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## It's True: You Are Known by the Company You Keep

By: Diane McGaha, WAMS Attorney Director

The well-known title above from one of Aesop's Fables (*The Ass and His Purchaser*) comes to mind when describing the newest members of the WAMS panel of professional neutrals.



Monte Bersante



Michelle Corsi



Jack Follis



Brad Maxa

**Monte Bersante** was a cardiopulmonary technologist before obtaining his law degree and joining the Davies Pearson firm in Tacoma. Monte had several excellent mentors at Davies Pearson, including Larry Levy. Monte was aware of Larry's progression from litigator to mediator, so it's no surprise that he chose to affiliate with WAMS as a neutral. According to Monte, "Having performed as an advocate on behalf of both plaintiffs and

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defendants over the past 20 plus years, it became a natural transition and desire for me to enter the role as mediator where I could assist parties in finding their mutual interests to resolve their disputes." WAMS is honored to have Monte join the company of neutrals at WAMS, where he will be mediating and arbitrating throughout the Puget Sound region.

**Michelle Corsi** has spent her career as a litigator with the Lee Smart firm in Seattle, handling commercial matters for plaintiffs and defendants. Michelle's interest in ADR has evolved over the years from that of advocate to neutral, as she explains: "Approaching twenty years in practice, I have accepted an invitation to join the WAMS panel to expand my practice by using my extensive litigation experience to mediate and otherwise facilitate the voluntary resolution of disputes. The WAMS panel has always exemplified a judicious commitment to resolution of legal disputes whether in arbitration or mediation. I look forward to maintaining that tradition." There's no question that Michelle will be an asset to the WAMS panel, particularly in Snohomish, Whatcom and King counties.

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## You Are Known by the Company You Keep, Continued from page 1...

**Brad Maxa** has a litigation practice with Gordon Thomas Honeywell in Tacoma that emphasizes insurance coverage matters. As a result, Brad has spent a lot of time as an advocate for one party of many involved in multiple-party CD and serious personal injury disputes. Partially because of his repeated involvement in mediation of such cases by Bill Joyce and Tom Harris, Brad developed an interest in becoming a neutral. According to Brad, "As I looked to expand my mediation and arbitration practice, I wanted to be associated with the very best. I did not even consider going with any group other than WAMS." WAMS is very pleased that Brad chose to join the club at WAMS and make himself available to mediate in Pierce and Thurston counties.

**Jack Follis** became a litigator at Anderson Hunter in Everett while Scott Holte was a member of the

firm, so it's only natural that Scott advocated for Jack to become a neutral with WAMS. Since Jack had been a WAMS client over the years, the decision to have him join the WAMS panel was logical for WAMS and for Jack. In Jack's words, "You are known by the company you keep. That is why I have chosen to be a mediator with WAMS. Being part of such a diverse group of skilled professionals will help me to keep improving my skills." WAMS is excited to add Jack Follis to its panel as another neutral available to clients in need of dispute resolution services in Snohomish and Whatcom counties.

The addition of Monte, Michelle, Brad and Jack to the WAMS panel in 2013 will expand the dispute resolution options available to our clients. We welcome them and hope our clients will find an opportunity to do the same in the very near future.



## 25<sup>th</sup> Anniversary of Lemon Law Program

By: Alisa Sullivan, WAMS ADR Program Director

Washington Arbitration & Mediation Service has administered the Washington State New Motor Vehicle Arbitration Board (Lemon Law) since its inception in 1988. Designated under statute to settle new vehicle disputes between consumers and manufacturers, the Arbitration Board is an independent, neutral agency that conducts arbitration proceedings as a prerequisite to court. Washington is one of a handful of states with a designated Arbitration Board, as others require the consumer to utilize the manufacturer's arbitration program prior to filing in court.

In its twenty-five year history, the Lemon Law

program has received over 6,025 requests for arbitration from consumers looking to have their vehicles repurchased or replaced by the manufacturer. Of those requests, 2,210 cases have resulted in an arbitration hearing, 1,894 have settled with the manufacturer prior to hearing, and 686 requests have been withdrawn by the consumer. It is estimated that the Lemon Law program has resulted in settlements or awards worth about \$104,537,440.

Kudos to the dedicated neutrals who have made the Washington State program a successful, impartial process.



## Revisions to Rule 39.1

By: Judy Mikel,  
WAMS Senior Attorney

Under the Local Rules of practice for civil proceedings before the United States District Court for the Western District of Washington, LCR 39.1 addresses Alternative Dispute Resolution. A number of WAMS panel members are on the court's register of attorney neutrals. Interesting changes were made to LCR 39.1 in late 2012, including the following:

Participation in ADR is no longer mandatory. The court may order participation, but it is otherwise voluntary. LCR 39.1(a). The register of attorney neutrals now requires that the neutral have a physical office within the geographic boundaries of the Western District of Washington. LCR 39.1(b).

LCR 39.1 now includes a process for parties to request a pro bono mediator and requires mediators on the court's register to accept at least one pro bono appointment per year, if requested to do so, or risk removal from the register. LCR 39.1(b). Also, if the parties do not agree on a mediator from the court's register, they may select any mediator they wish and adopt their own process. LCR 39.1(c).

Rule 39.1 previously required a conference call to be set up by plaintiff between mediator and counsel. The revised rule now indicates the mediator 'may' arrange an initial conference call. LCR 39.1(c).

Although not defined, the rule now requires good faith participation. LCR 39.1(c).

This rule was last revised in 2009. The change from mandatory to voluntary is significant and attorneys practicing in federal court will likely take advantage of the pro bono obligation.

### WAMS Certified 39.1 Mediators

- ✓ Monte Bersante
- ✓ John Cooper
- ✓ Michelle Corsi
- ✓ Pat Duffy
- ✓ Cliff Freed
- ✓ Harry Goldman
- ✓ Tom Harris
- ✓ Scott Holte
- ✓ Bill Joyce
- ✓ Margo Keller
- ✓ Don Kelley
- ✓ Larry Levy
- ✓ Cynthia Morgan
- ✓ Michele Sales
- ✓ Kathleen Wareham

## Did You Know?

...that since its establishment in 1981, WAMS has provided pro bono mediation services to clients represented by pro bono attorneys? Over the years, WAMS mediators have volunteered their time to resolve cases involving churches and other non-profit organizations, indigent clients with civil rights claims, criminal plea bargains with victim compensation and small business disputes – just to name a few. WAMS mediators also mediate on a pro bono basis for clients referred through the Volunteer Attorneys for Persons with Aids (VAPWA) and Neighborhood Legal Clinics (NLC) programs.

## Cases of Interest

### Refusal to Make Offer at Mediation Not Bad Faith

Plaintiffs sought sanctions against defendant for refusing to make any offer in mediation while its motion for summary judgment was pending, arguing that defendant should have provided notice that the mediation would be futile. The court denied sanctions, noting that defendant had sent an out-of-state representative to the mediation with full settlement authority, so there was no bad faith. Defendant was helped by the facts that plaintiffs were also mediating an underlying state case with another party in the same mediation, so it was not a wasted process, and that defendant prevailed on its motion for summary judgment. The court noted in passing that what transpired in the mediation was not supposed to be revealed under the confidentiality agreement signed by the parties.

*Kline v. State Farm Fire and Casualty Co.*, No. 12-CV-00955WJ/RHS (U.S.D.C. D.N.M., April 19, 2013)

Source: Keith Seat's Mediation News for the 21<sup>st</sup> Century

### Medicare Lien Issues

Check out a May 2013 New Jersey court ruling of interest to anyone who deals with Medicare lien issues, as a mediated settlement was enforced notwithstanding the "no review" status of a proposed Medicare set-aside.

*DuHamell v. Renal Care Group East, Inc., et al.* and *Catherine Ney v. Renal Care Group East, Inc., et al.*, 2012 N.J. Super. LEXIS 201 (decided December 7, 2012, and released for publication May 16, 2013),



## Bill Joyce

"Too often, when a lawsuit is settled as a result of mediation, the efforts of the mediator go unrecognized. I do not want that to happen in the above captioned matter, because, in my view, our mediator, Bill Joyce, went above and beyond the call of duty while guiding the parties to a settlement. Bill demonstrated both great mediation skills and tenacity during an all-day mediation, but, more importantly, after the close of formal mediation and despite his own busy work and travel schedule, he made himself available to the parties on a moment's notice and thus kept the process going until the case settled."

~WAMS Client

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