



And So It Goes!

A Quarterly Newsletter from David M. Zacks, Esq.

I want all my friends and colleagues to know that I have joined JAMS. I am excited about this chapter in my career as a neutral and look forward to assisting parties with particular emphasis in health care, catastrophic and personal injury, business disputes and Native American issues.

On the “QT”

“Asking the right question is 95% of getting the right answer.” —Albert Einstein

Tip: As advocates as well as neutrals we should always remember the power of the right question at the right time. Lastly, follow up the question with effective listening. Sometimes listening is hard.

Worth Reading

Difficult Conversations is written by Douglas Stone, Bruce Patton and Sheila Heen of the Harvard Negotiation Project. The foreword is written by the late Roger Fisher, author of *Getting to Yes*.

If you spend time with this paperback you will learn that a difficult conversation is anything you find it hard to talk about. Although difficult conversations are a normal part of life, we all

need help in how to deal with them. Do you avoid or confront? As it seems there is no good path. Hopefully, this book will assist. As the cover suggests, it is not only useful with your lawyer hat on but also in dealing with your spouse, your friends, your kids and maybe even your dog!

Going from Better to Best

One of my life heroes passed away this year. His name was Arnold Palmer. His charisma and perseverance to win put golf on the world stage. I was fortunate to serve in a leadership position with Arnold at my alma mater, Wake Forest. The matter involved recognition of a classmate of Arnold's who was suffering from a terminal brain tumor. As busy as Arnold was he never missed a conference call or failed to respond to a communication regarding accomplishing something that was important to him.

There is a book written by Tom Callahan, *Arnie*. In it Callahan writes:

Arnie won the 1962 Masters – on his way to winning he had hit four errant shots and looked at the gallery and said:

“I didn't have any zip today. Does anybody know where I can get some zip?”

(continued on the back)



He made everyone feel they could help him win, of course, they couldn't.

In many ways we can learn from Arnold Palmer. In a mediation, the parties control whether or not they will succeed in a mutual resolution. Hopefully, they can look to the neutral and find the “zip” that may be necessary to make it all happen.

Important New Case in Arbitration

Agreement to Arbitrate Upheld by Georgia Supreme Court, *United Health Services of Georgia, Inc. et al v. Norton et al*, March 6, 2017.

Lola Norton died while she was a patient in a nursing home operated by United Health Services, Inc. Her husband, through a representative, filed a wrongful death action against a number of defendants affiliated with the nursing home claiming that negligence actions resulted in Nola's death. Initially the defendants filed a motion to dismiss or alternatively to compel arbitration in accordance with the provisions in the admission agreement Lola had signed. The motion to compel arbitration was granted by

the trial court but the plaintiff appealed this decision and the Georgia Court of Appeals reversed finding that a wrongful death action presented a new, distinct and separate cause of action and that Lola's beneficiaries were not required to arbitrate the wrongful death action. The language in the arbitration agreement included the following:” ... “Patient/Resident” shall include ... his or her guardian, attorney-in-fact, agent, sponsor, representative, or any person already listed in this Paragraph, any parent, spouse, child, executor administrator, heir, or survivor entitled to bring a wrongful death claim.” The Georgia Supreme Court granted certiorari and reversed. *United Health Services of Georgia, Inc. v. Norton et al*, [3/6/2017]

The Georgia Supreme Court stated that the language in the agreement bound the husband and any other of Lola's wrongful death beneficiaries and requires them to arbitrate their claims.

All of us should pay particular attention to what we are signing. Whether it is putting a loved one in a nursing home, applying for a credit card or getting a new iPhone. As a general rule, if you agreed to terms of a contract, which include an arbitration clause, they are binding.

The Last Word

I recently opened the door to a hotel as I started a week of work in Chicago. On the wall was the following quote:

*“Life is not about finding yourself.
Life is about creating yourself.”*

Worth remembering.