

**Case Studies on Dispute Prevention**  
(Two Rival Chemical Companies)  
(prepared 2021)

<b>Description of parties:</b>	Two rival chemicals companies—Company A and B
<b>Brief history of relationship and arrangement:</b>	<p>The JV was formed to build and own an ethylene production facility, which would be operated by Company A. The JV was co-located with other ethylene plants, which were wholly owned by Company A. All ethylene plants on the site, including the JV and Company A’s wholly owned assets, received ethane from the same “pool.”</p> <p>A couple of decades ago, Company A and a third-party company formed a JV to build and own an ethylene production facility, which would be operated by Company A. Before the facility was even up and operating, Company B acquired the third-party company, thereby becoming a partner in the JV. Companies A and Company B were and continue to be rivals working within the same industry.</p>
<b>Nature of issue, conflict, or dispute:</b>	<p>Company B believed that Company A had breached its contractual obligations under the JV Operating Agreement by failing to supply a sufficient amount of feedstock (i.e., ethane) to the JV, instead diverting ethane that should have gone to the JV to its wholly-owned ethylene production facilities. Company B alleged this breach had been ongoing for many months, especially when there had been a shortfall on ethane supply.</p> <p>The JV Operating Agreement required a few specific types of disputes to be referred to arbitration, such as disputes about dissolving the ethane pool and those related to the Operator carrying out its duties in a specific section of the JV Operating Agreement. However, the alleged breach of the JV Operating Agreement in this case fell outside those arbitrable decisions and thus resulted in litigation.</p>
<b>Nature of dispute prevention mechanism deployed:</b>	N/A
<b>How was the actual or potential conflict or dispute prevented or resolved?</b>	Company B filed suit against Company A claiming breach of the JV Operating Agreement. The trial lasted 8 months and involved 21 lawyers from six different law firms. The Alberta court found that Company A had acted with willful misconduct and gross negligence and awarded Company B more than \$1B in damages. The litigation was a significant distraction for both companies and the JV Board essentially stopped meeting throughout the duration of the litigation given the animosity between the parties.
<b>If none deployed, nature of dispute prevention mechanism</b>	The JV Operating Agreement could have called for escalation and/or included a broader arbitration provision. Escalation to company executives could have reduced costs associated with arbitration or litigation and preserved the relationship between the parties if executives had been able to come to an agreement.

**that might have been  
deployed:**

Arbitration would at least have kept the dispute a private matter between the Companies and potentially could have reduced costs (though not necessarily so). The JV Operating Agreement could also called for more transparency regarding the pooling arrangement in the first place. For example, it could have provided Company B with regular reports or allowed Company B to audit the use of ethane from the pool.

**Lessons from the case  
study:**

The scope of arbitration provisions should be closely scrutinized during JV Operating Agreement drafting. In this case, certain disputes among the partners related to Operator conduct would have gone to arbitration and others to litigation when the types of breaches were quite similar and the rationale for having different dispute resolution mechanisms was not clear. Furthermore, this case proves the well-known fact that litigation can be expensive, time consuming, and detrimental to the parties' ongoing relationship given the zero-sum nature of courtroom battle. Litigation between Party A and Party B was detrimental to the functioning of the JV and a significant distraction to those operating and governing the JV. On the other hand, litigation did allow the parties to resolve the dispute, albeit over a long period of time, and thus in some ways was a necessary tool for resolving conflict.