

The Rise of Plan Mediation Benefits and Pitfalls

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Interested parties in the largest and most complex bankruptcy cases are increasingly turning to mediation as a means of reaching consensual plan terms, in addition to more targeted mediation of specific disputes. Plan mediation offers potentially significant cost savings and efficiency benefits, but it also entails risks. In addition to the potential for increased cost and delay from a premature, failed or mismanaged mediation, parties should be mindful of the risks relating to exposure to nonpublic information in the context of a mediation, particularly in the wake of Hon. Mary F. Walrath's 2011 ruling in the WaMu bankruptcy regarding potential violations of the federal securities laws by participants in confidential settlement talks.² Judges and practitioners have begun developing certain creative means of seeking to address the risks highlighted by the WaMu ruling; however, no method is a panacea, and participants are well advised to be mindful of the drawbacks of each.

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