

THE BENEFITS OF USING SETTLEMENT COUNSEL

As Settlement Counsel, I am engaged by one party to the dispute to see if the dispute can be resolved by negotiation or some ADR option. I work only for that party, and assist the party in finding real alternatives to litigation, and a clear look at that party's settlement options. Where a lawsuit is pending, I work in parallel with trial preparation. In such situations, my role is distinct from, and much more limited than, the role of Trial Counsel. In some instances, trial preparations are suspended during the search for settlement. I have served in this capacity for CH2M Hill, Weitz Corporation, The Montana Power Company and others.

The benefits to the Company are:

- Find the best dispute resolution option for your case.
- When appropriate, the prompt initiation of settlement negotiations.
- Assistance in the preparation for settlement negotiations or mediation.
- Improved quality in settlement negotiations.
- Create negotiation goals, evaluative tools and negotiation summaries/plans.
- If requested, a second opinion on trial risk.
- My experience in a wide variety of ADR processes and agreements.

Tasks I frequently undertake in that role:

- Make a brief "conflict assessment" and recommendation.
- Assist in planning a settlement strategy.
- Evaluate Early Intervention into disputes that have not yet been filed, or are in early stages.
- Create technical teams where data are still needed to assess settlement.
- Locate suitable neutrals if needed.
- Negotiate and draft ADR agreements suitable for the specific case.

FINDING THE BEST DISPUTE RESOLUTION PROCESS

Assess the dispute before choosing an ADR option. An important element in selecting an ADR option is determining the nature of the conflict. I suggest that parties and Companies consider the following when considering whether or how to use ADR in a specific case or dispute:

- What are the key issues and conflicts presented? Factual? Legal?
 - What information is needed to resolve the conflicts?
 - Who has that information?
 - What expertise is needed to evaluate the information?
 - Who is needed at the table to resolve these conflicts?
 - Under what guidelines can the parties meet?
 - What legal safeguards are needed?
 - What process will lead to the best resolution?
 - Will a neutral (facilitator, convenor, mediator) help?
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IMPROVING SETTLEMENT NEGOTIATIONS TO OBTAIN BETTER SETTLEMENTS

Where the chosen ADR option involves negotiation or mediation, mutual gains bargaining improves results. Lawyers, business persons, government officials, economists and sociologists have learned a great deal in the last decade about how negotiations and settlement agreements can be improved. However, much of their advice remains unused -- theories on the bookshelf rather than improved settlements. My efforts in settlement are to bridge the gap between theory and practice so that clients receive better negotiations and improved settlements.

The key issues in achieving these efforts are:

- Higher and mutual levels of disclosure in negotiations
- Use of interest based bargaining
- Ensure that negotiations involve both legal issues and business interests, not just risk avoidance
- Better and more clear assessment of risks and opportunities
- Avoidance of the "settlement culture"
- Explicit discussion of and work to avoid decision making errors
- Seeking optimal settlement rather than the settlement that is minimally acceptable to all