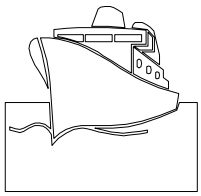

Seminar Paper

Personnel Training in Management Skills in Dispute Avoidance and Settlement in the Maritime Industry

To
Global Maritime Ventures

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The Relevance of Personnel Dispute Resolution Training

What is a conflict or a dispute ? A conflict occurs when two or more persons or organisations take up apparently irreconcilable stances in respect of a common issue or concern arising out of a continuing relationship. Commercial bargaining and everyday value judgements as to whether or not to engage in business relations are not conflicts.

Conflicts and Disputes are part and parcel of everyday life for managers. Because of the negative connotations given to the words "Conflict" and "Dispute" there is frequently a tendency to marginalize the impact of conflict on management operations. However, conflict is a positive, not negative phenomenum. Without conflict there can be no constructive evaluation of business practice. Inertia sets in. It is only by challenging the way that things are done that renewal and progress can occur. Negativity arises out of skill deficiencies in the way that conflict is managed, resulting in animosity and the withdrawal of co-operation between members of a management or administrative team.

Learning how, to **identify the sources of conflict** and then **to effectively manage conflict**, empowers managers to harness the forces of dispute to produce better working practices. It is far better to recognise and identify problems at an early stage enabling decisions to be made as to how to address and solve the problems, thus preventing them from turning into major obstacles at a latter date. Furthermore, by engaging members of the team in the process, self-esteem is boosted and job satisfaction maximised. Minor resentments in the workforce can be nipped in the bud before dissatisfaction pulls the team apart. A well motivated, contented workforce is an efficient workforce.

Is the management of conflict a problem? : Since it is the job of a manager to manage it might be assumed that conflict management is not a problem. Within some organisations this is true but for many the inability to manage conflict effectively is a major source of inefficiency and lost opportunities. Even though it is the job of managers to make commercial decisions on an hourly or at least daily basis this provides no guarantee that potential conflicts will be routinely recognised and dealt with. The reasons for this are many. A manager exercising professional expertise in a particular discipline may be unaware of conflicts and dissatisfaction outside his or her field of practice or so preoccupied with pressing commercial concerns to notice what is going on around. Often personnel recruited as experts are elevated to managerial status without receiving general managerial skill training. Managerial skills are not an inherent. They must be developed.

Team working and dispute management : A manager who likes to control every aspect of operations and is unwilling to delegate responsibility for aspects of office or business operations will almost certainly overlook many aspects of commercial and personnel relationships. By concentrating on specific targets and priorities, as he or she must do simply to get through the daily workload, he or she will inevitably fail to pick up on the early indicators of potential conflicts. An unwillingness to delegate is often borne out of a lack of confidence in members of the team. Inherent within conflict management techniques are fail-safe mechanisms to identify shortcomings, enabling the manager to delegate in the safe knowledge that problems will be identified.

JIT - Just in time management techniques and disputes : Prioritisation, whilst essential, can lead to problems unless a mechanism is built into the system to pick up and deal with issues put to one side. A temporary shelving of a problem must not be allowed to become a permanent abandonment of necessary action. Providing staff and trading partners have confidence that a problem will be addressed in due course, when time and opportunity permit it is possible to engender good will which will buy time to deal with urgent compelling commitments.

QAM - Quality Assurance Management techniques and disputes : Good dispute management systems ensure that problems are both identified and dealt with in a timely manner, thereby eliminating disputes. Quality Assurance identifies problems that have already occurred and is a damage limitation mechanism to prevent the problem turning into a crisis, protecting the good will and image of the organisation.

Total Quality Control management techniques and disputes : Total quality control is a management technique for analysing the causes of problems identified by Quality Assurance and then instituting mechanisms to ensure that the problem does not arise again in the future. TQC is a self adjusting training mechanism that can be applied to different spheres of operation informing an entire operation of best practices.

Personnel Training for Maritime Managers

The Management of Disputes in the Maritime Industry

Dispute Avoidance and **Dispute Minimisation** are preferable to **Dispute Settlement.** Maritime managers need the skill and ability in order to be able to limit the life cycle of disputes and in order to settle disputes in the following areas :-

- Commercial Supply and Service Contracts
- Intellectual Property Disputes
- Employment Grievance Procedures, Disciplinary Procedures and Industrial Relations /Employment
- Third Party Claims in relation to damage to Property including Cargo Claims; Charterparty Claims ; Collision Claims ; Insurance Claims ; Ship Building, Purchase and Commissioning Claims ; Pollution Claims
- Damage to Business Interests
- Planning and Environmental Issues

What mechanisms exist for settling such disputes ?

Conciliation : Mediation : Adjudication : Arbitration which encompasses Fast Track limited hearing Paper Only without hearing and Traditional with full hearing

Dispute Review Boards and Dispute Review Panels

ADR TRAINING AND ACCREDITATION FOR THE MARITIME INDUSTRY

Who should undertake ADR Training in Maritime ADR Practice ? Anyone acting as a maritime claims lawyer including in house legal personnel, insurance dispute settlement, claims managers and claims adjusters.

Why undertake ADR Training in Maritime ADR Practice ?

1 To represent claimants/ defendants and underwriters to settle claims in

a) **Mediation :** Mediation is private, quick, relatively inexpensive and helps to maintain valued client base. Mediation can be used at a number of different points in the Insurance Claims process :-

i) To settle personnel disputes, cargo claims, charterparty disputes, collision claims, pollution claims and sale/supply disputes.

ii) To settle disputes that arise when a claimant / assured disputes a claim adjuster's evaluation or a claim rejection is challenged

iii) Disputes between the underwriter and third parties in subrogation of the assured's legal rights following a pay-out to an assured.

iv) A multi-party mediation between the assured as plaintiff, third party as defendant with claims adjusters for both underwriters in attendance.

v) Inter-underwriter negotiations over linked claims.

b) **Adjudication and Arbitral Hearings**. Adjudication is very speedy, arbitration is quick relative to judicial settlement. The process is private, protecting the industry's reputation as a reliable provider of protection against misfortune.

2 **To act independently as an adjudicator, arbitrator or mediator.** One of the distinct advantages of ADR over the judicial determination of disputes, is the fact that the central person involved in assisting the parties

a) to reach a mediated settlement : or alternatively

b) in adjudicating the dispute and rendering a decision or award

is the disputants' peer, someone who has a working knowledge and understanding of the commercial framework within which the dispute has arisen.

The advantage of the specialist over a legally qualified judge without specialist knowledge is that time and effort does not have to be expended explaining to the judge how various aspects of the industry work. This reduces settlement costs and ensures that the outcome is one, which takes a realistic view of what is usual practice within the insurance industry.

INTRODUCTION TO MARITIME DISPUTE MANAGEMENT

Why should those engaged in maritime activities be concerned with Dispute Resolution ? It sounds like a rather boring topic. One might be inclined to the view that Dispute Resolution is something best left for the lawyers to deal with if and when the need arises. It is true that, unless you are a legal beagle type with a taste for legal niceties, then there are much more interesting things to concern yourself with, such as getting on with the business of making a living, than delving into the arcane details of maritime law. Nonetheless, there are good reasons for gaining a better insight into the Dispute Resolution Process, not least of all being that engaging a lawyer is an expensive luxury. A little time and effort expended on choosing an appropriate Dispute Resolution System for the settlement of disputes that arise during the course of business can help to keep your legal bills in check.

WHAT IS A DISPUTE ? No doubt the last thing a businessman wants is to get into a dispute with anyone. Haggling over a deal is part and parcel of everyday business life where prospective trading parties seek to negotiate the best deal possible in a given situation. What is being bargained over is the shape of business opportunities. The parties may not initially be in agreement about the terms of the prospective deal. This difference of expectations however is not a dispute because no rights are at stake. If no agreement is reached the proposed venture simply fails to materialise. Any costs and expenses incurred trying to set up the deal are irrecoverable from the other party.

A full-blown dispute is quite different. Apart from the stress, expense and inconvenience involved, the added ingredient is an assertion of harm done to a legal right. Disputes detract from the real business at hand and are unwelcome. However, welcome or not, apart from adopting good business practice to minimise the likelihood of problems occurring which might give rise to a dispute, once a bone of contention arises between two parties, there is no option but to address and resolve the difference. There is no point in ignoring the issue hoping it will go away. If the stakes are significant the aggrieved party will pursue the matter. Even if the stakes are so minor that the cost of enforcing a claim exceeds the value at stake, there is a strong likelihood that a valuable trading partner might be lost if the debtor resorts to delaying tactics which result in the claimant dropping the matter. That said, however unethical it might be, it is not uncommon for large organisations, faced with a claim by a smaller trader, to engage in a war of attrition to try and wear the claimant down. Even in respect of relatively minor disputes a great deal of stamina may be required to successfully assert and enforce one's rights.

TYPES OF DISPUTE : Apart from the enormous range of activities involved in maritime business which have the potential to give rise to disputes, the types of dispute can be divided into two distinct legal forms of action, namely **Contract** (including Bailment) and **Tort**.

Contractual Disputes : Disputes involving the performance or non-performance of business agreements are founded in Contract Law and amount to allegations of breach of contract. Apart from the types of business transactions common to all commercial operatives, such as labour relations and the sale and supply of goods and services, contracts that are peculiar to the Maritime industry include ship building and ship sales, charter party contracts for the hire of vessels and contracts for the carriage of goods. Contract disputes have tended, at least until recently, to be limited to the two parties to the contract. The contract is likely to be one of a chain of contracts for, for instance, the sale and delivery of goods but each dispute is dealt with by a separate dispute resolution process.

When the parties make a contract there is the opportunity at that stage to set out in advance the way that any future dispute between the parties in relation to that agreement will resolved. The parties can even agree the process for the settlement of any other type of civil dispute that might arise between them in the future, including Tort claims. The parties can subsequently agree to a different process but one party cannot unilaterally decide to ignore the agreed dispute resolution process and use a different method or process.

Tort Disputes : Disputes that involve allegations of injury to other legal rights and interests, which were not created by a contract between the parties, are founded in the Law of Tort. The consequences of collisions provide the most common source of tort action involving personal injury claims, damage to other vessels and damage to other interests. Tort actions often involve multiple claimants and or multiple defendants. Whilst the claims are likely to be dealt with by separate dispute resolution processes, the multiple defences in relation to a particular claim may be dealt with at the same time during a single dispute resolution process. The non-contractual nature of tort claims means that the process cannot be agreed in advance by parties who have had no prior dealings before the incident occurred. The parties can agree the process that will be adopted for the resolution of that particular dispute.

Insurance Disputes : Disputes can involve contractual and tortious matters at the same time. Whilst both types of claim can be dealt with at the same time so there is no need to engage in separate dispute resolution actions for the different types of claim. A peculiarity of the maritime industry is that most maritime activities are covered by contracts of insurance. Frequently an assured will claim against his insurance policy and leave the underwriter to battle out the legal issues with the other party or as is often the case, with the other party's underwriter. Underwriters pursue actions in subrogation of the assured's rights. A court action is conducted in the name of the assured, so the extent to which claims are pursued by underwriters, rather than the parties themselves is not immediately apparent. Insurance is a good way of avoiding disputes but will not cover all eventualities. Unfortunately, because underwriters are better at taking money off you than they are at paying you, it is common for a dispute to develop between the assured and the underwriter who resists paying out on an insurance claim.

TYPES OF DISPUTE RESOLUTION PROCESSES : There are four principal dispute resolution processes available to the parties to a civil dispute, namely mediation, adjudication, arbitration and litigation before the courts,. There are a number of variations on each of these. A dispute may be resolved by a combination of these processes such as arbitration / litigation or mediation / arbitration. The process ends as and when the dispute is resolved. In respect of the maritime industry arbitration and litigation are the most common forms of dispute resolution.

International Maritime Dispute Resolution : The striking feature about the maritime industry is that it is involves global activity. The principal function of vessels is to carry goods from one country to another. The vessel is likely to be owned by an organisation based in one country and chartered to an organisation that may well be based in yet another country. Neither organisation will necessarily have links to the countries where the goods are loaded and discharged. The insurance carriers for various aspects of the venture may well be based in another state. Tortious incidents can occur in foreign waters and affect the interests of people from many other lands.

Not surprisingly therefore, one of the first major hurdles to overcome in settling a dispute is to decide where the settlement process will take place, the laws of the State that will govern the conduct of the dispute resolution process and the law of the State that will govern the settlement of the dispute itself. These are separate issues even if they appear at first sight to be the same thing.

It is perfectly possible for the process to take place in Paris, with the process governed by English Law, whilst the contractual or tortious rights, are governed by the substantive law of Holland.

The parties will seek to establish a venue for the process, which is convenient and accessible to them. The parties will hope to ensure that the procedural law governing the dispute is fair, impartial and expeditious. The parties will hope to ensure that the substantive law governing their rights is certain, predictable and familiar to them. All of this is a tall order! What can they do to achieve these aspirations?

CHOOSING THE PROCEDURAL AND SUBSTANTIVE LAW : Whatever process is adopted for the resolution of a dispute there is still a need to establish the governing procedural and substantive law of a dispute. It is a general principle of "Private International Law" that the process is governed by the procedural law of the State, where the dispute resolution process is conducted. Furthermore, the governing substantive law is that of the State with the closest connection to the place where the central purpose of the business at hand is carried out. This all sounds straight forward enough until one realises that it is no easy task to determine exactly what is the central purpose of a multi-purpose contract and therefore no easy matter to establish where that duty will be performed. A variety of International Conventions regulate the legal default position in different parts of the world. The convention provisions are not uniform. The courts of different States have provided differing interpretations of the meaning of sections of these conventions. Much money, time and effort has been expended on settling these issues before the courts. It does not have to be this way.

The maritime industry is fortunate in that most of its business dealing are conducted by written, standard form contracts. With varying degrees of success, most standard form contracts have something to say about which dispute resolution process will be applied to future disputes about the performance of the contract, where the process will be conducted, the applicable procedural jurisdiction and the substantive law that will govern the dispute. By enlarge, the courts will respect the contractual choices of the parties and so expensive litigation to settle these issues is avoided by a well drafted jurisdiction and choice of law clause.

There are special circumstances where jurisdiction is prescribed by law, but these have little impact on maritime dispute settlement. Thus for example under the E.U. Brussels Convention land disputes must be settled in the State where the land is located. The conduct of the dispute will be subject to the jurisdiction and law of that State. Any "jurisdiction and or choice of law" clause will be over ridden by the Convention provisions.

The problem in inserting a choice of jurisdiction and law provision in a contract is that at the time of drafting it might not be possible to determine whose law will best satisfy your interests. That will only become apparent once the dispute arises. A simple illustration of this is that awards for damages tend to be higher in the US to the UK. If you are the claimant US law would be preferable. If you are a defendant UK law has much to commend it. Legal rights and duties are far from internationally uniform. International conventions have improved some aspects of international dispute settlement but provision is far from all embracing.

WHERE SHOULD ONE CHOOSE TO SETTLE A DISPUTE? : In as much as the location of the dispute settlement process tends to determine the governing procedural law what difference does it make where the process is conducted? If the location had no legal consequences the choice would depend simply on the most convenient location for the parties, their representatives and witnesses. Paris in spring sounds like a good idea. At least at the end of each day's business a good time can be had by one and all provided they can still afford it. Personally, Harrods and Selfridges make London an attractive proposition.

The procedural law governs both the way that litigation is conducted and the role of the courts in respect of alternative dispute resolution processes.

Actions in Rem and the concomitant power to arrest ships to provide security for an award are not available in many Civil Law jurisdictions.

Statutory time bars under various limitation acts and the extent of limitation of liability vary world wide despite attempts by way of International Conventions to impose a degree of uniformity on this area of the law.

Powers in relation to security of costs, disclosure, commanding witnesses to attend and seizure of assets vary from State to State. A simple illustration is that currently arbitration in the UK is governed by a new Arbitration Act 1996, which limits the scope for judicial interference with the process. The 1952 Malaysian Act, modelled on the old UK 1950 Arbitration Act continues to result in excessive and unwelcome judicial challenges to the arbitral process. Even the adoption of the UNCITRAL Model Code, to govern the conduct of an arbitration, is no guarantee that the courts will not, on the application of one of the parties, interfere with the process.

Finally, location can have an impact on enforcement. There is little point in suing someone in a State where they have no assets unless the award can be enforced in the State where their assets are located. The efficiency of the legal systems of the world is variable as is personal perceptions of the quality of justice dispensed by these courts. In consequence a small band of States has captured the bulk of the global dispute resolution market. Despite the high costs involved London is high on the list of chosen venue. Whether or not it is a wise choice is for the individual to decide.

Where criminal charges are involved there is no choice about venue, jurisdiction or choice of law. Frequently criminal issues are settled locally whilst the civil issues are settled over seas.

The substantive law is yet another matter. There is a considerable degree of harmonisation in some areas, as with The Hague and Hague Visby Rules in relation to claims regarding the contract of carriage of goods. However, there is considerable variation in the international regimes governing the laws of obligations.

It may be impossible to predict in advance of a dispute whose law will be most favourable to you should a dispute arise. The end result is that frequently even though a contract contains a choice of jurisdiction and a choice of law clause a party, having realised that in the circumstance the choice is unfavourable, seeks to overturn the provision.

LITIGATION : In the absence of choice to the contrary, a dispute will find itself before the courts. This is good news for lawyers. It is expensive to engage the services of lawyers. Even the best and most efficient judicial systems tend to be slow and laborious. However, State courts enjoy a great deal of power and have the authority to enforce the process. Confidence in the judicial system is the court's greatest asset. The legal knowledge and understanding of a judge may be highly valued by the parties.

Judges are perceived as being dispensers of justice. Many maritime disputes are settled before the courts despite the problems of cost and delay. Indeed, delay often suits a party who does not want to pay, whilst the coercive powers of the court are the only way to ultimately ensure that a recalcitrant party appears at a hearing and is ultimately brought to account.

ARBITRATION : After litigation, this is the most common form of dispute resolution process adopted by the maritime industry. Arbitration has several distinct advantages over litigation. Arbitration is in essence a private court and the arbitrator is a private judge.

- **Privacy :** Arbitration is private so the dispute does not end up being discussed in the papers which can have adverse implications for public confidence and can give rivals an insight into your trading practices.
- **Speed :** Assuming the court's role in the process is kept to a minimum, the process can be conducted relatively quickly. It should take no more than 6 months to get to Arbitration whereas 2 years or more is not unusual for the commencement of a trial. The time aspect went somewhat awry in the eighties and early nineties but globally arbitration is now regaining the time advantage over the courts – due to new regimes which encourage less formal arbitral procedures.
- **Costs :** Arbitration tends to be less expensive than litigation. However, this is not uniformly true. The procedural rules of some judicial systems have done much to improve judicial efficiency in particular by the introduction of strict time limits on aspects of the process. An inefficient arbitral process could result in excessive discoveries and argumentation which push the costs up to exorbitant levels. However, to a certain extent, the parties get the arbitral process they want, so there is little ground for complaint.

Industry Expertise : Despite the legal expertise of judges the parties frequently feel that a judge does not understand the commercial and technical realities of their industry. The lawyers can try to explain how it is to the judge but at the end of the day the judge is unlikely to have much understanding or empathy with the industry. Arbitration can solve this problem in that many arbitrators start out their professional life as architects, surveyors, mariners or whatever before converting to ***"legal practice".*** There is less need to explain to an arbitrator with relevant industry experience how the industrial process, which went wrong, should have been carried out. The arbitrator can make decisions of fact reinforced by his own personal expertise, knowledge and understanding of the industry. There is less likelihood of a party walking away from an arbitration bitterly declaring: "The Law is an Ass, the judge simply doesn't understand the way things are on board a ship. The man should get real !"

Jurisdiction – choice of law – enforceability of awards. Arbitration has distinct advantages over the courts in terms of jurisdiction and procedural and substantive law. International arbitrators are far more familiar with foreign law than domestic judges and frequently apply foreign laws during the course of their deliberations. Arbitrators tend to be far more familiar with the provisions of International Conventions. It is common for international contracts to be governed by the provisions of such conventions rather than by domestic laws of obligations. The Vienna Convention on International Sales of Goods is a classic example. Most UK judges would only be familiar with the Sales of Goods Acts. Under the UNCITRAL Model Law it is possible to opt out of law altogether and to give the arbitrator a discretion to decide a dispute on "equitable principles" alone. Arbitration awards are enforceable in 128 countries world-wide and are therefore more useful than court awards.

EXPERT DETERMINATION : Expert determination is where an expert is asked to express a contractually binding opinion on a question of fact. Frequently, the only issue to be settled in a dispute is "How much is this worth ?" or "Has the contractual duty been carried out or not ?" Questions of law and legal interpretation may have little or no role whatsoever in the settlement of such a dispute. An expert may well be far better suited to deciding the issue than a judge. Once the issue is settled it is clear what to do next. Pay the established price, or pay or not pay for the contractual service.

It is common to employ an expert evaluator to determine the contract price for something, be it the sale of a house or a ship. The role of surveyors in the classification and valuation of vessels is common-place. However, there is no reason why an expert cannot be employed to settle other factual questions. The process is extremely quick and inexpensive. Judges and arbitrators can perform the same function but it is an expensive luxury.

Sadly expert evaluation is used far less than it should be. It was very popular at one time but has fallen into disuse possibly because lawyers rarely think of advising clients of the value of their services. After all, a lawyer will make far more money if the dispute goes to court whereas he will have little role to play in the expert evaluation system since the expert applies his own knowledge and understanding without recourse to legal submissions.

ADJUDICATION : What is an adjudicator and what is adjudication ? Whenever someone, duly empowered to do so, makes a decision affecting some one else's legal rights they adjudicate over that person's rights. Expert determinators, judges, arbitrators and government officials often perform an adjudicatory function. Clearly therefore, "adjudication" here refers to something else.

Adjudication was popularised by the FIDIC International Construction Contract and by the DOM / 1 Construction Contract. The ICC Pre-Arbitral process is a form of adjudication. Adjudication was adopted in the UK and made compulsory for construction contracts by the Housing Grants Construction and Consolidation Act 1996. The Australians have recently adopted the process.

In essence adjudication, whether statutory or contractual, is a form of fast track arbitration with special procedural rules and a fail safe mechanism that enables the decision to be re-examined and finally determined by an arbitrator or a court at a later date if either party wants a second opinion. Contractual, voluntary adjudication processes are not limited to the construction industry and are currently in the process of being considered for adoption by the Greek and Middle East maritime industries for chartering contracts and for ship building and port servicing contracts.

The distinct features of adjudication are that it is a private, immediately enforceable, temporarily-binding process and is carried out very, very quickly. The process is very inexpensive. It tends to be carried out on a documents only basis though it is possible to have oral hearings and pleadings. The role of the lawyers is kept to a minimum. Under the Housing Grants Act the process takes 28 days from reference to determination but a voluntary system could extend or limit that time scale at the behest of the parties or the organisation running the adjudication process. Adjudicators are drawn from industry just like arbitrators and expert determinators. They do not have to be qualified lawyers though many do in fact have dual qualifications.

The words "immediately enforceable" and "temporarily-binding" appear at first sight to be contradictory and demand some explanation. The award is immediately enforceable on the due date, often 7 days after the award. In the event of non-compliance the courts will enforce the award. There is scope to challenge the scope of jurisdiction and judicial review is available to supervise the conduct of the process, as with any other legal decision making process, but that apart the successful party will get his award. Very few cases have been successfully challenged on this basis. Above all, there is little point in refusing to pay. Enforcement before the courts is as simple and straight-forward as an action for the enforcement of payment of a debt.

The value of this is that within a short space of time the parties receive an authoritative statement of what their respective positions are. This enables them to get on with business quickly with a clear understanding of what is required of them. Compare this with arbitration or worse still litigation where clarity will not emerge for months at best or even years. Experience indicates that most disputes end at this stage. The parties tend to be more than satisfied with the outcome. The percentage of cases which have proceeded from adjudication to arbitration or to court determination is miniscule. For the greatest the adjudication decision has signified the end of the dispute process. As a definitive statement of rights an adjudication award also provides the basis for recovery under an insurance policy. If the insurance company does not like the result it can always move on to stage 2, described below, in subrogation of the assured's rights.

"Temporarily-binding" refers to the right of either party to seek a second opinion and to take the dispute forward to arbitration or litigation for final binding settlement. The subsequent process will take place without reference to the adjudication process. However, since the parties were initially forced to gather evidence and witness statements to present to the adjudicator, much of the preparation work for trial will already have been carried out, quickly before anyone had suffered from lapses of memory and whilst all the relevant persons were still available. Contemporary photographs and evaluation reports will be available for the trial greatly enhancing and facilitating the trial process. Both in the construction industry and in the maritime industry this often presents serious problems for subsequent dispute resolution processes because of the mobility of labour within both industries.

The arbitrator or judge makes an award without any reference whatsoever to the adjudication. The arbitrator or judge will be aware of who prevailed in the adjudication but will not know details of the award and will not therefore be influenced by the adjudication when assessing damages. However, as with a payment into court or settlement offer, the judge can take the adjudication award into account when making an award on costs. It can therefore be a risky business challenging an adjudication award and a party would need compelling reasons to take the matter to arbitration or to court.

MEDIATION : Unlike adjudication, arbitration, expert determination and litigation, which are third party dispute resolution processes where someone else decides the outcome of the dispute, mediation is a negotiated settlement process where the parties themselves decide, through agreement, the terms and conditions upon which the dispute is brought to an end.

At the present time mediation is virtually unknown in the shipping industry outside the US though it is being seriously considered by the Greek shipping community in tandem with adjudication as an alternative to arbitration. Mediation has much to commend it and will hopefully have an important role to play in the industry in the not too distant future. Mediation shares many of the benefits of adjudication in that it is private, quick and relatively inexpensive. However, the parties themselves maintain control over the decision making process rather than handing it over to a third party. There is an obligation to participate in the process but no obligation to reach a settlement. If no settlement is achieved the parties are free to proceed to adjudication, arbitration or litigation. However, having canvassed the issues thoroughly in advance pre-trial preparation will be at an advanced stage and many side issues will have been resolved resulting in a quicker and more efficient trial.

At a mediation, the mediator acts as a go-between, exploring issues with each of the parties in turn, facilitating them to find a way to broker a settlement. The process has much to offer where the parties realise that a settlement is necessary and are prepared to broker a settlement. Many court cases settle on the steps of the court. Mediation achieves a similar result but involves the parties directly and leads to far more satisfactory settlements than are brokered by the hands off approach of settlement through the auspices of lawyers. Mediation settlements frequently include agreements for the future conduct of business rather than a mere settlement of the dispute at hand.

Mediation has less to offer, apart from a reality check on the parties, in situations where one party simply adamantly refuses to recognise any liability whatsoever and refuses to pay or perform a service or put something right. Even here, participation in the process can result in the recalcitrant party realising that their stance is unrealistic, paving the way for a settlement. Apart from being relatively inexpensive mediation is a valuable tool for repairing damage to commercial relations.

Mediation is a serious process and has been successfully used to settle disputes involving very large sums of money. A great advantage of mediation is that it lends itself to multi-party dispute settlement and can therefore replace an entire series of arbitrations or court actions. Mediation agreements are readily and easily enforceable before the courts if the mediation agreement is breached.

DISPUTE REVIEW PROCESSES AND BOARDS : Dispute Review Processes developed in the US. They initially applied to the labour market and to the construction industry and are ideal for ship building contracts. DRPs combine the concepts of negotiation, conciliation, expert determination, mediation and arbitration into one seamless operation. DRPs have been successfully employed in the UK and in Hong Kong. DRPs have resulted in major improvements in efficiency and have savaged the legal costs involved in disputes on major projects. There are many variants on the dispute review process and processes can be tailored to the specific needs of parties engaged in joint ventures. The process is particularly useful where several organisations work together on a project and therefore has much to commend it to the maritime industry, particularly for off shore operations involving oil drilling, transportation, storage and servicing. Employment DRBs are also highly commended.

DRPs involve the appointment of a Dispute Review Board, which may contain industry experts and perhaps a lawyer or an arbitrator / mediator. The Board is introduced to the technicalities of the operation at the initial stage and through regular consultations with all of the parties advises on any potential problems of pitfalls facilitating the brokering of solutions to those problems. If a dispute arises which cannot be settled by mediation the DRB turns itself into an arbitral tribunal and hands down an award thereby settling the dispute.

One advantage of this type of facility is that frequently disputes arise because an operative refuses to acknowledge that there is a problem. If senior management had had any inkling of the problem they would invariably have nipped the problem in the bud and settled the problem. The operative, perhaps fearing that his job is on the line, pushes the issue to one side. Since the operative is the point of contact there may be no way of getting past the operative to higher management in the early stages of the dispute. The problem festers and turns into a major problem requiring arbitration or litigation to settle. Major disruption to commercial activities ensues. The DRB process provides a way of getting such problems out into the open and dealing with them at an early stage.

CONCLUSION : Arbitration and litigation have a valuable role to play in the future of maritime dispute settlement. However, the new processes have much to commend them and the industry will be well advised to take a close look at what is now on offer. The maritime industry is continually evolving. The same is true of the dispute resolution industry. The industry must embrace change in order to prosper.

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