

# AMERICAN LEGAL SYSTEM – WHAT ARE THE METHODS OF RESOLVING COMMERCIAL DISPUTES BETWEEN U.S. AND CZECH COMPANIES

Masaryk University – Law Faculty  
October 2011

# Alternative Ways of Resolving Disputes

## How does the dispute begin:

- Contract between U.S. and Czech Company for Czech to produce and send to U.S. high tech automotive parts:



- What are the contract terms? What's "the deal"



# Alternative Ways of Resolving Disputes

- Contract explains the terms, including how the dispute will be resolved: in court or by arbitration; and where resolved – whether in the U.S. or in the Czech Republic – or somewhere else.
- Let's suppose the auto entertainment systems are shipped but the U.S. manufacturer claims there are not enough to meet the contract.
- Not all disputes are worth fighting about:
  - Cost of the dispute
  - Damage to the relationship: if you fight with your customer (even if you are right), no new orders.
  - Damage to reputation (yours or the U.S. company's)

# Alternative Ways of Resolving Disputes

U.S. Company: “we’re going to Court in the U.S.”



Very expensive for Czech Company.



Why? What is the process in U. S.?

# Alternative Ways of Resolving Disputes

- Unlike cases in the Czech Republic, or in the E.U. generally (except for the U.K.), cases in the U.S. allow extensive and **expensive** “discovery”. What is that ?
  - Pre-trial testimony from anyone with information about the case (“depositions”).
  - Document Production: all of your documents, including all of your private emails (except for those with your attorney).
  - This includes the email that you thought you had deleted.
  - These can be very damaging – to either side.
  - Obtaining emails from your opponent may help you prove your case. Expensive but could be big help.

# Alternative Ways of Resolving Disputes

- ▣ VIDEO CLIP

# Alternative Ways of Resolving Disputes

- ▣ VIDEO CLIP

# Alternative Ways of Resolving Disputes

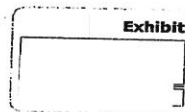
**From:** Kelly  
**Date:** 10/28/2006 2:52:27 PM  
**To:** Ron  
**Subject:** RE:  
**Attachments:**

---

Ron:

This is totally confidential and I will not admit that I provided it to you but I believe it will help you.  
Regards, Kelly

-----Original Message-----  
**From:** Ron  
**Sent:** Friday, October 27, 2006 5:11 PM  
**To:**  
**Subject:**





# Alternative Ways of Resolving Disputes

- **The Trial**

- U.S. courts allow jury trial, or trial without juries.



- 6 or 12 persons decide the facts; the judge instructs the jury on what the law is:
  - What each side must prove to win.
- Juries are difficult to predict and can reach a result based on emotional responses.
- This is dangerous for both sides, but juries often favor the “home team” – the person or company from that area.
- Jury trials take longer and are more expensive.

# Alternative Ways of Resolving Disputes

- Or, cases in the U.S. can be decided by a judge alone, without a jury.



- If tried by a judge, he or she then decides the facts and applies the law.
- How are judges in the U.S. selected, and what does this tell you about the fairness of the judge?



- Attorney's fees are usually paid by each side, regardless of who wins.
- These are risks for a U.S. trial. But there are risks in the Czech Republic, too.

# Alternative Ways of Resolving Disputes

- **Judges in the Czech Republic are in career positions**
  - Not having served as lawyers first, they may not see the case in the same way as the lawyers do.
  - If the judge is not good, or does not work hard, can he be replaced?
  - There is no (or limited) pre-trial discovery: you will hear the positions for the first time during the trial, limiting your ability to prepare for it.
  - You will not have access to the documents from the other side, so you may not know the full story.
  - *Attorney's fees will be paid by the losing side.*

# Arbitration and Mediation Alternatives

- Cost and uncertainty of Litigation cause parties to look for other methods of resolving disputes: what are they and how do they work?
- A. Arbitration
  - Agreement to resolve disputes through a private, but binding method of resolving a dispute.
  - Provided for by the contract: specific provision instead of litigation.

# Arbitration and Mediation Alternatives

- ▣ Arbitration resolves a dispute outside of court, but in a binding way.
- ▣ Arbitrator's decision (an "Award") is then entered into Court as a judgment
  - Same as if the case had been tried in Court
- ▣ Judgment entered in Court of one country after arbitration will be enforced in another country

# Arbitration and Mediation Alternatives

- ▣ If a case is arbitrated in one country, can the resulting decision be enforced in another?
- ▣ International Arbitration has become common since 1958.
- ▣ “New York Convention” on International Arbitration, sponsored by United Nations.
- ▣ This is a treaty – an agreement among countries to enforce arbitration awards in other countries.
- ▣ More than 140 countries agree and jointed treaty
- ▣ Czech Republic joined in 1993.

# Arbitration and Mediation Alternatives

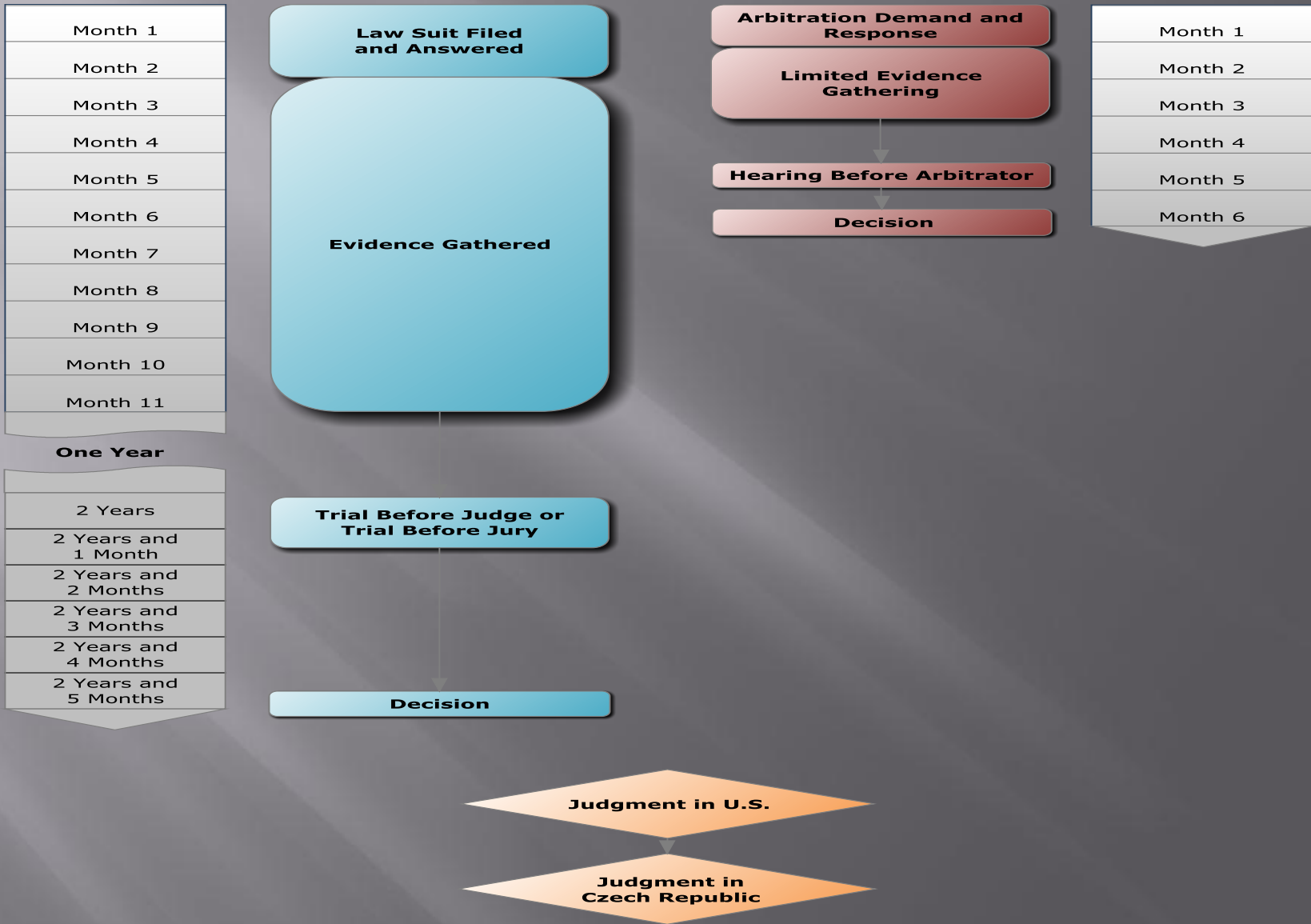
- Some types of disputes may still be presented to Court.
  - Example: where urgent remedy is needed – someone is taking your intellectual property and is about to put it on the internet.
  - One of your former employees has taken customer files, copied them and is about to give them to a competitor.
  - Your customer is making damaging statements to the news media about your product.
- Arbitration may be too slow to effectively prevent these harms.
  - So contracts provide for court for some exceptional situations.

# Arbitration and Mediation Alternatives

- More routine disputes can be reserved for arbitration. For example:
  - Was the product defective?
  - Was the charge proper?
  - Did both parties expect that the quantity to be shipped could be decided only by the Buyer?
  - If the product was lost in shipment, whose fault is that? Must the customer pay; or the manufacturer?



# Litigation vs. Arbitration



# Alternative Ways of Resolving Disputes

- **The Appeal:**
  - In the U.S., almost every case can be appealed after the trial.
  - An appeal in the U.S, is **not** another trial.
  - It is a review of the trial court to decide if the court made a legal error. Did the trial judge misunderstand the law or apply it incorrectly?
  - Appeals that raise important social issues can be heard by the highest court, the Supreme Court.
  - Not a “right”; the Supreme Court selects only a few cases that it considers most important. These are the cases that will affect major issues.

# Alternative Ways of Resolving Disputes

## ▪ Czech Republic Appeals

- Similar: appeals may be taken to the Regional Courts, challenging whether the trial court correctly applied the law.
- Further appeals to the Supreme Court are discretionary: the Court only takes those cases considered to have wide application and importance.
- Difference: in the U.S., an appeals court's decision will control or bind the trial court in similar cases. In the C.R., the decisions are not published and are not binding (except for the Supreme Court).

# Alternative Ways of Resolving Disputes

- U.S. use of precedents may provide guidance for how your case will be decided.
  - Similar facts should lead to similar result
  - Trial judge is required to apply the precedent of court decisions.
- Let's Take a Possible Case you might encounter:
- If you were the Czech business person in a dispute with the U.S., and the facts and contract were as provided to you before this class, where and how would you bring the case, and why?
- What are the things you would think about?