

## **Significant Case Law For Attorneys and Mediators**

**Ainsley Munroe v. U.S. Food Service and Ace American Insurance, 33 Fla. L. Weekly D1664** (Fla. 1st DCA Opinion Filed June 27, 2008): The facts of this case are interesting and educational. Claimant Ainsley Munroe appealed from an order enforcing a settlement agreement with the employer, U.S. Food Service and carrier, Ace American Insurance (the E/C). Munroe was injured at work on April 11, 2006. Claimant and the E/C went to mediation. The mediator issued a Mediation Settlement Agreement Report, which stated in part:

*“Contingent upon employer/carrier approval (emphasis added), the parties agree to a total settlement of \$30,000, out of which claimant will pay attorney fees + costs of \$5000. Claimant will net \$25,000.*

*E/C has 20 days for the contingency. If e/c does not approve of \$30,000, claimant has option of accepting \$25,000 total with \$5000 to attorney + therefore [\$]20,000 to claimant net...”*

This agreement was signed by Munroe, his attorney, and the E/C's attorney. Munroe retained a new lawyer who sent a letter to the E/C two days later stating that Munroe had opted out of the mediation agreement. The carrier replied eleven days later that the E/C had obtained “\$30,000.00 in settlement authority,” thus satisfying the contingency in the settlement agreement, and asserted that “the agreement is enforceable as the contingency was not mutual.” The judge of compensation claims granted the E/C's motion to enforce, concluding as a matter of law that the parties had entered into a binding agreement.

The First District Court of Appeals disagreed, and reversed. The First District's holding is instructive. “...The mediation report expressly provided that both parties had not yet agreed. Because counsel for the E/C attended mediation without full authority to settle (Footnote 1), we read the agreement in the case at bar as an offer by Munroe to settle for \$30,000, to which counsel for the E/C provision-

ally agreed, pending actual acceptance of the offer by the E/C. Munroe was permitted to revoke the offer before it was accepted.”

Footnote 1 states: “Florida Administrative Code rule 60Q-6.110(5) states that mediation shall be attended by the claimant; the carrier's claims representative, who “must have full authority to settle the issues”; the employer, if the employer/servicing agent does not have full authority to settle the issues; and the parties' attorneys. The rule expressly provides: “The appearance of an attorney for a party does not dispense with the required attendance of the party. Subsection 60Q-6.110(6) provides: “Failure to attend the mediation conference without having shown good cause or failure to appear at the mediation conference with full authority to resolve the issues may subject the party or attorney to sanctions.”

### **PRACTICE TIP:**

This case demonstrates the importance of showing up for mediation with the requisite “settlement authority.” It also emphasizes the importance of drafting the terms and conditions of mediated settlement agreements with precision and clarity. Truly, “the devil is in the details.”

### **MY NEW WEBSITE IS UP AND RUNNING**

The “new” website is now more than one year old. You can find it at these addresses: [www.BABMediate.com](http://www.BABMediate.com) and [www.BruceBlitman.com](http://www.BruceBlitman.com). The website contains past issues of mediation newsletters, as well as information about current mediation case-law, 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.

### **ANNOUNCEMENTS, APPOINTMENTS AND RECENT TRAININGS**

In November, 2008, I received the 2007-2008 “Kiwanian of the Year Award” from the Kiwanis Club of Cooper City, Florida in recognition of my service to the club and the community. Kiwanis In-

ternational is a global organization dedicated to serving the children of the world one child and one community at a time. I was honored to receive this wonderful award.

In February, 2008, I successfully completed the 2008 WIND Advanced Umpire Certification Course sponsored by The Windstorm Insurance Network, Inc. in Jacksonville, Florida. This was an outstanding national conference attended by more than one thousand insurance professionals and exhibitors. The 10th Annual Windstorm Insurance Conference will be held January 25-28, 2009 at the Rosen Centre Hotel in Orlando, Florida. For more information on WIND 2009, please visit [www.windnetwork.com](http://www.windnetwork.com) or call (850) 473-0601. If you are looking for an umpire for an Appraisal matter, the Windstorm Insurance Network has compiled the 2008 edition of the WIND UMPIRE ANNUAL DIRECTORY: A PUBLICATION OF PROFESSIONALS SERVING AS UMPIRES IN PROPERTY INSURANCE APPRAISALS. (I am on page 42).

Mediation Works Incorporated (MWI) of Boston, Massachusetts recently invited me to join the MWI Employment Mediation Panel for the Coca-Cola Enterprises (CCE) Solutions Program. The Solutions Program is intended to provide for the quick, fair, accessible, inexpensive and individualized resolution of conflicts among Coca-Cola Enterprises' present and former employees. MWI is dedicated to providing innovative dispute resolution services and training to corporate, institutional and individual clients seeking to resolve difficult disputes.

### **RECOMMENDED READING**

The May, 2008 issue of The Florida Bar Journal contains two excellent articles about Mediation and Negotiation that are well worth reading:

The Feature article, "Ethics In Negotiation And Mediation For The Florida Attorney", by O. Russel Murray and Stephen A. Bailey, thoughtfully considers the lines of ethical conduct for lawyers engaged in negotiation and mediation (Volume 82 of Fla. Bar J., No. 5, May 2008 at pages 10 through 20).

In "Mediation Myths and Urban Legends," Professor Fran L. Tetunic of the Shepard Broad Law Center at Nova Southeastern University, highlights ten popular misconceptions about the mediation pro-

cess. This article is an excellent primer for those who are unfamiliar with mediation in Florida, as well as a wonderful refresher for those who are frequently engaged in mediation as advocates or mediators (Volume 82 of Fla. Bar J., No. 5, May 2008 at pages 52 through 56).

### **DISPUTE RESOLUTION IN THE NEWS - PART I**

An article in the August 8, 2008 edition of The Miami Herald reported that Citigroup, the nation's largest financial institution, agreed to buy back more than \$7 billion in auction-rate securities and pay \$100 million in fines as part of settlements with federal and state regulators, who said the bank marketed the investments as safe despite liquidity risks. The buybacks must be completed by November. Citigroup will also pay a \$50 million civil penalty to New York state and a separate \$50 million civil penalty to the North American Securities Administrators Association, which represents securities regulators in the 50 states and the District of Columbia.

### **DISPUTE RESOLUTION IN THE NEWS - PART II**

An article in the August 7, 2008 issue of The Miami Herald reported that Mississippi Attorney General Jim Hood's office settled its dispute with State Farm Insurance over how the insurer handled Hurricane Katrina damage claims in Mississippi. Hood stated that State Farm has complied with a January 2007 agreement with the state by reopening some claims and agreeing to pay more than \$74 million more to Gulf Coast policyholders whose homes were damaged or destroyed by Katrina's storm surge. Hood also said the insurer agreed to notify nearly 150 more State Farm policyholders who haven't sued or settled their claims that they can still have their cases reevaluated.

### **DISPUTE RESOLUTION IN THE NEWS - PART III**

An article in the July 11, 2008 edition of The Miami Herald reported that The American Medical Association issued a formal apology for more than a century of discriminatory policies that excluded blacks from participating in a group long considered the voice of U.S. doctors. The apology stemmed from initiatives at the largest U.S. doc-

tors' group to reduce racial disparities in medicine—from the paltry number of black physicians to the disproportionate burden of disease among blacks and other minorities. The apology came more than 40 years after AMA delegates denounced policies at state and local medical societies dating to the 1800s that barred blacks.

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### **FLORIDA DEPARTMENT OF FINANCIAL SERVICES (DFS) AND COLLINS CENTER FOR PUBLIC POLICY HURRICANE MEDIATION CENTER IN DAVIE, FLORIDA IS NOW OPEN TWO DAYS A WEEK**

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 serves as the administrator for the Florida Department of Financial Services (DFS) Hurricane Mediation Program.

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. Although the Center continues to mediate claims arising out of Hurricane Wilma as well as prior hurricanes, at the end of July, 2008 it reduced its operating hours and is now open only two days a week—on Tuesdays and Wednesdays. There is no charge to consumers who choose to mediate their hurricane disputes through this program. The Center is likely to remain open through January, 2009. Additional information about these programs is available at [www.collinscenter.org](http://www.collinscenter.org) or by calling the DFS at 1-800-22-STORM.

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### **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.

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### **LITIGATION ALTERNATIVES ADVISORY COMMITTEE**

I have previously reported on my appointment to the Litigation Alternatives Advisory 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.

Recently, the Board of Directors for the Florida Patient Safety Corporation ratified our Committee's recommendation to adopt "The Sorry Works!" concept dedicated to promoting full disclosure and apologies for medical errors as a "middle-ground solution" to the medical malpractice crisis. For more information, please visit [www.sorryworks.net](http://www.sorryworks.net).

#### **I DIDN'T KNOW THAT...**

According to The Miami Herald's Action Line column (July 30, 2008), if you have a complaint about a towing experience, you can contact your county's consumer affairs department for mediation.

According to The Miami Herald's Action Line column (July 16, 2008), if you have a complaint about a national bank, you can contact the Office of the Comptroller of the Currency for mediation. [www.helpwithmybank.gov](http://www.helpwithmybank.gov). Also, it was reported in this column that if you are tired of automated phone systems (who isn't?), you can find shortcuts at [www.gethuman.com](http://www.gethuman.com) to get through to live customer service representatives at major companies.

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### **NOTABLE QUOTATIONS**

"I expect to pass through life but once. If therefore, there be any kindness I can show, or any good thing I can do to any fellow being, let me do it now, and defer or neglect it, as I shall not pass this way again."  
-William Penn

"No person can be a great leader unless he takes genuine joy in the success of those under him."  
-W.A. Nance

“Having a place to go-is a home, having someone to love-is a family, having both-is a blessing.”

-Donna Hedges

“Love is not just looking at each other, it’s looking in the same direction.”

-Antoine de Saint-Exupéry

“Your mind is like a parachute.

It only works if it is open.”

-Anthony J. D’Angelo

“For myself, I am an optimist-it does not seem to be much use being anything else.”

-Winston Churchill

“If anyone speaks badly of you, live so no one will believe it.”

-Anonymous

“The only discipline that lasts is self-discipline.”

-Bum Phillips

“Learning is a treasure that will follow its owner everywhere.”

-Chinese Proverb

“Let me win. But if I cannot win, let me be brave in the attempt.”

-Special Olympics Oath

“The secret of happiness is not doing what one likes, but in liking what one has to do.”

-James M. Barrie

“Praise does wonders for our sense of hearing.”

-Arnold H. Glasow

“Your friend can turn a day as dark as coal into a day that’s as bright as gold.”

-Vonce

“Eighty percent of success is showing up.”

-Woody Allen

## **19 YEARS AS A SUPREME COURT CERTIFIED COUNTY AND CIRCUIT CIVIL MEDIATOR - AND COUNTING!**

In February, 2008, I celebrated my nineteenth anniversary as a Florida Supreme Court certified County and Circuit Civil mediator. How quickly the years have passed. It doesn’t seem possible that I completed the training course so many years ago. I greatly 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 (at least) another 19 years as a certified County, Family and Circuit Civil Mediator.

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### **“KICK FOR NICK” PROJECT**

On May 26, 2008, Memorial Day, I watched a beautiful and moving story on ESPN’s “Outside the Lines” program about Private First Class Nick Madaras, who was tragically killed while serving in Iraq. The story by Tom Rinaldi described a program called “Kick For Nick,” which was established by Nick’s father, Bill Madaras, and friends and neighbors, to honor Nick’s memory and promote Nick’s dream of improving relations between American soldiers and Iraqi children through the sport of soccer. Shortly before his death, Nick asked his father to send him some soccer balls so that he could play with the game with Iraqi youngsters. Nick was going to give these balls to the children so they could enjoy playing soccer with the troops and develop friendships with them. Sadly, Nick was killed before the soccer balls were delivered. The “Kick For Nick” Foundation was established to carry out Nick’s vision for friendship and peace. Soccer balls are collected, they are each inscribed with Nick’s name on them and they are shipped to American soldiers in Iraq. These soldiers personally deliver the soccer balls to Iraqi children and tell them about Nick’s dream. To learn more about this wonderful project, please visit the website at [www.kickfornick.com](http://www.kickfornick.com) and [www.kickfornick.org](http://www.kickfornick.org). The site contains video about the program, as well as photographs of American soldiers and Iraqi children playing soccer and testimonial letters from American soldiers describing the positive affect this project has had on everyone.

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### **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](http://www.OperationDearAbby.net).

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**OTHER 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](http://feedingbroward.org). Thank you.

**THE GIFT OF LIFE:**

For information on how to become an organ donor, please visit [www.organdonor.gov](http://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](http://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](http://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.

**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](http://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](http://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](http://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](http://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](http://www.lungusa.org). Thank you.

**EASE FOUNDATION, INC.:** The mission of this 501(c)(3) non-profit foundation is "To aid those qualified residents who are in need of temporary emergency assistance with food and financial help. Our objective is to assist them back into a self-sustaining, productive life." EASE helps approximately one hundred families each month that come into the office for groceries. EASE only handles non-perishable items, paper products and canned goods for its pantry. The shelves are in need of food. If your business, church or organization would like to have food drive, please contact Linda Owen at (954) 797-1077 or e-mail Linda at [Linda\\_owen@davie-fl.gov](mailto:Linda_owen@davie-fl.gov). Thank you.

**MILES FOR MONDAYS:** The Miles For Mondays program was developed to encourage donors to give platelets on Mondays. Platelets are needed to treat patients who are in danger of bleeding and do not produce enough platelets themselves to protect against fatal internal bleeding. The program has now been expanded to include Saturday platelet donors as well. Just donate platelets two eligible Mondays or two eligible Saturdays in a row and earn American Airlines AAdvantage Miles. To schedule an appointment, please call the Community Blood Centers of South Florida at (800) 869-9628, ext. 5608 or visit online at [www.cbcsf.org](http://www.cbcsf.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, 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. I hope that you and the members of your family and staff are enjoying the beauty of autumn. Where is the time going? How can the year be almost over? How quickly the new school year is passing (although probably not fast enough for the students). Thankfully, the weather has cooled a little bit. I hope that you and the members of your family and staff are well. I wish all of you a very Happy Thanksgiving and a Healthy, Joyous and Prosperous Holiday Season and New Year. Many thanks for your loyal patronage for so many years. As always, Best wishes for much Good Health, Happiness, Success, and Peace (and Good Mediation, too) in 2009 and beyond.

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