

The advantage of agreement >

Executive Summary:

Settling a lawsuit may not satisfy all your requirements, but it diminishes the expense and hassle factor to the degree that more and more clients seek settlements these days.

By Jay Conley

Companies embroiled in lawsuits today are more likely to settle out of court than face

costly legal fees and leave the fate of their profits in the hands of a judge or jury. And the legal system is embracing the trend.

Since the mid 1990s, the popularity of settlement agreements has grown to become a standard practice.

"The vast majority of civil cases settle before going to trial," says Kevin Oddo, a partner with LeClair Ryan in Roanoke who handles commercial litigation cases. "There are a variety of reasons for that, but certainly one of the key reasons is the popularity of alternative dispute resolutions, which would include mediation."

Under mediation, both parties agree to settle out of court using a paid neutral third party as a mediator. Such mediators are often veteran lawyers or retired judges like

Diane Strickland, who served for years as a Roanoke Valley circuit court judge. The mediator's job, along with the lawyers representing both sides, is to help negotiate a settlement agreeable to both parties.

The Conflict Resolution Center, a nonprofit agency in Roanoke, also provides mediation services at a discounted rate to settle a variety of work place, landlord/tenant and family disputes.

"It's an acknowledged problem throughout the bar that newer lawyers have trouble getting actual



Dan Smith

Greg Haley: "The trend toward mediation is requiring lawyers to adapt and learn new skills ..."

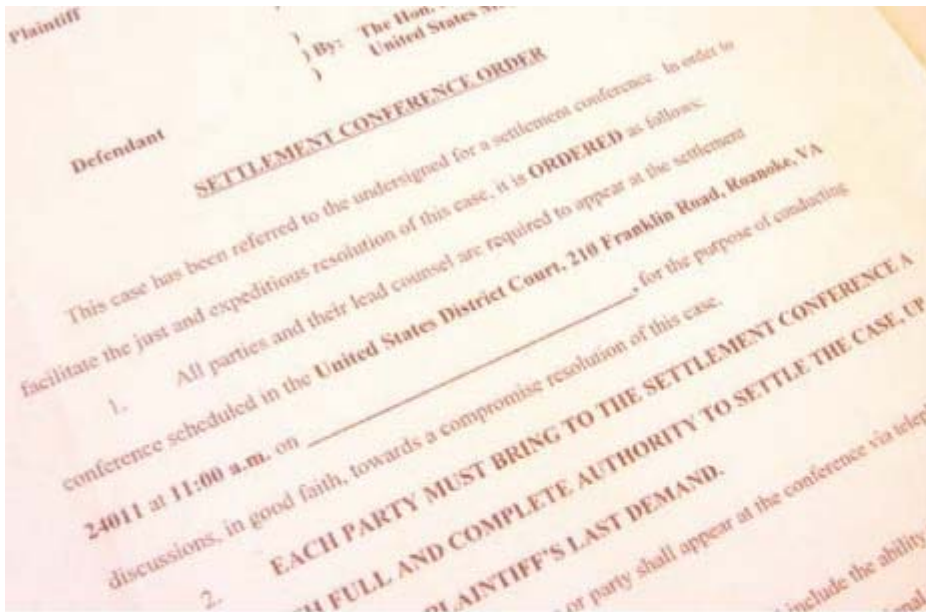


Photo of Urbanski's standard settlement form found on U.S. District Court Web Site

Jay Conley

verdict of a financial payout up to a jury or judge to decide. Haley, who co-authored an article about the growing popularity of mediation in the February issue of Virginia Lawyer magazine, says parties have more control and more flexibility in structuring a settlement during mediation.

That means lawyers must now possess a range of mediation and negotiation skills

trial experience," says Greg Haley, a partner with Gentry Locke Rakes & Moore in Roanoke. "It's a result of the mediation phenomenon. Because so many cases get mediated and resolved."

Both Oddo and Haley estimate that more than 90 percent of civil suits at the state and federal levels never make it into a courtroom.

From a business perspective, it boils down to dollars and cents and the simple fact is that it's often quicker to negotiate a settlement than go through a trial.

"People don't want to pay lawyers to litigate if they can get a settlement," Oddo says.

There is also the uncertainty of leaving the

to serve their clients. "The trend toward mediation is requiring lawyers to adapt and learn new skills, or a different way of applying the same skills," Haley says.

Judge Michael Urbanski, a federal magistrate in Roanoke who has mediated over 100 cases, has a standard settlement order posted on the Web site for the U.S. District Court for the Western District of Virginia so people can better understand the process.

He wrote in a recent article published by the Virginia State Bar Association that it is rare that a case can't be settled through mediation: "Rational people, facing the cost, distraction, pressure, and anxiety of a lawsuit, will nearly always choose to settle a case if each side is willing to listen to the other and explore realistic settlement opportunities." 