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How Corporate America Uses Conflict Management: The Evidence from a New Survey of the Fortune 1000

Abstract

[Excerpt] Our survey results disclose considerable variation in the use of ADR and conflict management systems in Fortune 1000 corporations. Although as many as one-third of these companies use a form of a conflict management system, our results suggest that as many as 40% rarely use any ADR techniques and continue to rely largely on traditional methods, including litigation, to resolve disputes.

The findings also show that major U.S. corporations that rely on ADR have adopted a wider array of ADR techniques over the past 14 years, including so called “hotlines,” open-door policies, early neutral evaluation, early case assessment, and conflict coaching. There appears to be a clear growing diversity in the conflict management strategies used by U.S. corporations.

What’s behind an ADR process choice? My colleagues and I are now analyzing the factors that seem to affect a corporation’s choice of a conflict management strategy, and we will present a full analysis of those findings in another article.

In brief: It appears that it is factors *within an organization*, such as management’s attitudes about conflict, rather than factors *outside an organization*, such as the industry in which the organization operates, that determine the corporate choice of a conflict management strategy.

Keywords

conflict management systems, corporations, alternative dispute resolution, ADR, litigation

Disciplines

Dispute Resolution and Arbitration | Human Resources Management | Labor and Employment Law

Comments

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**How Corporate America Uses Conflict Management:
The Evidence from a New Survey of the Fortune 1000**

David B. Lipsky

Cornell University

In 1997, Cornell University conducted the first comprehensive survey of the use of alternative dispute resolution by Fortune 1000 corporations. The survey was co-sponsored by the Institute on Conflict Resolution (now the Scheinman Institute on Conflict Resolution) at Cornell, Price Waterhouse Coopers, and the PERC Foundation; it was administered by Cornell's Survey Research Institute. (The principal results were published in Lipsky and Seeber, 1998a, Lipsky and Seeber, 1998b, and Lipsky, Seeber, and Fincher, 2003. For a key to these published works and the other resources cited throughout this article, see the accompanying references box at the article's end.)

In brief, the 1997 survey documented (1) the growing use of ADR, especially arbitration and mediation, to resolve workplace disputes, (2) the corporate preference for interest-based—rather than rights-based—methods of resolving disputes, and (3) the emergence of a new phenomenon, namely, integrated conflict management systems (see, especially, Lipsky, Seeber, and Fincher, 2003).

Although there is no standard definition of a conflict management system, in the literature and in practice there is a growing consensus that a *system* differs from a *practice* or *technique* in four ways:

- (1) A system entails a comprehensive, proactive approach to managing and resolving conflict in an organization;
- (2) A system has a broad scope, allowing many different types of disputes (statutory, non-statutory, etc.) to be handled within it;
- (3) A system provides multiple access points for employees who want to use it (e.g., an employee can file a complaint with his supervisor, the counsel's office, the human resources function, or the office that manages the system), and

(4) A system provides multiple options for resolving disputes—that is, both interest-based and rights-based methods (Lipsky et al., 2003, pp. 3-22).

In 1999, the Association for Conflict Resolution appointed a task force to identify and define the essential components of an integrated conflict management system; the task force's report was published by the Cornell Institute on Conflict Resolution in 2001. The ACR task force considered an authentic system to have two additional elements, namely, (1) an organizational culture that not only tolerated but also welcomed dissent and (2) a support structure, usually in the form of an independent or semi-autonomous office that would provide the oversight, administration, and resources necessary to manage a system effectively. Lipsky, et al., 2003, adopted the ACR task force's definition of a conflict management system in their work.

About five years ago, the Scheinman Institute on Conflict Resolution at Cornell, the CPR Institute (which publishes this newsletter), and the Straus Institute for Dispute Resolution at the Pepperdine University School of Law in Malibu, Calif., decided that a new survey of the use of ADR practices by Fortune 1000 firms would be a worthwhile undertaking. The faculty and staff of the three co-sponsors developed a new survey instrument that in part replicated the 1997 instrument, and in part included new survey items designed to capture ADR developments that had occurred since the first survey was conducted.

The co-sponsors were prepared to launch the survey in the fall of 2008, but decided to delay the undertaking because of the deep recession the nation entered at that time. The co-sponsors shared the objective of being able to compare current ADR practices in major U.S. corporations with practices that prevailed in 1997. In the earlier year, the U.S. economy was in the middle of a period of sustained economic growth and low unemployment, and the co-sponsors feared that a 2008-09 survey, in much

different economic conditions than existed in 1997, would prevent a valid comparison being made between the earlier survey and the new survey.

Consequently, the co-sponsors waited until the fall of 2010, when an economic recovery had begun, to launch the new survey. Cornell's Survey Research Institute (SRI) administered the survey, which continued through the spring of 2011 and was concluded last July.

ADR Survey

THE METHODOLOGY

Our objective, as it was in the 1997 survey, was to interview the general counsel in each of the Fortune 1000 corporations. If we could not interview the GC, we interviewed one of the GC's top deputies.

We succeeded in conducting interviews with top attorneys in 368 of the Fortune 1000 companies. In 1997, we were able to interview in 606 corporations. The SRI survey experts attributed the response-rate decline principally to "survey fatigue," which had affected most of the surveys SRI had administered in recent years.

Respondents had a choice of completing our survey by telephone, by mail, or on the web. About 46% of the respondents were GCs, and the remainder consisted of other top attorneys (deputy counsel, employment counsel, etc.) in the GCs office. The 368 corporations in the sample are a good cross section, in terms of number of employees, industry, etc., of all of the corporations included in the Fortune 1000 list.

The results of the new survey provide a rich tapestry of data on the use of ADR and conflict management systems by the corporations in the sample. They also provide a basis for comparing the ADR policies and practices pursued by major corporations in 2011 with the policies and practices pursued by similar companies in 1997.

COMPARING PRACTICES

This article reviews some of the principal findings. Accompanying Figure 1 provides a comparison of various types of ADR practices used by major U.S. corporations in 1997 and j 2011. It is important to note that this comparison includes not only employment disputes but also consumer, commercial, and other types of corporate disputes.

Also, some caution must be used in interpreting the results because the companies included in the Fortune 1000 in 1997 differed from the companies included in 2011. For example, there was a marked decline in the number of manufacturing companies included in the newer list, and a marked increase in the number of retail and wholesale trade, finance, and insurance companies.

INSERT FIGURE 1 HERE

Finally, note that Figure 1 shows the proportion of corporations that used a particular technique at least once in the previous three years. This particular metric, of course, is only one of several that might be used to gauge the frequency of ADR usage. In fact, we know that the majority of corporations in the research sample used some of the techniques, particularly arbitration and mediation, numerous times within the previous three years.

Figure 1 shows that the vast majority of corporations in 1997 and 2011 relied on mediation and arbitration as techniques to resolve workplace and other disputes. In fact, the figure shows that the proportion of companies using mediation increased to 97%, from 85%, over the course of 14 years. There also was a discernible increase in the proportion of companies using fact-finding and med-arb.

Of special note is the finding that the proportion of corporations having an om- buds function increased to 16% from 10%— in relative terms, a 60% increase. In the contemporary organization, the ombuds office is frequently the hub of a conflict management system. Also note that the Figure 1

includes two techniques—early neutral evaluation and early case assessment—that were not included in the 1997 survey. These were novel techniques in 1997, but Figure 1 shows that by 2011 they had become prominent in the ADR portfolio.

Our 2011 results show that the use of mediation by Fortune 1000 corporations had remained relatively stable across a variety of disputes, including employment, commercial, consumer, etc., over a 14-year period.

SHRINKING ARBITRATION?

The results also reveal a noteworthy decline in arbitration use across a variety of disputes. Figure 2 shows that the proportion of corporations that reported using employment arbitration at least once in the previous three years declined to 36%, from 62%—in relative terms, about a 40% decline.

Note also that Figure 2 shows that arbitration use in construction disputes declined to 14% from 40%, while the use of arbitration in commercial disputes declined to 60%, from 85%.

It is possible that a major reason for the decline in arbitration use was the recession that began in 2008. Thomas Stipanowich, the Straus Institute’s academic director [and, previously, the CPR Institute’s president and a publisher of *Alternatives*], points out that the significant decline in new construction caused by the recession probably means that there was not enough activity in the industry to generate disputes that might have been settled by arbitration.

We lack the data to test this proposition. The respondents in the survey provided other reasons for the decline in the use of arbitration. Many of them believe that arbitration has increasingly become similar to litigation, and they suggest that “external law”—relevant statutes and court cases—has made arbitration more costly, complex, and time consuming.

INSERT FIGURE 2 HERE

The new survey confirms the 1997 survey findings, namely, that corporate attorneys prefer to use mediation and other interest-based options, rather than arbitration and other rights-based options, to resolve employment and other types of disputes.

SYSTEMS RISING

Another possible reason for the decline in the use of employment arbitration is the rise in the use of conflict management systems in U.S. corporations.

Among the hallmarks of a conflict management system is the emphasis on resolving employment disputes *within the organization*, using internal dispute resolution mechanisms, rather than resorting to outside arbitrators or mediators to resolve such disputes.

Based on the 1997 survey, we estimated that about 17% of the Fortune 1000 corporations used a conflict management system (Lipsky, et. al, 2003, p. 126). A major objective of the 2011 survey was to discover how many corporations had adopted and were currently using a conflict management system.

We included several questions in the survey instrument designed to provide an estimate of the use of such systems by major corporations. The metrics needed to make such an estimate, however, have proven to be laden with ambiguities and definitional difficulties that make arriving at a precise estimate challenging. In part, as noted earlier, this is because there is no standard definition of a “conflict management system,” and many corporate attorneys and other practitioners view the use of ADR *techniques*, such as arbitration and mediation, as synonymous with the use of a *system*.

Thus, when the respondents were asked, “Do you believe your company has a conflict management system?” about 67% answered “yes.” Fortunately, the inclusion of other items in our survey instrument that covered core characteristics of an authentic conflict management system allowed us to develop more valid estimates of the proportion of our respondents that actually had a system.

For example, we asked each respondent whether his or her company had “an office or function dedicated to managing [the] dispute resolution program.” As Figure 3 shows, about 38% answered “yes” to this question.

Although some systems are managed directly by the corporate counsel’s office or by the human resources function, past research suggests that the most fully developed systems are managed by independent or semi-autonomous offices within the organization (Lipsky et. al., 2003). These offices often are given names intended to suggest their central function: Prudential Insurance Co. of America’s conflict management system, for example, was managed under the rubric, “Roads to Resolution,” and was headed by a vice president who was also the corporation’s chief ethics officer. For a discussion of the Prudential conflict management system, see Lipsky, et. al, 2003, pp. 147-152.

The U.S. Postal Service has “REDRESS” (“Resolve Employment Disputes Reach Equitable Solutions Swiftly”); General Electric Co. has “Resolve”; Alcoa Inc. has “Resolve It”; PECO Energy Co. has “PEOPLE*SOLVE,” and other organizations use other names. (For a discussion of the dispute resolution program at the U.S. Postal Service, see Bingham, et. al., 2001; for a discussion of the General Electric program, see Nordstrom, 2004; for discussion of the Alcoa program, see Perdue, 2004; and for a discussion of PECO Energy, see Lipsky, et al., 2003, pp. 148-150.) As noted earlier, corporations are increasingly using an ombudsman to manage a conflict management system.

INSERT FIGURE 3 HERE

By using other survey data, we were able to refine further our estimate of the number of corporations in our sample that have either all or most of the characteristics of an authentic conflict management system. Our best estimate is that roughly one-third of the corporations have a system.

Confidence in this estimate is buttressed by the identity of the corporations that met the criteria we used to define a system. That list includes corporations that are well known among scholars and

practitioners for having sophisticated ADR programs: Coca Cola Co., General Electric, Eaton Corp., Macy's Inc., Harman International Industries Inc., Prudential, Werner Enterprises Inc., and others. (In particular, Werner is a global transportation and logistics company, operating throughout North America, Asia, Europe, South America, Africa, and Australia, headquartered in Omaha, Neb. The Werner family endowed the Werner Institute for Negotiation and Dispute Resolution at Creighton University's School of Law in Omaha.)

'CONSIDERABLE VARIATION'

Our survey results disclose considerable variation in the use of ADR and conflict management systems in Fortune 1000 corporations. Although as many as one-third of these companies use a form of a conflict management system, our results suggest that as many as 40% rarely use any ADR techniques and continue to rely largely on traditional methods, including litigation, to resolve disputes.

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What's behind an ADR process choice? My colleagues and I are now analyzing the factors that seem to affect a corporation's choice of a conflict management strategy, and we will present a full analysis of those findings in another article.

In brief: It appears that it is factors *within an organization*, such as management's attitudes about conflict, rather than factors *outside an organization*, such as the industry in which the organization operates, that determine the corporate choice of a conflict management strategy.

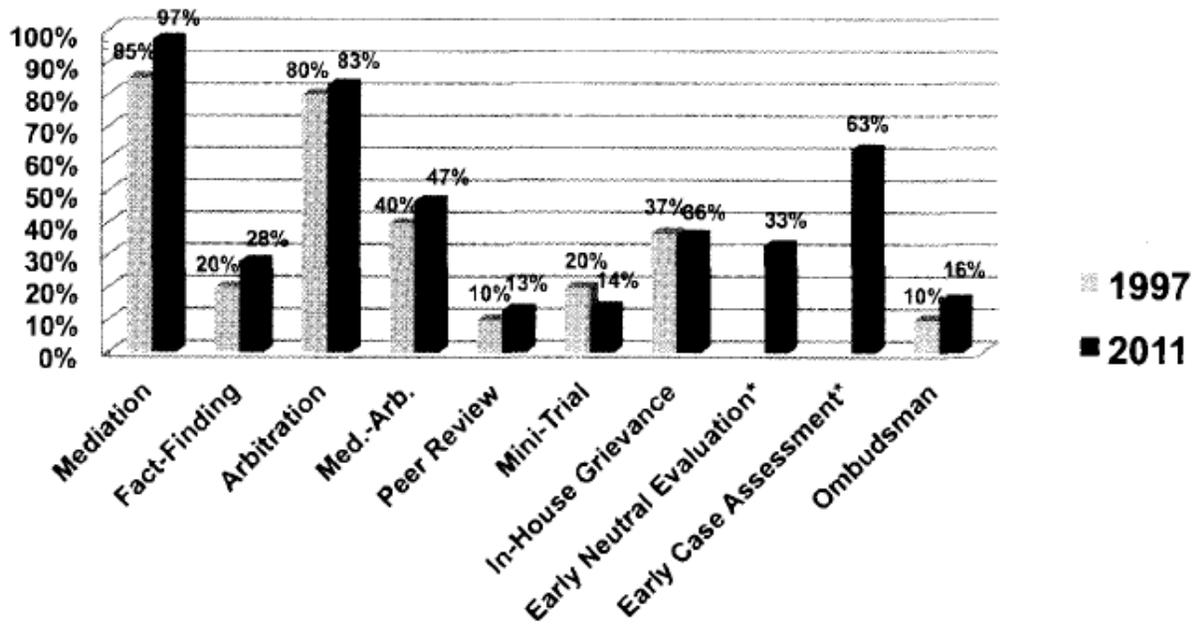
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**Figure 1. Experience with Types of ADR
Among Fortune 1000 Companies, 1997 and 2011**

The Proportion of Corporations that Used the Technique
At Least Once in the Previous Three Years



* These options were only included in the 2011 study

Figure 2. The Use of Arbitration by Type of Dispute, 1997 and 2011

The Proportion of Corporations that Used Arbitration
At Least Once in this Type of Dispute in the Previous Three Years

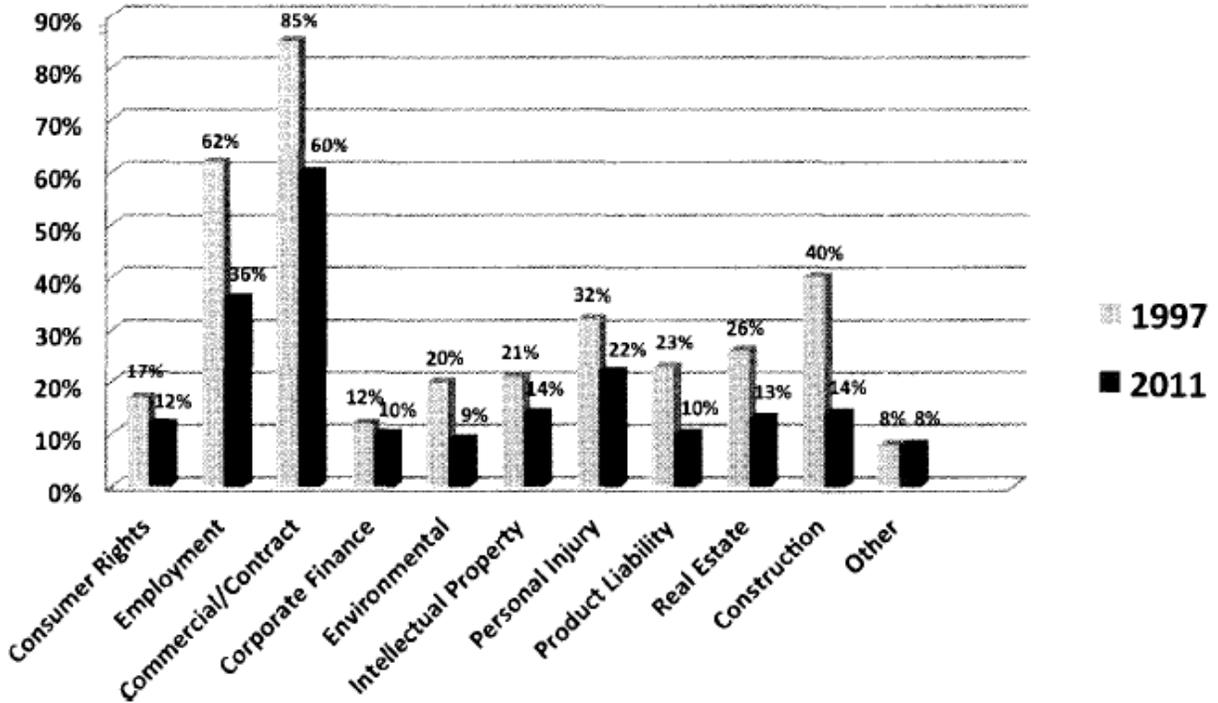


Figure 3. Does Your Company Have an Office or 'Function' Dedicated to Managing Your Dispute Resolution Program?

