

Fly on the Wall

**Danny McFadden, CEDR Representative, Asia Pacific
Hong Kong
World Bank Group**

The dispute Axis and Nexus

- May 2009 Contract signed
- Axis Chinese company to supply Nexus European company with 20,000 metric tonnes of metal
- Price of US \$500 per metric tonne delivery by June 30 2009 total US\$10,000,000
- Source of the metal Eastern Europe
- Axis paid Nexus two payments, 5% on signing of the contract (US \$500,000) and in late May a further down payment of 10% (US \$1,000,000)
- Metal not delivered by June and no communication from Nexus

Non delivery of Metal

- In August 2009 Axis wrote to Nexus asking why metal not delivered
- Told mine in Eastern Europe bankrupt could no longer complete the contract
- Chinese owner of Axis visited Europe to attempt to resolve the issue
- Most of deposit money returned but Axis started ADR proceedings in February 2010
- Axis claimed suffered losses unable to supply its customers with metal forced to buy at short notice at a higher price
- Axis claimed US\$530,000

Arranging the Mediation

Nexus invoked provisions of the contract

Conditions: Timely and sufficient delivery by the supplying mill is a precondition for the fulfilment of this contract....

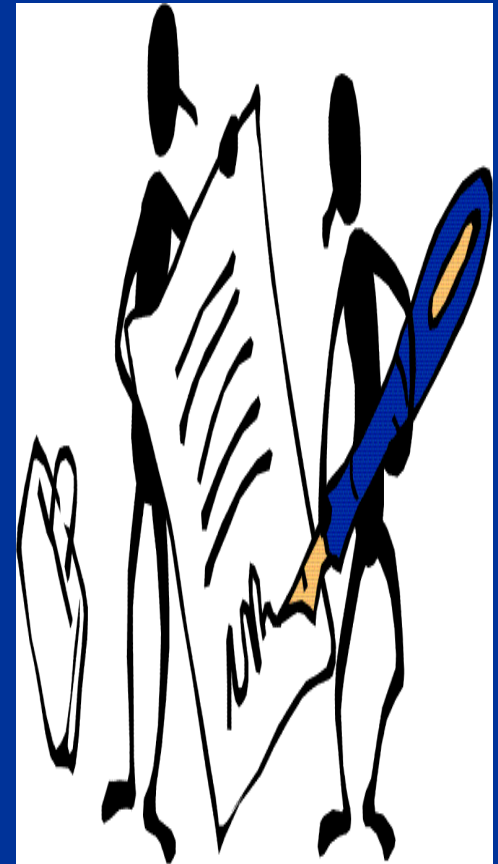
Mediation Arranged:

- Documents: mediation submissions and agreed bundle
- Pre-mediation telephone conversations
- Venue: Europeans wanted Europe and the Asian party Asia.
- Mediator under the ICC rules has the final say where parties cannot agree - a dilemma for mediators - choose preferred venue of one party - damages perception of the mediator's neutrality
- Eventually venue was agreed - some "pain" for both parties

Settlement

Recorded in two parts:

- Items of Understanding: general terms of the agreement including a cash payment by Nexus to Axis
- A Collateral Management Agreement containing specific and detailed agreement terms



Outcome

- Both parties left satisfied that they had achieved a better deal at far less cost, both in terms of avoiding further legal fees and management down time
- Each party got the opportunity to express their views of what had gone wrong and without being forced to change its own perspective of the situation



Some Mediation Process Points

- Pre Mediation Contact
- Language issues
- Negotiation styles
- General to Specific
- Culture
- Process decisions
- Private session or joint session
- Lawyers' roles
- Relationship building
- Authority
- Jet lag