



JAMS's international jigsaw puzzle

As JAMS International continues its expansion in the UK and EU Jay Welsh discusses what changes are ahead for mediators.

Matthew Rushton

With 23 US Resolution Centers and a turnover approaching US\$120m, JAMS is the unabashed behemoth of the alternative dispute resolution (ADR) world. 'We're now 32 years old,' says Executive Vice President and General Counsel, Jay Welsh, 'and unlike others in the legal sector, our business is robust and growing.'

JAMS began in Orange County, California in 1979 when retired judge Warren Knight tapped a market for settling cases which would otherwise

have been determined in court. Following a period in ownership by an investment bank (1989 to 1997), the organisation is now owned by, and operated for, JAMS neutrals.

To European eyes, the value and scale of the business is startling: some 50,000 US lawyers passed through JAMS's offices last year, and its clients include almost every major law firm and most of the Fortune 100 companies. 'Any high-profile dispute that you read about – contract or

otherwise – is usually being mediated by JAMS somewhere,' says Welsh.

Building on its success in the US, the JAMS and ADR Center in Italy have formed JAMS International, which aims to replicate the JAMS business model in Europe and the UK. But the ADR market has evolved very differently in the UK, compared with the US. Among recent trends in the UK is that of clients going direct to mediators, rather than contracting them through service

provider organisations. Thus the market in the UK is largely one of individuals who have flourished as service providers' market share has declined. Welsh is undeterred: 'If we provide exceptional service, we know mediators will establish a loyalty to us.' The issue of exclusivity to a service provider is a vexed one, but Welsh considers it a vital component in JAMS' success in the US: 'One of the keys to JAMS' success in the United States is exclusivity. Any of the mediators and arbitrators who work with JAMS are exclusively contracted to us. All of their work, no matter how it originates, is managed by JAMS on behalf of that mediator.'

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Exclusivity

JAMS will take a similar approach to the London market. 'Although full exclusivity will not be expected,' says Welsh, 'exclusivity on cross-border disputes will be required in London.' He continues: 'What we do is take somebody and get them known in the business and get them mediations. It's a hard business. It takes a number of years to build a practice, but we work with every mediator on a plan and we have somebody monitor that plan. Some people get excited about it and they are the ones who succeed. Others hate it, they think they're above it and those are the ones who will not be successful.'

To lead its efforts, JAMS International has hired global ADR expert Lorraine Brennan to serve as Managing Director for its EU operations. She will spearhead the opening of the new

London office. Ms Brennan has spent a significant portion of her career working in the international ADR community. Most recently, she served as Senior Vice President of Programs and International at the CPR Institute, an ADR provider based in New York. She was also Director of Arbitration and ADR, North America for the Paris-based ICC International Court of Arbitration.

Hiring Ms Brennan puts a key component of JAMS International's strategy for the EU in place, notes Welsh. 'It's a crucial part... She's been involved in international mediation and arbitration for nearly 15 years and has the trust and respect of general counsel, law firms and other key players in the ADR field.'

A cadre of mediators

Among Ms Brennan's tasks will be adapting the JAMS business model to suit what will work on this side of the Atlantic. As a result, JAMS International plans to recruit what Welsh describes as 'a new cadre of mediators drawn from the major law firms.'

JAMS International's approach to its hiring of mediators is also a departure for the UK, with a preference for profile above technique. 'Senior lawyers bring a lifetime of experience in the field in which they will specialise. We feel we can teach the mediation part because most of these lawyers have been in mediation many times as a lawyer and they understand the process.' In Welsh's view mediation technique is relatively less important and relatively easier to teach rather than acquiring the status and sector knowledge that comes with years of top-flight legal practice. 'The model that we go under is that 80 per cent of the success of a mediator is their own personal power, charisma, personality and background, and that can't be taught,' says Welsh. 'We try to get people who already obviously have that 80 per cent and we're looking to teach the 20 per cent technique.' Underscoring the relative merits of profile over technique, Welsh notes that they have people who are 'extremely successful and just have the 80 per cent.'

It's a methodology that Welsh believes actively fuels the proliferation of personal styles: 'If you're humorous, you're going to use humour. If you're serious and

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do not fool around, that's the way you're going to be. You can't teach people that,' he says. By contrast, Welsh is critical of the constraining effects of role-playing, which is core to mediator training in the UK. 'One of the problems with the observed role-play is that it tends to focus on a single methodology: by showing people how it is done you're really telling them that this is the way we want you to do it. And we have found that to be unsuccessful in training the kind of people who come to us with a lifetime of experience.'

Instead, the JAMS Institute, which handles training internally and not as a revenue-generating venture, emphasises shadowing successful mediators. 'The best training for our people is watching others do it,' says Welsh. 'We intend to bring people to New York and they can sit in on mediation after mediation because on any one day in New York we might have ten mediations with 35 rooms filled to capacity. So if you're a judge, we put you with a judge. If you're a non-judge or lawyer mediator we put you with a non-judge.'

The halo effect

By combining limited exclusivity and recruitment of high-profile lawyers, JAMS International hopes to create

a halo effect from which all benefit. 'Each new person brings their own constituency that's different to other people,' says Welsh. 'One of the benefits of having ex-major law firm practice specialists as mediators is that they are able to go back to their former firms and tell the story of JAMS International to their partners. We are real believers that the more quality people you have, the better everybody does.'

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With a different recruitment plan and different training, a different approach to mediation naturally follows. Welsh is cautious about describing the JAMS approach as evaluative, but suggests that sessions can be a 'a little bit firmer'. 'It's certainly the case,' he says, 'that mediators are routinely asked for help in bringing the matter to a close, particularly when there is a gap. Closing that gap is something that our people do on a daily basis effectively, and we hope that those kinds of techniques are going to be utilised more so than they have in the past in the EU and the UK. In the end, the market tells us what it wants.'

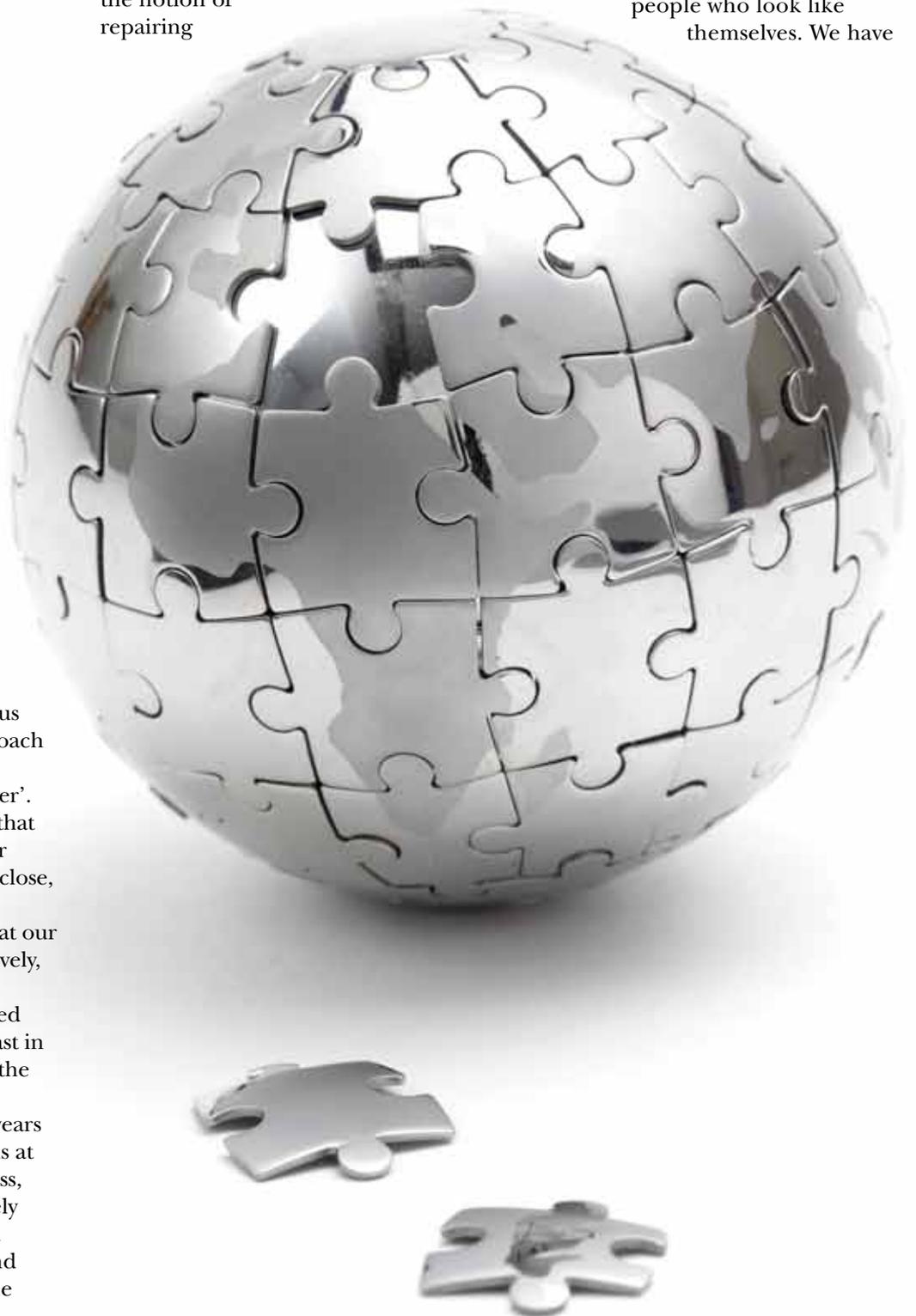
Pragmatism, informed by 32 years in the business, it seems, prevails at JAMS. 'Mediation in our business, in the commercial world, is rarely win-win,' says Welsh. 'Mediation can be described as lose-lose, and managing the process so that the

plaintiff understands why they are taking less, and so that the defendant understands why they are probably paying more is what an adept mediator can do.' Little mediation time, therefore, is spent exploring options for mutual gain, likewise healing relationships is far down the agenda. 'We did a study a few years ago, and the number of cases we mediated in which the parties would ever have any future relationship was under five per cent, so the notion of repairing

relationships so that people can continue to work together is rarely applicable in the world of big litigation,' says Welsh. Construction, Welsh notes, is an exception.

Experimentation

Non-lawyer mediators are also peripheral in the JAMS model. Welsh is unapologetic: 'We let the market tell us who they want. And the market tells us that they want people who look like themselves. We have



Feature articles

experimented with some non-lawyers and we found that we couldn't get them the kind of work which made sense for us or them.' Nevertheless he doesn't dismiss the idea out of hand: 'If the marketplace told us they wanted accountants, we'd get them accountants.'

The same holds true for purely facilitative mediation. 'We hope that if that's what the market wants we'll provide that. We just don't see that the market is currently providing everything that we think the legal market wants – particularly in complex cases.' He sounds a placatory note to those who might feel threatened: 'We're a big company, but the Americans are not coming over. It's going to be run in the UK by Lorraine, who is intimately involved in the international ADR community. JAMS International is focused on the resolution of cross-border disputes.'

With the addition of Ms Brennan, JAMS International's expansion plans are well underway. Welsh is clear, however, that this is a long-term investment. 'It's going to be slow,' he says. 'This isn't going to happen overnight, but this is an exciting time for JAMS International. We're going to be taking an international group of mediators that will become

part of JAMS International and we will market them in the UK, Europe and the US, concentrating on what they can bring to the table for cross-border and international cases.'

If JAMS International succeeds, the opening of a London office could prove to be a significant turning point in the global ADR marketplace.

Turnover	US\$120m
Number of offices	23
Number of neutrals	250
Number of owners	98 (including 3 executives)
Turnover split	70 per cent mediation, 30 per cent arbitration

Standout cases

JAMS neutrals have been appointed to oversee hearings in Washington, DC concerning the BP oil disaster, and to settle litigation against Toyota over defective product. Others include the Enron cases, and the litigation featured in *Erin Brockovich*.

IBA Annual Litigation Forum: Managing Litigation Risk: The View from Inside the Corporation

19–20 May 2011 Krakow, Poland

A conference presented by the IBA Litigation Committee and the IBA Corporate Counsel Forum

Conference overview

Following the success of their 2010 joint conference in Washington DC, the IBA's Litigation Committee and Corporate Counsel Forum move to Europe for another joint programme designed to explore the ways in which lawyers and their corporate clients – or prospective clients – can best work together. Disputes are inevitable. The key is to manage them efficiently to achieve the predicted outcome, on time and on budget. At this conference outside lawyers will have an opportunity to meet with leading in-house counsel from around the world to learn what they expect from their litigators, while in-house counsel will learn evolving international best practices and the new challenges that await them in various jurisdictions?



Who should attend?

Corporate counsel, other corporate officers responsible for the management of litigation, managing partners and heads of law firm litigation departments, litigation attorneys, policymakers, academics and anyone involved in complex litigation.



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