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MARIA JACKSON
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THE USE OF ADR IN MARITIME DISPUTES

Three panelists from JAMS discuss the increasing use of alternative dispute resolution as a method for resolving disputes in the maritime sector.

JAMS has grown into the largest private arbitration and mediation service in the world. The Irvine-headquartered organization fields 26 resolution centers across the globe, and calls on an experienced panel of nearly 300 full-time neutrals of retired judges and attorneys to preside over disputes.

The extensive network of specialists at JAMS ensures that it has the capacity to handle multi-party, complex cases in virtually all areas of the law. As high-profile maritime disputes continue to make waves across the globe, retired judges Garrett E. Brown Jr., Scott J. Silverman and Frederic N. Smalkin took the opportunity to highlight the key trends driving the use of alternative dispute resolution (ADR) in maritime disputes.

WHAT ARE THE KEY DRIVERS BEHIND THE GROWING PROFILE OF INTERNATIONAL MARITIME DISPUTES?

JAMS: Public interest in maritime disputes is by no means a new, or even modern phenomenon. Indeed, maritime disputes – which are often compelling sea-stories – have seemingly always fascinated the public mind, from Homer's *The Odyssey*, to the present-day dramas that continue to unfold off of East Africa. Equally enduring is the historically-constant relevance of maritime commerce and transit to the global economy. Today, as in ancient times, ships and shipping-lanes are relied upon to facilitate the movement of both goods and people around the world. Given the modern advent of virtually 'real-time' global media coverage of newsworthy events, it is not surprising that the public's time-honored interest in maritime disputes has continued.

In the past, oil spills, rig explosions, and commercial shipping mishaps have garnered most of the headlines.

Recently, the media and public have demonstrated an overwhelming interest in cruise line accidents such as the Costa Concordia. It is likely because so many people take cruises so they can relate to these accidents, even if they are exceedingly rare.

TO WHAT EXTENT HAVE LITIGANTS BECOME MORE LIKELY TO TURN TO ADR TO SOLVE MARITIME DISPUTES OVER RECENT YEARS?

JAMS: Today, the world's three largest cruise lines resolve all of their crewmember disputes through arbitration. That was not the case 10 years ago when all of those disputes were heard in the public courts.

That said, arbitration has long been the method for resolving maritime disputes. There are a number of reasons why the maritime community prefers arbitration to traditional litigation. Some of the primary reasons include the privacy of the proceedings - the panel that decides the dispute typically consists of people with maritime experience as opposed to jurors with limited maritime knowledge - and of course, disputes are resolved much faster than those heard in the public courts. Another major factor is that since most countries are signatories to the 1958 New York Convention, an international arbitration award is enforceable in those countries without the need to go through the laborious, expensive and unpredictable procedure associated with domesticating a foreign judgment.

WHAT ARE THE KEY ATTRIBUTES OF ARBITRATION AND MEDIATION THAT MAKE THOSE METHODS USEFUL TOOLS FOR RESOLVING MARITIME DISPUTES?

JAMS: Whether a dispute is a wet case, arising from a



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collision or allision, or is a dry case, stemming from a disagreement over the terms of a charter party or bill of lading issues, it is in the interest of all in the maritime trades to achieve a quick, relatively inexpensive, and reasonable resolution. In many countries, litigation can be frightfully expensive. For example, complaints are often made about the costs arising from the wide-ranging pre-trial discovery rules in United States litigation. Delays are often encountered in litigation, and the process is public in nature. ADR aims at achieving a quicker and less expensive resolution than litigation. Arbitration has long been a preferred method for relatively quick, fair, and comparatively inexpensive method of resolving dry cases, and it has thus traditionally been provided in many contracts of carriage and charter parties, much more frequently than in many other trades. Mediation also has a place, especially in wet cases where there is no contractual relationship calling for arbitration between the parties. A mediator experienced in maritime law can more often than not help the parties negotiate a fair and reasonable settlement of their dispute at relatively little cost, compared to litigation.

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AS FOREIGN INVESTORS CONTINUE TO POUR INTO LATIN AMERICA, HOW EFFECTIVE IS ADR IN ENSURING THAT CLIENTS ARE PROTECTED IN MULTI-JURISDICTIONAL DISPUTES?

JAMS: As previously noted, choice is a key advantage to the resolution of maritime disputes via ADR, and the force of that maxim is clearly exhibited within the realm of multi-jurisdictional disputes. International news is

“It is of paramount importance to a just and efficient resolution of a maritime dispute to choose arbitrators and mediators skilled not only in law and dispute resolution, but with special knowledge about maritime matters.”

replete with stories of large-scale disputes being litigated in multi-national venues that one or both parties have not chosen. In those cases, the seemingly unavoidable result is inconvenience, frustration, and significant cost increases – not to mention sometimes-questionable and often unenforceable verdicts. Because ADR is based upon the parties’ agreement, it inherently provides increased control over the resolution of a given dispute through the many advantages of choice. In the context of maritime disputes, those advantages appear axiomatic when juxtaposed with the realities of multi-jurisdictional litigation.

IN ADR THE IMPORTANCE OF CHOOSING THE RIGHT PROFESSIONAL TO OVERSEE SENSITIVE CASES IS KEY; WHAT SKILLS AND EXPERIENCE DISTINGUISH JAMS’ NEUTRALS AS LEADERS IN COMPLEX DISPUTES?

JAMS: It is of paramount importance to a just and efficient resolution of a maritime dispute to choose arbitrators and mediators skilled not only in law and dispute resolution, but with special knowledge about maritime matters. For example, in the United States, admiralty jurisdiction is vested in the federal district courts and retired judges of those courts, many of whom are available through JAMS, are likely to be familiar with maritime law. In addition, some JAMS arbitrators and mediators have had extensive private practice in maritime law and/or academic maritime law training. In short, JAMS is ready to provide maritime interests and attorneys with a broad palette of experienced, skillful, and trustworthy arbitrators and mediators.

ABOUT THE AUTHORS:

Hon. Garrett E. Brown Jr. (Ret.)

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Hon. Garrett Brown (Ret.) joined JAMS after a distinguished judicial and legal career. He served for 26 years as United States District Judge for the District of New Jersey, the last six as Chief Judge, where he led the court-wide effort to provide prompt, efficient justice to civil litigants and to implement new local patent rules. Prior to appointment to the federal judiciary, he served as Chief Counsel and Acting Administrator of the U.S. Maritime Administration and as General Counsel of the U.S. Government Printing Office.

Scott J. Silverman

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Scott Silverman began working in Miami’s JAMS resolution center the day after he retired from Miami’s Circuit Court. Previously, he served as a South Florida judge for nearly 22 years and experienced just about every type of case that came before the Circuit Court in the civil, criminal, and family divisions. At JAMS, he realized that his past public service was a valuable asset during mediations. He could impart first-hand knowledge about the complexities of the jury system, the makeup of juries, the risks attendant with jury trials, the costs of trials, case/trial time lines, trial statistics, and the judicial mindset. Without a doubt, his previous experiences make him an effective mediator.

Hon. Frederic N. Smalkin (Ret.)

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Hon. Frederic Smalkin (Ret.) is based in the JAMS Greenbelt Resolution Center. He served as a Chief Judge of the U.S. District Court, District of Maryland for nearly two years. Prior to being appointed as District Judge in 1986, he served as a United States Magistrate for the District of Maryland for 10 years. During his years of service as a U.S. Magistrate, Judge Smalkin concentrated on pioneering the role of Federal Magistrates in civil litigation, especially as settlement mediators. He has successfully settled hundreds of cases and taught mediation skills to others. Judge Smalkin holds an LL.M. in Maritime Law from the University of London.