

# SOME THOUGHTS ON THE MEDIATION OPTION IN PASSENGER CLAIMS UNDER THE MONTREAL CONVENTION

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# I. BRIEF ROADMAP

- Selecting the Mediator
- Advantages to Mediation
- Use of Social Media
- “Blocks” to a Successful Mediation

## II. SELECTING THE MEDIATOR

- There are various “schools” of mediation
  - The “beat over the head” school
  - The “risk analysis” school
  - The “let’s make deal at all costs” school
- Selection should really depend on the type of case and nature of the dispute

### III. ADVANTAGES TO MEDIATION

- Early settlement is always better than an expensive trial and its inherent risks
- Since under Montréal, liability is usually a given, issue basically relates to quantum, making the case suitable for mediation
- Ability to evaluate the other side's case and counsel skills
- Presentations are “unfiltered” so each client gets the other side's view “unfiltered” by their lawyer
- Neutral assessment of the strengths and weaknesses of your case
- Proceeding is entirely confidential

## IV. USE OF SOCIAL MEDIA

- Can be a powerful tool especially in cases of “loss of enjoyment” or loss of “quality of life”
- Can embarrass the other side if social media posts show a lifestyle inconsistent with what is claimed
- Be careful, can also be used by savvy lawyers to bolster claims

## V. CONCLUSION

- Very little downside to agreeing to mediation other than a modest additional cost
- Good opportunity to “suss out” the other side’s strategy
- Neutral third-party assessment can be useful in evaluating the value of a case, unfiltered by the view of counsel
- Confidentiality protects both sides