emotional distress. The employee claimed that the mediator improperly disclosed medical information at the mediation to his employer, and later disclosed it to the psychologist. The employee demanded \$100,000 to settle from the mediator and threatened to amend the Complaint to allege that the mediator maliciously failed to recuse himself when he possessed information adverse to the employee which was not disclosed to the employee. The case eventually settled for an undisclosed amount after a ten-hour mediation. Defense costs were substantial. (2002)

Commercial Law and Other Actions

Lawsuits against mediators arising from commercial law matters and other various types of disputes have proven to be just as dangerous as those which arise out of family law, employment law and personal injury.

- ***Conspiracy and Bias.*** A commercial law mediation involved a dispute among the plaintiff company, another company who asserted cross-claims against the plaintiff, and the plaintiff's insurer. The court appointed a mediator, who presided over a mediation. The Plaintiff left the mediation before it was concluded, after which the insurer and the other company reached a settlement of part of the dispute. The plaintiff then filed suit against the mediator, alleging that he improperly continued with the mediation and conspired with the other parties to prejudice the plaintiff's rights. The trial court granted the mediator's motion for summary judgment, holding that the court-appointed mediator enjoys quasi-judicial (i.e., virtually absolute) immunity. That ruling is on appeal, and the parties are in the briefing stage. This claim has been very costly to defend. (2005)

- ***Nondisclosure and Bias.*** A commercial law mediation involved a dispute over the creation of a popular television show. The plaintiff claimed the production company owed him compensation for his contribution to the creation of the show. The parties agreed to mediate. Unbeknownst to the plaintiff, the mediator had previously mediated a dispute between the production company and another party which involved the same attorneys. The case settled at mediation for \$200,000. The plaintiff later discovered the mediator's prior history with the other side and claimed that the mediator was biased against him. He further alleged that if the mediator had properly disclosed this information before the mediation, he would not have agreed to the selection of the mediator. The plaintiff filed a lawsuit, which alleged that the mediator's failure to disclose the prior mediation which involved the production company resulted in a settlement that was significantly lower than it should have been. The complaint alleged causes of action for conspiracy, fraud, breach of fiduciary duty and negligence. Although the lawsuit was eventually dismissed based on quasi-judicial immunity, the mediator incurred significant defense costs. (2002)

- ***Misrepresentation.*** Another potentially dangerous claim arose out of a judgment call by the mediator. A mediator was appointed by the court in an action brought by an attorney to recover unpaid legal fees from a former client. While the mediation was pending, the attorney filed a motion with the court to strike the former client's pleadings based on discovery violations in the civil suit. The attorney requested that the mediator ask the judge whether the client's pleadings would be stricken. The judge indicated that he would not strike the pleadings. The judge also requested that the conversation remain confidential. Despite the judge's request, the mediator informed the attorney of the judge's preliminary decision because he believed the attorney would not agree to a reasonable resolution if he thought his motion would succeed. Later that day, the attorney and his former client reached a settlement.

The attorney later spoke to the judge about his civil action. Thereafter, the attorney confronted the mediator and alleged that the mediator had misrepresented what the judge had said about his motion. The attorney indicated he would seek reimbursement from the mediator for the difference between the amount he received from the settlement and the amount of fees he had sought in the civil action. The attorney demanded \$57,500 in damages. In defense of the claim, the mediator obtained an affidavit from the judge stating that he had not intended to strike the former client's pleadings. The mediator also argued that he was protected by immunity. After the mediator threatened a counterclaim and the pursuit of sanctions, the attorney abandoned his claim. (2002)

- ***Coercive Settlement.*** In another case involving complaints over the mediator's conduct, a lawyer-mediator was appointed by the state in a lawsuit between a medical supply company and a group of doctors. The president of the supply company appeared *pro se* at the mediation after two separate attorneys withdrew from representation. The matter was settled, but nearly two years later, the president of the supply company filed suit against the mediator. The complaint alleged that the mediator violated the rules of mediation by "forcing" the supply company to settle. The company sought compensatory damages of \$48,000. The lawsuit was ultimately dismissed, but not before the mediator had incurred almost \$11,000 in defense costs. (2002)

- ***Unauthorized Practice of Law.*** In one case in California, the plaintiff (hereinafter the "Company") had been named as a defendant in an underlying commercial dispute. The Company alleged that the mediator firm had contacted it after becoming aware of the lawsuit against the Company. According to the Company, the mediator firm's business plan is to make contact with defendants named in suits filed in the local court, seek to be engaged to negotiate settlement with the adverse party, and recommend a defense attorney in the underlying suit. The Company alleged that the mediator firm recommended a defense attorney who did very little work on the case, while the mediator firm negotiated with the plaintiff's attorney. A settlement was achieved, but the Company later sued the mediator firm for damages because the settlement was allegedly necessitated by the appointed defense counsel's lack of preparation for trial. The Company further alleged that the mediator firm had violated state law by practicing law without a license. The suit is pending, with the mediator firm's general demurrer having been denied. The Company has sought discovery regarding the mediator firm's other clients. The discovery battles are ongoing. (2005)

Disciplinary Complaints

In addition to potential exposure to civil liability, mediators also face exposure to disciplinary proceedings which address potential misconduct. Although an adverse outcome will not result in payment of money damages, the imposition of disciplinary measures can be costly in other ways. And, of course, it costs money to respond to the disciplinary allegations.

- ***Unauthorized Practice of Law.*** A non-attorney family mediator on the East Coast was brought before a state bar committee to defend charges that she was practicing law without a license, by virtue of her alleged role in drafting memoranda of understanding in connection with dissolution proceedings. One point to remember in this connection is that insurance coverage for mediators may not extend to situations where no damages are being sought. A disciplinary proceeding is a good example of a situation where there may not be coverage unless disciplinary proceedings costs coverage has been purchased. (2005)

• ***Heavy-handed Techniques.*** Florida is one state that has adopted formal guidelines which govern mediator conduct and impose strict disciplinary procedures for the disposition of complaints involving alleged violations of the standards of conduct. The Florida Supreme Court adopted the Florida Rules for Certified and Court-Appointed Mediators with an effective date of May 28, 1992. One grievance involved improper attempts by the mediator to persuade the plaintiff to accept a settlement offer by the defendant. The mediator purportedly told the plaintiffs they were “too poor” to take their case to trial, addressed the plaintiffs as “spoiled brats” and declared that the plaintiffs were “poor slobs” who would never be recognized in court. The plaintiffs also alleged that the mediator advised that the settlement offer was acceptable and, when the plaintiffs stated they did not wish to settle, the mediator refused to terminate the mediation. The reviewing committee found probable cause existed to establish violations of several rules, including failure to remain impartial and failure to terminate mediation when requested. The mediator agreed to complete 20 hours of training and agreed to suspend mediations until training was completed. (2002)

Conclusion

As these cases demonstrate, with the growing number of ADRs, mediators are frequently exposed to situations with the potential to spark a variety of expensive claims. Although the defendants may avoid liability in many cases, defense costs can be significant. The magnitude of the problem may not be widely known because many of the cases involve confidential settlements entered into prior to trial. Given the current trend of increased use of ADR, these examples demonstrate that mediators cannot afford to be unprotected. These claims are often expensive to defend and sanctions can lead to other costs. In many jurisdictions, mediators cannot rely on strong immunity defenses, and thus must look to other safeguards to protect their business assets.