

Significant Case Law For Attorneys and Mediators

Evanston Insurance Company v. Advanced Transportation Solutions, LLC, et. al., 32 Fla. Law Weekly D 526 (Fla. 3rd DCA Opinion Filed February 21, Law 2007):

A personal injury action was settled at mediation between the plaintiffs and three different insurance carriers. All the parties signed a General Release, Hold Harmless and Indemnity Agreement in which they agreed not to litigate against each other. Then one of the insurance companies sought to recover its attorneys fees from one of the other carriers. The Third District Court of Appeal held that the carrier seeking contribution for attorney's fees waived its right to do so when it entered into the Release Agreement without preserving its right to seek contribution. The Court held: "... Evanston had every opportunity to create such an agreement, particularly since Evanston was a participant at mediation during its negotiation and settlement of {Plaintiffs'} complaint..."

PRACTICE TIP:

How many of you bring copies of your General Release, Hold Harmless and Indemnity Agreements to mediation conferences? This can be quite helpful. By bringing proposed releases to mediation for discussion, the parties and their counsel can agree upon the language of the releases required under the terms of their settlement agreements. As always, it is better to be safe than sorry.

TRAGEDY AT VIRGINIA TECH

April 16, 2007 will be remembered as one of the darkest days in the history of the Virginia Tech community and the world beyond. To remember and honor the victims of those tragic events, the university has established the Hokie Spirit Memorial Fund to aid in the healing process and generate financial support. The fund will be used to cover expenses including, but not limited to, Assistance to victims and their families; Grief

counseling; Memorials; Communication expenses; and Comfort expenses. If you wish to contribute to this Memorial Fund, please go to www.vt.edu/tragedy/memorial-fund.php and choose "Hokie Spirit Memorial Fund" from the dropdown menu. Thank you

MY NEW WEBSITE IS UP AND RUNNING

After years of procrastination, I have finally done it. I have my own website. You can find it at these addresses: www.BABMediate.com and www.BruceBlitman.com. The website contains past issues of mediation newsletters, as well as information about current mediation caselaw, ADR articles I've written and announcements about upcoming mediation seminars and presentations. Many thanks to Webmaster Gio Gutierrez for his invaluable expertise in designing this site. Please visit this site and let me know what you think. I hope you like it.

DISPUTE RESOLUTION IN THE NEWS-PART I

An article in the February 6, 2007 edition of the South Florida Sun-Sentinel reported that Apple Inc. ended a legal dispute with the Beatles over rights to use the Apple name and logos, potentially clearing the way for the company to distribute the group's music through its iTunes online store. Under a new agreement, Apple Inc. owns all trademarks related to "Apple" and will license some rights back to the Beatles' Apple Corps. Ltd. for its continued use. Terms were not disclosed. The settlement ended decades of litigation.

DISPUTE RESOLUTION IN THE NEWS-PART II

An article in the November 21, 2006 of The Miami Herald reported that the Southwest Ranches Town Council and its landlord, the South Broward Drainage District both voted on an agreement resolving their ongoing lease dispute over the town's use of drainage district property for council meetings. The agreement enabled the town to avoid eviction and to continue leasing the property for

another three years by paying the district \$115,000 over three years.

DISPUTE RESOLUTION IN THE NEWS-PART III

Under a contract with the Department of Justice, The Key Bridge Foundation receives referrals of complaints under Titles II and III for mediation by professional mediators who have been trained in the legal requirements of the ADA. The following are examples of results reached through mediation in the Southeast Region, as reported in Volume 16, No.1, 2007 of the ADA Pipeline (which is described below):

In Florida, a wheelchair user complained that an insurance agency did not have an accessible entrance ramp at its entrance. The business immediately constructed an accessible ramp at its entrance.

In Florida, a person with a mobility disability complained that she had been denied the opportunity to volunteer at a museum and theater company because of her disability. The company agreed to accept the complainant as a volunteer and to open all of their volunteer activities to people with disabilities.

In Florida, a person who is deaf alleged that a doctor's office did not provide effective communication during an office visit. The doctor's office developed and implemented a written policy for all office staff members outlining the procedure for providing sign language interpreter services when needed.

RECOMMENDED READING

ADA Pipeline, a publication of the Southeast Disability and Business Technical Assistance Center (Southeast DBTAC) is published twice each year. Southeast DBTAC is authorized by the National Institute on Disability and Rehabilitation Research to provide information, materials and technical assistance to individuals with rights, as well as entities, that are covered by the Americans With Disabilities Act (ADA). This publication is available, free of charge, to subscribers in eight southeastern states. It is available upon request in large print, braille, audio cassette, and computer disk. Contact information: 490 10th Street, Atlanta,

Georgia 30318 Phone: (800) 949-4232 (Voice/TTY) and (404) 385-0636 (Voice/TTY); Fax: (404) 385-0641; E-mail: sedbtacproject@law.syr.edu. Website: www.sedbtac.org

ADA Guide for Local Governments: Making Community Emergency Preparedness and Response Programs Accessible to People with Disabilities. www.ada.gov/emergencyprep.htm

ADA Best Practices Tool Kit for State and local Governments.

www.ada.gov/pcatoolkit/toolkitmain.htm

The ADA Game

www.adagame.org

At Your Service:

Welcoming Customers with Disabilities to Your One Stop www.wiawebsite.org

FLORIDA SUPREME COURT REVISES LANGUAGE IN FLORIDA RULES FOR CERTIFIED & COURT - APPOINTED MEDIATORS EFFECTIVE AUGUST 1 , 2006

There have been some changes in some of the Rules for Certified and Court-Appointed Mediators. Here are the changes for your review.

The italicized language in bold print was adopted by the Florida Supreme Court and became effective August 1, 2006:

Rule 10.360. Confidentiality

(a) Scope, A mediator shall maintain confidentiality of all information revealed during mediation except where disclosure is required **or permitted by law or is agreed to by all parties.**

Rule 10.370. Advice, Opinions, **or information**

(c) Personal or Professional Opinion. A mediator shall not offer a personal or professional opinion intended to coerce the parties **unduly influence the parties**, decide the dispute, or direct a resolution of any issue. Consistent with standards of impartiality and preserving party self-determination, however, a mediator may point out possible outcomes of the case and discuss the merits of a claim or defense. A mediator shall not offer a personal or professional opinion as to how the court in which the case has been filed will resolve the dispute.

Rule 10.420. Conduct of Mediation.

(a) Orientation Session. Upon commencement of the mediation session a mediator shall describe the mediation process and the role of the mediator, and shall inform the participants that:... (3) communications made during the process are confidential, except where disclosure is required or permitted by law.

FLORIDA DEPARTMENT OF FINANCIAL SERVICES (DFS) AND COLLINS CENTER FOR PUBLIC POLICY HURRICANE MEDIATION CENTER IN DAVIE, FLORIDA IS STILL GOING STRONG

In previous issues, I've reported on The Collins Center's long history of assisting the State of Florida with hurricane recovery. The Collins Center, which has served as the administrator for the Florida Department of Financial Services (DFS) Hurricane Mediation Program, has concluded its 2004 hurricane mediation program. Mediation requests from consumers exceeded 12,000 and the program generated an overall settlement rate of 92%.

The DFS and Collins Center's 2005 hurricane mediation program is still fully operational. The Department of Financial Services opened its newest Hurricane Mediation Center in Davie (Broward County), Florida in mid-February, 2006. This Center continues to mediate claims arising out of Hurricane Wilma as well as prior hurricanes, and is now operating Mondays through Fridays. Additional information about these programs is available at www.collinscenter.org. or by calling the DFS at 1-800-22-STORM.

MEDIATION AND NEGOTIATION SEMINARS AVAILABLE FOR CONTINUING EDUCATION CREDITS

For years, I have written and spoken extensively about mediation and negotiation-related topics, including: *"Florida's Mediation Case Law"*; *"Ingredients For A Successful Mediation Process"*; *"The Alternative Dispute Resolution Continuum"*; *"What Is Your Negotiating Style?"*; and *"Effective Negotiating Tips And Tactics"*. If you want to put on a seminar for your law firm, clients and/or staff,

please contact me for details.

RECENT WORKSHOPS

I presented a Professional Development Seminar titled "Mediation and Alternative Dispute Resolution: Managing Conflict in the Workplace" for members of the Greater Miami Society For Human Resource Management (GMSHRM) in Miami.

RECENT APPOINTMENTS

I have been appointed to serve on the City of Cooper City's newly created Education Advisory Board (EAB). The EAB makes recommendations to the City Commission on matters pertaining to the education of the City's public school students from elementary school through high school. The EAB and the Broward Sheriff's Office (BSO) recently sponsored a parent awareness workshop titled "Keeping Your Kids Safe In Cyberspace: What You Don't Know Can Hurt Them." The program provided a number of Internet Safety tips for parents and children.

I have been elected Secretary for the newly chartered Kiwanis Club of Cooper City. Kiwanis International is a global organization dedicated to "Serving the Children of the World" through a variety of service projects.

LITIGATION ALTERNATIVES COMMITTEE

I have previously reported on my appointment to the Litigation Alternatives Committee for the Florida Patient Safety Corporation. This Committee is charged with exploring alternative methods for resolving medical malpractice disputes. I continue to welcome your suggestions, ideas or recommendations on this matter. If you'd like to share, please contact me.

NOTABLE QUOTATIONS

"We have become not a melting pot but a beautiful mosaic. Different people, different beliefs, different yearnings, different hopes, different dreams."

- Former President Jimmy Carter

“A good laugh and a good cry both cleanse the mind.”

- Chinese Proverb

“Happiness is a place between too little and too much.”

- Finnish Proverb

“You’ll never achieve 100 percent if 99 percent is okay.”

- Will Smith

“The nicest part about being a pessimist is that you are constantly being either proven right or pleasantly surprised.”

- George Will

“You know the best way to double your money? Fold it and put it in your pocket.”

- Phyllis Diller

“They say our mothers really know how to push our buttons-because they installed them.”

- Robin Williams

“The best proof of love is trust.”

- Dr. Joyce Brothers

“A solved problem creates two new problems, and the best prescription for happy living is not to solve any more problems than you have to.”

- Russell Baker

“Having five children in six years is the best training in the world for Speaker of the House.”

- Nancy Pelosi

“Whatever does not destroy me makes me stronger.”

- Friedrich Nietzsche

SEMINAR PRESENTATION

I am an approved instructor for Florida Atlantic University’s Small Business Development Center (FAU SBDC), based in Boca Raton. In May, 2007, I presented a two-hour seminar titled “The Mediation Advantage: Getting Ahead By Getting Along In Business” at the South Broward/Broward Community College Library in Pembroke Pines. These SBDC programs are free and the public is

welcome to attend. Please visit my website for details about this presentation. Thank you.

MESSAGES OF THANKS TO OUR TROOPS

To remember our troops in Iraq and around the world who risk their safety every day on our behalf, messages of appreciation and support can be sent via www.OperationDearAbby.net.

25 YEARS AS A FLORIDA LAWYER-AND COUNTING!

In May, 2007, I celebrated my twenty-fifth anniversary as a member of the Florida Bar. How quickly the years have passed. I appreciate your patronage and generous support through the years. It is always an honor and privilege to be of service to you and your clients. I am looking forward to another 25 years as a member of The Florida Bar and as a certified County, Family and Circuit Civil Mediator.

WORTHY CAUSES

THE COOPERATIVE FEEDING PROGRAM:

This 20-year-old agency, which dishes out more than a million meals a year, also provides free haircuts and other services to the needy, such as food stamp information and legal advice, with the help of volunteers. The agency also has an emergency food pantry that periodically supplies families with enough groceries to get them by for a few days. The program has seen a 25% increase in the demand for free food over the last year, but funding has been flat for the same period. Checks can be mailed to:

The Cooperative Feeding Program,
1 NW 33 Terrace, Fort Lauderdale, Florida 33311.
For more information, call (954) 792-2EAT (2328) or visit feedingbroward.org. Thank you.

THE GIFT OF LIFE:

For information on how to become an organ donor, please visit www.organdonor.gov. Thank you.

**UNIVERSITY OF MIAMI-NOVA
SOUTHEASTERN UNIVERSITY CENTER
FOR AUTISM & RELATED DISABILITIES
(UM-NSU CARD):**

Is dedicated to optimizing the potential of people with autism, dual sensory impairment and related disabilities. In 1993, the legislature passed a statute that appropriated startup funds to establish the Center for Autism and Related Disabilities (CARD) at sites throughout Florida, including the University of South Florida, the University of Miami, Florida State University, University of Florida at Gainesville and Jacksonville, and the University of Central Florida. Individuals of any age with autism, pervasive developmental disorder, dual sensory impairment or sensory impairment with other disabling conditions, their family members, friends and professionals are eligible to receive CARD's free service. For contributions or information, please contact UM-NSU CARD's main office at: 5655 Ponce de Leon Boulevard, Coral Gables, Florida 33125-0725

Telephone: (305) 284-6563, 1-800-9-AUTISM,
Fax: (305) 284-6555 www.umcard.org. Thanks.

MAKE- A-WISH FOUNDATION:

Since 1980, the Make-A-Wish Foundation has granted more than 144,000 wishes for children with life-threatening medical conditions. It is the largest wish-granting charity in the world, with 74 chapters across the United States and its territories and 28 international affiliates on five continents. For more information, please visit the Make-A-Wish web site at: www.wish.org or call (866)880-1382 (toll-free). You can also support the Make-A-Wish Foundation by returning a generous tax-deductible contribution to the Gift Processing Center at: P.O. Box 97104, Washington, DC 20090-7104. Thank you.

**2008 DAVIE-COOPER CITY
RELAY FOR LIFE:**

The Relay For Life is the American Cancer Society's Signature Event. This is a fun-filled overnight event designed to bring together those who have been touched by cancer in our community. At the event, people celebrate survivorship and raise money to

help the American Cancer Society in its mission to save lives, help those who have been touched by cancer, and empower individuals to fight back. During the event, teams of people gather at Cooper City High School and take turns walking laps. Each team tries to keep at least one member on the track at all times. The Relay is a time to remember those lost to cancer and to celebrate those who have survived. By joining together as volunteers and donors, we are helping the American Cancer Society strive towards a future where cancer doesn't take the lives of friends and family. The 2008 Relay For Life will be held on March 15 through March 16, 2008 at Cooper City High School. Volunteers at all levels are needed. City Commissioner Elliot Kleiman chairs this event. For more information, you can call him at (954) 434-4300. Donations can be made payable to: American Cancer Society and can be sent to the American Cancer Society, whose toll free number is 1-800-ACS-2345, or to the attention of Commissioner Kleiman or me. Thank you.

**PEDIATRIC BRAIN TUMOR
FOUNDATION:**

The Pediatric Brain Tumor Foundation is dedicated to supporting the search for the cause and cure of childhood brain tumors. For more information, please contact the Foundation at: Pediatric Brain Tumor Foundation, 302 Ridgefield Ct, Asheville, North Carolina 28806, (800) 253-6530, www.curethekids.org. Thank you.

**NATIONAL CANCER FOUNDATION FOR
CANCER RESEARCH:**

Founded in 1973 to support cancer research and public education relating to the prevention, early diagnosis, better treatments and ultimately, a cure for cancer. For more information, please visit www.NFCR.org or call 1-800-321-CURE. Thank you.

EASTER SEALS DISABILITY SERVICES:

Easter Seals mission is to provide exceptional services to ensure that all people with disabilities or special needs and their families have equal opportunities to live, learn, work and play in their communities. For more information, please visit www.easterseals.com or call 1-800-221-6827. Thank you.

PACE CENTER FOR GIRLS, INC.:

Provides girls and young women an opportunity for a better future through education, counseling, training and advocacy. PACE values all girls and young women, believing each one deserves an opportunity to find her voice, achieve her potential and celebrate life defined by responsibility, dignity, serenity and grace. Since its inception, PACE Center for Girls, Inc. has played a critical role in promoting gender responsive programming, influencing juvenile justice policy and changing the lives of over 12,000 at-risk girls. PACE is a not for profit, 501 (c)(3) minority provider that has 22 locations in Florida (19 direct care centers and 3 outreach locations), with its headquarters in Jacksonville. For more information, please visit the website at www.pacecenter.org or call Aggie Pappas, MSW, Executive Director of the PACE Center for Girls Broward at (954) 561-6939. Thank you.

AMERICAN LUNG ASSOCIATION:

It's mission is to prevent lung disease and promote lung health. To learn more, please call 1-800-LUNG-USA (1-800-586- 4872) or visit www.lungusa.org. Thank you.

DO YOU HAVE A FAVORITE CHARITY?

I am always interested in informing our readers about worthy causes. If there is some cause you want me to share with our readers in future issues of this newsletter, please send me an e-mail or a brochure which describes the charitable organization and its mission. I will be pleased to help you share this information.

MAY I ASK A FAVOR?

IF YOU HAVE A QUESTION OR SUBJECT you'd like me to address in this newsletter I please send me an e-mail with your suggestion. Thanks.

PLEASE FORWARD: If you'd like to share this newsletter with your partners, associates, clients, friends and colleagues, feel free to forward this issue including the copyright notice.

ADDRESS CHANGES: If you want to continue to receive my newsletter, please make sure I have your current e-mail address

QUESTIONS? COMMENTS? IDEAS?

OPINIONS? I'm always happy to hear from you.

It's Summertime! Another school year is over. The children are growing up all too quickly. It's time to kick back, slow down and relax (a little bit anyway). I hope you and the members of your family and staff are well, and that you enjoyed Father's Day and the Fourth of July. Although the Miami Heat made an unfortunately quick exit from the NBA playoffs, there are still plenty of other sports to watch and play. Enjoy the beauty and freedom of Summer. Fortunately, the Spring rains finally arrived-better late than never. As always, Best wishes for much Good Health, Good Luck and Good Mediation in 2007 and beyond.

BRUCE A. BLITMAN, ESQ,

Certified County, Family, Circuit Civil and Federal Mediator

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