



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."*

May 1, 2005

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CASES & RESOLUTIONS:

Microsoft and Gateway Mediate and Settle Antitrust Dispute

Out-law.com, April 12, 2005; *Wall Street Journal*, April 12, 2005

Microsoft and Gateway have mediated and settled a long-running antitrust dispute with Microsoft agreeing to pay \$150 million over four years, while admitting no liability. The settlement resolves previously undisclosed claims that Gateway pursued as a result of findings in the Department of Justice's high-profile antitrust suit against Microsoft in the late-1990s, which was itself resolved through mediation in 2002.

View [Out-law.com Article](#); [View WSJ Article](#) (Subscription Required)

Mediation Term Sheet Enforceable: *Tender Loving Things, Inc. v. Robbins*, 2005 Cal. App. Unpub. LEXIS 3470, (April 20, 2005)

In a patent dispute concerning a scalp massager called "The Tingler," a stipulation for settlement and "term sheet" signed by the parties after mediation was held enforceable by the California court of appeals despite the parties' intention of completing a more polished settlement agreement. The court held that the fact that parties detailed stipulation contemplated a subsequent "final agreement" does not override the fact that the parties agreed that the stipulation itself could be enforced and all key term were in the stipulation, noting that an uncompleted dispute resolution clause was not key. The court also rejected arguments that the mediation agreement was reached by fraud or mistake, stating that a party cannot rely on statements by an opponent in mediation any more than in court proceedings, since each side may present its views in the most favorable light.

View [Opinion](#)

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Mediation Quote

"People don't want more information... They want faith – faith in you, your goals, your success, in the story you tell. It is faith that moves mountains, not facts."

– Annette Simmons,
The Story Factor

IBA Mediation Newsletter

The first issue of the International Bar Association's Mediation Newsletter (Vol. 1, No. 1) with 22 articles from 16 countries is now available and linked [here](#).

Unsigned Mediation Settlement Agreement Cannot Be Used as Shield: *Cohen Schatz Associates v. Perry*, 2005 WL 891239, 2005 N.C. App. LEXIS 807 (April 19, 2005)

Although the parties reached an agreement in mediation, one side failed to sign the written settlement agreement, so the North Carolina Court of Appeals held that the settlement could not be used to block ongoing proceedings in the litigation. The appellate court agreed that a properly documented settlement would render litigation over the settled claims moot. However, the court refused to overturn summary judgment, noting that the objecting party had neither signed the settlement agreement nor sought to enforce it.

[View Opinion](#)

NEWS & INITIATIVES:

ABA Group Finalizes Confidentiality Guide for Federal ADR

ADRWorld.com, March 31, 2005

After four years of effort, an ABA ad hoc committee on federal alternative dispute resolution (ADR) confidentiality has adopted a detailed policy statement providing guidance on confidentiality issues and suggesting best practices. Notably, the guide states that participants in federal ADR proceedings can agree to greater confidentiality protections than those set forth in the federal Administrative Dispute Resolution Act (ADRA). This addresses an issue raised by section 574(b)(7) of the Act, which provides that communications made in a joint session are not protected from disclosure. At least one agency has interpreted the Act as prohibiting separate agreements going beyond its terms. The ABA guide encourages parties to extend confidentiality protections beyond what is provided in the Act by simply signing a document agreeing to the confidentiality of the proceeding (which binds signatories but not third parties). The ABA committee included many representatives of federal agencies and public and private ADR groups, who agreed on processes and standards for addressing access requests, which may avoid disclosures in future investigations. The next step is to encourage agency implementation of the policy statement.

The final ABA guide is expected to be publicly available in several weeks; in the meantime, the 96-page draft containing the final substantive guidelines is available electronically from Keith Seat.

[View Article \(Subscription Required\)](#)

New Mediator Model Standards of Conduct Tweaked

ADRWorld.com, April 21, 2005

The ABA Dispute Resolution Section on April 13 approved the Litigation Section's modest changes to the updated Model Standards of Conduct for Mediators. The changes clarify the definitions of "shall" and "should" and state that the document may provide a "standard of care" to which mediators may be held even if it hasn't been adopted by a court or

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If you did not receive the newsletter directly from Keith and would like to receive future mediation updates, please send a note to KSeat@KeithSeat.com.

However, if you did receive this directly and would prefer not to, please send an "unsubscribe" e-mail to Admin@KeithSeat.com.

regulatory authority and doesn't have the force of law.

[View Article](#) (Subscription Required); [View Redlined Model Standards](#) (Subscription Required)

South Carolina Enacts Mediation Requirement for Medical Negligence Claims

ADRWorld.com, April 20, 2005

South Carolina enacted S. 83 on April 4, requiring mediation of medical malpractice claims in an effort to reduce health care costs and provide parties the opportunity to go beyond monetary issues when seeking to resolve claims. A sponsor of the legislation stated that studies show that malpractice settlements which include an apology from the doctor can have a positive effect on patients and may reduce future mistakes. The legislation provides that engaging in prelitigation mediation does not eliminate the obligation to participate in alternative dispute resolution after the litigation has begun.

[View Article](#) (Subscription Required); [View Legislation](#) (Subscription Required)

Washington and Iowa Enact Uniform Mediation Act

ADRWorld.com, April 29, 2005

The states of Washington and Iowa became the fifth and sixth jurisdictions to enact the Uniform Mediation Act (UMA) on April 22 and 28, respectively. The UMA is intended to encourage greater use of mediation by ensuring clear confidentiality protections. The Iowa legislation is very similar to the uniform act drafted by the National Conference of Commissioners on Uniform State Laws, except for a provision giving mediators and mediation programs immunity from civil actions unless they act in bad faith or with wanton disregard. The Washington legislation contains minor differences to conform to state law, including exemption of mediation materials from disclosure under the state open records laws, and coverage of mediations relating to collective bargaining agreements. The other states that have enacted the UMA are New Jersey, Illinois, Nebraska and Ohio.

[View Washington Article](#) (Subscription required); [View Washington Statute](#) (Subscription required); [View Iowa Article](#) (Subscription required); [View Iowa Statute](#) (Subscription required)

Connecticut, Minnesota, District of Columbia Considering Uniform Mediation Act with U.N. Supplement for International Disputes

ADRWorld.com, April 5, 2005

Connecticut, Minnesota and the District of Columbia are the first jurisdictions to consider adopting the Uniform Mediation Act (UMA) enhanced with a supplement that incorporates the United Nation's Model Law on International Commercial Conciliation. Doing so would encourage parties to mediate international disputes in the U.S. by providing more options and greater certainty over the confidentiality of mediation communications in future proceedings. If enacted, the supplement would provide that, unless the parties agree otherwise, mediations of

international disputes would be governed by the UN model law with the UMA privilege attached. Six states (New Jersey, Illinois, Nebraska, Ohio, Washington and Iowa) have already enacted the UMA without the UN Model Act supplement, while other states (including Indiana and Vermont) are currently considering adopting the UMA without the supplement.

[View Article \(Subscription Required\)](#); [View Connecticut Senate Bill 1363 \(Subscription Required\)](#); [View Minnesota House Bill 1159 \(Subscription Required\)](#); [View District of Columbia Bill 16-0145 \(Subscription Required\)](#); [View United Nation's Model Law on International Commercial Conciliation](#)

Mediation to Ease Court Load in Maryland County

Delmarva Daily Times, April 21, 2005

The State's Attorney's office in Worcester County, Maryland is beginning a mediation program this summer to resolve criminal complaints with a renewable \$35,000 grant it received in April from the Maryland Mediation and Conflict Resolution Office (MACRO). The mediation program is intended to both reduce crowded court dockets and offer defendants and accusers an opportunity to find solutions that are tailored to their individual needs and may end the conflict. Cases in which two or more people file charges against each other are more likely to be addressed by mediation than those initiated by a police arrest, so a single mediation often resolves multiple cases.

[View Article](#)

OECD Consumer Dispute Resolution Workshop Held at FTC

The Federal Trade Commission hosted a workshop organized by the Organization for Economic Cooperation and Development's Committee on Consumer Policy on April 19-20. The workshop examined approaches to consumer dispute resolution and redress in OECD member countries. Experts from governments, business, consumer groups, and academia explored the advantages and disadvantages of different mechanisms for resolving consumer disputes in the cross border context.

[View Workshop Information](#); [View Background Report](#)