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## **INTERNATIONAL** **DISPUTE MANAGEMENT AND RESOLUTION:** **AN INTRODUCTION**

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To Author (1988)

### I. **DISPUTE MANAGEMENT AND RESOLUTION DEFINED**

#### A. **Dispute Management**

1. Defined by time period:
  - a. From beginning of dispute
  - b. From beginning of attorney involvement
  - c. From introduction of attorney to other side of dispute
  - d. From beginning of formal or informal dispute resolution
  - e. Other time period
2. Defined by announced objectives of management:
  - a. To terminate disputes at earliest possible juncture
  - b. To evaluate each dispute throughout its life
  - c. To dissuade others from filing lawsuits

d. To eliminate or diminish uncertainty as to any dispute's value

3. Budgeting and dispute evaluation methods

B. Dispute Resolution

1. Defined as the mechanics and systems used to resolve disputes

a. Binding and non-binding

b. Formal and informal

c. Specialized and general

d. Voluntary and involuntary

(1) Government required

(2) Court orders and rules

e. Arbitration

(1) American Arbitration Association

(2) ICC Court of Arbitration

f. ADR

(1) US (includes arbitration, mediation, rent-a-judge, conciliation, mini-trial, etc.)

(2) International (may exclude arbitration)

(3) Center for Public Resources

(4) Judicate - National Private Courts

(5) AAA

g. Litigation

h. Traditional negotiation and settlement

2. Limited only by the parameters of applicable law and the flexibility of the parties

3. A subpart of dispute management

II. **BASIC DISPUTE MANAGEMENT GOALS**

A. Cost Containment

1. Budgeting
2. Control
3. Coordination
4. Impact on profession

B. Results

1. Superiority of work product
2. Success in dispute
3. Achievement of goals

C. Maintaining Relationships

1. Through good faith approach to dispute
2. Through compromise
3. Consistency in approach

III. **BASIC DISPUTE RESOLUTION GOALS**

A. Similarity To Dispute Management Goals

1. Goals reachable through all mechanisms
2. Goals not reachable through all mechanisms

B. Other Goals

1. Improvement of dispute mechanism involved
2. Modification of dispute management techniques

IV. **HISTORY OF DISPUTE MANAGEMENT**

A. Past History

1. Limited resources
2. Little formal management applied

3. Little accountability

4. Few resources

B. Current Status

1. Beginnings of comprehensive management

2. Broad differentiation

3. Declining divergence in views and goals

C. Future Of Dispute Management

1. Greater control

2. Greater flexibility

3. Declining cost

4. Greater automation

V. **HISTORY OF DISPUTE RESOLUTION**

A. Past History

1. Few alternatives

2. Greater reliance on single person in charge

3. Limited role of corporate counsel

B. Current Status

1. Greater number of alternatives

2. Continuing rigidity of resolution techniques

3. Continuing reliance on historical methods, particularly internationally

C. Future Of Dispute Resolution

1. Greater flexibility

2. Fewer formal techniques

3. Less formal litigation

4. Greater coordination between management and attorneys

## VI. **MECHANICS OF DISPUTE MANAGEMENT**

### A. Internal Dispute Notification

1. Direct formal instructions to personnel
  - a. To company management
  - b. To all company personnel
2. Informal instructions
3. No instructions to personnel

### B. Internal Dispute Reports

1. Informal reports
2. General reports
3. Specific reports
  - a. Insurance
  - b. Single dispute
  - c. Other

### C. External Dispute Management

1. Guidelines for outside counsel
2. Coordination of categories of disputes
3. Resources for future disputes

### D. Special Situations

1. Multiple claimant
2. Multiple defendant
3. Bankruptcy

## VII. **MECHANICS OF DISPUTE RESOLUTION**

A. Budgeting

1. Internal costs and benefits
  - a. Management time
  - b. Internal strife
2. External costs and benefits
  - a. Customer costs and benefits
  - b. Supplier costs and benefits
  - c. Attorney costs and benefits
  - d. Dispute resolution costs and benefits
  - e. Competitor costs and benefits

B. Dispute Evaluation

1. Methods of calculating costs and benefits
2. Systems include informal and formal

C. Negotiation

1. Consistency with management objectives
2. Formal and informal preparation
3. Techniques
4. Objectives
5. Checklists
6. Informal discovery
7. Selection of negotiators
8. Separation of negotiation and advocacy roles
  - a. Timing
  - b. Different lawyers

D. Sharing Agreements

1. Among defendants
2. Pre-litigation agreements

E. Settlement Agreements

1. Form agreements
2. Preliminary letter
3. Letters of intent
4. Business agreements as settlement agreements

VIII. **INTERNATIONAL DISPUTE MANAGEMENT**

A. Internal Management Control

1. Centralized
2. Regional
3. Language

B. Coordination Of Disputes

1. National
2. Regional
3. International

C. Interface With Outside Attorneys

1. By outside counsel
2. By corporate transactional counsel
3. By corporate litigation counsel
4. By corporate international counsel

IX. **INTERNATIONAL BUSINESS DISPUTE RESOLUTION**

A. Current Views

1. Geographic differences
2. Differences among different countries' bars
3. Difference among judiciaries
4. Effect of international developments among nations

B. Enforcement Considerations

1. Treaties
2. Comity
3. Product differentiation
4. National interests

C. Liability Considerations

1. Multiple forum questions
2. Government rights and requirements

D. Payment Considerations

1. Currency restrictions
2. Countertrade
3. Taxes
4. Exchange rates

E. Special Privilege And Confidentiality Issues

1. Attorney-client privilege
2. Rights to inspection and seizure

X. **SIGNIFICANT LEGAL ISSUES**

A. Dispute Management

1. Discovery questions



- a. Budgets
    - (1) Fee cases
  - b. Management guidelines
  - c. Dispute reports
- 2. Dispute management rights and obligations
    - a. Attorneys' rights and obligations
    - b. Employees' rights and obligations

**B. Dispute Resolution**

- 1. Settlement contracting
  - b. Breach of settlement agreement
  - c. Choice of law
- 2. Attorney fees
  - a. Attorney contingent fees
  - b. Attorney liens
  - c. Statutory attorney fees
- 3. Ethical issues
  - a. Representations
  - b. Resolution authority
  - c. Multiple party representation
  - d. Champerty and maintenance
  - e. Resolution recommendations
  - f. Contact with client on other side
  - g. Attorney's future practice restrictions
  - h. Class actions

4. Releases
5. Finality
  - a. Res judicata
  - b. Contribution
  - c. Resurrection of settled claims
6. Enforcement
7. Taxes
8. Assignment of claims
  - a. Statutes against assignments to corporations
9. Privileges and confidentiality