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Why International Companies Doing Business In the U.S. Should Consider the Mediation of Lawsuits and Disputes

By

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When I spoke at an international legal conference in Heidelberg, Germany, in May 2003, many of the international participants were unfamiliar with mediation. To the international participants, "alternative dispute resolution" meant primarily international arbitration. International arbitration under the auspices of organizations such as the International Chamber of Commerce is a long-established mechanism for resolving disputes. However, international arbitration, like litigation, tends to be expensive and time consuming.

In May of 2009, I attended another international legal conference, and was pleased to learn that all of the participants knew about mediation. I was pleased to hear that mediation is gaining traction even in countries such as Italy, which has a legal system and tradition not generally disposed to mediation. Mediation is still in its infancy in Europe, but it is gradually gathering recognition and support.

International companies doing business in the U.S. will almost surely want to consider mediation as a mechanism for resolving disputes that might arise while doing business in the U.S. As a general matter, the U.S. legal system is quite different than the civil law system used throughout Continental Europe. In Europe, broad discovery rights are not granted and the jury system is practically unknown. European litigants generally do not face potential exposure to punitive damages. Particularly to Europeans, the civil law system is seen as far more predictable and rational than the U.S. system.

For these reasons, mediation should be an attractive option for European companies. European companies should consider utilizing multi-tiered dispute resolution provisions in their contracts. Such provisions may require that, in the event of a dispute between the contracting parties, they must first mediate, and then resolve any remaining dispute through arbitration. Such an approach may be more acceptable to international companies than proceeding in the U.S. court system. Of course, many U.S. companies favor such an approach as well.

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