



Conflict management

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Summary of several surveys & studies

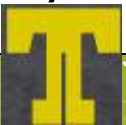


CONFLICT MANAGEMENT AS POLICY

- USA: Dispute Wise Companies
(Cornell 1998, AAA, 2003)
- NL: Non-Users (ACB, 2004)
- EU: Embedded Users (Herbert Smith, 2007)
- GER: Structured “out of court”
procedures more effective than ad hoc
approach (PWC 2005/2007)
- UK: Managers avoid disputes
(CEDR/CMS 2006)



- Survey 1000 largest US Corporations
- 88% had used mediation /
79% had used arbitration
- No future use: mediation 17%
arbitration 31%
- Why ADR?
 - = cost control (89%)
 - = **dispute control (83%)**
 - = expedition (80%)
 - = **business solution (67%)**
 - = maintenance relationship (59%)



Dispute-wise management index (total – most – least dispute wise)

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- Inhouse counsel (IC) business awareness (81-93-68%)
- IC involved in corporate planning process (59-81-42%)
- Sr. management more focused on maintaining relationships than winning cases (48-65-31%)
- Most time devoted to complex and technical matters (41-62-21%)
- Aggressive attitude in disputes (40-28-59%)
- Lot of focus on contract clauses (23-14-36%)
- Litigation preferred over ADR (15-3-31%)



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Dispute-wise companies have

High satisfaction rate employees
and other stakeholder
Lower costs for disputes
Longlasting relationships

PE-ratio 28% and 68% higher
than mean and least resp.



Making profit while resolving disputes

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- No idea about **time and cost** involved with disputes (est. Eur 3 billion /year; CEDR GBP 50 billion)
- Lack of **know-how** re. modern conflict management methods and tools
- No (clear) **guidelines** re. dealing with disputes
- Mainly **legal approach** instead of business approach (**managers/business no ownership**)
- Too many **preconceptions** re. mediation (soft, kind of arbitration, just compromise)
- Distrust due to **lack of legal framework**, f.e. re. confidentiality
- After practical experience more interest, but no breakthrough yet.





Blockings/impediments lawyers*

- ADR can mean *Alarming Drop in Revenues*.
- Process and its implications **unfamiliar**.
- **Uncertainty** about role in ADR, afraid to make mistakes.
- Scared to lose the client because of 'having given a **wrong advice**' in case the mediation does not lead to a solution.
- Fear the mediation may go on forever and will cause **additional costs and time**.





Blockings/impediments lawyers

- Difficult to **hand over process** to third party whose added value is unclear.
- Apprehension to **lose client** to lawyer-mediator (still: lawyers generally prefer lawyer-mediators).
- Uncertainty about **quality** mediator.
- If referral: sometimes feeling that referral means that the judge *'doesn't want to deal'* with this case.
- Anxious about **"strategic use"** of mediation (obtain information), uncertainty re. lack of right of refusal to testify as mediator & confidentiality issues.





Blockings/impediments lawyers

- Concerned **confidentiality** in mediation is **too strict** (f.e. introducing incriminating information in mediation to block potential use during subsequent legal procedure).
- Mediation (and esp. referral) can be perceived as **admission of weakness**/sign lawyer does not do good job.
- Lawyers tried to negotiate themselves without result and **added value of 3rd party unclear**.
- Mediation generally ok, but **not in this case/ these parties**.





Blockings/impediments lawyers

- The **common denominator** for all these impediments:
 - **Unfamiliarity** with the process and its practical implications and use, combined with **fear to lose business.**



The inside track.

How Blue chips are using ADR

- Use of ADR at 21 Blue Chips
- 4 types “users”: **embedded** (7), **ad hoc** (6), **negotiators** (6) and **non-users** (2)
- Mainly **mediation** as ADR method.
- Frequent and sophisticated ADR-use in **US & UK**, rest of Europe relatively ‘poorly educated’.
- Significant increase in **“strategic” use** in US and UK (obtain info, to comply with court order, no mandate to settle)
- Key differentiator is CLD



The “Embedded Users”

- **ADR central role** in DR culture, using Early Case Assessment processes or less formal **internal guidelines** to achieve consistent approach to DM.
- Use of ADR processes **more frequently and earlier** in life-cycle of disputes than other organizations => savings in legal costs and management time.
- See **value** in mediation even when no settlement.
- Highest **skill levels** in ADR processes in their in-house teams, use metrics on ADR use and their disputes portfolio as a whole.
- Most **constructive relationships** with external lawyers.



Commercial Dispute Resolution

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- **Discrepancy** between **actual choice** of DR procedure and perceptions **benefits** (litigation perceived as least beneficial but most used method after negotiation).
Little use of other 'out of court procedures' than negotiation.
- **Main reasons for using litigation** are: failure of previous procedures, legal action taken by other party or lack of willingness by the other party to consider other procedures. = > **not because of specific advantages**
- Trend towards systematic conflict management, esp. in large companies.



Managers avoid conflict

Would you address a problem with your team or rather ...

- parachute jump for the first time: 35%
- shave your head for charity: 27%
- eat 'bush tucker' bugs for a week: 8%

Tell a client a home truth or rather...

- attend an event where you know no one: 49%

Confront a boss's underperformance or rather

...

- send back a bottle of wine in a restaurant: 69%



Managers avoid conflict

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Few managers, **only 37%**, feel trained to cope with business conflict

Dutch survey (1999):

69 % of employers do not find management suitable to lead

