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CLIENT ADVISORY

Volume XXVI, Number 2

February 28, 2009

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**MAIN STREET DELAWARE AWARDS RECEIVED**

At the annual meeting of Main Street Delaware, the law firm received an award for its continuing support of Main Street and the preservation and economic revitalization of downtown Delaware. Also, one of our attorneys, Thayne Gray, received an award for volunteer service above and beyond the call of duty on the Main Street Board of Directors.

**MEDIATE, ARBITRATE OR LITIGATE**

Sometimes we are asked what is the difference between mediation and arbitration or is it better to arbitrate a controversy or to litigate.

*Mediation:* Black's Law Dictionary defines mediation as "A method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution."

Mediation is a process that can be used before litigation is initiated, can be used while litigation is in progress, and can even be used while an appeal is pending.

It takes two willing parties to mediate. Mediation can be conducted by a private mediator for a fee, and some courts offer magistrates to conduct mediation if the parties so desire, at no cost to the parties. The mediator is merely a facilitator and has no power to decide the merits of a case. The mediator's powers are limited, and to use an old saying, "You can lead a horse to water, but you cannot force him to drink." Likewise, the mediator cannot force the parties to settle a case; he can only try to bring them to a resolution.

*Binding Arbitration:* Black's Law Dictionary defines binding arbitration as "A method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding."

An arbitration clause is sometimes inserted in a contract, and the contract may also specify who is to conduct the arbitration and how the expenses of the arbitration are to be shared.

*Litigation:* Black's Law Dictionary defines litigation as "The process of carrying on a lawsuit."

As a general rule, either party to the litigation may request a jury, except for certain types of cases for which there is no right to a jury. A decision to litigate does not mean that it is too late to mediate. As previously indicated, mediation is a process that can be used even after litigation has begun. Generally, arbitration does not occur after litigation has begun. However, in some jurisdictions, the court rules permit a court to order what amounts to non-binding arbitration if the amount in dispute is below a certain level.