



JANUARY 2008

CASES & RESOLUTIONS:

Settlement Increases Company's Market Value by 70%

A \$130 million jury verdict in December motivated American Dental Partners Inc. to settle the breach of contract litigation through mediation, resulting in a 72% surge in the price of the company's stock after the settlement was announced. American Dental provides business services to dental practices, including PDG, P.A. which alleged that among other things American Dental refused to give dentists access to their own funds, paid itself unreasonable service fees, and withheld money for new equipment. The settlement agreement includes American Dental transferring leases and assets for 25 of 31 facilities, payment by PDG of \$19 million in future management fees, forgiveness by American Dental of a few million in accounts receivable due from PDG, among other details. The settlement is subject to the approval of secured lenders and requires the parties to enter into definitive agreements by a specified date.

[CNNMoney.com](#) (December 27, 2007); [Boston Globe](#) (December 27, 2007)

"007" Sent to Mediation

The "slash-and-burn" litigation of 007's one-time alter ego Sir Sean Connery and his downstairs neighbor in a Manhattan town house has become "exceedingly burdensome" to the court; the judge has urged the parties to seek mediation to obtain goals not achievable through litigation. In addition, with litigation and arbitration between the parties dating back to 2001 over renovations to the building, including six lawsuits filed by Connery alone, the judge ordered that the parties must obtain the court's permission before filing any further litigation.

[People News](#) (December 29, 2007)

Georgia Supreme Court Creates Mental Capacity Exception to Mediation Confidentiality

Mediation Quote:

"Effective [mediation] practice reflects the skilled integration of a number of components – theoretical knowledge, attention to process, skills and practice experience, commitment, and above all, the realisation in action of certain essential if elusive personal attributes. . . . [T]hese attributes [are] the virtues of extraordinary patience; word sensitivity and power; personal maturity and authority; the ability to engage readily with people; dedication; and a curious and enquiring mind. In addition, . . . effective practice requires not only the capacity to make delicate judgments relating to the timing of interventions, but emotional awareness, and imaginative thinking that include[s] risk-taking."

- Marian Roberts, *Developing the Craft of Mediation: Reflections on Theory and Practice* (Jessica Kingsley Publishers 2007) at 215

Other Cases & Resolutions:

U.S. Court of Appeals for Ninth Circuit Urges Mediation of Fifteen Year Battle over School Programs to Teach English in Arizona,

While emphasizing the importance of mediation confidentiality and urging caution, the Georgia Supreme Court in [Wilson v. Wilson](#) created an express exception to mediation confidentiality when a party tries to void a signed settlement agreement by asserting lack of mental competence. Although the divorcing couple who mediated without counsel present signed an agreement stating that all aspects of the mediation would be privileged and "absolutely confidential," the Court affirmed that it was permissible for the mediator to testify about the mental competence of the party who challenged the settlement agreement by asserting that he was depressed, bipolar, on several medications and did not remember signing the settlement or know it was legally binding. The Court stressed that there was no testimony given on the substance of the mediation or specific communications and that testimony was needed in order to protect the integrity of the mediation process and avoid an unjust result. The Court found it helpful that some courts treat an assertion that a mediated agreement is unenforceable as a waiver of confidentiality, which is in line with an exception in the Uniform Mediation Act (which has not been adopted in Georgia). The Court also noted that it was permissible for the mediator to draft the settlement agreement for the parties.

[Wilson v. Wilson](#), No. S07F1201 (Ga. Sup. Ct., Nov. 21, 2007)

Rhode Island Supreme Court Requires State Attorney General to Continue Mediation of Criminal Matter

The Chief Justice of Rhode Island strongly encouraged the parties to continue mediating a contentious criminal matter over the objections of the state's Attorney General and despite the Court's own rules on mediation. Criminal charges arose from violence during a police raid on a Narragansett Indian smoke shop that was selling cigarettes on Indian land without charging state taxes. When the Governor appealed a ruling that he must testify about orders he gave to state police prior to the raid, the Rhode Island Supreme Court ordered the parties to mediate the entire criminal matter. After participating in a mediation session, the state Attorney General strongly objected to mediation as futile and inappropriate, pointing to the Court's rules that limit mediation to civil matters. But at a hearing in late October the Chief Justice stated that "[w]e weren't kidding" in the order and instructed the parties to continue with the mediation.

[The Providence Journal](#) (November 25, 2007)

Telecom Giant Mediates with U.S. Agencies to Avoid Prosecution

Alcatel-Lucent agreed to pay \$2.5 million in fines to the U.S. Department of Justice and the U.S. Securities and Exchange Commission after mediations with the agencies, resolving bribery allegations involving sightseeing trips to the U.S. that Lucent allegedly provided to Chinese officials to secure purchase contracts.

[China.org.cn](#) (December 25, 2007)

Fiji Deregulates Telecom Industry Through

[AP Alert - Arizona](#) (December 5, 2007) (Subscription Required); [KOLD News 13](#) (December 5, 2007)

Judge Sets Stage for Mediation by Urging Developers to Review Issues Raised by Environmentalists and Neighbors and Agree on Scope of Mediation, [Press Republican](#) (November 10, 2007)

Federal Litigation Against Veterans Affairs Department for Data Breach Survives Motion to Dismiss and Is Sent to Mediation, [National Journal's Technology Daily](#) (November 29, 2007)

Parties Ordered to Mediate over Unfinished Florida Hockey Arena in Attempt to Avoid Foreclosure and Lien Trial, [Bradenton Herald](#) (December 15, 2007)

Judge Orders Mediation of Wrongful Death Claim by Murdered Rapper's Family Against Los Angeles, [LA Times](#) (December 27, 2007)

Parties Voluntarily Considering Mediation of Federal Litigation Alleging Massachusetts Town Pushed Out Disabled People, [MetroWest Daily News](#) (November 15, 2007)

Florida City and County Mediate Land Use Issues with Participation by Elected Officials in Open Meeting, [Venicegondolier.com](#) (November 23, 2007)

District Attorney and City Attorney Attempting to Mediate Law Enforcement Issue, But Stuck on Which Parties Should Attend, [Victoria Advocate \(TX\)](#) (December 13, 2007)

Mediation

In four days of negotiations, World Bank-appointed mediators helped Fiji government representatives and the management of several telecommunications companies reach agreement on conditions to deregulate the Fiji telecommunications industry, which had been run as a monopoly for decades. The agreement is subject to approval of the Fiji Cabinet and company boards.

[Fiji Times](#) (November 22, 2007)

NEWS & INITIATIVES:

Survey Concludes that Mediation Saves U.K. Businesses a Billion Pounds a Year

A survey by the Centre for Effective Dispute Resolution (CEDR) calculates that mediation in the U.K. saves businesses over £1 billion in legal fees, damaged relationships and lost productivity, at a cost of only £8 million in mediation fees. The survey concluded that there were about 3,700 mediations in the last year, which is up a full one-third since CEDR's 2005 survey. Over half of these mediations were conducted by only 35 individual mediators, with top mediators charging over £3,000 per case and earning over £280,000 a year. The survey also covered the experience and backgrounds of mediators, performance in mediation, ethical issues and perspectives on standards and regulation.

[Sourcewire](#) (November 12, 2007); [CEDR Survey](#) (November 8, 2007)

World Bank Urges Mediation of Corporate Governance Conflicts

The Global Corporate Governance Forum of the World Bank Group's International Finance Corporation recently released a 60-page analysis strongly encouraging the use of mediation by corporations in resolving both internal and external corporate disputes. The paper discusses mediation approaches and obstacles, giving examples throughout. Among other things, the publication recommends that senior management and directors be trained in mediation techniques, that professional mediators increase their knowledge of corporate governance issues, that corporate professional organizations offer mediation services and training, and that codes of best practices recommend use of mediation.

[Webwire](#) (November 9, 2007); [Mediating Corporate Governance Conflicts and Disputes](#)

Arkansas Adopts Pilot Appellate Mediation Program

Arkansas will begin an appellate mediation program on a pilot basis in September 2008, pursuant to a December 13 decision of the Arkansas

(Subscription Required)

University of Colorado Resolves Sexual Assault Case after Mediation Involving President and Policy Changes, Plus Hefty Payment, [Rocky Mountain News](#) (December 6, 2007)

University of California in Mediation with City over Expansion Plans, [Santa Cruz Sentinel](#) (December 28, 2008)

Public Meeting Determines Issues and Format of Mediation Process Concerning Public Library in Maine, [The Times Record](#) (December 6, 2007)

Mediation over Alleged Violations of Ohio Public Records Law Began by Teleconference and Is Going Well, [Advertiser-Tribune.com](#) (December 14, 2007)

Three Canadian Soccer Associations Agree in Mediation to Form Unified Youth Soccer Organization for Edmonton, [Market Wire](#) (November 30, 2007)

Counsel in Successful Multi-Million Dollar Mediation Against Insurer Credits Extensive PowerPoint on Insurer's Bad Faith Negotiation Presented in Earlier Unsuccessful Mediation, [Daily Business Review](#) (December 10, 2007)

Litigation over Sale of Oscar Statuettes Goes to Mediation, [The Desert Sun](#) (January 4, 2008)

Kaufman Shoe Company Closing in 2000 Left Millions in Unpaid Severance, But Mediation May Clear Path of Other Litigation, [TheRecord.com](#) (November

Supreme Court. According to rules on the Arkansas Judiciary's website, while most civil cases will be eligible for the mediation program, participation is voluntary. A roster of appellate mediators is provided, and if funds are available the program will pay mediators \$225 an hour for up to eight hours per case. Most appellate deadlines can be stayed for 60 days pending mediation, and mediation is to be completed within 60 days after an order granting the stay.

[Arkansas Supreme Court Opinion](#) (December 13, 2007); [Appellate Mediation Rules; Program Background](#)

Iowa and Ohio Turn to Mediation in Home Loan Crisis

Seeking pragmatic solutions to address subprime mortgage foreclosures, Iowa Attorney General Tom Miller hired the Iowa Mediation Service in September to establish a toll-free phone line and work with Iowa homeowners. The mediation service has received 4,100 calls and is working to settle over 500 mortgage cases. This is a familiar path for Attorney General Miller, who helped enact a state law in the 1980s requiring lenders to mediate troubled farm loans prior to foreclosure. The Iowa Mediation Service began in 1985 and resolved 21,000 cases during the farm crisis. In Ohio, the state Supreme Court is planning to implement pilot projects in three counties using mediation to resolve foreclosure disputes, while trial judges in two other counties in Ohio are working to develop mediation programs to reduce foreclosures.

[New York Times](#) (December 9, 2007) (Subscription Required); [Mansfield News Journal \(Ohio\)](#) (December 4, 2007); [The Enquirer](#) (January 3, 2008)

Florida Tweaks Insurance Mediation Program

Florida's mediation program has assisted over 13,000 homeowners with disputed hurricane claims in recent years with an 80% settlement rate and it has been emulated in other states, but officials are tweaking the program to make it even more efficient. Issues being addressed include requiring notice be given by homeowners to insurers when reopening claims, such as when repairs cost more than estimated, and the state agency using safeguards in eligibility rules for mediation and sending consumer-friendly letters.

[Palm Beach Post \(Florida\)](#) (November 25, 2007) (Subscription Required)

Mediation Successful in Providing Consumer Restitution

Missouri's attorney general recovered \$9.2 million for consumers through mediation in 2007, greatly exceeding the previous record of \$5.2 million in 2006. The attorney general's office handled about 100,000 contacts from consumers during 2007, including 36,000 formal complaints.

[US State News](#) (December 31, 2007) (Subscription Required)

Maine's Court Mediation Program

22, 2007)

Eleven-Year Legal Battle Between Minister and Presbyterian Church over Sex Discrimination Going to Mediation, [CBC News Canada](#) (December 28, 2007)

Dublin Soccer Club and Neighbor Willing to Mediate €35 Million Property Dispute at Urging of Judge, [Irish Times](#) (December 11, 2007) (Subscription Required)

U.K. Town Council Considers Mediation in £40 Million Dispute by Construction Services Firm for Lost Profit in Cancelled Management Project, [Builder & Engineer](#) (November 16, 2007)

Australian Supreme Court Refers GlaxoSmithKline Pharmaceutical Litigation to Mediation, [PharmaLive](#) (December 18, 2007)

Other News & Initiatives:

Alabama's Requirement of Mediation Prior to Arbitration of Attorneys' Fee Disputes Is Both Criticized, Defended, [Birmingham News](#) (November 12, 2007) (Subscription Required)

Business ADR Conference Considers Diversity of Mediation Styles and Ethical Considerations, Along with Growth of Mediation, [Maryland Daily Record](#) (November 12, 2007)

Corporate Counsel Discuss Increasing Use of ADR, Inclusion in Contracts and Impact on Discovery, [The Metropolitan Corporate](#)

Celebrates Thirty Years

Court-annexed mediation in Maine began as an experiment in small claims court thirty years ago, but has become an "inextricable part" of the framework of the court system, according to a Maine Supreme Judicial Court Justice. Last year 150 court mediators conducted over 5,000 family and small claims mediations.

[Fosters.com](#) (November 10, 2007)

Senator Inhofe Suggests Mediation for Poultry Waste Dispute, Includes Related Provision in Farm Bill

With litigation continuing by the Oklahoma Attorney General against numerous poultry companies in the state, U.S. Senator Inhofe (R-OK) is seeking common ground through mediation. Specifically, Senator Inhofe successfully included an amendment which would encourage long term solutions for poultry waste in the major Farm Bill (H.R. 2419) which passed the Senate on December 14.

[Tulsa World](#) (December 15, 2007); [Associated Press](#) (December 15, 2007)

Hopi Reservation Begins Mediation Program with Federal Support

A mediation group funded by a three-year \$300,000 federal grant has been formed on a Hopi Reservation, with the goal of being a role model for other Native American reservations. The concept was developed by the late chief justice of the Hopi Appellate Court. A group of nine has received training in mediation tailored to fit Hopi needs and traditions.

[The Independent](#) (January 3, 2008)

Mediation Gaining Momentum in Israel

Mediation in Israel has developed momentum over the last year, since the Justice Minister approved implementation of a mandatory court-annexed mediation program to begin in March 2008. The pilot program in the magistrate courts of three cities will require parties in civil cases above a certain size to participate in a mediation session prior to going to trial. The court is proceeding carefully with the mandatory program, and is seeking to learn from mediation programs in courts around the world, noting that there are substantial differences in approach between common law jurisdictions (such as the U.S. and U.K.) and civil law jurisdictions (such as Continental Europe).

[The Jerusalem Post](#) (December 5, 2007)

Australian Agency Uses Mediation to Assist Small Businesses

[Counsel](#) (January 2008)

Increase in Condo and Homeowner Associations Results in More Complaints and More Mediation by Maryland Attorney General's Office, [Southern Maryland On-Line](#) (December 3, 2007)

Run-off Insurance Event Suggests that Mediation May Avoid Problems Experienced Using Arbitration, [Business Insurance](#) (December 24, 2007) (Subscription Required)

Mediation in U.K. Insurance Industry Analyzed, Especially Personal Injury Claims, [Post Magazine](#) (November 15, 2007) (Subscription Required)

World Halal Council (Which Pursues Uniform Certification of Products Meeting Muslim Dietary Laws) Elects New Chairman of Mediation and Arbitration Committee, [The Times](#) (December 9, 2007)

The Victorian Small Business Commission uses its broad investigative powers and mediation to end unfair market practices and bullying of small businesses by larger companies. The Australian agency has increasingly focused on franchising relationships, along with retail tenancy disputes and other contract issues. The Commission encourages mediation as a way to resolve conflicts without necessarily ruining relationships. The Commission has dealt with 4,000 complaints since the office opened in 2003 and resolved about 80% before or at mediation. The Commission also encourages companies to avoid conflict by utilizing specified practices to sustain good working relationships.

[My Small Business](#) (December 17, 2007)

Tonga Encourages Mediation During Law Week

The highlight of Law Week in Tonga this year was the prominence of mediation, according to the Chief Justice of Tonga. A mediation film shown every night on Tongan television was very popular and greatly increased knowledge about mediation among both lawyers and the public. With financial assistance from the World Bank, copies of the mediation video are being sent to every village and church committee in the country.

[Tonga-Now](#) (November 23, 2007)

Other International Mediation Developments

- **China's** New Administrative Reconsideration Law Permits Government to Conduct Mediations in Administrative Appeals, [World News Connection](#) (December 19, 2007) (Subscription Required)
- **Chinese** Authorities Urge Mediation Service Providers to Develop Common Accreditation Benchmark, and Seek Increased Education about Mediation for Lawyers and Students, [South China Morning Post](#) (December 1, 2007) (Subscription Required)
- Chinese Government Establishes Cross-Sector Group to Study How to Promote Mediation in **Hong Kong**, [South China Morning Post](#) (November 25, 2007) (Subscription Required)
- The Asia Foundation and McConnell Foundation Are Expanding Program for Community Mediation across Twelve Districts in **Nepal**, [Earth Times](#) (November 26, 2007)
- **Indian** State of Tamil Nadu Assists Other States in Establishing Mediation Centers; Tamil Nadu Mediation and Conciliation Centre Moves Toward Collecting Fees from Clients, [Hindu \(India\)](#) (November 14, 2007)
- **Tamil Nadu** Chamber of Commerce and Industry Establishes In-House Arbitration Tribunal and Mediation Center, [Hindu \(India\)](#) (November 25, 2007)
- Year-Old Mediation Center in Bangalore, **India** Resolved 600 Cases in First Year with 75 Lawyers Trained as Mediators; "Mediation Week" to Be Held in February, [Hindu \(India\)](#) (November 27, 2007)

- In **Pakistan**, the Karachi Centre for Dispute Resolution Urges Business Community to Mediate Commercial Disputes, [Business Recorder](#) (December 6, 2007) (Subscription Required)
- Citizens Mediation Center in Lagos, **Nigeria** Mediates Thousands of Landlord-Tenant, Workplace, Family and Other Cases, [AllAfrica.com](#) (November 21, 2007) (Subscription Required)
- **Singapore** Resolves Confusion over Enforceability of Settlement Agreement when Judge Is Mediator, [Straits Times](#) (January 4, 2008) (Subscription Required)
- **Philippines** Spreads Mediation to Sarangani Province with New Mediation Center; Nationwide, 82,000 Cases Referred to Mediation in Six Years, [PIA Daily News Reporter](#) (December 4, 2007)
- **Fiji** Ponders Next Step after Court Rules Against Argument that Mediation Should Satisfy Arbitration Requirement in Labor Agreement, [Fiji Government Press Release](#) (December 20, 2007); [Radiofiji.com](#) (December 20, 2007)

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