

**SUITE 200  
SOLUTIONS**



**Litigation Industry Snapshot:  
Participants' Report**

**Perceptions and Observations of Industry  
Litigation and Claim Professionals  
On the Subject of:**

**Measuring the Effectiveness of Mediators  
on Litigated Files**

**Spring 2020**

**Suite 200 Solutions Industry Snapshot: Mediator Effectiveness  
Spring 2020**

---

**Table of Contents**

A Thank You to Our Participants.....	3
About This Industry Snapshot.....	3
Snapshot Methodology.....	4
Executive Summary.....	5
Snapshot Questions and Answers .....	6
Litigation Volume .....	6
Mediation as a Percentage of Files .....	6
Court-Mandated vs. Optional Mediations .....	6
Mediator Value in Court-Ordered Mediations .....	7
Mediator Value in Optional Mediations .....	7
Differences in Mediator Skills .....	7
Who Contributes Most to Likelihood of Settlement at Mediation?.....	7
How Are Mediators Selected – Court Ordered .....	8
How Are Mediators Selected – Optional Mediations .....	9
Use of Pre-approved Mediator Panels.....	10
Ease of Quantifying Mediation Volume .....	10
Ease of Quantifying Mediation Impact on Settlement Rates .....	10
Ease of Quantifying Mediator Fees.....	11
Ease of Identifying Specific Mediators Used.....	11
Ease of Matching Specific Mediators to Settlement Rates.....	11
How Individual Mediator Performance is Currently Assessed .....	12
The Importance of Outcome in Defining Mediator Performance .....	12
The Importance of Cost in Defining Mediator Performance .....	12
Interest and Value in a “Preferred Mediators Map” .....	13
Interest and Value in Different Mediation-Related Metrics.....	13
Would Better Metrics Affect Mediation Usage .....	14
About Suite 200 Solutions.....	14

## Suite 200 Solutions Industry Snapshot: Mediator Effectiveness Spring 2020

---

### A Thank You to Our Participants

We would like to thank the 84 senior claim and litigation executives who participated in this Industry Snapshot. These studies, and the information produced as a result, would not be possible without your participation.

Suite 200 Solutions conducts these periodic Snapshots to capture how industry executives feel about different litigation and claim strategies. Your willingness to spend a few moments sharing your thoughts is a reflection of your commitment to the industry, and supports our efforts to promote and further the highest standards of claims and litigation management.

In contrast to our more formal “Industry Studies”, these Snapshots are intended to serve as more informal, point-in-time, views on a particular aspect of our industry. In our Snapshots we provide very little analysis, leaving each participant to draw what conclusions they wish from the raw data presented.

We trust you will find this information to be both interesting and helpful, and we look forward to including you in future Snapshot surveys.

### About This Industry Snapshot

Mediation has played an increasingly visible and important role in this resolution process. The purpose of this Snapshot was to better understand what the industry’s executives feel and believe about their use of mediators generally. Specifically, we were interested in executives’ observations in several key areas, including:

- Mediator Value
- Mediator Selection
- Measurement of Mediator Utilization
- Measurement of Mediator Effectiveness; and
- Overall interest in mediation-focused metrics and analytics

### Distribution of this Report

We fully encourage and support the wide distribution of this information. We feel the industry as a whole benefits from open and curious discussions around the topics covered in our Snapshots.

If you participated in this survey at the request of a more senior claim officer in your organization, please send a copy of this report to them. If you have staff or industry colleagues, who might enjoy seeing a copy of this Report, either internal or external to your Company, you are free to share this report with them as well.

In doing so, please encourage them to ensure that we have their contact information so that we can invite them to participate in future Snapshots.

## Suite 200 Solutions Industry Snapshot: Mediator Effectiveness Spring 2020

---

### Questions About this Snapshot

Prior Industry Snapshots can be found on our website at [www.suite200solutions.com](http://www.suite200solutions.com).

Questions about this specific Snapshot can be directed to:

**Taylor Smith, President, Suite 200 Solutions**

224-212-0134

[taylor.smith@suite200solutions.com](mailto:taylor.smith@suite200solutions.com)

### Snapshot Methodology

Eighty four (84) respondents answered 23 questions relating to mediator utilization and the measurement mediator effectiveness. The tool used to gather answers was an online survey, consisting mostly of multiple choice and ranking questions.

Respondents self-identified in one of four primary roles, as follows:

Role	Percentage
Senior Claims or Litigation Executive	66 %
Litigation Unit Manager	14 %
Front-line Claims Professional with Litigation Responsibilities	7 %
Other	13 %

Those in the “Other” category self-identified as:

- Claims Administrator
- AVP, Claims
- Chief Claims Officer
- General Counsel, Chief Claims Officer
- Claims VP
- General Counsel
- Senior Resolutions Counsel
- Director of Claims
- Counsel
- Lead Litigation Counsel

Participating organizations varied widely in the size of their litigation portfolio. The largest organization maintains roughly 50,000 open litigated files; the smallest only ten.

Average open litigated files for this data set was 2,954 files; the median open litigated file count was 1,000.

## Executive Summary

- Mediations take place on more than half of litigated files (55%). Almost half (40%) of the mediations being conducted are optional (i.e. not court-mandated).
- Mediators are perceived to have greater value in optional mediations (73 out of 100) than in court-mandated mediations (46 out of 100).
- The mediator is perceived as contributing the most to whether a case settles at mediation (more than other parties) and there is wide agreement (80 out of 100) that mediators skills vary widely.
- Defense counsel is the primary driver in the selection of a specific mediator. 66% in court-ordered mediations; 72% in optional mediations.
- Only 35% of executives said their claim organization uses pre-approved panels of mediators.
- It is somewhat difficult for claims organizations to identify how many mediations they are conducting (47 out of 100), the impact of those mediations on settlement rates (48 out of 100), and the amount of mediation fees they pay (52 out 100).
- It is harder for claims organizations to identify the specific mediators used (38 out 100) and the specific performance of those mediators (28 out of 100).
- Half (50%) said that individual mediator performance is “not captured at all.” Another 45% said that they have some data but wish they had more.
- Outcome is very important in defining mediator performance (82 out of 100); cost is less important (48 out of 100). Percentage of settlements at mediation is the most important performance metric.
- There was moderately high interest (70 out of 100) expressed in a “Preferred Mediators Map” that showed the Top 5-10 mediators preferred by insurance defense counsel across the country.
- Almost half (44%) of respondents said they would likely increase their use of mediations if they had access to data that identified highly effective mediators.

## Snapshot Questions and Answers

### Litigation Volume

Generally (an estimate is fine), how many open, litigated files does your organization maintain at any given point in time?

Litigation File Count	
Average	Median
2,954	1,000

### Mediation as a Percentage of Files

Very broadly (an estimate is fine), on what percentage of your litigated files is there a mediation of some type before closure?

Mediation on Percentage of Files	
Average	Median
55 %	60 %

### Court-Mandated vs. Optional Mediations

Very broadly (an estimate is fine), what percentage all the mediations your organization participates in are court-mandated (vs. being optionally entered into by you)?

Court-Mandated Percentage	
Average	Median
40 %	40 %

**Suite 200 Solutions Industry Snapshot: Mediator Effectiveness  
Spring 2020**

---

**Mediator Value in Court-Ordered Mediations**

**In your view, in court-ordered mediations, how helpful is the use of a mediator generally in terms of getting a file settled? (Scale of 1 to 100)**

<b>Mediator Value in Court-Mandated Mediations Scale of 1-100</b>	
<b>Average</b>	<b>Median</b>
<b>46</b>	<b>50</b>

**Mediator Value in Optional Mediations**

**In your view, in optional mediations (i.e. not court-ordered), how helpful is the use of a mediator generally in terms of getting a file settled?**

<b>Mediator Value in Optional Mediations Scale of 1-100</b>	
<b>Average</b>	<b>Median</b>
<b>73</b>	<b>75</b>

**Differences in Mediator Skills**

**Do you perceive that there are significant differences in mediator skills, or do you think that most mediators have generally the same skill level?**

<b>Differences in Mediator Skills 1= Very little differences 100 = Significant differences in skills</b>	
<b>Average</b>	<b>Median</b>
<b>80</b>	<b>85</b>

**Who Contributes Most to Likelihood of Settlement at Mediation?**

**Please help us rank which of these roles you believe contributes the most to whether a case is likely to settle at mediation.**

**Suite 200 Solutions Industry Snapshot: Mediator Effectiveness  
Spring 2020**

<b>Who Contributes Most? To Cases Being Settled at Mediation</b>	
<b>Participant</b>	<b>Weighted Score</b>
<b>Mediator</b>	<b>2.39</b>
<b>Internal Claims Professional</b>	<b>2.05</b>
<b>Defense Counsel</b>	<b>1.58</b>

**How Are Mediators Selected – Court Ordered**

In court-ordered mediations, which statement best describes how a specific mediator is generally selected for use:

<b>Statement</b>	<b>Percentage</b>
<b>Defense counsel identifies and proposes the mediator and our claims professional reviews and approves</b>	<b>66 %</b>
<b>Our in-house file-handler identifies and proposes the mediator and defense counsel reviews and agrees</b>	<b>4 %</b>
<b>Other</b>	<b>30 %</b>

**SAMPLING OF “OTHER” RESPONSES**

In the states we operate in, the trial judge is often times the mediator in court-ordered mediations.	Many courts dictate the mediator. When they do not DC identifies and proposes or PC does and we agree.	Either the court has a mediator they use or plaintiff and defense agree on a mediator. Claims folks can have favorites, but there are typically only a handful of good ones.
I find that typically the plaintiff and defense attorneys agree upon a mediator and the claim professional is asked if they agree.	Multiple variants, ranging from court assigned to proposed by either attorney, insurer, or even a party; then vetted by others.	It is usually collaborative. We have preferred mediators but discuss defense counsel's recommendations to find the right fit for the claim.



**Suite 200 Solutions Industry Snapshot: Mediator Effectiveness  
Spring 2020**

**How Are Mediators Selected – Optional Mediations**

**In optional mediations (i.e. not court-ordered), which statement best describes how a specific mediator is generally selected for use:**

Statement	Percentage
<b>Defense counsel identifies and proposes the mediator and our claims professional reviews and approves</b>	<b>72 %</b>
<b>Our in-house file-handler identifies and proposes the mediator and defense counsel reviews and agrees</b>	<b>12 %</b>
<b>Other</b>	<b>16 %</b>

SAMPLING OF “OTHER” RESPONSES		
Probably 50/50 between defense counsel and the adjuster selecting the mediator.	Both of above	both of above
Same, defense attorney and plaintiff's counsel agree on a mediator.	Same as above	Attorneys and Claim rep collaborate
It depends - one of the first two	I find that typically the plaintiff and defense attorneys agree upon a mediator and the claim professional is asked if they agree.	Defense counsel and file handler agree on a mediator to propose to Plaintiff counsel
Both parties agree and provide a mediator	It is usually collaborative. We have preferred mediators but discuss defense counsel's recommendations to find the right fit for the claim.	Both sides submit names and then it gets narrowed down - defense counsel and claims professional confer on selection

**Suite 200 Solutions Industry Snapshot: Mediator Effectiveness  
Spring 2020**

---

**Use of Pre-approved Mediator Panels**

Do you generally require either counsel or in-house file-handlers to pick mediators from a previously vetted, pre-approved, “panel” of mediators that you maintain?

<b>Do You Use Pre-Approved “Panels” of Mediators?</b>	
<b>Yes</b>	<b>35 %</b>
<b>No</b>	<b>65 %</b>

**Ease of Quantifying Mediation Volume**

On a scale of 1 to 100, how easy it is for your organization to quantify how many mediations took place on your litigated files over a specific time-frame?

<b>Ease of Quantifying Mediation Volume 1 = Very Difficult 2 = Very Easy</b>	
<b>Average Answer</b>	<b>Median Answer</b>
<b>47</b>	<b>50</b>

**Ease of Quantifying Mediation Impact on Settlement Rates**

On a scale of 1 to 100, how easy is it for your organization to see what percentage of your mediations resulted in settlement, either at mediation or shortly thereafter?

<b>Ease of Quantifying Mediation Impact On Settlement Rates 1 = Very Difficult 2 = Very Easy</b>	
<b>Average Answer</b>	<b>Median Answer</b>
<b>48</b>	<b>50</b>

**Suite 200 Solutions Industry Snapshot: Mediator Effectiveness  
Spring 2020**

---

**Ease of Quantifying Mediator Fees**

On a scale of 1 to 10, how easy is it for your organization to quantify mediator fees paid over a specific time-frame?

<b>Ease of Quantifying Mediator Fees Over A Specific Time-Frame 1 = Very Difficult 2 = Very Easy</b>	
<b>Average Answer</b>	<b>Median Answer</b>
<b>52</b>	<b>50</b>

**Ease of Identifying Specific Mediators Used**

On a scale of 1 to 10, how easy is it for your organization to identify the specific mediators used over a specific time-frame?

<b>Ease of Identifying Specific Mediators Used 1 = Very Difficult 2 = Very Easy</b>	
<b>Average Answer</b>	<b>Median Answer</b>
<b>38</b>	<b>25</b>

**Ease of Matching Specific Mediators to Settlement Rates**

On a scale of 1 to 10, how easy is it for your organization to see which individual mediators had the most cases settle at mediation, or within specific time-frames after mediation?

<b>Ease of Matching Specific Mediators To Settlement Rates 1 = Very Difficult 2 = Very Easy</b>	
<b>Average Answer</b>	<b>Median Answer</b>
<b>28</b>	<b>18</b>

**Suite 200 Solutions Industry Snapshot: Mediator Effectiveness  
Spring 2020**

**How Individual Mediator Performance is Currently Assessed**

In general, which statement below best describes how individual mediator performance is currently assessed (and captured) in your organization?

Statement	Percentage
We have pretty good data around which mediators are most effective	5 %
Some mediator performance is captured but we wish we had more data	45 %
Individual mediator performance is really not captured at all	50 %

**The Importance of Outcome in Defining Mediator Performance**

In defining “mediator performance,” how important is the mediation **OUTCOME** (the result achieved) (10= highest value):

Importance of Outcome in Assessing Mediator Performance 1 = Not Important 100 = Very Important	
Average Score	Median Score
<b>82</b>	<b>90</b>

**The Importance of Cost in Defining Mediator Performance**

In defining “mediator performance,” how important is the mediator’s **COST** (reasonableness of fees):

Importance of Cost in Assessing Mediator Performance 1 = Not Important 100 = Very Important	
Average Score	Median Score
<b>48</b>	<b>50</b>

## Suite 200 Solutions Industry Snapshot: Mediator Effectiveness Spring 2020

### Interest and Value in a “Preferred Mediators Map”

If a company could provide you with a “Preferred Mediators Map” --- showing you the Top 5-10 mediators preferred by each of your primary defense counsel across the country – how valuable would this be to you?

Importance of Cost in Assessing Mediator Performance 1 = Not Interesting 100 = Very Interesting	
Average Score	Median Score
70	75

### Interest and Value in Different Mediation-Related Metrics

Help us understand how valuable these different metrics and statistics are (or would be) to you in analyzing your use of mediation?

Value in Different Metrics and Statistics	
Metric	Weighted Score
Percentage of settlements at mediation (by mediator)	2.68
Percentage of settlements shortly after mediation (by mediator)	2.56
Numbers of times you’ve used a specific mediator	2.2
Fees spent on each mediator	2.15

## Suite 200 Solutions Industry Snapshot: Mediator Effectiveness Spring 2020

---

### Would Better Metrics Affect Mediation Usage

If you had access to data that you believe identified highly effective mediators, do you believe your use of mediations generally would stay the same or increase?

How Would Access to Metrics Around Effective Mediators Impact Mediation Usage?	
Statement	Percentage
Increase - most likely I'd use mediations more	44 %
Same - it is doubtful we'd change our overall mediation use	56 %

### About Suite 200 Solutions

Suite 200 Solutions (formerly CLM Advisors) offers advisory services to the property casualty claims and litigation industries. We provide generalized consulting and market intelligence services to claims organizations, law firms, and to the service and technology providers that serve both those constituencies. Through its Transaction Advisory Group, the Company also provides critical support to investors, buyers, and sellers in this industry segment. More information can be found at [www.suite200solutions.com](http://www.suite200solutions.com).