

Disruptions, Disputes and Dialogue

► **Washington, D.C.-based Ranse Howell, who oversees international efforts at JAMS, discusses the importance of being proactive and maintaining good business relations even in the midst of a dispute.**

CCBJ: Supply chain management has been a key issue during the COVID-19 pandemic. How have you been advising attorneys to deal with supply chain disruptions?

Ranse Howell: I first saw this as a potential challenge for businesses when the initial outbreak happened in China. An article in The Economist on February 13 included a graph showing where supply chain challenges would happen and when. I then wrote a blog post predicting a disruption and asking what we can do to deal with some of these challenges. We know that some goods will not be delivered and that manufacturing may be interrupted.



Ranse Howell is a member of the senior management team and oversees international efforts at JAMS. He supervises a global team with representatives in multiple markets across the United States as well as in China, Mexico and the United Kingdom, among other countries. Reach him at rhowell@jamsadr.com.

Given that information, rather than waiting until a conflict occurs, have a conversation with your suppliers about what needs to be done, including finding alternative sources of supplies and/or services. You want to maintain these relationships while continuing to do business.

Of course, that was in February, and now we're in a very different situation. Concerts have been canceled, and businesses have been shut down. There are going to be commercial difficulties due to the

interruption of supply chains, and businesses are going to suffer. There may be remedies, if you look at your contract, but there is also a benefit in maintaining relationships. Parties want to stay in business, because they know this will end at some point.

Our role in mediation and dispute resolution is to facilitate that dialogue, but there's another opportunity as well, which is to have a mediation process before litigation occurs, before claims are filed, before parties become entrenched in their positions. Typically, mediation is used at a later stage in a conflict. And if you do need a determination, you could use an expedited form of arbitration, as that can provide a speedy resolution.

What would you tell attorneys about how to prevent disputes during these uncertain times?

This series of events has magnified, or is very similar to, the repercussions we saw after both 9/11 and the financial crisis to some degree. I always stress to think about what's important to you and your commercial partners. You're both in business to supply goods and/or services; you're not in business to seek retribution or commercial difficulty.

The first step is to understand your options: Work with your entire legal team. Consider all the permutations and prepare to have a conversation with your suppliers. Have a plan and say, "We are best set to do business together and survive together if we can communicate and we have a plan."

Be aware of all the remedies that are available, rather than canceling a contract or walking away.

If a dispute cannot be avoided, what should attorneys do?

Certainly, there are some situations that require a remedy. If a dispute cannot be avoided, then understand the various mechanisms that are available, as well as the ramifications



and the time frame of a particular path of dispute resolution. Of course, you can go to court, but that will take time and energy, and at the moment, it might not be the most desirable course of action. So some sort of a dispute resolution mechanism — mediation, arbitration or adjudication — should be selected.

Businesses should understand what their end game is. What are your goals? If you want enforcement and recognition, then choose arbitration. If you want the parties to come to the table and consider a variety of options, mediation is the way to go. It's about considering dispute resolution methods you might not have considered because of the nature of your business or the sector you're in. For example, if you're used to arbitration, then look at other forms of dispute resolution because, at this moment, they might be more appropriate.

What advice would you give to those trying to anticipate the new normal?

Consider the future now. Don't wait until this is over to ask, "What are we going to do in the future?" You have to

plan now so that tomorrow will be what you want it to be. As you're going through this process, consider what you are learning. What are we doing? How could we do this going forward? What's the messaging we're projecting to businesses? How are we going to work with others? If we say that we as a business have a certain ethos, are we embodying that as we're going through this process?

Then learn from what you've experienced and do a lessons-learned exercise. In this situation, it is essential that people step back and ask themselves, "What have we just experienced? What did we learn?" Celebrate the successes and recognize the challenges and how people are dealing with them.

But first, give yourself time to process what's happened. Some people deal with conflict and trauma overtly; others, quite subtly. However, everyone is dealing with it. It's about making sure that there are conversations about what has happened. What did we experience as a group? For there to be continued support, people need to feel supported. Yes, they've been supported through the

process, but as they are grieving the loss of, potentially, a loved one or a role or a career, it's about what that is going to look like going forward.

As you plan for the future, take the time to check in. Are we doing what we said we'd do? It may be easy for us to go back to our normal daily lives, once everything reopens, but realize that this gives us a chance to say, "We don't necessarily have to make, if there were mistakes, the same mistakes again. Did we use the electronic medium appropriately? Did we reach out to all the people that we could've reached out to? Did we keep people informed? And if we didn't, how can we bring them on board?"



Have a plan and say, "We are best set to do business together and survive together if we can communicate and we have a plan."

What should corporate counsel uniquely consider?

There are a number of things that people want to be aware of, from both a cultural and a disputes management perspective, such as how we deal with risk and identify opportunities for dialogue, for dispute resolution and for other forms of dealing with commercial difficulty.

Consider what sort of environment has been created and if the individuals have enough information to recognize and manage commercial disputes. Are we dealing with the conflict and working with our internal clients? Are we more likely to increase our disputes or decrease them? Just because people have access to tools doesn't mean they are comfortable using them. When this is over, there is no guarantee that life will return to how it used to be. Be aware of all your options, and make sure that you and everybody else on your team and in the organization understand the benefits of being proactive in dealing with disputes, managing them effectively and resolving them when they need to be resolved.

Then think about all of the mechanisms in our arsenal, both in the teams and the processes, so that when something like this happens again, we have processes in place to deal with it. I'm not saying to have a dispute system designed particularly for a catastrophic pandemic, but there are many opportunities like this. It's important for individuals to feel that they have the knowledge and confidence to manage a range of commercial conflicts so that they can provide the most appropriate guidance and advice to their internal clients. ■