Melanie Willems in International Bar Association Publication: 'Pandemic Places Spotlight on ADR for In-House Teams'

By Melanie Willems | March 26, 2021

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Haynes Boone Partner Melanie Willems talked with the International Bar Association (IBA) about the impact of the COVID-19 pandemic on the courts and how it has pushed alternative dispute resolution (ADR) into the spotlight.

Here is an excerpt:

The global COVID-19 pandemic has had a tumultuous effect on all aspects of our lives – with access to justice being no exception. While some courts have adapted to the new normal and soldiered on with social distancing or remote hearings, many courts across the world have been forced to close due to lockdowns and staff shortages.

Court Concerns

Backlogs of case hearings have been building exponentially as the COVID crisis generates more and more disputes, chiefly because companies are left unable to fulfill their contractual obligations.

In the UK, the dire state of the courts prompted former UK Supreme Court presidents Lord Neuberger and Lord Phillips to publish a note via the British Institute of International and Comparative Law, in which they urged parties to commercial contracts to adopt a conciliatory approach towards disputes arising during, and as a result of, the pandemic.

Conciliation and Negotiation

A conciliatory approach is always a good starting point with disputes, says Melanie Willems, Head of International Arbitration at Haynes Boone in London.

“I would stress that ‘conciliatory’ does not, obviously, mean being weak. For example, this year we at Haynes Boone faced parties claiming with a straight face that COVID was not a force majeure event. That required a firm response.”

The Future

Moving forward, companies will be more cautious with the wording of clauses, ensuring they specifically contemplate events such as a pandemic ….

Given the massive boost to technology and the rapid adaptation of professionals to the new way of doing business, it seems clear that there will be new ideas and changes to what we were all used to, says Willems.

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“Perhaps the pandemic might be viewed, outside of its obvious devastation and without diminishing that, as an accelerator,” she says. “It has allowed us all to examine how we live and work, and why, and what techniques we must deploy to achieve great results, whatever the situation we find ourselves in. Will that lead to a sea change? Not necessarily, but there will be important and useful developments.”

To read the full article, click here.

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