

Business law



Four business cases involving alternative dispute resolution Case Acme Inc. and Imperial Corp. ADR is appropriate in this case. Both parties need one another. Imperial needs Acme's business as it is a large portion of its revenue. Acme needs Imperial as "loss of Imperial as a supplier would be devastating." Litigation is costly and it would prove very harmful to the loser in a lawsuit.

Since litigation would focus on an ambiguous clause in the contract neither party can be sure how it would turn out.

Any delays or interruptions in their relationship caused by litigation could have a devastating impact on both parties regardless of which party is ultimately vindicated in the courts. Acme would find itself without essential parts that are hard to source elsewhere. Imperial could find itself with a sudden, severe decrease in its cash flow. It might also have to layoff employees and have equipment sit idle. Simply put, litigation, regardless of the outcome could do irreparable damage to both parties.

In this case negotiation would be the appropriate form of alternative dispute resolution to pursue. The two parties need to sit down face-to-face. They need to lay out their understanding of the ambiguous clause in the contract, seek common ground, and perhaps by consent share any costs or losses involved in their differing interpretations of the clause. If negotiation proves fruitless they should move to mediation. Then an objective and disinterested third party could assist them in understanding one another's position and finding a middle ground. (Marsh, 2008)

Case #2: Hightech Ltd. And Megasoftware Inc.

Litigation must be avoided at all costs in this case. A trial would force both parties to reveal, on the record, trade secrets.

The complexity of the case and the likelihood of a jury not understanding it means that the outcome of litigation is entirely unknown. Consequently, it could prove damaging to one or both parties.

Due to the complexity of the case collaborative law would be the best approach. The case, too complex for a jury, might also be too complex for a mediator or arbitrator, regardless of their qualifications and experience.

Therefore, the parties would be wise to sit down together, with their lawyers accompanying them, and work towards an agreement in camera with trained lawyers, able to understand the complexity of the case. If they were to negotiate in good faith, in this private environment with expert legal advice they stand the best chance of resolving the dispute in a fair manner that also takes account of the legal complexities of the situation. Collaborative law would also ensure that the case never ended up in court.

Collaborative law is “ cost effective and discrete”, and with trade secrets involved that is precisely what each party needs. (Newitt, “ Shot before dawn”) It is an unusual proposal for a business dispute, but most appropriate in this instance.

Case #3 Sexual harassment at Empire Corporation

In this case it is plain that Empire Corporation wishes to avoid a court case. There is the danger of disadvantageous precedent being set if the case does go to trial. Also, the company may find itself in a position where a jury might rule on emotion rather than reason and find the reprehensible to be illegal for emotional reasons.

The employee, with qualified legal advice, might be persuaded to avoid a trial also if he fully understands that, legally, his case is largely without merit. Negotiation might be appropriate if the company is willing to offer up

the supervisor as a sacrificial lamb. If the supervisor could be persuaded to take the fall. Alternately, the company might be able to assuage the employees outrage by offering carrots such as enhanced training and education programs dealing with sexual harassment or a transfer of the employee or supervisor so as to reduce the possibility of this situation arising again.

Negotiation should be the first step and failing that the company should push for arbitration. An arbitrator is likely to rule based on jurisprudence rather than emotion and provide the most acceptable resolution to both parties: The employee could drop the threat of a lawsuit and the company could make concessions to him to avoid the costs and damage to its image that a sexual harassment trial could cause. Often a victim is not concerned with benefits for themselves but rather, desires to have an impact on the system and or arbitration could quietly and quickly move the case in that direction to the benefit of both parties. (

Case #4: Prosthetic Device Manufacturer

Alternative dispute resolution is appropriate for this case: Specifically, arbitration. Clearly the company needs to avoid the poor public relations that accompanies a class action suit. Moreover, research by Price Waterhouse indicates that international arbitration consistently leads to resolution. For the claimants the fact that awards are, in the vast majority of cases, recoverable is noteworthy. (Price Waterhouse Coopers, 2008)

In this case the largest problem might be the adversaries lawyers. They are intractable and may see significant legal fees as an inducement to draw this case out and take it through the courts.

References

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Marsh, Stephen R. “ Negotiation Styles in Mediation”. Web. <http://adr.com/adr1/essayb.htm>. Accessed 13 June 2010.

Newitt, Rebecca. “ Shot Before Dawn”. Web. <http://www.spearswms.com/spears-world/shot-before-dawn/15332/collaborative-law.html>. Accessed 13 June 2010.

Price Waterhouse Coopers (2008). “ International Arbitration: Corporate Attitudes and Practices 2008” Web. http://www.pwc.co.uk/eng/publications/international_arbitration_2008.html. Accessed 13 June 2010.

“ Sexual harassment: a victim advises others on how to win”. Stanford University Media Release (1991). Web. <http://news.stanford.edu/pr/91/911025Arc1107.html>. Accessed 13 June 2010.