

## Selecting An ADR Forum

The Editor interviews **Ryan Hamilton**, President, *Resolute Systems, LLC*.

**Editor: What are the factors that general counsel should look for in selecting an ADR forum? Are some forums more favorably disposed than others in certain types of dispute?**

**Hamilton:** Mediation and arbitration have multiple applications and are frequently used in concert to resolve disputes. We highly recommend mediation as a first step. Mediation can be used in employment, contract, vendor, supplier, construction and liability disputes to mitigate risk and control expenses. By using mediation as a first step in the resolution process, the parties are in control of the outcome. Mediation is especially appropriate for the resolution of disputes where the parties will continue to have a relationship after the dispute is resolved, such as with customers,

employees, distributors, manufacturers, etc. Arbitration can be used if mediation fails. Arbitration brings finality to the dispute while reducing costs associated with litigation and maintaining privacy. Arbitration is especially appropriate to resolve disputes where there is "no middle ground" or compromise available. Another advantage of arbitration is that it allows the parties to select a hearing officer who is highly experienced in the area of dispute. Juries may not understand the complexities of a business dispute. Selecting a knowledgeable arbitrator instills confidence with the disputing parties that whatever the outcome, it was fairly and competently reached. Our clients generally write mediation/arbitration clauses into their contracts with employees, customers and business partners. We recommend that these clauses mandate mediation first followed by arbitration if the mediation does not produce a resolution.

## Corporate Counsel Organization Highlights

### Industry Leaders Join Together In Initiative To Restore Public Confidence In Business Ethics

In the midst of the current crisis of confidence in American businesses, seventeen companies representing nearly \$1 trillion in global commerce in industries ranging from financial services to retail have come together as charter members of the Business Ethics Leadership Alliance (BELA). BELA's inaugural class includes some of the most well known and highly respected brands in the world, such as General Electric Company, Accenture, Dell, PepsiCo, Dun & Bradstreet, Ecolab, Wal-Mart, The Hartford, Jones Lang LaSalle, NYK Line, Southern Co., Crawford & Company, Avaya, CACI International, Sempra Energy, Fluor and United Airlines.

BELA is a groundbreaking initiative dedicated to fostering higher standards of corporate ethical responsibility and accountability. BELA was developed by The Ethisphere Institute, a think tank dedicated to the creation, advancement and sharing of best practices in business ethics, corporate social responsibility, anti-corruption and sustainability.

At its essence, BELA proactively empowers businesses to be de facto leaders in self-regulating against corporate

fraud, corruption and greed. The four core values for BELA members are:

**Legal Compliance:** Following both the letter and spirit of the law to counter fraud, corruption, bribery and deceit;

**Transparency:** Setting the cultural tone from the top by encouraging dialogue on ethical issues and disclosing information in a full, accurate and timely manner;

**Conflict Identification:** Actively identifying and addressing potential conflicts of interest and appearances of impropriety;

**Accountability:** Emphasizing quality, customer protection, environmental sustainability and integrity in the supply chain.

"In today's complex operating environment, one of the fundamental building blocks of a sustainable enterprise is an unshakable commitment to responsibility and accountability," said Larry D. Thompson, senior vice president and general counsel of PepsiCo and a former Deputy Attorney General of the United States. "BELA will play a vital role in establishing clear ethical standards that promote those principles across the business community."

## Corporate Counsel Organization Highlights

### The ACC Value Challenge: Reconnecting Legal Costs To Value

#### Problem

ACC believes that many traditional law firm business models and many of the approaches to lawyer training and cost management are not aligned with what corporate clients want and need: value-driven, high-quality legal services that deliver solutions for a reasonable cost and develop lawyers as counselors (not just content-providers), advocates (not just process-doers) and professional partners.

#### Mission

ACC will launch an initiative to reconnect value and costs for legal services and which will: promote dialog among corporate counsel, law firms, law schools, and others who are interested in driving an alignment and focus on value; develop methodologies and metrics that corporate counsel can use to assess the strengths and weaknesses of law firm vendors; create tools that in-house counsel and firms can share to drive change in the performance of value-based legal services; and enhance awareness and communicate success stories in achieving value and alignment.

We plan to think in a revolutionary fashion but work in an evolutionary and inclusive manner, with the goal of helping foster a (r)evolution in the legal services marketplace.

#### Desired Outputs/Outcomes

A national dialog about the need to reconnect value to costs, especially within the law firm community, with a common language and framework that ACC will have helped define.

Tool kits for use by in-house and outside counsel that contain leading practices, management tools, models for managing to value, and networks by which ACC members can communicate their experiences and ask questions of each other, including "who do you use and how do you do this?"

Recognition by senior management that GCs and in-house counsel are taking the lead, rather than simply being reactive, and that they are exercising strong business skills in balancing their inside and outside legal spend – targeting results and outcomes, rather than just hoping to manage an unpredictable process.

A client community that supports law

firm efforts to implement change, including a willingness to reward those efforts.

Law firms that are better focused on retaining the talent and rewarding the skills that are valued by clients; training at law schools and law firms that develops the needed skills; and matter management that is driven by client expectations and needs.

Greater satisfaction and pride in their work for both inside and outside lawyers – less time spent bickering over costs, greater focus on solving client problems, and greater satisfaction with what is accomplished and how it is accomplished.

A core group of identified leaders in the in-house and outside communities (firms, consulting houses, media, etc.) who are our partners in promoting the need for change.

A better alignment of interests of the corporate client and the outside firms, leading to a professional culture and market that is focused on delivering high value.

#### Steering Committee

Michael Roster, Chairman, 2001 Chairman, ACC Board; retired General Counsel, Golden West Financial and Stanford University; former Managing Partner of Morrison & Foerster, Los Angeles; Jeff Carr, Vice President, General Counsel & Secretary, FMC Technologies, Inc.; Janine Dascenzo, ACC Board Member; Associate General Counsel, General Electric Company; Mike Dillon, ACC Board Member; Executive Vice President, General Counsel & Corporate Secretary, Sun Microsystems, Inc.; Ivan Fong, ACC Board Member; Chief Legal Officer & Secretary, Cardinal Health, Inc.; Kerry Galvin, ACC Board Member; former General Counsel, Lyondell Chemical Company; Al Gonzalez, ACC Board Member; former General Counsel for Tyson Foods; Miguel Rivera, Associate General Counsel-Class Action Division, Wal-Mart Stores, Inc., and Laura Stein, ACC's 2008 Chairman of the Board, Senior Vice President & General Counsel, The Clorox Company.

For information, contact ACC's General Counsel Susan Hackett at [hackett@acc.com](mailto:hackett@acc.com).



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](mailto:weinzierlme@resolutesystems.com) or 800-776-6060, x129 for more information.

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### OBJECTIVE AND CREATIVE DISPUTE RESOLUTION

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