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CONTENTS

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EDITOR'S NOTE

We had received umpteen numbers of mails from lawyers and in-house corporate counsels asking how a mediation practically work. The various articles on mediation gave the theoretical aspect of mediation and its advantages. But unless one participates in a mediation session either as a party or a lawyer, the "hands on" experience is not gained. I am thankful to Mr. Michael Leathes, Member of the IMI Board, who has provided a case study on mediation, which gives a first hand experience on mediation. The case study is given in this edition, viz., "Einstein's lessons in Mediation".

I would urge Mediators and Mediation practitioners to send us your work on mediation, which could provide a "hands on" experience on mediation. This would give people who are interested in mediation an overview of the process.

Looking forward to your continued support and views….

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Einstein's lessons in Mediation

CASE STUDY: ARBITRATION - MEDIATION

Einstein once explained his greatest theory in terms all of us can understand: "When you are out with a nice girl, an hour seems like a second; when you are standing on a red-hot coal, a second seems like an hour – that's relativity". Many relativities are connected to opposites. Too often we reject things that are opposite to traditional beliefs and practices as being unsuitable, contradictory, oxymorons, and un-doable. It is human nature to hate oxymorons. Their relativities are out of balance.

Anecdotal evidence is an oxymoron. So is truthful propaganda. Groucho Marx claimed that military intelligence is also one, though Napoleon would have disagreed; we even buy oxymorons – have you ever seen a label that says "pure 100% orange juice from concentrate"? Einstein himself famously claimed that it was not possible simultaneously to prevent, and to prepare for, war, only to be proved wrong by the advent of nuclear weapons. Life is full of oxymorons. But strip away the superficial reaction and maybe they are not so self-contradictory in reality. So let's pose another oxymoron: can you have an arbitration-mediation, an Arb-Med? Not a printing error, this – an arbitration followed by a mediation.

When two companies could not agree a price for a trade mark sale, they decided to hold an arbitration followed by a mediation. Those involved explain how this unusual process worked.

People who train as facilitative mediators learn that arbitrators are judges – they make decisions on behalf of argumentative parties who then have to live with the result imposed upon them. Mediators, however, never get judgmental, they merely aid the parties, and any decisions are taken by the parties, not by the mediator. Based on those archetypal characterizations, it appears contradictory for an arbitrator to act as a mediator, and many would claim that it is an oxymoron for a mediator to arbitrate.

Therefore, they don't do it. Neutrals get asked to act as one, or as the other, but not as both! How can you trust a neutral person with your deepest secrets, your real bottom line, your hidden agendas, if that person can impose a decision? It makes no sense.

Another of Einstein's remarks was "If at first an idea is not absurd, there is no hope for it". So, let's not be so hasty and dismissive of the idea of a single neutral being both an arbitrator and a mediator on the same day with the same parties.

Mediators are taught to hypothesize, to search for options for mutual gain. They often ask questions beginning "What if..." as a means to provoke the listener into thinking outside the box.

Einstein would urge us to ask: "What if the neutral was asked to wear two hats, to be an arbitrator and a mediator, but not at the same time? First to be an arbitrator, make a decision, seal the decision in an envelope without telling the result to the parties, and then become a mediator? What if the parties agreed in advance that they would open the envelope, and be bound by its contents, only if the mediation were to fail to result in an agreed outcome?"

A real scenario

PMEC is a small, independent, successful business selling upmarket casual clothing and accessories for men originally themed on 1950s aviator gear – the kind of

wardrobe you would expect to catch the eye of the new breed of Hollywood actors.

BAT is a tobacco company that for decades had owned a series of clothing trade marks that were licensed to PMEC. BAT had no interest in continuing to own the trade marks, and was happy to sell them to PMEC, who preferred to own its own brand names rather than operate under a licence agreement. It was a common situation – a willing buyer, a willing seller, and a simple deal.

Negotiations went well until the discussion, inevitably, turned to value. PMEC had one idea about what it was willing to spend to buy the brand rights, and BAT had another idea about what it was willing to accept in order to sell those brand rights. The two figures were dramatically different. So it was agreed that each would instruct an independent professional firm expert in valuing brands to arrive at a fair price. It was also agreed that the parties would then exchange their valuation reports and meet again to finalize the value.

The parties did not have a dispute about anything. Nor was either even contemplating a conflict with the other. Both just wanted to do a deal but could not agree on the key issue – money.

Einstein would urge us to ask: "What if the neutral was asked to wear two hats, to be an arbitrator and a mediator, but not at the same time?

When the valuation reports arrived, and were exchanged, it emerged that the expectations of each party were very different. Two prominent professional firms had arrived at very different valuation results based on the same facts.

Bob Bulder, MD of PMEC:

"I run my own business and own a high percentage of the shares. We are in the fashion business – it is cyclical, decisions have to be made many months ahead, it is risky, we have to be highly entrepreneurial and for me control is everything. Although we have never had a problem with BAT owning many of the brand names we use on our clothing lines, nevertheless we have always been uncomfortable not actually owning them ourselves. It's rather like the difference between owning the freehold of your home and owning the leasehold. I would rather own the freehold.

For me, buying these trade marks was about the cost of feeling comfortable. BAT was not threatening to take the rights away, or anything like that, and although I was prepared to pay something for the rights, I had my limits. I also had options. I could have re-branded over time. Or I could have merged with another company and used their brand rights. Or I could have put up with the discomfort and continued to license the rights from BAT. We don't have a lot of capital, and are nowhere near as cash-rich as BAT. Because I had options, I had worked out the upsides and downsides of each one. I knew exactly how much I could spend to buy these trade marks, but obviously, if I could get them for less then I would."

Michael Leathes, Head of IP at BAT:

"My company had gradually sold off its noncore rights and focused on what it knows best: being a tobacco business. Owning and maintaining these clothing brands was a throw-back to the past. We wanted to divest them, but not to give them away. There was really only one buyer – PMEC. They had built a business using these brands and it would have been irresponsible of a company like BAT to threaten to sell the brand rights to a third party just to intimidate PMEC into paying more. So I didn't do it.

On the other hand, the trade marks in question were certainly not worthless, and the company's shareholders had the right to expect that I would sell them for a fair value. I had an independent valuation in my hands, and I had shared it with Bob, but it was far above the valuation he had in his hands."

At a lunch to try and bridge the gap, the two parties discussed the valuation reports each had commissioned. PMEC viewed the BAT valuation report as completely unacceptable and, worse, unaffordable. BAT viewed the PMEC valuation report as equally unacceptable, almost as a give-away. They discussed a principle – was BAT willing to accept a price below its valuation, and was PMEC willing and able to pay a price above that indicated in its valuation? With affirmative responses on both sides, the next question was: is it possible to agree high and low parameters – a range within which the agreed valuation would fall? Further discussion resulted in BAT conceding that, despite its independent valuation, it would accept a price of no more than !x and PMEC conceded that despite its independent valuation, it was willing to pay at least !y. Although this was progress – the parties now had a narrower range within which to find the right number – there was still a large, apparently unbridgeable, gap.

The options

The most obvious way forward was to arbitrate the valuation issue and both parties would then live by that result. However, both rejected the idea. BAT feared that it would lead to an unacceptably low result and PMEC feared that it would lead to an impossibly high outcome.

Baseball (or final offer) arbitration was an alternative, and it was considered. A neutral person would be invited to read each side's valuations, hear the parties' representations, and then each party would make an offer at which to close the deal. The neutral could then decide which offer was more reasonable, and that would be the offer that closes the deal. The neutral would have no power to suggest or determine any other solution. This was how the salaries of Major League Baseball players were settled. It might have worked here because the technique automatically encourages each party to put forward its best offer to encourage that offer to be the one chosen by the neutral. So the process automatically encourages gap-closing.

A variation on the theme was night baseball, so called because it operates like baseball arbitration with the difference that the parties do not disclose their offers to the neutral but seal them in envelopes; the neutral then makes a decision which is disclosed to the parties, the envelopes are opened, and whichever party's offer is closest to the neutral's decision is the one that prevails.

Mediation was also considered. However, the risk remained that maybe no deal would have emerged, and one party felt this could have wasted time and cost.

The way forward that was eventually chosen was a blend of arbitration and mediation – an Arb-Med. The parties agreed that they would ask a neutral person to wear two hats, but not simultaneously. The process chosen was simple – the neutral would spend a morning acting as an arbitrator, and would arrive at a fair and appropriate valuation over lunch but would not disclose that amount to the parties. Instead, the neutral would place the decision in an envelope, place the envelope on the meeting room table, then become a mediator. If, by the end of the afternoon, the parties, with the neutral mediator's help, could not arrive at an agreed outcome, the envelope would be opened and the parties would accept the valuation figure that it contained.

This would not have worked the other way around – as Med-Arb – where the neutral begins as a mediator, then, if the parties fail to agree an outcome, becomes an arbitrator and renders a decision that binds the parties. Neither of the parties would have revealed their own private circumstances to a mediator who later might metamorphose into an arbitrator with the power to *impose* a decision on the parties.

The merit in the Arb-Med process over the other options was that an outcome was always guaranteed at the end of the day, but the parties had ample opportunity to control that outcome themselves by arriving at an amicable arrangement.

Selecting a neutral

Having agreed on the process for determining the valuation of the intellectual property assets, the next vital ingredient was to identify the neutral. It had to be someone able to act as both an arbitrator on valuations, and also as a mediator. It had to be someone in The Netherlands as the Arb-Med would take place in Amsterdam. The parties agreed to ask ACB Mediation, a member of the MEDAL alliance (comprising leading mediation bodies in five countries), to propose three suitable neutrals. Both parties trusted ACB Mediation to narrow down the choice to neutrals with the right skills and quality. On receipt of a list of three people proposed by ACB, BAT invited PMEC to choose whichever one it liked and that choice would be acceptable to BAT.

Manon Schonewille, Director, ACB Mediation, Den Haag:
"Mediation bodies can play a vital role in convening the parties in a common frame of mind – even if they disagree on matters of substance. After consulting with PMEC and BAT regarding the process to be followed and the profile of the mediator, I considered who among my excellent panel of neutrals was specifically suitable to guide this Arb-Med situation. They wanted a neutral with skills as an arbitrator and as a mediator who was flexible enough to play both roles in one day perfectly. The requested profile was for a business-wise, hands-on mediator. I have a number of professionals on my panel who have such skills. And they needed a neutral who could quickly get to grips with the esoteric area of intellectual property valuation principles as it relates to the fashion industry.

I put forward three members of my panel. All could have done an excellent job in this situation. BAT had sufficient confidence in my ability to select the right neutrals, none of whom they knew personally by the way, that they were able to let PMEC choose among the three resumés I sent to the parties.

This incredibly important convening role of mediation bodies is often underestimated. A provider like ACB Mediation can speed up a negotiation process tremendously by helping the parties to narrow down

the selection based on their own requirements, checking to ensure there are no conflicts of interest or scheduling constraints, and if necessary being there to inter-mediate if the parties need help agreeing on a choice of mediator. It can usually all be done on the phone and by email. I merely set the stage for the performance to begin."

The Arb-Med process

As in all mediations, the parties need to sign a mediation agreement which deals with such matters as the sharing of the costs, confidentiality, privileged nature of the discussions and so on. In an Arb-Med, the mediation agreement also needs an "envelope clause". This is a provision which explains that the result of the arbitration phase of the process will not be disclosed immediately to the parties but placed in a sealed envelope, to be opened, and to bind the parties, only if the mediation phase fails to produce a negotiated agreement, or, even if the mediation does result in an agreement, if the parties all agree that the envelope should be opened.

Willem Kervers, mediator:
"This was the first time I had conducted an Arb-Med. The arbitration phase went smoothly enough. Prior to the day chosen for the mediation, I had read the valuation reports prepared for both PMEC and BAT. Although I was broadly familiar with valuation methodologies, I had also asked the parties in advance if they would share the cost of allowing me access to a valuation expert, someone who had the expertise to answer my questions on valuation technicalities on an objective and impartial basis.

I was aided in this case by the fact that the parties had already agreed parameters within which any valuation for these assets would fall. But the gulf between the two was considerable, and the task before me was challenging. However, with the help of the expert, who I consulted while the parties took a lunch break (leaving me with sandwiches, which in the Netherlands are excellent!), I did arrive at a valuation based on the parties' presentations during the morning session and the facts explained to me."

After lunch the parties returned to the meeting room to see a sealed envelope sitting prominently on the table for all to see. It was a bright day, but even the rays of the afternoon sunshine striking the table did not enable anyone to see what was inside. Curiosity pervaded the atmosphere.

Willem Kervers, mediator:
"I began the afternoon session by emphasizing that I had removed my arbitrator hat. I had done my evaluative job. The output of my arbitrator mode was in that envelope. I explained that my role had now changed radically; my goal in the afternoon was to assist the parties to arrive at a negotiated agreement to avoid opening the envelope – an act which would most likely have pleased one party but not both. I considered it vital that the parties considered me differently, even subconsciously. Because of my role in the morning session as an arbitrator, I had to ensure they grasped the distinction. It was a bit easier than I expected, because it was the parties, not ACB or myself, that had suggested an Arb-Med, but all the same, the effort had to be expended."

The mediator held several private sessions with each party, and after two hours had moved them both on to common ground. The gap was closed by exchanging terms that represented value as well as by understanding what each needed to reach a mutual agreement. Heads of agreement were signed and initialled. The deal was done.

Bob Bulder, MD of PMEC:
"At the end of this experience, after we shook hands and celebrated the conclusion of the terms on which the brand rights would be transferred to us, I was curious to know what was inside the envelope. Had I negotiated a better deal than would have been possible if I had let someone else decide? So I asked Michael whether he would agree to open the envelope. But he declined. That was fine with me – I suppose it was just my entrepreneurialism and inquisitiveness coming to the surface!"

Michael Leathes, Head of IP at BAT:
"I could understand why Bob wanted to know what the envelope contained. So did I, actually, and for similar reasons. But I declined for a further reason. We had shaken hands. Both of us were happy with the outcome. If we opened the envelope, that situation would most likely change. One of us would suddenly have become unhappy. If the number in the envelope was higher than what we had agreed, then obviously I would be unhappy. If the number was lower, Bob would have been unhappy. To come away from that negotiation with Bob unhappy would also have made me unhappy, despite being better off, because he's a friend. I explained this to Bob. He understood my rationale. It's not about turning a blind eye. Some things are just better not knowing."

And so this deal concluded satisfactorily. The parties never opened the envelope. A huge gap in perceptions of value had been bridged by the mediator finding non-monetary issues which could be thrown into the pot of consideration and which enabled both parties to get what they needed. The arbitration could not have achieved this because judicial decisions are purely one-dimensional.

Manon Schonewille, Director, ACB Mediation, Den Haag:
"In any negotiation, whether in a dispute context or as a straightforward deal, there are dynamics and undercurrents that seal the deal. In this case, the deal sealer was the power of the envelope. Here we had two parties who wanted to do a deal but had different ideas about its value. Because Willem had made a decision, the parties knew they would end the day with a result. But would it have been palatable to both? The envelope represented the potential worst alternative to a negotiated agreement. It served as a constant reminder, a permanent reality check. It influenced both parties to listen more carefully to the other, to be more inventive in seeking solutions, because opening that envelope could leave them worse off. It was psychology at work. The relativity between best and worse case scenarios, and the relative position of the unknown realistic outcome contained in the envelope all played a vital role. Einstein would have been proud of those who took part."

The last word should rest with the Arb-Mediator. Was the result in that envelope much different from what the parties ended up agreeing?

Willem Kervers, mediator:
"Maybe. Maybe not. It may be a big question, but it is also the wrong question. The right question is – did the parties do a good deal? The answer here was Yes. They were pleased. It was also a multi-faceted deal and they worked it out together. It was much better for them than whatever one dimensional number I had written in the envelope. This deal pleased them both. Outcomes don't come better than that."

(Michael Leathes is head of intellectual property, British American Tobacco, London and former Executive Director of IMI. Bob Bulder is managing director, PMEC BV, Amsterdam. Willem Kervers is a mediator in Rotterdam. Manon Schonewille is managing director, ACBMediation, Den Haag
This was first published in Managing Intellectual Property, July 2006)

Think ... Finding God!

A little boy wanted to meet God. He knew it was a long trip to where God lived, so he packed his suitcase with Twinkies and a six-pack of Root Beer and he started his journey. When he had gone about three blocks, he met an old man. He was sitting in the park just staring at some pigeons. The boy sat down next to him and opened his suitcase. He was about to take a drink from his root beer when he noticed that the old man looked hungry, so he offered him a Twinkie.

He gratefully accepted it and smiled at him. His smile was so pleasant that the boy wanted to see it again, so he offered him a root beer. Again, he smiled at him. The boy was delighted! They sat there all afternoon eating and smiling, but they never said a word.

As it grew dark, the boy realized how tired he was and he got up to leave, but before he had gone more than a few steps, he turned around, ran back to the old man, and gave him a hug. He gave him his biggest smile ever.

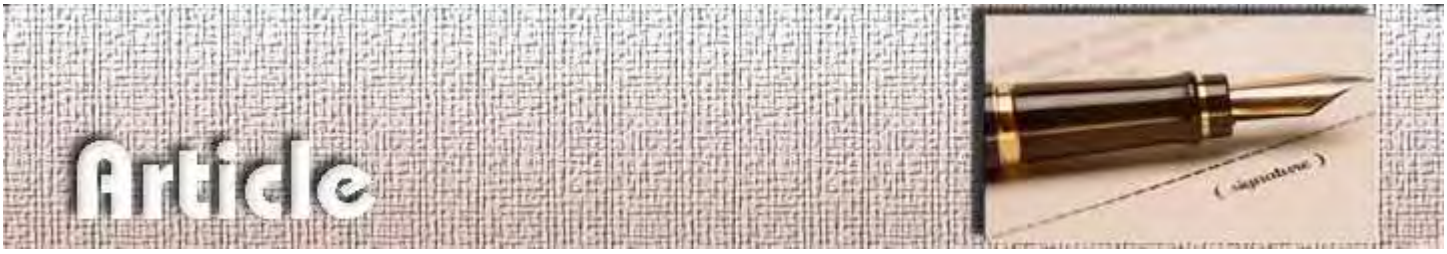
When the boy opened the door to his own house a short time later, his mother was surprised by the look of joy on his face.

She asked him, "What did you do today that made you so happy?

"He replied, "I had lunch with God." But before his mother could respond, he added, "You know what? God's got the most beautiful smile I've ever seen!"

Meanwhile, the old man, also radiant with joy, returned to his home. His son was stunned by the look of peace on his face and he asked," Dad, what did you do today that made you so happy?"

He replied, "I ate Twinkies in the park with God." However, before his son responded, he added, "You know, he's much younger than I expected."



The Art of the Deal - *"Deal Mediation"*

: HESHA ABRAMS, ESQ.

Most negotiators move one puny move at a time. Great negotiators negotiate like great chess players, five moves at a time and take actions designed to provoke/ encourage a particular move from their opponent.

Why is it that everyone knows that the traffic intersection in that part of town is dangerous, but the City doesn't put a stop light there until a child is killed? Once the uproar occurs, the political will to spend the money appears. Why is it that a teenager has to get stinking, filthy drunk before he discovers that alcohol is not so much fun, and that drinking in moderation is a wiser course? We all know we should eat healthier, exercise more, take a vacation, etc, but we don't do it. There is something in human nature that doesn't value preventative care and is more comfortable with crisis management. Why?

After over 20 years of deal making and thousands of negotiations I think it's because human beings are short term gratification oriented. The stock market rewards quarterly increases, not long term planning. The CEO's compensation package rewards stock price increases so there is a natural predilection to achieve short term gains, rather than strategically planning for future long term growth.[1]

Great chess players never move one move at a time, they move five moves at a time in their head and can see the whole board *and* the end game. They also make a move designed to *provoke* a move from the other side that fits into *their* long term end game.[1]

Most negotiators move one puny move at a time. Great negotiators negotiate like great chess players, five moves at a time and take actions designed to provoke/ encourage a particular move from their opponent. They know that it is not the battle that must be won, but the war. Allowing your opponent to become overconfident, to become lax in their preparation or due diligence, might allow you to sacrifice one piece in order to gain something of much greater value and/or to position yourself for victory in the whole game.

This same philosophy applies to deal making negotiations. Often, the participants and/or their attorneys in a deal think:

(Footnotes)

[1] See Remarks by the Chairman of the Federal Reserve Board, Alan Greenspan on corporate governance at the Stern School of Business, New York University, New York, March 26, 2002, http://www.federalreserve.gov/BoardDocs/Speeches/2002/200203262/default.htm,
also, Robert Reich's Blog, who was the 22 nd Secretary of Labor for the US, entry dated February 1, 2007,"Bush on CEO Pay, and the Truth about CEO Pay",
http://robertreich.blogspot.com/2007/02/bushonceopayandtruthaboutceopay.
html

[2] Strategies for Chess Players and Other Warriors, By Brian Roche, An *About Chess* guest article~ June 2007.

"I can do this myself."
"I don't need any outside help."
"I don't want any outside influence."
"I want to retain control."
"I've negotiated many deals and don't need a mediator"

In many instances, these statements and beliefs are accurate and true…*If* your opposing party in the deal negotiation has an alignment of interest with yours,…*If* he/she has either compatible or not incompatible negotiating styles and …*If* they have an equal self interest in closing a deal.

But what if these statements aren't true? What if strong personalities get in the way? What if you hit a snag and one party wants to appear strong by walking out? Would you lose the deal simply because there wasn't a third party there *driving* the negotiation? I've often been hired in deals after private negotiations failed and both parties will either be perplexed as to why it fell apart or hypothesize and come up with the wrong reason. As a third party with no skin in the game, a smart business deal mediator can find the correct reason and then come up with a fix.

If you don't diagnose the correct problem, you can't design a workable solution. In negotiation, parties are not fully forthcoming with each other so you may never know the real reason a deal works, falls apart, or becomes sluggish.

If you don't diagnose the correct problem, you can't design a workable solution. In negotiation, parties are not fully forthcoming with each other so you may never know the real reason a deal works, falls apart, or becomes sluggish. Using a deal mediator, you gain insight into the tent of the other side that helps you avoid these pitfalls.

Interestingly, you can be harder and tougher in your own negotiating stance if you also don't have to play conciliator or peacemaker and leave that job to an independent third party. Each party can concentrate on trying to achieve their own negotiation objectives without worrying that it will disrupt or destroy the negotiations because you can safely rely on the deal mediator to keep the game going.

If you have a deal mediator whose job and self interest it is to keep the negotiations going, you can employ time honored and excellent negotiation techniques such as good cop bad cop, referrals to an outside approval mechanism, the walk away etc. You actually achieve greater control because you know you have a deal mediator there keeping the train on track for deal culmination.

As a dealmaker for over 20 years, and having conducted thousands of negotiations with tens of thousands of parties, I believe one thing emphatically, there is never only one "right", and never only one "wrong", there are only perspectives, personalities, and positions. Take the exact same facts and change the human beings around the table, and you have an entirely different game. The proof for this supposition is to attend any negotiation simulation and have the same problem given to multiple groups of people and see all the different results that are achieved by the different negotiating teams.[3]

Furthermore, you never know what is going on inside the deep dark recesses of the "other" camp. There might be an IPO brewing, someone might be about to lose his job, be up for a promotion, have bad loss to gain ratios, have the imminent announcement of a new product or service, or the denial of a crucial governmental approval. All of which has nothing to do with the negotiation at hand factually, but may dramatically influence a desire or non desire to culminate a negotiation. By using a *deal mediator,* someone with extensive mediation experience as well as sophisticated business acumen, you can avoid the trap of falling into the unknown of having no information or false information influencing your negotiating posture.

The trick is in hiring the right person. It can't just be any old mediator or former judge. It has to be somebody with sophisticated people skills, well developed negotiation skills, sharp business acumen and a persistent personality. There are often unofficial outsiders in deals i.e. brokers, consultants, investment advisers etc. However, these folks don't have the often magical people moving skills, are tainted by perceived allegiance to one party and have their own self interest that may make them impaired as deal makers.

Bringing in specific deal mediation talent at the onset of negotiations before things haven gotten off track, ensures that the negotiations will stay *on track* and the chances of a deal culminating dramatically increase. Furthermore, if an ongoing relationship is necessary

(Footnotes)
[3] Richard J. Klimoski, *The Journal of Conflict Resolution*, Vol. 22, No. 1 (Mar., 1978

between the principles after the deal closes, this ensures that there are no bruised egos or damaged personal relationships that have to be weathered post closing.

Bringing all the resources you have to bolster your negotiating position should be a priority. If you can gain agreement from the other party to hire a deal mediator, the chances for success are improved. If the other party will not agree, still hire a deal maker to work with your team. Her/his skills will still be useful. I've been hired by one party and during the negotiations, began working with their opponent, who began treating me as a confidant simply because I spoke like a mediator. This enabled me to bring the deal to a successful culmination.

In short, using a deal mediator improves your negotiating position, improves your chances for a successful deal signing, and improves post deal relations between the parties. Wise negotiators anticipate using such talent in their transactions.

(Authot: Hesha Abrams, Esq. is a nationally acclaimed attorney mediator – Abrams Mediation and Negotiation, Inc., Dallas, Texas USA. She specializes in Intellectual Property matters and highly complex, emotional and/or political cases.)

Interested to contribute Articles?

We would like to have your contributions, provided they are not published else where. Articles should be in English. Please take care that quotations, references and footnotes are accurate and complete. Submissions may be made to the Journals Division, Indian Institute of Arbitration & Mediation, G-209, Main Avenue, Panampilly Nagar, Cochin - 682 036 or editor@arbitrationindia.com.

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The Lighter Side

A man was driving home late one afternoon above the speed limit. He noticed a police car with its red lights in his rearview mirror. He thought, "I can outrun this guy," so he floored it and the race was on.

The cars were racing down the highway at 90 miles an hour. Finally, as his speedometer passed 100, the guy figured, "What the heck," and gave up. He pulled over to the curb. The police officer got out of his cruiser and approached the car.

He leaned down and said, "Listen mister, you had better have a real good excuse why you tried to run from a police officer."

The man thought for a moment and said, "Three weeks ago, my wife ran off with a police officer. When I saw your cruiser in my rearview mirror, I thought you were that officer and you were trying to give her back to me!"

The officer let him go.

"A marriage without conflicts is almost as inconceivable as a nation without crises."
~Andre Maurois~

Arbitration "Free Zone"

The Kingdom of Bahrain today formally launched the Bahrain Chamber of Dispute Resolution and, in the process, became the first country in the world to establish an arbitration "free zone" and introduce the concept of statutory arbitration. The Chamber, an initiative of Bahrain's Ministry of Justice and delivered in partnership with the American Arbitration Association, the world's leading provider of conflict management and dispute resolution services, will be known formally as the BCDR-AAA. Established through unique ADR legislation, the BCDR-AAA will provide the region with a 'best in class' international ADR centre of excellence, but with the distinct added advantage of operating an arbitration "free zone" under Bahrain's new legislation.

Reforms on International Arbitration Process

The global recession has led to a spike in cross-border commercial disputes, which in turn has led to a rise in international arbitration. But even as more companies turn to arbitration, many in-house lawyers complain that the process, at its worst, can be as costly and time-consuming as litigation. Now an advocacy organization called the Corporate Counsel International Arbitration Group is highlighting the problems in order to encourage reforms. Though CCIAG was launched three years ago, it's just beginning to make its influence felt. The Paris-based group is composed of 50 large multinationals, including General Electric Company, Exxon Mobil Corp. and Siemens AG.

Foreign Award refused enforcement on ground of Public Policy

For the first time since China acceded to the New York Convention in 1987, a foreign arbitration award has been refused recognition and enforcement in China on public policy grounds. The award was rendered by a tribunal sitting in Paris under the ICC Rules. The claimants were Hemofarm DD, MAG International Trading Company - two Serbian corporations - and a Liechtenstein company, respectively and the respondent was Jinan Yongning Pharmaceutical Co, a Chinese company. The Supreme People's Court found that the award disposed of matters beyond the scope of the arbitration clause contained in the contract between the parties. Since all of the claims relied on the same factual circumstances, this finding alone would have been sufficient basis for refusal in respect of the entire award. Nevertheless, the court went on to consider the public policy grounds. It declared that the tribunal's disposition of matters that were beyond the scope of the arbitration clause and had already been decided by the competent Chinese courts amounted to a violation of China's "judicial sovereignty and the jurisdiction of its judiciary". The court apparently intended to set a precedent on public policy grounds as a bar to recognition and enforcement under the convention.

Act on time

In a recent decision the Supreme Court of Denmark held that an arbitrator was not independent because of his previous role as an adviser to one of the parties in regards to the contract on which the arbitration tribunal was to decide. However, the arbitration award was not found legally invalid, as the claimant had not stated its objection in time.

Enforcement of arbitral awards rendered in Hong Kong

The Supreme People's Court of the People's Republic of China has recently circulated a notification on the enforcement of arbitral awards rendered in Hong Kong to all courts in Mainland China. Dated 30 December 2009, the notification clarifies that ad hoc and institutional arbitral awards rendered in the Hong Kong Special Administrative Region are enforceable in Mainland China subject to Article 7 of the Arrangement concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region, which became effective from 1 February 2000.

Customised Training Programs

To cater the requirements of various segments of people, IIAM conducts training programs to suite their convenience and need. The tailor-made training programs on negotiation, mediation or arbitration can be designed to suite the requirement of the industry or institution. The duration (hours or days), contents etc. can be finalized on requirement. The costing of the program can also be finalized based on the number of participants, contents and duration of the program. It gives complete flexibility for the industry or institution to design the program based on their requirement.

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You will be sent four 'reading and study assignments' with your course materials, and these form an essential part of your distance learning course. They are designed to help you to work through the course manual and understand the concepts. The course will provide a good basic knowledge of ADR – Negotiation, Mediation & Arbitration – in theory and practice. On successfully completing the assignments included in the course a certificate will be awarded.

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Interested to start ADR Centre?

Indian Institute of Arbitration & Mediation is looking for parties interested to start IIAM Chapters in various states and cities.

If you have a passion for dispute resolution and you are interested to start a Dispute Resolution Centre, please mail your details to: dir@arbitrationindia.com

For details of IIAM activities visit website

It often seems, in life,
that there are more questions than answers.
The truth is that there are more answers than questions.
It just seems the other way around.
~Jake Ehrlich III~