

Mediating in the Context of Collective Interests

Deborah Masucci, Independent Neutral, Immediate Past Chair of IMI

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AGENDA

- Why Mediation for Investor State Disputes
- Development of Mediation
- Learning from the Global Pound Conference Series
- Other Models
- Role of the Mediator
- Co-Mediation
- Restraining Mediation through Rules

Why Mediation for Investor State Disputes?

- Investors do not want to sue states
- Flexible Process
- Process can be adjusted to the parties' needs
- Foundation is trust in the mediator(s) to guide the parties toward voluntary result
- Can deal with multi party interests and goals
- Compliments the arbitration process

Development of Mediation

- Mediation is an accepted process
- Mediators are working in diverse fields and have developed tools that are transferable to the investor state context
- EU-Canada Comprehensive Economic and Trade Agreement

Global Pound Conference Series

- Convened over 3,000 participants in 24 countries at 28 events including an on-line event
- Global take-aways
 - Efficiency is a key take away
 - Users expect greater collaboration between advisors
 - Interest in Pre-dispute protocols and mixing of adjudicative and non-adjudicative processes

What Other Models Are There?

- New Hong Kong Core Projects (1980s)
- Construction Project Dispute Resolution
- Insurance Coverage Disputes
- Environmental Disaster Disputes

Role of the Mediator

- Educator and Process Advisor
 - Guide the parties on the process
 - Suggest process changes for progress
- Communications Facilitator
- Questioner and Clarifyer
- Devil's Advocate
- Generate options
- Responsible for Details
- Sell the settlement

Co-Mediation Adds Value

Double the mediator ability to observe the parties' verbal and non-verbal communications.

- Helps to deal with possible linguistic and cultural concerns.
- Cover differing legal systems and norms.
- Less downtime and more momentum.

Creates balance on the mediation team and possibly increase ability to develop trust due to diversity of mediators.

Co-Mediation Adds Value

- Provides a model for the parties of effective communication, cooperation and interaction.
- Allow one mediator to take a risk, while having the other mediator available to come to the rescue.
- Make the mediation more efficient by division of tasks between the mediators.

Mediation is
flexible and
should not
be
constrained
by Rules

- Can be used to prevent disputes (de-escalation)
- Avoid political confrontation
- Early to determine information needed to promote fruitful negotiations
- During the course of a project to address concerns before becoming a dispute that results in delay