SECOND MEETING OF THE INTERNATIONAL JUDICIAL DISPUTE RESOLUTION NETWORK (JDRN)

MONDAY, 22 MAY 2023 & TUESDAY, 23 MAY 2023

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Introductory Remarks by JDRN Members on Day 1

Speaker: The Right Honourable Lady Justice Sarah Asplin DBE, Lady Justice of Appeal, Royal Courts of Justice from the Judiciary of England and Wales, United Kingdom

Thank you. It is such a pleasure to be here and to be here in person. I too participated last year online and I am very grateful for all the efforts which were taken in order to achieve that. But I have to say it is much nicer to be here. But also, there are members of our judiciary who are online today, and I shall quickly introduce them – Lord Justice Birss who is Deputy Head of Civil Justice in London and Her Honour Judge Kelly, Her Honour Judge Phillips and Her Honour Judge Venn. They sit in courts around the country and use mediation tools day-in and day-out.

If I can also, like everyone else, reiterate and it's not a case of just reiterating - I am very sincere about my thanks to our host here and for these wonderful surroundings. It takes a great deal to organise an event like this, so thank you. And also of course, to everyone in Singapore whose idea and mission it was. I think we are all going to benefit enormously from it and that is a lot of hard work too, so thank you.

If I can now turn a little to a thumbnail sketch of what is going on in England and Wales. First of all, I should say that a great deal of what is being spearheaded now is due to the commitment and enthusiasm of the present Master of the Rolls who is very eager to incorporate these tools into the armoury of the judiciary. We have had the building blocks for this, however, since a time back in the 1990s or even earlier when Lord Woolf reformed the Rules of the Court and what we call in short hand, the CPR was written. Built into that were many of the elements which other jurisdictions have discussed. The overriding objective is in the first rule. It is an amalgamation of many of the things that people have talked about. It involves dealing with things justly and appropriately in relation to the amount at stake and the kind of dispute. Proceedings include, as others have mentioned, having a what we call a CMC, a Case Management Conference, at which it is expected that the judge will be proactive and imaginative and not just go through the usual motions. We also have very highly developed pre-action protocols which mean that before you get to court, you are required to liaise and interact with the other side and it will be noted and noted in costs if you do not. The intention is to bring minds to bear on what actually is involved and perhaps to encourage appropriate dialogue very early on.

We also have within the system an ability to stay matters for mediation and that will be third-party mediation. That is the norm but it does take an active proactive judge to make sure those things happen. We also have schemes both in the High Court and in the Court of Appeal

where matters are considered to see whether they are appropriate for mediation. And that means generally that they are already in a prescribed list of kinds of cases although the judge has general discretion to suggest something should go to mediation. That is not compulsory at the moment.

We do already have embedded in certain areas of the tribunals actual requirements to mediate, for example, in the Property Tribunals, where the tribunal judge will conduct that mediation. Employment cases are another example. You cannot proceed to court unless the claim has been mediated by a recognised third-party body.

We also have what we call "FDRs" which are Financial Dispute Resolution hearings in family matters and those are very well embedded. In other areas though, as I say, it's much more fluid and less embedded as yet.

In Small Claims, however, there is a small claims mediation service which is paid for by the court service. It has been recommended that that should be compulsory in cases which are valued up to £10,000. We are expecting that might actually come to pass and the Ministry of Justice have been doing a great deal of work about that.

In addition, some of my colleagues and those who are online today, in particular, use informal judicial mediation or ENE a great deal. It is being practised around the country and we have a number of projects which are being monitored at present. Unfortunately, I have to report though in the higher courts, I think, that early neutral evaluation occurs much less than one might hope. And that is something that I want to spur on.

We are also ramping up the training which we give judges both in relation to ENE and mediation because at the moment, many who are very interested are doing so but others are not. It is essential, we think, that they should have the support and the confidence to do so because they have been properly trained in relation to it.

So, that is a thumbnail sketch. I hope I haven't talked too long, and I just want to thank you all again for facilitating us all being here which I think is so important. I am looking forward to the stimulation, the support, and the inspiration that we are all going to receive, I hope, over the next two days.

Thank you.