

Mediation Trends



Mediation Offices of Steve Cerveris

An Occasional Newsletter
January, 2007

When a Settlement Isn't Really a Settlement!

In the recent decision, *Fair v. Bakhtiari (Stonesfair Financial Corporation)* S129220 (12-14-06) (not yet approved for publication), the California Supreme Court held that a settlement memo prepared at a mediation is only binding and admissible when it *directly* expresses the parties' intent to be bound by the document they sign.

At the end of partnership dissolution mediation, the parties executed a handwritten memo prepared by Plaintiff's counsel listing settlement terms including a clause that all disputes were subject to JAMS arbitration rules. A Case Management Report informed the Court the matter settled at mediation.

The settlement later fell apart and Plaintiff moved to compel arbitration pursuant to the memo. Defendants objected claiming there was no enforceable agreement and that the settlement memo was inadmissible as a confidential writing prepared in the course of mediation pursuant to Evidence Code section 1119(b). Plaintiff argued that the inclusion of an arbitration clause rendered the memo admissible and enforceable pursuant to Evidence Code section 1123(b).

The trial court excluded the memo; the appellate court reversed and upheld the validity of the settlement memo. The Supreme Court reversed holding that to preserve mediation confidentiality, under 1123(b) a writing must "directly express the parties' agreement to be bound by the agreement they sign."

The moral of this story: make sure to include the precise language referenced in 1123(b) that "[t]he agreement provides that it is *enforceable or binding* or words to that effect" to effectuate a binding settlement at mediation.

2006 HIGHLIGHTS:

January: Continued Second year term on the State Bar of California's Committee on Alternate Dispute Resolution. Appointed to serve on the LASC's ADR Committee and Operations and Q.A. Subcommittees.

February: Speaker at the LASC's Litigation Program for Attorneys on Court-annexed mediation.

August: Speaker at the Constitutional Rights Foundation's Summer Law Institute at UCLA Law School on Mediation; Speaker at the LASC's Litigation Program for Attorneys on Court-annexed mediation.

September: Roundtable Discussion Leader at the California Employment Lawyers Association's Annual Conference.

October: Speaker at the State Bar Annual Conference in Monterey: "Making the Most of your Court-Sponsored Mediation" and "How to Maneuver through Ethical Minefields in Mediation."

November: Speaker at SCMA's Annual ADR Conference at Pepperdine's Straus Institute.

Honors: Invited to join the Distinguished Panel of Neutrals of the International Institute for Conflict Prevention & Resolution (CPR); Invited to become a Diplomate Member of the California Academy of Distinguished Neutrals; Named as a 2006 Southern California "Super Lawyer" in the field of Mediation.

*Wishing you a healthy,
prosperous and peaceful 2007!*

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