

Court Rules Mediation Clause Lacks Condition Precedent Language: Key Lessons for Construction Contracts

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Eastern District of Pennsylvania Decision Highlights Critical Contract Drafting Issues

A recent federal court decision is an important reminder for construction industry professionals about the precise language needed to make mediation a mandatory step before litigation. On November 18, 2025, the U.S. District Court for the Eastern District of Pennsylvania ruled in *Healy Long & Jevin, Inc. v. CQSA Construction, LLC* that a dispute resolution clause failed to create a binding condition precedent to litigation, despite the general contractor's arguments to the contrary.

Background

The dispute arose from a mixed-use retail and residential development project in South Philadelphia. Subcontractor Healy Long & Jevin, Inc. filed a lawsuit against general contractor Post General Contracting, LLC (whose interests were later assigned to CQSA Construction, LLC) after experiencing nearly \$14 million in delay damages and being denied payment of the outstanding contract balance.

CQSA moved to dismiss the lawsuit, arguing that Healy failed to satisfy a contractual requirement to mediate before suing. The contract's dispute resolution provision stated that parties "**shall endeavor** to resolve their Claims by mediation" and noted that mediation requests "may be made concurrently with the filing of binding dispute resolution proceedings." The provision also required that if filed concurrently, the litigation would be stayed for 60 days while mediation proceeded.

The court denied CQSA's motion to dismiss, finding that the mediation clause did not establish a condition precedent to litigation. The court emphasized that the contract's use of the soft verb "endeavor" and the explicit allowance for parties to request mediation "concurrently" with filing a lawsuit demonstrated that mediation was not mandatory before initiating legal proceedings.

The court contrasted this provision with clauses in other cases where courts found conditions precedent existed, such as language stating parties could proceed with litigation "only if a reasonable attempt at mediation is unsuccessful." While the court ordered a 60-day stay to allow for mediation, it made clear that the failure to mediate first was not grounds for dismissal.

Critical Mediation Provision Drafting Tips

The following three tips can help avoid a result like *Healy*:

First, use express “condition precedent” language. Explicitly state that mediation is a “condition precedent” to litigation or arbitration. Avoid ambiguous terms like “endeavor” or provisions that allow inconsistent actions, such as simultaneously requesting mediation and filing suit.

Second, prohibit filing until mediation concludes. Clearly define when mediation is considered “complete” — whether through mediator declaration of impasse, expiration of a specific timeframe, or mutual agreement. This eliminates ambiguity about when parties may proceed to litigation.

Third, establish consequences for noncompliance. Include provisions allowing parties to recover attorneys’ fees if they must move to dismiss a prematurely filed action. This reinforces the mandatory nature of the mediation requirement.

Why This Matters

Construction disputes are prone to be lengthy, costly, and complex because of extended project deadlines, technical intricacies, and numerous potential claim issues. For these reasons, many construction entities prefer alternative dispute resolution methods like mediation. But as *Healy* demonstrates, poorly drafted mediation clauses may fail to achieve their intended purpose. Construction stakeholders should review their standard contract templates to ensure dispute resolution provisions accurately reflect their intentions and include the necessary express language to make mediation truly mandatory when desired.

Troutman Pepper Locke attorneys are well positioned to advise clients on construction contract drafting and negotiations, as well as in navigating construction project disputes with all types of project stakeholders.

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