

The Economics Of ADR

The Editor interviews **The Hon. William A. Dreier**, Member, Norris, McLaughlin & Marcus, P.A. (Presiding Judge, New Jersey Superior Court, Appellate Division, Retired) and **Ryan Hamilton**, President, Resolute Systems, LLC.

Editor: Is ADR still a less expensive alternative to litigation?

Dreier: In short: "Yes" for both mediation and arbitration.

Mediation avoids most discovery, and the expensive, intense and emotional wait for and cost of trial. Results are negotiated, not imposed by a judge or jury or subject to costly appeals. You can obtain innovative results beyond the money judgments that are the hallmark of litigation.

Some cases still require an outside decision. By using arbitration, you can choose the arbitrator without the "luck of the draw" of the local courthouse, limit abusive discovery, and schedule convenient hearings in a private setting. And unless the parties both agree otherwise, there are no appeals.

There are two inexpensive elements to effective ADR: First, engage a well-trained and experienced neutral. Second, commit to the ADR process and realize that a reasonable settlement, without exposure to an imposed judgment or award, is worthwhile. Of all disputes, 97 percent settle prior to trial, but usually after most of the costs of litigation. If this fails, a qualified arbitrator can still bring faster and cheaper closure. In these days of tight money and the need to conserve resources, the ADR route makes business sense.

Hamilton: ADR should be viewed in two contexts – mediation and arbitration. Mediation is still an attractive option in terms of time and cost savings. Because mediation allows the parties to negotiate a settlement, often times with minimal formal discovery and without having to present a case, it is significantly less expensive than gearing for trial. Simple arbitration is also an attractive option, particularly in bodily injury cases where the arbitrator can review medical records, IME's, etc. without having to bring in live expert witnesses.

Where the cost of the arbitration is becoming comparable to litigation is in the commercial arena, in which parties often approach arbitration just as they would a bench trial and engage in the same discovery and preparation processes as they would in court. In this scenario, the advantage to arbitration may not be so much on the cost savings, as it is in narrowing of risk and retaining the ability to present their case to a neutral expert in the nature of the dispute before her or him.

Editor: Do particular areas of potential disputes lend themselves better to ADR?

Dreier: There is really no area where people of good will cannot reach an accommodation. The most difficult disputes are (1) those where payment comes from an individual's own pocket; (2) professional breakups, which are so emotional that they take great finesse to resolve; (3) matters where decisions must be made by absent parties who do not participate in the process. But none of these problems are insurmountable. On the other hand, business matters, in which the parties understand the realities of the marketplace, are often easier to mediate, as are matters in which parties are familiar with the process. They usually reach a point of a reasonable demand and offer, after a minimum of posturing. It is more the attitude of the parties than the type of dispute that is the decisive factor. In my many years of conducting commercial mediations I have helped parties to over 95 percent settlements.

Hamilton: ADR is ideally suited to resolve contract disputes. While the complexities and language could make a jury's eyes glaze over, an effective mediator can help the parties focus on common interests and work out a solution that is acceptable to all sides. If the parties elect to put an arbitration clause into their contract, disputes involving hard figures, be they dollars, sales commissions, formulas, product units, etc., are easier to define in arbitration than issues such as "time devoted," interpretation issues, non-compete issues, and so on.

Partners Notes

Proskauer Rose Expands New York Office

Proskauer Rose LLP announced that Joshua W. Thompson, a leading corporate lawyer and former General Counsel and Secretary of Jefferies Finance, has joined the firm as a partner in New York.

Mr. Thompson focuses on leveraged finance with a particular emphasis on acquisition finance and debt transactions for investment banks. As General Counsel at Jefferies Finance, he was instrumental in negotiating and managing all financings for the company and oversaw the creation of its legal department and compliance systems.

Prior to joining Jefferies, Mr. Thompson

was at White & Case, where he represented major investment banks and leading private equity sponsors, hedge funds and corporations, with an emphasis on complex acquisition financings, asset-based financings, structured financings, recapitalizations, workouts, debt restructurings and liability management transactions.

Mr. Thompson is the latest partner to join Proskauer's New York office, which recently welcomed Jeffrey Neuberger, Robert Freeman and Kristen Mathews to its Technology, Media and Communications Practice Group.

Goodwin Procter Achieves Major Victory

In a final decision issued by the U.S. International Trade Commission (ITC), Goodwin Procter LLP achieved a major litigation victory for its client Pass & Seymour/Legrand (P&S), a leading supplier of electrical wiring devices. The ITC ruled that multiple China-based manufacturers and their U.S. distributors had infringed P&S patents and ordered those companies and their U.S. distributors to stop importation of infringing ground fault circuit interrupter (GFCI) products into the United States.

GFCI receptacles were invented and developed by P&S in 1971, and are required by building codes in kitchens and bathrooms. GFCI receptacles which are identifiable by "test" and "reset" buttons on their face, have saved thousands

of lives, by reducing electrocution in homes and buildings.

P&S's Complaint was filed by Goodwin Procter in August 2007, the trial held in June 2008. The investigation included six patents and 15 respondents. Following the nine-day trial, the ITC Administrative Law Judge Carl C. Charneski noted numerous violations of P&S's patents.

Abate served as lead counsel for P&S. George R. McGuire of Bond Schoeneck & King, PLLC's Syracuse, New York office served as co-counsel. The Goodwin Procter trial team also included attorneys Jennifer Albert, Charles Sanders, Ankur Parekh, Andrew Stein, Calvin Wingfield and Eleanor Hynes. Since 2007, Goodwin Procter has been involved in five ITC investigations.

Sills Cummis & Gross P.C. Member Appointed To NJ Supreme Court Committee

Sills Cummis & Gross P.C. Robert J. Alter was appointed to the New Jersey Supreme Court Committee on the Tax Court in March, 2009. Mr. Alter is also the chair of the New Jersey State Bar Association's Taxation Law Section. He is a member of the firm's Corporate Internal Investigations and Business Crimes Practice Group and resides in the firm's Newark office.

The New Jersey Supreme Court Committee on the Tax Court is com-

prised of members of the bench and tax bar as well as representatives of taxpayers' groups, local, county and state tax administrators, and others concerned with the administration and review of the New Jersey tax laws. The Committee engages in a comprehensive examination of the rules governing practice in the Tax Court, proposed rule amendments, recommended legislation, case management and court procedures, court forms and Tax Court opinions.



Resolute Systems, LLC helps corporate clients prevent and reduce costly litigation while mitigating risk through our Mediation and Arbitration Programs. We work with clients to develop and administer:

- Employment Dispute Resolution Programs
- Manufacturer/Distributor Dispute Resolution Programs
- Liability Dispute Resolution Programs
- Customer Dispute Resolution Programs
- Contractual Mediation and Arbitration

Resolute Systems will help you put all the pieces together so your corporation can focus on its mission. Please contact Mike Weinzierl at weinzierlme@resolutesystems.com or 800-776-6060, x129 for more information.

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