



**Keith's Perspective:** *"Mediation is a powerful, yet underutilized tool for resolving serious conflicts, and often saves important business and personal relationships as well. Although mediation is not magic, and requires hard work by the parties, as an experienced mediator I have time and again directed its power to turn difficult situations around and end bitter drawn-out litigation. I invite you to consult with me, as I am committed to the mediation process and fostering understanding of how mediation can help you and your business or clients."*

**April 1, 2005**

## In This Issue

### Cases & Resolutions:

- Mediation Settlement Agreement Scrutinized Closely: *Goodrich Corp. v. Autoliv ASP, Inc.*
- Decision-maker as Mediator Can Sour Mediation: *Schauf v. Schauf*

### News & Initiatives:

- "This Time We Mean It": Utah Re-Emphasizes Agency Use of ADR
- New Jersey Considers Ending Free Mediation
- North Carolina Courts May Send More Cases to Mediation
- Mediation of Complaints Against Police Expanding
- Mediation Service Helps Maine Consumers
- U.K. Launches National Mediation Helpline
- Australia Considers More Workplace Mediation

## CASES & RESOLUTIONS:

### Mediation Settlement Agreement Scrutinized Closely:

#### *Goodrich Corp. v. Autoliv ASP, Inc.*, A106077 (Cal. App. 1st Dist. 2005)

Even though the parties signed a memorandum of settlement after mediation stating that their agreement was binding and intended to settle all issues, the California Court of Appeals concluded that the parties had failed to agree to the "same thing" on one material point and thus there was no enforceable settlement agreement. Noting that the parties disagreed from the outset on the terms of a more formal settlement agreement and refused to return to mediation, the court concluded that the issue of whether yearly costs were capped or could be rolled over from year to year was sufficiently material to prevent formation of a binding contract. The appellate court reversed the trial court, stating that whether the agreement was sufficiently definite was a question of law that could be reviewed de novo.

[View Opinion](#)

### Decision-maker as Mediator Can Sour Mediation: *Schauf v. Schauf*, 2005 WL 497133 (Kan. App. 2005)

The Kansas Court of Appeals held that the better practice is not to assign one person to be both mediator and master (with authority to try issues in the case) because "this taints the spirit of open disclosure in mediation and it taints the impartiality of the master." However, a party must promptly object to the dual assignment of roles or the right to object is waived. Here, after nine years of litigation, the trial court appointed a senior judge as both mediator and master to help feuding family members resolve accounting issues and damages relating to the family dairy farm, without objection from either side. When mediation failed, the remaining issues were tried to the master, and the subsequent appeal was unsuccessful.

[View Opinion](#)

## NEWS & INITIATIVES:

### [“This Time We Mean It”: Utah Re-Emphasizes Agency Use of ADR](#)

*ADRWorld.com*, March 11, 2005

The Utah legislature passed a resolution calling on state and local government agencies to rely on alternative dispute resolution (ADR) as a “preferred option” for preventing and resolving public and private conflicts. While existing Utah law already encourages use of ADR to resolve disputes, the resolution urges agencies to take full advantage of that authority in order to reduce litigation costs. The resolution was quickly approved in both the Senate and House before being sent to the governor in March for filing.

[View Article](#) (subscription required); [View Text of Resolution](#)

### [New Jersey Considers Ending Free Mediation](#)

*New Jersey Law Journal*, March 14, 2005

To obtain greater professionalism in its civil mediation program, the New Jersey Supreme Court is contemplating whether to end its “first three hours free” rule, which is causing many of the best mediators to quit. Instead, the court may permit a charge of \$100 per hour for the first three hours. Mediators assert that the current rule causes parties to take mediation less seriously, and that some parties give up when the free time runs out, even though a little additional effort could resolve the dispute. The court-ordered civil mediation program has expanded from four to seventeen counties in New Jersey over its five year existence, and mediated about 4,000 cases last year.

### [North Carolina Courts May Send More Cases to Mediation](#)

*ADRWorld.com*, March 24, 2005

Pending North Carolina legislation would increase mediation in the state by giving all superior court clerks the authority to send cases within their jurisdiction to mediation. Unlike other states, North Carolina’s superior court clerks are judges of probate and other issues such as public land condemnation, foreclosures, adoptions and guardianship, in addition to their administrative responsibilities. Notably, the legislation would allow the clerks to compel attendance of named and interested parties as well as non-party participants who may have useful information which could help the mediation.

[View Article](#) (subscription required); [View NC Senate Bill 805](#)

### [Mediation of Complaints Against Police Expanding](#)

*The Oregonian*, March 14, 2005

Mediation is increasingly being used in Portland, Oregon and elsewhere in the country to resolve complaints by the public against police officers, allowing both complainants and officers an opportunity to better understand the concerns and actions of all involved. Cases range from

### Mediation Quote

“The art of the mediator is to paint almost invisibly, play a beat that will work but no one will notice, or to direct in such a way that heroes are born. Unlike an artist, you never get to show your work and because you were in the background your work may also be forgotten. But, the disappearing nature of your craft is part of the art as well.”

- Eric R. Galton,  
[Ripples from Peace Lake](#)

### Check Out This EU Site:

Click [here](#) for a Green Paper and information about the European Union’s approach to mediation in civil and commercial matters

## Contact Information

Please contact Keith with dispute resolution questions and to discuss any matters or issues that might be suitable for mediation or facilitation:



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mistaking victims for perpetrators, to cultural misunderstandings and problems caused by short-staffing. Portland seeks to have ten percent of its 1,000 annual complaints for alleged police misconduct addressed through mediation. Portland joins larger cities, including Washington, D.C. and New York City, in relying on mediation for police complaints.

### Mediation Service Helps Maine Consumers

*Bangor Daily News*, March 17, 2005

Disgruntled Maine consumers can take their complaints to mediation, rather than going directly to court. The Maine Attorney General's Volunteer Consumer Mediation Service offers free complaint resolution to anyone who uses products and services in Maine. The Attorney General's office also keeps an eye out for repeated, similar complaints against a business and determines whether enforcement action is needed. Neutral volunteer mediators trained in consumer law are handling about twenty percent of the 8,000 contacts from consumers each year; the resolutions involve payment of hundreds of thousands of dollars each year, along with other types of solutions reached by the parties.

### U.K. Launches National Mediation Helpline

*The Liverpool Daily Post & Echo Ltd.*, March 8, 2005

People throughout England and Wales can now make a local call to a National Mediation Helpline to obtain information about resolving personal injury, small claims, and business and consumer disputes through mediation. Launched in March as a pilot project that will run until November, the National Mediation Helpline is a collaborative effort of public and private groups to encourage use of mediation outside the courts. Operators at the Helpline provide detailed information and put callers in touch with mediation providers. Mediators are paid on a sliding scale depending on the size of the case. The Helpline is being publicized by county courts sending out information to litigants and through posters, leaflets and a Helpline website.

Go to [Helpline Website](#)

### Australia Considers More Workplace Mediation

*Lawyers Weekly Magazine*, March 24, 2005

The Australian federal Coalition committed AU \$2 million (US \$1.5 million) to provide free mediation services for workplace disputes involving small businesses, as an alternative to the conciliation services offered by the Australian Industrial Relations Commission. Legislation mandating mediation in workplace cases is also being considered. This has stirred controversy and debate about whether more mediation is needed and how it would differ from the conciliation offered by the Commission, which is described by users as rights-based and evaluative.