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1st ICC International Commercial Mediation Competition, Paris

The first ICC International Commercial Mediation Competition took place at the International Chamber of Commerce (ICC) in Paris from January 14-16, 2006. Over that weekend, teams from 13 universities from all over the world competed to find the best negotiation skills in commercial mediation in an international and very well-organized setting. The ADR Division of the ICC Dispute Resolution Service started an enormous pilot project for students to learn about effective mediation representation skills. The ICC restricted the number of participants to sixteen law schools to take part in this new way of learning. Dr. Robert Briner, Chairman of the ICC International Court of Arbitration, and David Plant, American Bar Association Section of Dispute Resolution, had the idea to organize a mediation competition a few years ago, as Dr. Briner announced at the welcoming dinner. What started as a pilot project will continue to be held annually. The competition was based on the ICC ADR Rules, which provide a framework for an ADR settlement.

Eight universities from the United States¹, two from France², a Canadian team³ and a team from the United Kingdom⁴ participated in the competition. From Germany, only the Ruprecht-Karls-University of Heidelberg was invited and sent a team of four students. Considering the level of development of ADR in the aforementioned countries, the dominance of the United States is not surprising.

The competition consisted of a written and an oral phase. At the beginning of December, the Organizing Committee sent out four problems consisting of General Facts and Confidential Information for one side. The students had to evaluate these problems and write a so called "Representation Plan" for each problem. In the Representation Plan, the students had to lay out, e. g. interests of both sides and their negotiation strategy. The Representation Plan also contained an ADR analysis on which ADR technique would be most appropriate to settle the dispute. The students therefore had to discuss the different ADR techniques, offered by the ICC, and find the best technique for their dispute. The oral phase started on Saturday, January 14, 2006 in Paris with the preliminary rounds. Each team had to negotiate all four problems with a team of another university. The universities participated in each negotiation with a team consisting of a lawyer and his client. The mediators were experienced experts in their fields. They were briefed by the ICC to restrict themselves to a facilitative approach only. This led to the students not only learning about mediation but also about negotiation skills to solve business related international problems and disputes. One could see the improvements of the students from one round to the next.

The problems were drafted by five lawyers from different regions of the world, to cater for the different cultural backgrounds of the students: Hal Abramson (United States), Na-bil Antaki (Canada, Syria, Lebanon), Michel Kallipetis (United Kingdom), David Plant (United States) and Jean Timsit (France). The Drafting Committee chose cases from their own practice of different fields of law and thereby created a variety which met the requirements of the competition in a well-defined way.

In the first problem, the students had to negotiate on a dispute alleged patent infringement by the German company Germark of patents of the Indian company Ceramindia for a ceramic product. The parties were about to start a long-term business relationship in which Germark was supposed to manufacture and market a product of Ceramindia worldwide. But Ceramindia had lost confidence in the moral and ethical standards of Germark, which had hired Mr Pradesh, a valuable and fully informed employee of Ceramindia, and was manufacturing a different product which allegedly fell

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¹ Cumberland School of Law Stamford University, Fordham Law School, Georgetown University Law Center, Hamline University School of Law, Marquette University, University of California Hastings College of the Law, University of Houston Law Center and Washington University School of Law.

² Institut d'Etudes Politiques de Paris (Science-Po); and University of Montpellier School of Law.

³ McGill University Faculty of Law.

⁴ Nottingham Law School Bar Vocational Course.

under the patent of Ceramindia. Of course, the emotions in the negotiation were high. Ceramindia showed some anger and frustration about the unauthorised use of their know-how and Germark was utterly appalled at Ceramin-dia's claim for ten million Euros in damages for patent infringement, trade secret misappropriation and inducing breach of Ceramindia's employment agreement with Mr Pradesh. At the opening of the negotiations the positions of the parties were stated in strong terms. As the session proceeded, however, the parties started to evaluate their interests and move away from concentration on the question of patent infringement. They discovered the mutual interests of Germark and Ceramindia. Negotiating with elements of the famous "Getting to Yes"⁵, in Germany called the "Harvard Concept", led the students to a solution in which the parties created a long-term relationship with a framework contract for manufacturing and marketing all products, the share of investment/costs/profits for each product adequate being apportioned in accordance with the risk to which the Ceramindia litigation was subject. With this agreement the parties left aside their legal dispute on patent infringement and concentrated on a win-win solution satisfactory to both sides. Ceramindia did not need to go through the exhaustive process of finding a new manufacturer and Germark did not face any financial loss for their double-dealing behaviour concerning Mr Pradesh and the new product. The mediator was utilized to build up the trust-basis between the parties by demonstrating to each the reasonable views of the other side.

In the second negotiation round the students had to discuss a very ambiguous clause in an insurance contract which might have constituted a gap in insurance cover with massive financial loss for the insured party. In the third problem, a supermarket chain was trying to lower the prices of their supplier below the market price while circumventing national competition authorities. The interest of the supermarket chain in confidentiality was so high that it was prepared to accept a fair deal for the supplier in preference to the publicity attached to court proceedings. Last but not least, the students had to negotiate on the "Mr Adam's case" - an unfortunate Managing Director who claimed damages for unfair dismissal, accrued holiday pay and payment for his contractual notice period.

The students' negotiating skills improved by discovering the interest of the other side, using active listening skills and finding creative solutions. They developed a feeling for solutions which cater for the interests of both sides without giving up their own interests. They learned to react to aggressive lawyers, to threaten litigation at the right time, to disclose certain information while dangling (sometimes delicate) pieces of information and to recover lost confidence. The teams realized when it is best to call for a caucus and when to use the mediator as a tool for the solution finding. Other psychological effects such as ice breakers at the beginning of a negotiation and putting the others' tactic into words to steal their thunder were communicated without a theoretical course in rhetoric. The learning effect even for

the coaches, observers, mediators and judges was vast since two experienced mediators gave each team feedback for half an hour. Given that in real life there is a natural barrier for a lawyer to ask his client how he enjoyed his negotiations skills, even professionals observing rather than directly participating had a unique opportunity to learn from the judges' assessments.

The young team of the University of Heidelberg was one of the lucky ones who could enjoy the international competition and experience the great setting this year. Anne Bercher, Caroline Westphal, Kishore Pinpati and Rudolf Hiibner did a tremendous job to compete against American universities which look back on decades of experience with negotiation and mediation competitions. Heidelberg did not make it to the finals but earned honourable mention and the scoring sheets of the judges showed how close the decision choosing the winning teams had been. It is hoped that other German universities will participate next year and improve their negotiation skills within the competition. All participants agreed that the competition must be continued. It is the only truly international competition for students in the segment of ADR.

SchiedsV 2006, Heft 3, 158 f

⁵ Fisher/Ury/Patton, "Getting to Yes - Negotiating Agreement Without Giving In", 2nd ed., 1991.