

Client: Byfield Consultancy
Source: Broadcast (Main)
Date: 11 January 2013
Page: 17
Reach: 6442
Size: 235cm2
Value: 1482.85

IN MY VIEW

Consider mediation before starting a legal battle

Keeping disputes out of the courts can save time and money, says **Andrew Hildebrand**



You can resolve most disputes yourself but what are your options when you can't? People

generally consider marriage guidance counselling before getting divorced, but when it comes to business, they instinctively reach for a litigator without considering how that will play out, or whether there's a better option.

The focus, invariably emotionally charged, tends to be about who is right, not what's right, and about loss rather than likely financial outcome, collateral impact (on you and your business) and attendant risks. In fact, more often than not, mediating would probably be a smarter option.

Statistically, 90% of all UK commercial mediations settle, and at a fraction of the cost and time involved in litigation. Unlike litigation, mediation allows disputes to be settled confidentially. Settlement terms can also be kept private, without creating unwelcome precedents (making it well suited to royalty disputes).

A mediator cannot impose any ruling, so you can safely explore options without compromising your case – options that are more creative than a court might permit, such as reconfiguring rights, payments or cashflow terms. Instead of the lottery of litigation, you can buy certainty. With year-ends currently looming, this could be

especially attractive to financial directors who would prefer not to have to make accounting provisions, and who might also unearth tax-planning advantages.

With independent film and television arbitrations being relatively few and far between outside Los Angeles, mediation offers distributors the added bonus of being considerably more effective and predictable than suing or enforcing abroad.

The problem with litigation, or arbitration, is that people don't focus properly on three issues. The first is cost: people rarely calculate the likely legal bill through to the end of trial, or the odds of winning.

Statistically, the likelihood of 'winning' a really strong case rarely exceeds 70%. Even then you may not see the whole amount. After paying about 30% of your legal costs, your net recovery may come down to 50%. And that's if you win. But it isn't like tossing a coin; if you

ceedings can take 18-24 months and may be impractical if there are cashflow issues or tight deadlines.

Third is litigation fatigue and stress: people frequently underestimate how much time litigation can devour; time that would be better spent running their business.

Mediation does not currently feature much in television, and our contracts rarely provide for it, even as part of an escalation clause – the BBC Code of Practice is a notable exception. Elsewhere in UK industry, it is frequently market standard, used both inside companies and on large-scale multi-party projects. Nearly 70% of High Court commercial cases end up being mediated.

So the next time you are thinking about pressing the litigation trigger, consider whether mediation may be an option.

➤ *Andrew Hildebrand is a commercial mediator and media/entertainment dispute specialist with Jams International*

'With mediation, you can explore your options without compromising your case'

lose, you'll be on the hook for your legal costs, 70% of theirs, and maybe a counterclaim to pay – and the combined legal costs often end up dwarfing the claim.

The second issue is timing: pro-