

Significant Case Law For Attorneys and Mediators

In *Leff v. Ecker, M.D.*, 972 So. 2d 965 (Fla. 3rd DCA Opinion Filed December 19, 2007), the Defendants, Leff and Physicians Financial Consultants Corporation, moved to enforce a settlement agreement reached with Plaintiff in mediation. The Defendants appealed the trial court's order which denied their renewed motion to enforce the settlement agreement. The Third District held that the Plaintiff could not avoid the settlement agreement on grounds of mutual mistake, reversed the trial court's order and remanded for entry of an order enforcing the settlement agreement.

The Third District stated "... the record amply establishes that plaintiff went into the mediation conference without a clear picture of what the policy limits were for the incidents in question... Notwithstanding this limited knowledge, plaintiff chose to go ahead with the mediation and entered into an agreement at the end thereof. ...plaintiff made the decision to enter into the agreement."

The Third District rejected the plaintiff's argument that mutual mistake allows him to avoid the parties' agreement, reached after a mediation conference. The Third District stated: "The doctrine of mutual mistake was not created to relieve litigants of agreements entered into improvidently. The all-out efforts plaintiff engaged in to go behind the policy and ascertain, without question, what policies applied and what policy limits were, could have been performed before the mediation. The situation in this appeal would have been avoided."

Practice Tip

Parties beware. Parties who enter into a mediated settlement agreement with only limited knowledge of relevant facts, do so at their own risk. They cannot rely on the doctrine of mutual mistake to avoid the settlement agreement. They may be bound by the terms and conditions of their mediated settlement agreement. Be careful!

MY "NEW" WEBSITE IS UP AND RUNNING

The "new" website is now almost three years old. 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 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.

RECOMMENDED READING

In this edition of the newsletter, I am pleased to share with you two books written by two longtime friends and colleagues. I am NOT a paid endorser for these books, just a proud friend. Here they are:

"Ed'sitorials on Mediation: A Curmudgeon's Wit and Wisdom on the Perils and Pearls of Mediation" by Edward P. Ahrens, Jr. (Published in 2010 by Van Buren Books, vanburbuks@aol.com): I have had the pleasure of knowing the author for more than fifteen years. He is a veteran mediator as well as a keen observer of the mediation process. The book is divided into 58 short, entertaining chapters, each offering Ed's insightful observations about what goes on "behind the closed doors" of the mediation conference. These articles are filled with Ed's dry sense of humor and provide practical tips for veteran attorneys and mediators, as well as for novices who have never attended a mediation conference. Be prepared to laugh, learn and enjoy. This book will be a welcome addition to your ADR library.

"Miles Away... World's Apart: Empowering Lessons Gleaned From Experiences of a Whistleblower" by Alan Sakowitz (Published in 2010 by Legacy Series Press, LLC, www.legacyseriespress.com): I have known Alan since we were first year law students attending the University of Miami School of Law in 1978. He has written a fascinating story about the biggest financial fraud in South Florida from his perspective as a whistleblower

grounded in the compassionate values of his close-knit neighborhood. The author takes readers into the grandiose law offices of Florida attorney Scott Rothstein, and compares Rothstein's brash personality and ruthless conduct with the many unselfish acts of kindness performed by his modest neighbors. Like a modern "Tale of Two Cities", Sakowitz demonstrates how the worlds inhabited by Rothstein and himself, though geographically very close, are, philosophically, a million miles apart. This is a terrific book with an important message.

RECENT ANNOUNCEMENTS

My status as an approved primary trainer in certified circuit civil mediation training programs was reviewed and approved by the Office of the State Courts Administrator and will continue from October 9, 2010 through October 9, 2012.

The Superintendent's Screening Committee for The School Board of Broward County, Florida reviewed and approved my request to present "The Florida Bar's Legal Guide For New Adults" to students attending Broward County Schools.

Two of my articles, "Ten Ingredients For An Effective Mediation" (Chapter 12, pages 135 to 140) and "Visioning And Coaching Techniques In Mediation" (with Dr. Jeanne Maes, Chapter 37, pages 411 to 416) are featured in the American Arbitration Association's newly published **AAA Handbook on Mediation Second Edition** (2010). The AAA Handbooks are published by Jurisnet, LLC, 71 New Street, Huntington, New York 11743 phone: (631) 351-5430 www.arbitrationlaw.com. These handbooks bring to arbitration and dispute resolution professionals the latest thinking on arbitration and ADR from specialists in the field. The chapters were chosen from an extensive body of writings and provide interesting assessments about many facets of arbitration and dispute resolution practice. I am honored to be included in this impressive publication.

I have recently completed the training requirements needed to serve as a volunteer in The Florida Bar's Justice Teaching program. This is a wonderful program which enables attorneys to engage in

interactive discussions with students about the rights and freedoms guaranteed by the Constitution and the Bill of Rights. To learn more about becoming involved in Justice Teaching, please visit www.justiceteaching.org.

MEDIATION WEEK 2010

Charlie Crist, Governor of the State of Florida, issued a proclamation declaring the week of October 17-23, 2010 Mediation Week in Florida. Mediation Day was first established during the administration of the late Governor Lawton Chiles. Subsequently, Mediation Day was expanded to Mediation Week by Governor Chiles' successors in recognition that "Florida has been a leader in recognizing and promoting mediation as an alternative to litigation..."

DISPUTE RESOLUTION IN THE NEWS- PART I

An article in the December 6, 2010 edition of The Miami Herald (by Marco Chown Oved, Associated Press) reported that international mediators tried to intervene in the Ivory Coast's growing political crisis after both candidates in the disputed election said they were now president, raising fears the country could again be divided in two. The country was split into a rebel-controlled north and government-controlled south by a 2002-2003 civil war. The country reunited in a 2007 peace deal. Former South African President Thabo Mbeki arrived in Abidjan, Ivory Coast to try and mediate at the behest of the African Union. He said: "It's important not to have violence, not to return to war-to find a peaceful solution."

DISPUTE RESOLUTION IN THE NEWS- PART II

An article in the October 29, 2010 edition of The Miami Herald reported that Verizon Wireless agreed to pay at least \$53 million to customers who were charged "mystery" fees for data and will take steps to make its bills easier to read. Verizon also agreed to pay a \$25 million fine to the U.S. Treasury. Verizon, the nation's largest wireless-phone carrier, was accused of overcharging up to 15 million customers as far back as 2007. Verizon entered into a consent decree with the Federal Communications Commission.

DISPUTE RESOLUTION IN THE NEWS- PART III

An article in The Miami Herald reported that Lowe's Cos. Inc. dramatically amended a settlement for customers who bought defective Chinese or domestic wallboard from their stores, saying customers whose health or property was harmed can now be eligible for up to \$100,000 in cash. Under a previous agreement, Lowe's had offered to set aside \$6.5 million for victims, paying a maximum of \$4,500 in cash and gift cards to each person with tainted drywall in their homes. Lowe's latest offer was filed in Georgia state court and offered customers \$100,000 if an independent contractor can document that the consumer will or already suffered at least \$4,500 worth of property damage or \$4,500 worth of medical bills or symptoms related to the defective drywall. The proposed change must be approved by a judge. Lowe's denied selling tainted drywall and did not admit any wrongdoing.

DISPUTE RESOLUTION IN THE NEWS- PART IV

An article in the October 4, 2010 edition of The Miami Herald reported that the family of a 13-year-old Parkland, Florida girl who was seriously hurt on a Wisconsin amusement park ride reached a settlement with the park. The family's attorney said the terms of the settlement agreement with the amusement park are confidential and a judge will have to approve it.

DISPUTE RESOLUTION IN THE NEWS- PART V

An article in the October 26, 2010 edition of The Miami Herald reported that Miami-based Norwegian Cruise Line and the Justice Department reached an agreement in a lawsuit filed on behalf of cruise passengers who were deaf or hard of hearing or used wheelchairs on NCL cruises in Hawaii. Under the agreement, NCL will ensure such passengers have full access to activities on board or during shore excursions. NCL will also pay \$100,000 in damages to nine people with disabilities as well as \$40,000 in civil penalties to the United States.

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.

NOTABLE QUOTATIONS

"Character cannot be developed in ease and quiet. Only through experience of trial and suffering can the soul be strengthened, vision cleared, ambition inspired, and success achieved."
-Helen Keller

"I prefer to be remembered for what I have done for others, not what others have done for me."
-Thomas Jefferson

"Being a professional is doing the things you love to do, on the days you don't feel like doing them."
-Julius Erving

"The person with fortitude is the one who perseveres in doing what his conscience tells him to do. He does not measure the value of a task exclusively by the benefit he derives from it, but rather by the service he renders to others."
-St. Josemaria Escriva

"Success consists of going from failure to failure without loss of enthusiasm."
-Winston Churchill

"Never let life's hardships disturb you. No one can avoid problems, not even saints or sages."
-Nichiren Daishonin, Japanese Buddhist Monk

"Hear the meaning within the word."
-William Shakespeare

"If you can run one business well, you can run any business well."
-Richard Branson

“Curiosity keeps leading us down new paths.”
-Walt Disney

“Outside of a dog, a book is man’s best friend.
Inside of a dog, it’s too dark to read.”
-Groucho Marx

“You only grow by coming to the end of
something and by beginning something else.”
-John Irving

“Nothing is possible until you begin, then
everything is possible.”
-Author Unknown

“The beginning is half of the whole.”
-Plato

“It does not take much strength to do things, but it
requires great strength to decide on what to do.”
-Elbert Hubbard

“He who is outside the door has already a good
part of his journey behind him.”
-Dutch proverb

“We’re given second chances every day of our
life. We don’t usually take them,
but they’re there for the taking.”
-Andrew M. Greeley

“The fact is, nothing comes; at least nothing good.
All has to be fetched.”
-Charles Buxton

“Tomorrow is the most important thing in life...
comes into us at midnight very clean. It’s perfect
when it arrives and puts itself in our hands. It
hopes we’ve learned something from yesterday.”
-John Wayne

“I am only one; but still I am one. I cannot do
everything, but still I can do something; I will not
refuse to do the something I can do.”
-Helen Keller

“To be happy, drop the words, “If only...” and
substitute instead the words, “Next time...”
-Smiley Blanton

“Before you begin, consider well; and when you
have considered, act.”
-Sallust

“The best way to find yourself is to lose yourself
in the service of others.”
-Gandhi

“Delay is preferable to error.”
-Thomas Jefferson

“Ninety-nine percent of the failures come from
people who have the habit of making excuses.”
-George Washington Carver

MESSAGES OF THANKS TO OUR TROOPS
To remember our troops in Iraq, Afghanistan 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.

**22 YEARS AS A SUPREME COURT
CERTIFIED COUNTY AND CIRCUIT CIVIL
MEDIATOR; 21 YEARS AS A CERTIFIED
FAMILY MEDIATOR-AND
STILL COUNTING!**

February marks yet another anniversary as a certified mediator and another milestone. In February, 2011 I will celebrate my twenty-second anniversary as a Florida Supreme Court certified County and Circuit Civil Mediator and my twenty-first anniversary as certified Family 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 20 years as a certified County, Family and Circuit Civil Mediator.

“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.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. On Memorial Day, 2009, ESPN updated its story about this project and reported that more than 21,000 soccer balls inscribed with Nick’s name have been shipped to Iraq and delivered to Iraqi children. According to the Foundation’s November, 2010 e-newsletter, the last count for balls distributed by our troops to Iraqi, Afghani and African children was up to 32,079 (and still going strong)!

OUTSTANDING HBO DOCUMENTARY: “A SMALL ACT”

If you have the chance, please watch this inspirational program, which shows how a small act of kindness by Ms. Hilde Back, who sponsored the education of a poor boy in a Kenyan village, had a profound impact upon her, the boy and the entire community in which he lived (and beyond). This fall, the producers are launching the film’s “What’s your Small Act?” screening campaign across the country. Through this initiative, the producers are hoping to facilitate as many screenings of the film across North America as possible, encouraging community organizations, churches, high schools, universities, and non-profits to use the film as a way to grow support not only for their own missions,

but for the more universal notion that small acts really do have the power to effect great change. The hosting process is simple, and organizations are encouraged to band together with other co-sponsors to bring a screening about in their area. They are welcome to treat the screening event as a fundraiser, either for the Hilde Back Education Fund, or for a charity or cause of their choice. For more information about how to host this film, please contact Caitlin Boyle, Outreach and Community Screening Producer, at (347) 682-2483 or e-mail her at: asmallact@filmsprout.org. There is also a HOST A SCREENING page on the website to download a brief hosting application.

WOMEN IN DISTRESS PROVIDES VALUABLE RESOURCES

As a member of The Florida Bar and a Supreme Court of Florida certified County, Family and Circuit Civil Mediator, I am required to complete a certain number of Continuing Legal Education and Continuing Mediation Education (CLE and CME) hours on the important subject of Domestic Violence. This year, I attended two outstanding workshop presentations by Haley Cutler, Manager of Professional and Community Education for Women in Distress of Broward County, Inc. Women in Distress (WID) provides various services and resources to individuals who are victims of Domestic Violence and is ready and willing to share basic information about Domestic Violence to individuals and organizations for FREE. For articles about Domestic Violence, please visit www.mediate.com/articles/vestalA3.cfm and www.thegreenbook.info/documents/EC_Mediate_DV.pdf. There is also an interesting protocol from Michigan for mediators in that state and has some good screening tools that may be useful at <http://courts.michigan.gov/scao/resources/standards/odr/dvprotocol.pdf>. Some of these resources may help to save the lives of your clients or loved ones who may be the victims of Domestic Violence. For more information, contact Women in Distress at www.womenindistress.org. To contact Haley Cutler in Broward County, you can call her at (954) 760-9800 x1261 or e-mail her at: hcutler@womenindistress.org.

**KIWANIS INTERNATIONAL PARTNERS
WITH UNICEF TO ELIMINATE
MATERNAL/NEONATAL TETANUS (MTF)**

In 40 countries in Africa, Asia, Europe and North America, maternal and neonatal tetanus (MNT) can quickly turn the joy of childbirth into tragedy. MNT kills one baby every nine minutes. Its effects are excruciating-tiny newborns suffer repeated, painful convulsions and extreme sensitivity to touch. There is little hope of survival. And tetanus kills mothers too. The disease strikes the poorest of the poor, the geographically hard to reach and those without healthcare. MNT is highly preventable. Just three doses of a 60-cent immunization protect mothers, who then pass on the immunity to their future babies. Together, Kiwanis and UNICEF are hoping to stop this deadly disease. 129 million mothers and their future babies must be immunized. This requires vaccines, syringes, safe storage, transportation, thousands of skilled staff and more. It will take \$110 million-and the dedicated work of UNICEF and the Kiwanis family. UNICEF and Kiwanis hope to eliminate MNT by 2015, and give the poorest mothers and babies the chance to lead the healthy lives they deserve.

For resources and program updates, or to give now, please visit TheEliminateProject.org.

**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. 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.

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. 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. How is it possible that another year is rapidly coming to an end? The students who were just going "back to school" will soon be home for the winter break. Sadly, the college football season will soon be over. While it has been a disappointing year for many of our Florida teams, we should be pleased that so many of our local teams will be playing in bowl games during the holiday season. The Miami Dolphins' season is still not over (yet). Although the Miami Heat's newly assembled dream team won't go undefeated this basketball season, the team is now playing much better and looks ready to contend for an NBA championship. We shall see. I hope you and the members of your family and staff had a terrific Thanksgiving and are getting ready to enjoy the wonders of the Holiday Season. As always, I am truly grateful for your generous and

loyal patronage for so many years. This year, as every year, you have my best wishes for abundant Good Health, Happiness, Success, and Peace (and Good Mediation, too) in 2011 and beyond.

BRUCE A. BLITMAN, ESQ.

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