



Lawyers as a Catalyst for Change in

Early Issue Business Conflict Management

BY UTE A. JOAS QUINN



William Ury, co-author of “Getting to Yes” and “The Third Side,” said that “cooperation is essential to the future of humanity.”¹

In an era of globalization and the current “knowledge revolution,” Ury believes that there is a growing need for mediation, because negotiation is becoming the primary form of human decision-making. Where negotiations reach an impasse, mediation is an “inevitable next step.”

Though it may be inevitable, not all factions of society have caught on equally to our need for progress in this direction. The tsunami of acceptance of collaborative relationship-building techniques to manage conflicts is yet to transpire, with business and civil society lawyers alike often guilty of taking the path of least resistance: litigation. Why?

From a business perspective, the amount of time and effort to be spent on any one topic is directly related to the risk and/or opportunity that issue may bring to the company. As a result of increased public attention, regulatory enforcement, and looming economic and ecological realities, non-technical or corporate social responsibility (CSR) risks are moving to the extremities of risk matrices. These global societal, economic and environmental realities are increasing the number of risks that companies have to contend with, but are also exponentially changing the range of opportunities. Stimulated by studies on the costs of non-technical risks to the business, and John Ruggie's Guiding Principles,² which address the broken dichotomy between business and human rights, big businesses are vigorously working to adapt internal risk assessments, implementation programs and assurance reviews to respond to changes in societal goalposts. Public-private partnerships, such as the UN's Clean Cookstove Initiative, are springing to life, in addition to more traditional business collaborations with competitors, suppliers and even new industries in a bid to anticipate future growth platforms. As the inevitable conflicts generated by these risks and opportunities expand, so too must the range of solutions to manage these conflicts going forward. For in-house counsel and others charged with building effective conflict management (read: prevention) systems, these are exciting times.

Counsel are learning to assist in these soft law aspects, which used to be areas of discretionary responsibility (on top of economic, legal and ethical obligations), and are now of key concern to industry.³ However, the extent of innovation and collaboration that counsel have applied up to now is not in keeping with the efforts of their industry counterparts. This is despite the fact that the business case for a different approach — at both the early issue identification stage (conflict management) and the issue crisis/dispute stage (dispute resolution) — is strong.

Dispute resolution stage

In 2006, the American Arbitration Association published a study⁴ measuring characteristics of in-house legal departments considered "dispute-wise." Similar to how well-managed business organizations manage risk, these departments measured success by using a portfolio approach to disputes. The study said:



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"Typical of the portfolio approach is a willingness to take a more global view of the full spectrum of an organization's disputes — addressing each of them in relation to other disputes in the portfolio with an overall goal of minimizing risk, cost, time spent and resources expended, while preserving important business relationships. ..."

"Those companies falling into the 'most dispute-wise' category with respect to their handling of ongoing disputes are also actively engaged in conflict avoidance programs, putting in place a framework that both helps prevent disputes from arising and that deals with disputes in their earliest stages as close as possible to the point of origin."

The results of the study were telling — the most "dispute-wise" companies averaged 28 percent higher price-earnings ratios than the mean for all public companies, and 68 percent higher than those in the least dispute-wise category. According to the study, these outcomes suggested that the most dispute-wise companies are "*particularly concerned with maintaining good relationships with all of its stakeholders*" and that dispute-wise business management practices appear to be associated with positive business outcomes.

Key benefits identified with business-related management practices included:

- a) stronger relationships with customers, suppliers, employees and partners;
- b) appreciation and valuing the fairness and speed of ADR processes in resolving disputes with customers and suppliers, while turning away from what, in many instances, had become a single-minded focus on litigating at almost any cost;
- c) lower legal department budgets, and management of in-house legal costs with a higher degree of efficiency; and
- d) a good utilization of in-house legal resources.

In 2010, in a survey conducted by the Rome-based ADR Center (funded by the European Commission),⁵ research was done to assess the current status of intra-European Union ADR practices. The study was meant to assist policy makers in applying the newly approved EU Mediation Directive, with the ultimate goal of ensuring the growth of cross-border commercial transactions. Comparing litigation to the ADR alternatives of arbitration and mediation, arbitration takes slightly less time than court proceedings, but still (on average) takes more than a year to complete.

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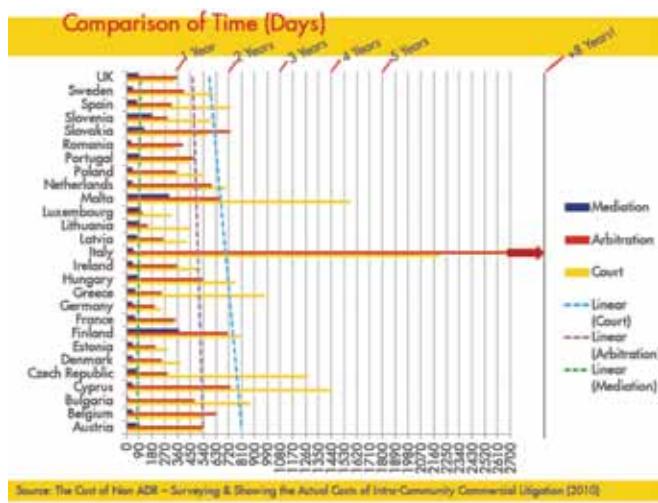


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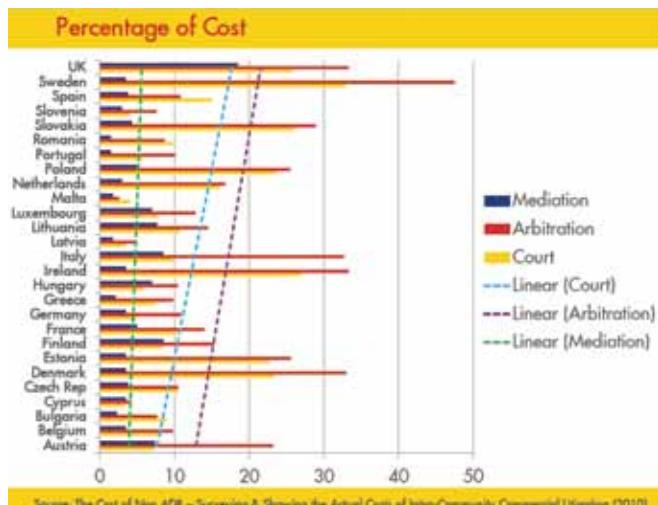
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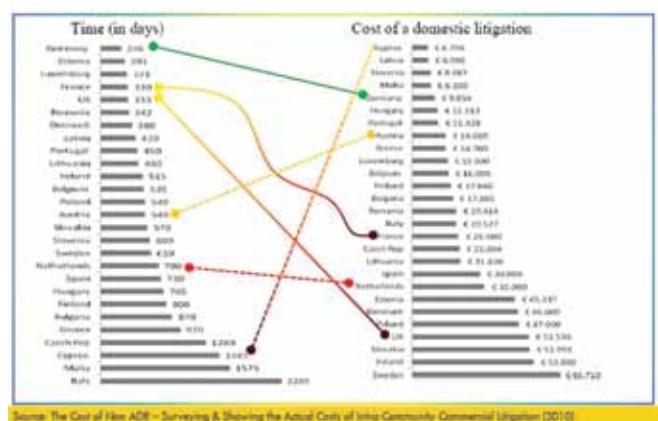


Source: The Cost of High ASR – Surveying & Shoring the Actual Costs of Intra-Community Commercial Litigation (2013)



The status quo in terms of EU litigation statistics is appalling.

The Status Quo : Single Issue Domestic Litigation, EUR 200,000 dispute



Source: The Cost of Non-ADR - Surveying & Showing the Actual Costs of Inter-Community Commercial Litigation (2016)

A study conducted by the British ADR provider CEDR estimated the extent of cost savings through early resolution of civil and commercial cases through mediation, compared with litigation, at around £1.4bn in 2010 (constituting saved management time, and avoidance of costs related to lower productivity, legal fees and damaged relationships). This is more than 100 times a mediators' fee income of £13m.⁶ Other in-house success stories exist on this front as well:

Georgia-Pacific Corporation Summary of ADR Savings 1995-2006		
Year	No. of Cases	Estimated Savings (Millions)
1995	13	\$1.00
1996	26	\$1.50
1997	84	\$6.50
1998	110	\$6.00
1999	94	\$2.50
2000	68	\$4.25
2001	43	\$2.97
2002	44	\$2.30
2003	36	\$2.35
2004	77	\$3.41
2005	96	\$6.97
2006	63	\$5.081
Totals	754	\$44.83

Early issue conflict management stage

Ironically, there are those who believe that legal issues are currently already well served by ADR, while businesses themselves are falling behind in using similar systems for early conflict prevention matters such as employee issues.⁸ One positive example is the conflict management system set up by Giant of Maryland, LLC (Giant), in which a Fair Employment Practices Office was set up for its 25,000 employees. In 2002, the Office received 800 internal complaints, only 20 of which became formal complaints (18 of these were also ultimately resolved). Though dated, such statistics can be considered a success by any means.

A 2004 study,⁹ however, suggested that ADR techniques were not pervasively used outside of legal departments for internal conflict prevention purposes. According to one author:

- 35 percent of respondents reported that ADR training and education is provided to legal staff, while only 13.5 percent provided such training and education for the non-legal staff;
 - 71.4 percent had no dispute resolution training and education for first-line supervisors;

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Given the strong business case for ADR techniques in both dispute resolution and early conflict management stages, what is impeding the tsunami realization of Ury's "inevitable" next step?

- 69 percent had no dispute resolution training and education for managers;
- 88.1 percent had no dispute resolution oversight body that includes representation of key stakeholder groups;
- 67 percent had no ADR program that is used in resolving employment and workplace disputes;
- 45.2 percent had no one who functions as an internal, independent and confidential neutral;
- 61 percent had no central coordinator or coordinating office, which spurs the development, implementation and administration of their companies' dispute resolution efforts;
- Only 2.4 percent had a trained mediator on staff, either full or part-time; and
- None uses external mediators on a contractual basis to help resolve conflicts within their workplaces.¹⁰

Little current statistical information exists to vary the impression generated by the above study. However, with the passage of the EU Mediation Directive,¹¹ at least one group of companies in Germany has taken their cue to ensure that ADR practices are of first-rate quality and used with optimum result in legal, human resources and compliance departments.¹² Some of these companies also house their own internal mediators.¹³

Given the strong business case for ADR techniques in both dispute resolution and early conflict management stages, what is impeding the tsunami realization of Ury's "inevitable" next step? The first place to look, for both the problem and solution, is at the lawyers.

Business on lawyers

To generate a culture change of improvement and to better connect with external demands on the corporate

agenda, some businesses are defining imperative behaviors to meet the risk, and urging middle management to embrace a more external focus. Businesses instruct that an external focus requires the willingness to listen and act, an obsessive avoidance of (perceived) arrogance, meaningful transparency to engender trust, and regular engagements that are relationship-focused rather than meeting-focused.

How do these behaviors translate to lawyers? Typically, a businessman's first reaction is "They don't." Strategies that focus on the heart rather than the mind seemingly have little nexus with a position-based lawyer. In this arena, the lawyer is seen as a technician (preparing necessary paperwork) rather than as a strategist, and as such, he is viewed as more likely to harm collaborative efforts than facilitate them if brought into the discussion too early:

"Talking with one's attorney may help the company sidestep a possible legal problem, but it does not address the core issue of the dispute itself. It merely addresses the legal issue. True early intervention involves addressing the actual conflict head-on through an effective conflict resolution process."¹⁴

Lawyers on lawyers

Strangely, a traditional lawyer's first reaction to the question posed is much the same as the business's. Where a robust analysis of strategic issues encompasses attention to people, process and content, many lawyers have been comfortable with focusing on process, and leaving people and content to others. Such a tunneled outlook categorizes non-technical risks and corporate social responsibility issues as "disputes" that need a formal judicial determination, rather than evolving "conflicts" that require engagement, collaboration, trust and respect. Subjective skills like these have no place in courtrooms or arbitral tribunals, and logically then (some lawyers may rationalize), no place in the legal professional's repertoire. It is no wonder that legal professional bodies, law schools, law firms and the like, rarely recognize lawyering skills that focus on conflict management rather than dispute resolution. At base, however, such views are short-sighted and ultimately detrimental to the future of the legal profession. Bernard Mayer addresses this in his book "Staying with Conflict."

"When resolution is the phase of conflict that parties need to address, we are in business. But this is a very limited and limiting view of what disputants want and need in the broad range of conflicts that they face in their lives. As a result, our efforts have been more constricted than they need to be. ... [Conflict professionals] need to start by revising our sense of purpose ... our overriding goal ought to be to promote a constructive approach to engagement in the significant issues that disputants face. ..."¹⁵

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ACC Extras on... Early Issue Business Conflict Management

Quick Reference

- Litigation v. Arbitration v. Mediation Comparison Spreadsheet (Oct. 2011).
www.acc.com/quickref/lit-arb-med_oct11

QuickCounsel

- Alternative Dispute Resolution (ADR) (July 2011).
www.acc.com/quickcoun/adr_jul11

Top Ten

- Top Ten Things to Consider When Using Mediation for Alternative Dispute Resolution (Jan. 2011).
www.acc.com/topten/mediation-adr_jan11

Form & Policy

- Submission to Mediate Form (Oct. 2011).
www.acc.com/forms/stm_oct11

Presentation

- Alternative Dispute Resolution — What Works? (May 2011). www.acc.com/adr-what-works_may11

Education

- ACC's Annual Meeting (Sept. 30–Oct. 3 in Orlando, Fla.) offers an entire track of programming on Litigation and Dispute Resolution. Join us for sessions such as "1003 — Straight Talk: In-house Litigation Tips and Management Techniques" and "1005 — How to Survive a C-Suite Scandal." Find more information and register at <http://am.acc.com>.



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Oddly enough, even this advice is directed toward conflict professionals, i.e., collaborative consultants (non-lawyers) who work for organizations like the Consensus Building Institute, the Office of the Compliance Advisor Ombudsman and Collaborative Decision Resources. Businesses are urgently turning to these groups because of a too-narrow appreciation of the skills lawyers can bring to the table. As legal professionals, we are selling ourselves short at the same time as we are being sold out.

The need for vision

As conflict management is a natural preventative measure to avoid full-blown dispute resolution, why is the legal profession allowing this role to slip through its fingers? One potential reality is that lawyers — in hard contrast to their clients — have accepted the technician role and have never felt the need to use *vision*.

As an example, multinationals spend significant funds to try and anticipate the markets of the future and to build a vision that can meet that future. Key to that vision is innovation. The Future Agenda program, sponsored by the Vodafone Group, has identified that innovation and foresight are the keys to the future for business.¹⁶ Innovation is exemplified by a five-pronged approach of:

1. Seeing the bigger picture (see Shell's "inside-out, outside-in" approach);
2. Challenging existing views (see GE's "seeking to destroy your own business" approach);
3. Accommodating wild cards (see Nokia's "What if?" scenarios, which try to anticipate events such as Iceland's volcanic ash cloud that stopped air traffic);
4. Building scenarios of the possible "dimensions" man may live in in the future; and
5. Identifying growth opportunities.

By definition, innovation is an ever-moving target, quickly outdated as new technologies, unfamiliar environments and varied competitors enter the market. Economic survival depends upon anticipating and rising to the challenge of those moving targets, and continuing to challenge existing views that cannot seem to adapt.

Many lawyers have miscalculated in assuming that these business developments have no effect on our profession. When debating the role of lawyers in implementing human rights through the Guiding Principles, for example, lawyers continue to focus on access to litigation¹⁷ rather than company grievance procedures that, if employed as envisioned, should work to curtail most conflicts from rising to the level of a dispute in the first instance. Similarly, the debate among law firms on the same subject of human rights sadly seems to focus more on the type of client who "deserves" legal representation,¹⁸ rather than broadening



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the type of services lawyers should be providing (i.e., collaborative dispute avoidance), no matter how “acceptable” certain factions of society might deem their clients. And such broadening should be directed to the entire profession (would-be plaintiffs’ lawyers alike), and not simply corporate lawyers.¹⁹

How can we help our clients build a fence at the top of the cliff, instead of waiting with the ambulance at the bottom?

To be fair, the lack of vision is not entirely lawyers’ fault (nor is the label fitting for all members of the profession, some of whom are notable visionaries). Legal education and training has historically not included thought leadership as part of the curriculum. And perhaps external counsel cannot be expected to emulate that to which they have had no exposure in their own organizations. But as part of a profession which prides itself in “relating” to (business, NGO, governmental, societal and other) clients so that it can best represent their interests, any lawyer who steadfastly harbors harnessed views of resolution over avoidance is only, as Wolf van Kumberg, European legal director of Northrop Grumman, puts it, “treating the illness rather than eliminating it — an inherent conflict.” As David Maister’s “Trusted Advisor”²⁰ coaches us, if we do not have our own vision for guiding the legal profession through inevitable changes in conflict management, we will not gain trust from our clients through understanding their visions and having capacity to act upon that understanding. How can we help our clients build a fence at the top of the cliff, instead of waiting with the ambulance at the bottom?²¹

Diversity of thought is key to vision and innovation

To realize a vision — and particularly one that has innovation and collaboration as core components — diversity of thought is needed. Unlike its popular definition, “diversity” is not purely a statistical objective. Instead, it is a welcoming acceptance of all ideas of substance as potentially good, no matter their source.

Using this definition, it is difficult to measure when the diversity needed for collaborative innovation has been achieved. Companies or law firms that present gender and origin statistics only demonstrate that different ideas po-

tentially exist in the organization, but not necessarily that those ideas are encouraged, spoken or listened to. The key performance indicators (KPIs) that measure this level of diversity are more nebulous, and are ultimately reflected in an organization’s performance, DNA and the reflections of the people who work for it.

The collaborative innovation needed for generating future business growth and effectively managing conflicts has diversity at its core. New ideas must come from new sources, both within and outside of the organization. In the 2012 Edelman Trust Barometer study results, Edelman speaks of businesses replacing their License-to-Operate with a License-to-Lead. “Radical transparency” is urged such that businesses learn to engage first with employees as the most crucial element of society to earn trust, even before shareholders. Trust, seen as an essential line of business, will then bolster reputations, and lead to more collaborative and sustainable solutions, and ultimately, less adversarial, high-exposure, formal legal disputes.

Again, innovation, diversity or trust are not a sermon to a statistically diverse audience. It is listening first, collaborating second, and then — whenever possible — building new concepts that all sides can support. It is also about taking action. Some thought leaders suggest that listening and empathy may not promote change, but that perspective taking and action toward an overall goal may work better to funnel conflict into solutions.²² In any case, joint gains should be the undisputed objective.

Inspiring change through collaboration

The future of effective conflict management lies in the legal profession’s ability to connect themselves to the “human agenda” — thereby aligning with their clients.

Thought leaders such as Richard Susskind (“The End of Lawyers? Rethinking the Nature of Legal Services”) are convinced that the type of lawyers who help clients prepare more responsibly for the future “are sorely needed and long overdue” and may “fundamentally change the way in which the law is practiced and administered.”²³ Similarly, Julie MacFarlane’s “conflict resolution advocacy” concept in “The New Lawyer: How Settlement is Transforming the Practice of Law” also comes closer to the mark of standing in the shoes of business in terms of relationship building.²⁴

Even further ahead is the International Mediation Institute (IMI), which developed global professional standards for experienced mediators and thereby became the first organization in the world to transcend legal jurisdictions’ limited approach to conflict/dispute resolution. The IMI Vision is simple and self-contained: Professional Mediation Worldwide. Multinational businesses like Shell, GE, Nestlé and Northrop Grumman,

and business-oriented service providers like the ICC, American AAA with ICDR, Asian SMC/SIAC, and Middle Eastern BCDR, are supporting IMI's efforts in recognizing that collaborative tools such as mediation are the conflict resolution mechanisms of the future. Collectively (also a first for dispute resolution service providers), these organizations are preparing for that future responsibly in a global manner, recognizing that as businesses transcend geographic and cultural boundaries, so must options for resolving potential conflicts. This will inspire transparency, consistency, credibility, and ultimately, greater understanding and acceptance of mediation and other collaborative techniques by its future users.

Legislators are also pushing the collaboration topic. Diana Wallis, former VP of the European Parliament and a strong proponent of mediation in general, and the passing of the recent EU Mediation Directive in particular, stated that the European Union is seeking "an alternative form of justice better suited to our modern day systems." Voicing that mediation is "such an important evolution for access to justice across the EU," Wallis consistently urges the European legal constituency to avoid becoming entrenched in legal positions and to solve the professional, traditional, legal and cultural issues that exist to make mediation successful in providing a better access to justice.

Of course, like our businesses before us, once the legal profession's focus is appropriately recalibrated, the effectiveness of engagement will require real change in relationship-building, not just empathy.²⁵

Doing so may create B2B dispute solutions, which look like this:



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And CSR conflict solutions that look like this:



No matter the context, "business as usual" for lawyers operating in business, government, civil society and as rights holders is simply no longer an option. Our efforts need to propel us to the point where we are viewed as desired problem-solvers rather than as a necessary evil. They need to increase our visibility with clients and act as catalysts for an interest-oriented culture aimed at defining and obtaining goals, not simply compromises.²⁷ Accomplishing visible, bottom-line change in forging a viable alternative to the current hackneyed debate of litigation vs. arbitration — one effective collaborative stakeholder relationship at a time — is a visionary imperative for the legal profession, an invaluable milestone for business (and society as a whole), and one which is well within our collective grasp to achieve. ▀

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NOTES

- 1 CPR Podcast, interview of Prof. William Ury by M. McIlWrath, dated 23 Nov. 2011, at <http://cpradr.org/Resources/ALLCPRArticles/tabid/265/ID/736/IDN-Podcast-No-101-William-Ury-on-Negotiating-Toward-a-Better-World-Nov-23.aspx>.
- 2 Advanced Edited Version, A/HRC/17/31, Report of the Special Representative of the Secretary-General John Ruggie, on the issue of human rights and transnational corporations and other business enterprises, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (March 2011).
- 3 Unfortunately, neither industries nor their counsel are helped by divergent opinions of what CSR actually entails. As described by the EU Commission Communication "A renewed EU strategy 2011-2014 for CSR", the EU Commission has defined CSR as "the responsibility of enterprises for their impacts on society" and has stated that CSR includes at least: human rights, labor/

- employment practices, environmental issues, bribery and corruption, consumer interests, community involvement, supply chain behaviors and public disclosure of non-financial information.
- 4 American Arbitration Association, *Dispute-Wise Business Management: Improving Economic and Non-Economic Outcomes in Managing Business Conflicts* (2006), Executive Summary available at www.adr.org (www.adr.org/si.asp?id=4123).
 - 5 ADR Center, "The Cost of Non-ADR – Surveying & Showing the Actual Costs of Intra-Community Commercial Litigation (9 June 2010)," available at www.toolkitcompany.com/Resources%20Center/Docs%20website%20stichting/Onderzoeken/Survey_Data_Report%20cost%20of%20not%20using%20ADR%20EU%202010.pdf.
 - 6 TheCityUK, "Dispute Resolution in London and the UK, at 4" (September 2010), located at www.thecityuk.com.
 - 7 "Georgia-Pacific's ADR Program: A Critical Review After 10 Years," *Dispute Resolution Journal*, May–July 2005 – updated courtesy G-P.
 - 8 Simon, Barry, "Are Businesses Missing the Dispute Resolution Boat? A Study Underscores Lack of Early Intervention Usage", published at www.mediate.com/pfriendly.cfm?id=1614.
 - 9 *The Use of ADR (Alternative Dispute Resolution) in Maryland Business*, published by Maryland's Mediation and Conflict Resolution Office (MACRO) (www.courts.state.md.us/macro/index.html). A study of 105 companies with staffs ranging from more than 5,000 to fewer than 250.
 - 10 Simon, Barry, "Are Businesses Missing the Dispute Resolution Boat? A Study Underscores Lack of Early Intervention Usage," published at www.mediate.com/pfriendly.cfm?id=1614.
 - 11 Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters (Cross-Border Mediation Directive).
 - 12 Round Table Mediation & Conflict Management of the German Economy (see www.RTMKM.de). Established in 2008, this group is a forum of representatives of German companies in the area of mediation and other forms of conflict management, independent of any associations. Current members are E.ON, SAP, Audi, Siemens, Deutsche Bahn, Deutsche Bank, Bombardier Transportation, Areva, the Fraunhofer-Gesellschaft, Deutsche Telekom and E-Plus Group. The Roundtable receives academic support from the Institute of Conflict Management, Europa Universität Viadrina, Frankfurt a.d. Oder.
 - 13 Id. See also Mallick, Drew L., "U.S. Corporations Should Implement In-house Mediation Programs into their Business Plans to Resolve Disputes," an excerpt from *Don't Think Twice, Mediation's All Right: United States Corporations Should Implement In-house Mediation Programs into Their Business Plans to Resolve Disputes* (2007), at www.hnlr.org/?p=120 (describing in-house mediation programs and statistics of Toro Company, Wells Fargo, U.S. Postal Service, Air Products and Chemicals, Inc. and Johnson & Johnson).
 - 14 Simon, Barry, "Are Businesses Missing the Dispute Resolution Boat? A Study Underscores Lack of Early Intervention Usage," published at www.mediate.com/pfriendly.cfm?id=1614.
 - 15 Mayer, Bernard, "Staying With Conflict: A Strategic Approach to Ongoing Disputes" (John Wiley & Sons, Inc. 2009).
 - 16 Jones, Tim and Dewing, Caroline, *Future Agenda: The World in 2020*, at 279-83 (Infinite Ideas Limited 2011).
 - 17 <http://international.lawsociety.org.uk/files/Ruggie%20panel%20discussion%20summary.pdf> [Summary of the Panel Discussion: "The Ruggie Guiding Principles on Business and Human Rights: What Do They Mean for Lawyers?" (The Law Society of England and Wales, 5 July 2011)].
 - 18 Advocates for International Development, "Law Firms' Implementation of the Guiding Principles on Business & Human Rights: Discussion Paper." p. 7, 17 Nov. 2011 at <http://a4id.org/report/guidingprinciples>.
 - 19 Cf. Pitts, Chip, "Authentic Leadership: The Lawyer's Role in Corporate Social Responsibility, Business and Human Rights" (Blog), 11 Oct. 2011, at www.l4bb.org/Blog95A5M8/blog_topic.php?action=view_topic&list_num=1&people_id=&people_name=Chip%20Pitts&people_title=Lecturer&people_institution=Stanford%20Law%20School%20USA%20&%20Oxford%20University&people_location=Oxford&people_country=United%20Kingdom&formatted_people_registration_date=9%20November%202010&topic_id=2&category_id=&cur_page='. See, e.g., Nocera, Joe, "BP Makes Amends" (New York Times article, 12 Jan., 2012) at www.nytimes.com/2012/01/10/opinion/nocera-bp-makes-amends.html?hp ("The Gulf Coast Claims Facility has the potential to serve as a model for handling future industrial accidents. It has proved that it can compensate victims quickly and fairly without the ordeal and cost of litigation. But, for that to happen, it's not just companies that have to put aside their greed. So do the lawyers.").
 - 20 Maister, David H., et al., "The Trusted Advisor," at 25-26 (The Free Press 2000).
 - 21 Susskind, Richard, "The End of Lawyers? Rethinking the Nature of Legal Services," at 224 (Oxford University Press 2010).
 - 22 Movius, Hal, "How Best to Restore Civility?" CBI Reports (Spring 2011), at <http://cbuilding.org/print/929>.
 - 23 Susskind, Richard, "The End of Lawyers? Rethinking the Nature of Legal Services," at 272-73 (Oxford University Press 2010).
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 - 25 Mayer, Bernard, "Staying with Conflict: A Strategic Approach to Ongoing Disputes" (John Wiley & Sons, Inc. 2009).
 - 26 "Shell vs. GE: The Employer-Contractor Debate: The Best Way to Resolve Conflicts," Wolters-Kluwer Corporate Counsel Dispute Resolution Webinar (Nov. 2011), at <http://view6.workcast.net/?pak=2463218220519480>. See also generally <http://corporatecounseldisputeresolution.com> and <http://IMmediation.com> for other B2B dispute solutions.
 - 27 See Schonewille, Manon A. and Fox, Kenneth H., "Moving beyond 'Just' a Deal, a Bad Deal or No Deal," at 83, in Ingen-Housz, Arnold, *ADR In Business: Practice and Issues Across Countries and Cultures, Volume II*, pp. 81-116 (2010 Kluwer Law International BV, The Netherlands) ("Many parties work hard to divide value rather than creating more value to share.").

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