

***Mediation Agreements – Don't Let Your Growling Stomach Distract***  
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Most Mediations are scheduled around meal times; end before lunch, start after lunch, finish in time to make dinner with the family. Our culture is consumed with food. The Super Bowl intermissions highlighted just how important the business of food is to the American economy. Will a \$2.3 million, 30-second commercial really persuade consumers to use one brand of cola over another? Apparently so.

Hunger is often a factor that can distract the patience of Mediation participants. The longer the conference goes, the more distractions arise. The greater the number and intensity of these distractions, the quicker the participants want the Mediation to end.

This influence is even greater if a settlement has been reached in principle. Often parties feel safe signing a skeletal summary of the agreement, trusting the other to accurately remember and consummate the settlement details. While the Mediation Agreement is not the release and will rarely have every detail spelled out, it should provide little room for misunderstanding.

The majority of Mediation caselaw stems from disputes over Mediation agreements. The most recent is Huntington on the Green Condominium, Inc. v. Lemon Tree Condominium, Inc., 29 Fla. L. Weekly D181 (Fla. 5<sup>th</sup> DCA January 9, 2004). A mediated agreement was reached between a developer and two nearby property owners. A lump sum was tendered, and the two receiving parties hastily drafted a distribution provision in the agreement. Lemon Tree was to receive an additional portion for the cost of building of a barrier wall, with the remainder to be split evenly. However, the agreement itself did not obligate Lemon Tree to actually build the wall. After one year of inaction by Lemon Tree, Huntington claimed entitlement to a refund. Ultimately, an appeal court reversed the trial court and granted Huntington's request.

Years of time, legal expense and uncertainty resulted from haste at the end of the Mediation. One additional sentence – or even a phrase within an existing sentence – would have eliminated any doubt. Instead, the few minutes saved cost the participants tremendously more.

I can't swear that hunger caused the oversight. But the lesson is the same: finish the task. Don't be distracted by fatigue, scheduling constraints, or other factors. While the principled agreement may be clearly understood at the Mediation conference by the participants, the clarity may dim with the passing of time and the introduction of new people to the matter.

What if Adam Vinatieri decided he was simply too hungry to kick that final second field goal? Absurd. He had a job to do, and that job has won for his team two of the past three Super Bowls. Likewise, Mediation participants have a singular job to do. Be sure to finish it. If it matters, use a Mediator who provides snack foods. Just don't be distracted from clearly memorializing the agreement because of such things as hunger pangs.

*This article is one in a series of periodic articles concerning mediation topics such as use, legal developments, and negotiation tactics. Blane G. McCarthy is a Jacksonville civil trial lawyer and certified circuit civil mediator. For questions, comments, or suggestions on future articles, please call (904) 391-0091 or email at [bgmccarthy@sprintmail.com](mailto:bgmccarthy@sprintmail.com).*