

Integrity in Solving Agribusiness Disputes in Rural Areas: Lessons Learned

By Dr. Eric P. Thor, S.A.M., Ms. Hanny Wijaya and Mr. Rizal Syarief¹

Overview

Commercial integrity in many parts of the four billion person emerging markets does not exist in the traditional “western” legal forms. These areas and countries do not have strict legal “uniform commercial codes”, understanding of international conventions nor “rules of law” to solve disputes in agribusiness, food and rural transactions. Thus, in many cases, integrity in transactions is a major challenge.

Two key emerging agribusiness markets where this can be a challenge are Indonesia and Russia and the Newly Independent States such as Moldova. Each is different. In Indonesia, there are over 300 different ethnic groups in over 6000 islands. With over 200 million people, it is considered a major emerging market of the United States. Another example is Russia, an emerging NIS country where agribusiness makes up over 30% of the transactions. Close to 200 million people in Russia and the NIS endure disputes, which cannot be solved under a “rule of law” system. In Australia, also they have helped develop the Integrity of transactions, which face serious difficulties in many transactions.

Arizona is a unique place to forge new ideas in Integrity due to its history and diversity. Arizona is a unique state due to its culture and ethnic diversity. For the past five hundred years, the Spanish territory, Mexican territory, U.S. territory, has faced disputes in the rural areas. While Hollywood movies have focused on the “Wild West” for the regions lore, the realities are quite different in regards to settling disputes and trade issues. The Early Spanish explorers such as Cabeza de Vaca (1536), Marcos de Niza (1539), and Francisco Vásquez de Coronado (1540), and several Spanish missions were founded in the late 17th century. They helped establish trade and other links with the many tribes and native American nations. Disputes were settled by force during this period. The region came under Mexican control after 1821, and lands north of the Gila R. passed to the U.S. territory of New Mexico at the end of the Mexican war (1846-48). Lands between the Gila R. and today's southern boundary were added through the Gadsden Purchase (1853). Arizona became a separate territory in 1863, and settlement accelerated after the surrender (1866) of Geronimo ended 25 years of Apache wars. Rapid development of irrigated agriculture, spurred by construction of the Roosevelt dam (1911), and industrial and urban expansion beginning during World War II strained limited water resources. Unfortunately in many areas violence remains as a way to settle commercial and rural disputes. The rural areas show this diversity as most of northern and eastern Arizona lies within the arid Colorado plateau region, and most of the south and west in the flat desert basins (many now irrigated) and jagged mountain ranges of the Basin and Range region. Major rivers are the Colorado, Gila, and Salt. A total of

¹ Dr. Eric P. Thor, S.A.M. is Professor and State Director of Ag Mediation and Finance Training Unit at ASU East and Ms Hanny Wijaya and Rizal Syarief are Lecturers and Bogor Agricultural University and participants in IRADRU (Indonesian Rural Alternative Dispute Resolution Unit) Project.

20,036,000 acres (8,108,000 hectares), or 38% of all U.S. Native American tribal lands, are in Arizona; the largest are the Navaho, Hopi, Apache, Fort Apache and Papago (TOHONO O'ODHAM) farming operations and reservations. In 1990 Arizona was 81% white, 19% Native American and others.

Like Arizona, Emerging Markets such as Russia and Indonesia have challenges settling disputes. Thus, many commercial agribusiness transactions, trades, and disputes do not have traditional ways of settling disputes. In some extreme cases violence and death has been the result of these disputes. After twenty years of American Rural Mediation to assist rural commercial businesspersons and farmers, there are a number of key developments in these areas. This paper highlights for IAMA and others interested in commercial mediation, peacemaking and dispute resolution a number of possible options. This paper outlines the background, law, and efforts by U.S. states and federal government to focus on mediation as a way of settling disputes. As of FY2001 there have been close to 39,000 cases in the U.S. submitted to formal state and local mediation units. Estimates suggest that 70 percent or over 27,000 have been successful in solving the dispute². Finally the paper will enumerate the lessons mediation and peacemaking organizations have learned.

Background

In the transformation and commercialization of agribusiness and resource-based projects and transactions, disputes over land, economic systems, environmental resources and financial fortune can be a serious impediment to growth and societal progress. In the rural areas, the rule of law is not always an accepted way of settling all disputes. In Arizona, less than 100 years ago, the “six” gun was used to settle disputes. In Arizona and twenty-five other states Rural Mediation centers currently are operating successfully. In Indonesia, one of the world’s major emerging markets and democracy, rural disputes has even caused riots, and even death. In both rural and agriculturally based Arizona and Indonesia, this paper highlights methodology and courses being developed to help solve some of these conflicts. Mediation, alternative dispute resolution, peace making and arbitration are techniques that can help solve both commercial and civil disputes. This is particularly true where the “rule of law” or courts cannot or will not be able to solve issues quickly, economically, and efficiently for all participants. Historically, rural alternative dispute resolution grew out of farmers’ and ranchers’ disputes, which could not be resolved by the existing institutions. In the U.S., over 70% of disputes referred to mediation are solved to the satisfaction of all parties. No party wins all but on the other hand, no party loses all either. This has significantly slowed appeals and litigation in certain important areas. Today around the world, mediation and similar techniques are used in trade matters, cross border issues, land issues, health determinations, divorce, and a wide variety of other issues before the courts, government agencies, and health organizations.

² Successful conclusion means no legal suit or dispute follows mediation.

Globally, as an emerging market, Indonesia has more than 300 ethnic groups, which have distinct cultures, business practices, civil and commercial practices; Indonesia faces a number of problems in multicultural and commercial practices. These problems are challenging the ability of rural community development. An article in the International Herald Tribune entitled “Indonesia faces a breakdown...” stated “Many fail to realize that restructuring the financial sector (and many others) without restructuring the judiciary will end in failure”³. The need to have an alternative dispute resolution continues to grow, as well as the need to empower the people.

In the next the years, the Academy of Agriculture in Indonesia, Bogor Agricultural the Indonesian Agricultural Extension Academy, the Moldovan Agribusiness Center and Arizona State University will continue to develop new ideas and institutions to assist alternative dispute resolution in emerging markets. Assisting this group, the Arizona Foundation of Law Related Education and the Santa Cruz Institute will help set up valued training and courses for all in these areas. This includes the creation of the Indonesia Rural Alternative Dispute Resolution and Agribusiness Unit (IRADRU). They will focus on developing joint techniques, courses, and certified individuals that will assist rural civic and commercial dispute settlements.

The strategies of these institutions is to promote courses and training, which focus on civic and mediation centers from the rural areas and to teach courses leading to mediation certificate and dispute resolution programs. The purpose is that the various parties can assist each other to focus on the techniques and alternative dispute resolution process in Indonesia and Southeast Asian emerging markets. Just south of Tucson these techniques are being developed also to assist in disputes over NAFTA disputes related to trade and related issues.

In the U.S. there is a similar Federal State Partnership. Section 502 of the Agricultural Credit Act of 1987 (P.L. 100-233) authorized the Secretary of Agriculture to help States develop the Department of Agriculture’s (USDA) Certified State Mediation Programs and participate in those programs. The Farm Service Agency (USDA) through its Executive Director for State Operations (EDSO) administers the program. State mediation programs assist agricultural producers, their creditors, and other persons directly affected by the actions of the USDA to resolve disputes, thereby reducing participants’ costs associated with administrative appeals, litigation, and bankruptcy. The USDA Mediation Program gives farmers and ranchers a confidential way to work out distressed or delinquent loans.

Agricultural mediation is a way of settling disputes within a producer’s own means. The program provides a neutral mediator who can sit down with the parties or work on the phone to resolve very problematic issues. Instead of years it can take for a case to filter through the courts, mediation generally takes only a few meetings to complete. A critical feature of mediation is confidentiality in working out differences concerning farmers and ranchers’ business operations. Mediation documents are not to be used for

³ International Herald Tribune January 14, 2000, page 7

any other legal action. This is one of the key requirements for State mediation certification. Confidentiality is the key to making mediation work.

Historical Development and the Law

The Agricultural Credit Act of 1987 authorized federal efforts as a result of the problems throughout the rural areas in America. It was based on a number of state programs principally in the Mid-West. It set up a series of matching grants for state formulated programs. Today there are 25 different programs in 25 states. The Food, Agriculture, Conservation and Trade Act of 1990 (P.L. 101-624) extended this authority through FY 1995. The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (P.L. 103-354) further refined the program. The Agriculture Credit Improvement Act of 1992 (P.L. 102-554) also redefined the roles of states and federal agencies in this partnership. Section 282 of the 1994 Reorganization Act expanded the program to include wetland determinations, conservation compliance, agricultural credit, and rural water loan programs, grazing on national forest system lands, pesticides, and other issues the Secretary of Agriculture deems appropriate. Today Congress is strongly supportive of this system and has increased financial support as a way of assisting rural areas in the financial challenges of the new millennium. The BLM has participated in many of these mediations as an agency, which is directly affected by the challenges of farmers and ranchers in rural areas. Today for all adverse decisions, Section 275 of the Act required that if a USDA Certified State Mediation Program is available as part of the informal hearing process, and the appeal participant would be offered mediation.

What is Rural Mediation?

Mediation is a process in which a trained, highly respected and impartial person--a mediator--helps people look at their mutual problems, identify and consider options, and determine if they can agree on a solution. A mediator has no decision-making authority. Unlike a judge or an arbitrator, a mediator cannot decide what is right or "make" anyone do anything. Successful mediation is almost always based on the voluntary cooperation and participation of all the parties.

USDA enters mediation to explore all available options to help agricultural producers, their creditors, and other persons directly affected by the actions of USDA to resolve disputes and reduce costs associated with administrative appeals, litigation, and bankruptcy. USDA representatives try to set a positive, constructive tone and encourage others to do the same in order to provide a positive atmosphere for good settlements.

How Does Mediation Work?

Any affected party can request mediation at any time, but it usually takes place after a government official advises the customer that mediation is available before or after

receipt of formal adverse actions. The customer may request mediation or waive the opportunity to use the service.

If mediation is requested, State mediation officials contact the requesting party to get a complete list of potential participants and their addresses and suggest steps the participants should take to prepare for mediation. The mediation service then assigns one or more mediators to the case.

Participants may select or eliminate the mediators offered by the mediation service. Once a mediator is selected, all potential participants are advised that a mediation process is underway. If a meeting is scheduled, the parties are informed of the time, place, and nature of the mediation process. Ground rules are set to ensure that the conference is productive.

Once an agreement is reached, the mediator makes sure that it is in writing, is signed, and made available to all participants. If an agreement is not reached, the case is closed, all parties are advised of the outcome, and all remain free to pursue other legal courses. Mediation does not favor one side or the other, but helps both consider their situation. The main idea is to provide a low-cost alternative to expensive, lengthy litigation or bankruptcy.

Certification of State Mediation Programs

The U.S. government has a special procedure to help States develop mediation services. Under Federal Regulation 7 CFR 1946, USDA officials determine whether a State program meets the following requirements:

1. By August 1 of each year, the Governor or designated State agency head must notify the USDA of its interest in being certified and eligible to receive matching Federal support funds for the State mediation program.
2. Mediation services must be provided to agricultural producers, creditors, and other persons directly affected by USDA actions to help them reach mutually agreeable settlement of their disputes.
3. The program must be authorized or administered by an agency of the State government or by the Governor.
4. Training and certification must be provided for mediators. Neutrality and familiarity with the problems are a must.
5. Confidentiality of the mediation process must be assured.
6. All lenders and borrowers of agricultural loans and, in cases of other issues covered by the mediation program, persons directly affected by USDA actions must be ensured of adequate notification of the mediation services available.

Each of these represents a lesson learned and are key to the high success rate of the program

State Supplemental Mediation Agreements

Each state can refine the process. Once a State's agricultural mediation program is certified, the USDA and state director jointly develops an agreement with the Governor's State mediation officials and other USDA participating agencies. The agreement will describe how the affected agencies will participate in the program. The USDA SED

confers with the State Attorney General's office, all affected USDA agencies, farm and ranch organizations that are interested in development of the State's certified mediation program, and affected departments of State governments, to ensure that all interested parties have an opportunity to participate.

The agreement will contain the essentials of the State mediation structure, procedural guidelines, and forms to be used in the mediation process. Then the Regional Office of the General Counsel reviews it. See Appendix 1 for a state-by-state list.

National Performance

The USDA Agricultural Mediation Program was cited for efficiency and effectiveness in the Vice President's Report of the National Performance Review, Creating a Government that Works better and Costs Less. The program was singled out as an example of activity, which other Federal agencies could use as a model.

The National Association of State Departments of Agriculture (NASDA) passed a resolution supporting the expansion of agricultural mediation. NASDA further urged the expansion of mediation to include other Federal agencies, which play a role in land and resource management, including the Department of Interior and Army Corps of Engineers.

What is the Lessons Learned?

There are several key lessons learned during the past two decades of this program. They include:

1. In the U.S. Federal-State Partnerships work. Adapting to local areas each state has a slightly different approach but it works. Before 1987, states were party to over 20,000 litigations against USDA agencies. This program has meant the states and Federal government agencies work together with the difficult restructuring and bankruptcy cases. The taxpayer does not have to pay twice.
2. Farmers and Producers have an important option. In 80% of the cases, no appeal has been filed nor litigation started. With each litigated case costing around \$80,000 according to government estimates. This suggests around \$14,000,000 for each party that has been saved by the government and participant. Subtracting out the current costs for state and federal appropriations, participants and their counsel it suggests savings from all parties of a range of between \$16. Million and \$14. Million per year. See Discussion of Savings and Costs in Appendix II.
3. Both Federal and State Governments can participate and adapt the process to each state's needs. The Attorney General, Agricultural and Environment agencies can refine the process. This means Senators and Congresspersons find this an important part of the program.
4. Training and certification must be provided for mediators. Neutrality and familiarity with the problems are a must for the mediators. Each participant and party can "pick" a neutral party from a roster maintained by both the Federal and State organization.

5. Confidentiality of the mediation process must be assured. This means that the findings by the parties are not part of the legal process. This is a voluntary process and not part of the legally defined process.
6. All lenders and borrowers of agricultural loans and, in cases of other issues covered by the mediation program, persons directly affected by USDA actions must be ensured of adequate notification of the mediation services available. This means banks, other federal and state agencies, have a right to seek a solution.
7. The success of mediation is expanding to both the public and private sector. Use of trained mediators, is effective in many incidences as an important tool for dispute resolution both in the U.S. and globally. Recent major mediations in the high technology area, Middle East peace process and emerging markets are key to reaching solutions to important issue.

Appendix 1: Certified State Mediation Program Contacts

Executive Director for State Operations
Agricultural Mediation Program
USDA/USDA/EDSO
STOP 0539/Room 3090-S
1400 Independence Ave., S.W.
Washington, DC 20250-0309
Tel (202) 690-2807
Fax (202) 690-0434

Chester A. Bailey
Farm Service Agency
USDA Agricultural Mediation Program
USDA/USDA/EDSO
STOP 0539/Rm. 6724-S
Washington, DC 20250-0539
Tel (202) 720-1471
Fax (202) 690-0466
E-mail: cbailey@wdc.USDA.usda.gov
<http://www.USDA.usda.gov/pas/publications/facts/html/agmed1099.htm>

State Mediation Program and Contacts

Alabama

Dr. John Gamble, Director, Marketing & Economics
Alabama Department of Agriculture and Industries
P.O. Box 3336
Montgomery, AL 36109-0336
Tel(334) 240-7245 Fax (334) 240-7270
E-mail: johngamble@mindspring.com
<http://agri-ind.state.al.us/mediation.htm>

Arizona

Dr. Eric Thor
Program Administrator
Rural Mediation and Finance Training Unit
Arizona State University East
6001 South Power Road. CNTR Bldg.
Mesa, AZ 85206
Tel (602) 727-1470 Fax (602) 727-1123
E-mail: ruralmediation@asu.edu
<http://www.east.asu.edu/masbr/research/agmediation.htm>

Arkansas

Mr. Richard S. Johnston
Programs Coordinator
Farm/Creditor Mediation Program
Arkansas Development Finance Authority
P.O. Box 8023
Little Rock, AR 72203
Tel(501) 682-5895 Fax (501) 682-5893
E-mail: rjohnston@adfa.state.ar.us

Florida

Alison E. Greenacres
Florida Agricultural Mediation Service
University of Florida College of Law
P.O. Box 117620
Gainesville, FL 32611-7620

Tel (352) 392-9238 Fax (352) 392-8727
E-mail: gerencsc@law.ufl.edu
<http://grove.ufl.edu/~mediate/>

Idaho

Taylor Cox
Idaho State Agricultural Mediation Program
Idaho State Department of Agriculture
P.O. Box 790
Boise, ID 83701
Tel (208) 332-8500 Fax (208) 334-4062
E-mail: tcox@agri.state.edu.us

Illinois

Alicia Hill Ruiz
Southern Illinois University School of Law
104 Lesser Law Bldg
Carbondale, IL 62901
Tel (618) 453-5181 Fax (618) 453-8727
E-mail: aruiz@siu.edu
<http://www.siu.edu/~lawsch/clinic/iamp/>

Indiana

Julia Wicker
Indiana Agricultural Mediation Program
Indiana State Commissioner of Agriculture
ISTA Center, Suite 414
Indianapolis, IN 46204
Tel (317) 232-8775 Fax (317) 232-1362

Iowa

Dr. Michael L. Thompson, Executive Director
Iowa Mediation Services, Inc.
1025 Ashworth Road, Suite 202
West Des Moines, IA 50265
Tel (515) 223-2318 Fax (515) 223-2321
E-mail: iamed8@netins.net

Kansas

Forest Buhler
Kansas Agricultural Mediation Program
K-State Research & Extension
2A Edwards Hall
Manhattan, KS 66506
Tel (785) 532-6958 Fax (785) 352-6532
E-mail: fbuhler@facts.ksu.edu
http://129.130.75.14/dp_kams/

Maryland

Ms. Jane Storrs
Director, Agricultural Mediation Program

Maryland State Department of Agriculture
50 Harry S. Truman Pky
Annapolis, MD 21401
Tel (410) 841-5770 Fax (410) 841-5987
Email: storrsJM@mda.state.md

Michigan

Douglas A. VanEpps, Director
Tara Verdonk, Coordinator
Michigan Agricultural Mediation Program
State Court Administrative Office
309 N. Washington Square
P.O. Box 30048
East Lansing, MI 48909
Tel (517) 373-4839 Fax (517) 373-8922
E-mail: verdonkt@jud.state.mi.us
vanepspd@jud.state.mi.us
<http://www.supremecourt.state.mi.us/cdrp.htm>

Minnesota

Rod Hamer
University of Minnesota Extension Service
146 Classroom Office Bldg.
1994 Buford Ave.
St. Paul, MN 55108
Tel (612) 625-1782 Fax (612) 625-1955
E-Mail: rhamer@extension.umn.edu
<http://www.revisor.leg.state.mn.us/arule/1502/>

Missouri

Edward D. Taylor
Cooperative Extension Service
Lincoln University
P.O. Box 29
Jefferson City, MO 65102
Tel (573) 681-5523 Fax (573) 681-5546

Nebraska

Mark Galvin
Farm Mediation Program
Nebraska Department of Agriculture
P.O. Box 94947
Lincoln, NE 68509
Tel (402) 471-2341 Fax (402) 471-3252
E-mail: Markgg@agr.state.ne.us - jkom404059@aol.com
<http://www.agr.state.ne.us/mediatio/index.htm>

Nevada

Paul Iverson
Administrator
Nevada Agricultural Mediation Program
Nevada Division of Agriculture
350 Capitol Hill Avenue
Reno, NV 89502
Tel (702) 688-1180 Fax (702) 688-1178

E-mail: hnderson@govmail.state.nv.us

New Mexico

Patrick Sullivan
New Mexico Agricultural Mediation Program
New Mexico Cooperative Extension Service
P.O. Box 30003, Dept 3AE
Las Cruces, NM 88003
Tel (505) 646-2433 Fax (505) 646-3808
E-mail: pasulliv@nmsu.edu
<http://www.nmsu.edu/~agmed/right.html>

North Dakota

Jeff Knudson
Administrator
North Dakota Agricultural Mediation Service
North Dakota Department of Agriculture
600 East Blvd., 6th floor
Bismarck, ND 58505
Tel (701) 328-4769 or 328-2231 Fax (701) 328-4567
E-mail: jknudson@state.nd.us
<http://www.state.nd.us/agr/otherpress.html>

Oklahoma

Weldon Schieffer
Mediator Coordinator
Oklahoma State University, Wellness Center
2302 West 7th St.
Stillwater, OK 74074
Tel (800) 248-5465 or (405) 374-0033 Fax (405) 377-1048
E-mail: weldon@oamp.net
<http://www.oscn.net/adr/statewideprogs.htm>

South Dakota

Linda Hodgkin
South Dakota Department of Agriculture
Joe Foss Building, 523 E. Capitol
Pierre, SD 57501-3182
Tel (605) 773-5841 Fax (605) 773-3481
E-mail: linda.hodgin@state.sd.us
<http://www.state.sd.us/>

Utah

Van Burgess
Deputy Commissioner of Agriculture
Utah State Mediation Program
Utah Department of Agriculture
P.O. Box 146500
Salt Lake City, UT 84114
Tel (801) 538-7102 Fax (801) 538-7126
E-mail: agmain.vburgess@email.state.ut.us
<http://www.ag.state.ut.us/divisns/comisnr/medlinks.htm>

Washington

Jack Hebner
Mediation Director
Fulcrum Institute
905 W. Riverside, Suite 304
Spokane, WA 99201-1099
Tel & Fax (509) 838-2799
E-mail: hebnerj@worldnet.att.com
<http://wcp.wsu.edu/nrcs/mediationserv.htm>

Wisconsin

Jo Ann Prust
Mediation Coordinator
Farm Mediation and Arbitration
Wisconsin Department of Agriculture,
Trade and Consumer Protection
2811 Agriculture Dr.
P.O. Box 8911
Madison, WI 53708
Tel (608) 224-5052 Fax (608) 224-5034
E-mail: prustja@wheat.datcpstate.wi.us

Wyoming

Dr. Alan Schroeder
Wyoming Agriculture Mediation Board
University of Wyoming
Box 3354, University Station
Laramie, WY 82071
Tel (307) 766-5133 Fax (307) 766-3379
E-mail: conrad@uwyo.edu
<http://soswy.state.wy.us/director/boards/ag-med.htm>

Appendix II: Costs and Savings by Mediation

3000 Cases from USDA Estimates and State Annual Reports

x 80% Success Rate

2400 Cases reach successful conclusion of no appeal

2400 Mediation Cases

\$80,000 per USDA per IG Inspector Estimates.

\$19,200 for the U.S. Government

A Similar Savings for State, Participant and other Institutions \$19.2 Million

Cost of Programs

\$2.-3 Million U.S. Appropriation plus overhead

State Costs including Cost Share \$750,000

Participant Costs equal \$1000 per case or \$2.4 Million

Thus, \$14. Million to 15 Million in savings annually.