THE DISPUTE RESOLUTION PROGRAM:

HOW VALUE-ADDED CORPORATE STRATEGIES SECURE EFFICIENCY AND $AVINGS

By Deborah Masucci, B. Rose Miller and Erin Gleason Alvarez

Experts in dispute resolution and corporate dispute resolution programs discuss the benefits of these programs, how to sell the concept to company leaders, the elements of successful DRPs, and the importance of retaining ADR-savvy outside counsel. A sidebar addresses the trend toward using online dispute resolution, which may someday be incorporated into corporate DRPs.

IN ORDER TO maintain a competitive edge, companies are always looking for new ways to accomplish corporate goals more efficiently. This translates into generating money to support business production, sales, and increased shareholder value. During a recession, the pressure from the top to identify savings opportunities to feed the corporate engine is even greater and can be felt in every office in the company, especially those that do not generate revenue. Corporate legal and

Deborah Masucci is a vice president at Chartis, a division of AIG, where in 2003 she established the Office of Dispute Resolution. She is responsible for the strategic and increased use of mediation, arbitration and other methods of dispute resolution within the claims organization. She also chairs the American Bar Association's Dispute Resolution Section. Ms. Masucci was previously a vice president at JAMS and before that, vice president of FINRA's Dispute Resolution Department. She can be reached by e-mail at Deborah.Masucci@chartisinsurance.com.

B. Rose Miller, a former in-house counsel for general liability matters at the Home Depot, is the owner of ADR Solutions LLC, which offers customized design, negotiation and mediation program management services to help clients reduce litigation volume and expense. She is also a registered mediator in Georgia and serves as a settlement counsel for clients. For additional information about Ms. Miller, see her Web site at www.adrsolutionsgroup.com.

Erin Gleason Alvarez is director of the Office of Dispute Resolution in the Litigation Management Division of Chartis, and chairs the Best Practices Sub-Committee of the ABA Section of Dispute Resolution's Arbitration Committee. She has an L.L.M. in Dispute Resolution from the Straus Institute for Dispute Resolution. She can be reached by e-mail at Erin.GleasonAlvarez@chartisinsurance.com.

The views expressed in this article are the personal opinions of the authors and should not be attributed to Chartis or any other company.

Reprinted with permission from the *Dispute Resolution Journal*, vol. 67, no. 1 (Feb.–April 2012), a publication of the American Arbitration Association, 1633 Broadway, New York, NY 10019-6708, 212.716.5800, www.adr.org.

claims departments, where disputes are managed, especially feel pressure to resolve disputes more quickly and reduce dispute resolution costs.[1] For this reason, ideas for saving money through alternative dispute resolution (ADR) processes are gaining prominence on corporate agendas. "Dispute-wise"[2] companies put savings ideas into practice by incorporating an integrated Dispute Resolution Program (DRP) into the business model they use.[3] Because a DRP can be specifically tailored to a company's needs to generate savings through early, more systematic and rapid dispute resolution,[4] it has become an extremely useful value-added corporate strategy.

What is a DRP?

A DRP is a program specifically designed for a company to approach resolution of some or all of its disputes before or soon after lawsuits are filed. The program can target categories of disputes and standardize the methods for resolution by integrating one or more voluntary and/or mandatory ADR processes. The specific ADR components a corporation decides to include in a DRP depend on the culture of the company, the type of DRP implemented, and its goals. The most effective of these programs pay attention to ADR processes the company can implement to prevent disputes from occurring: for example, those that focus on interest-based dispute resolution processes (e.g., negotiation, mediation).

Because a DRP can be specifically tailored to a company's needs to generate savings through early dispute resolution, it has become an extremely useful value-added corporate strategy.

An example of a targeted DRP is a program designed to resolve employment disputes. The goals of employment DRPs are to improve employee relations, retain employees, and eliminate employment litigation. Employment DRPs often include one or more of the following options: an ombuds, an open door policy, peer review, mediation (internal and/or external), fact finding, and/ or arbitration. In the late 1990s PaineWebber (now UBS) adopted Wall Street's first voluntary internal dispute resolution forum for employee disputes, named the FAIR Program. Hundreds of companies have since instituted employment DRPs, and every program is unique to the company's culture, structures, and needs.

An example of a DRP that focuses on resolution of consumer disputes before litigation commences is the Home Depot's pre-suit mediation program for customer claims. Mediation is offered to certain identified claimants when the adjusting process is not successful in resolving a dispute or claim.[5] Even if the dispute does not settle through these pre-suit efforts, the pre-suit exchange of documents and information that occurs can reduce or eliminate additional costly discovery after a suit is filed.

An example of a DRP with a broader application is General Electric's Model Early Dispute Resolution System. Launched in 1998, partly in response to Six Sigma, this was a companywide quality-assurance initiative. The premise of Six Sigma is that everything one does is a process that can be defined, analyzed and improved, and the entire process and any improvements can be continually measured and controlled. GE applied the Six Sigma principles to litigation and adopted an early DRP that spread throughout its organization.[6] The program had many components, including an early warning system, an early case assessment program, and an after-action review for certain matters.

Chartis, a property-casualty and general insurance organization, established a DRP eight years ago to enhance the claims resolution process. The step was taken to highlight the importance of mediation and arbitration in controlling legal expenses and managing indemnity costs. The program focuses on optimizing ADR strategies through training, improving the claims resolution process, gathering business intelligence about the optimal use of ADR, and developing ADR resources and tools for claims professionals, in-house counsel, and underwriters.

DRPs also have been implemented to address catastrophic events (e.g., Hurricane Katrina) or a large adverse verdict in a class action (e.g., the silicone breast implant, Agent Orange, and Dalkon Shield DRPs, to name a few).

Selling a DRP to Company Leadership

The main argument in favor of adopting a DRP is controlling dispute resolution costs, with the greatest savings achievable from resolution prior to the filing of litigation through negotiation or pre-suit mediation. Other specific benefits of a DRP include:

- A more consistent approach to resolving

certain types or categories of disputes, including resolution via ADR processes
- The ability to recognize and identify dispute/claim/litigation patterns.
- Lower reserves for contingent liabilities.
- Shorter cycle time for claims and lawsuits.
- Reduced discovery burdens, outside counsel fees, and related expenses.
- Fewer future lawsuits filed against the company.
- Preservation of business relationships that could be damaged or destroyed by litigation.
- Avoidance of negative publicity associated with litigation.
- Reduced time burdens on internal resources.
- Greater control by counsel and client over case dispositions.
- Opportunities for creative solutions to disputes that better satisfy business needs.
- Improving internal and external business relationships.

For a DRP to succeed it must have support from top management. The program needs to be viewed as consistent with the company's tolerance for risk and litigation philosophy. Senior-management level sponsors must not only be able to articulate the rationale for the program, they must persuade others to support it. Normally the DRP sponsors work in the area where the DRP will be managed, such as the legal, risk management, or claims department.

Ideally, the sponsor starts by assembling a project team to arrange for a needs assessment to be conducted.[7] Once it is completed, the team will assist in developing the actual DRP proposal to submit to top management. The team should be multi-disciplinary and include representatives from departments that will be involved in drafting the necessary program documentation; communicating the program; training key players; administering the program (or hiring a consultant to perform this function); and tracking, measuring, and evaluating the program after implementation. Among the departments that could be represented (depending on the type of program being implemented) are legal, claims/risk management, corporate communications, business operations, training and development, and information technology.

The project team, together with the sponsor, and usually an outside DRP expert, will develop the program goals, determine the ADR processes that will be included, and the order of process flow. They will also develop a resource allocation model to support the program and ensure it will work.[8]

The project team's DRP proposal should be supported by data showing the company's experience with the type of disputes to which the proposed DRP will apply. This includes, for example, the company's current inventory of matters, related case-management costs, reserves for contingent liabilities, and anticipated future litigation trends, if any. The data should be marshaled to make the business case for the DRP and show how the program can help the company meet defined dispute resolution objectives. Realistic goal setting is critical. If unrealistic goals are set, the DRP will ultimately fail.

A DRP proposal will be more persuasive and helpful to company leaders if it contains information about DRPs used successfully by other companies that have similar types of disputes and resource structures that support the DRP initiative.

As the DRP proposal is developed, the project team might find it helpful to contact one or more ADR providers or consultants to see if they are able to share information or statistics about programs where their services were used. It is also possible that an attorney at a company or law firm whose client has a DRP could provide some direction on implementing a DRP.

Company leaders want to see evidence of probable success in every proposal for a new initiative. Consequently, a DRP proposal should include data illustrating the company's success in using mediation and/or arbitration to reduce litigation costs and time, and any other beneficial results. But the opposite may also be true: a bad experience with a particular ADR tool could poison the corporate appetite for ADR. In that case, it is vital that the DRP proposal decipher the failed process and distinguish it from the DRP's more positive framework.

The DRP proposal should include a plan for tracking data to measure the effectiveness of the program and identify areas for improvement. Data on cost and time savings from DRPs adopted by other companies may be useful to establish a future savings benchmark, but may not be easy to find. Many companies are hesitant to make their benchmarking data public. However, research may disclose some useful material about savings achieved from specific DRPs, or about the use of a particular ADR process compared to litigation.[9]

Making DRPs Work

Successful DRPs feature several important elements, including: senior level buy-in; training of stakeholders; a communications plan; appropriate resource allocation; and an evaluation process.

To become a reality, a DRP requires buy-in at all levels of the company. Since leadership changes occur frequently in most companies, the buy-in must be horizontal as well as vertical to maximize the chance it will survive corporate restructures and

reorganizations. The more broad and sustained the buy-in, the greater the likelihood that the DRP will work as planned. To achieve buy-in, the sponsor and project team must continually promote the DRP throughout the company. The failure to obtain appropriate buy-in, especially from top management, is one of the most common reasons why DRPs are not successful.

Training is essential if the program is to operate effectively and be used to maximum advantage. However, the size of the company and its budget will determine who is trained and how much training they receive. A company that highly values its DRP will do the most training.

Obviously, employees who will be involved in implementing the DRP must be trained in its ADR processes and procedures. A company that implements an employment DRP usually trains its HR personnel in how to resolve disputes. Employees, however, generally learn about the DRP via an in-person orientation about the program in which time may be allotted for questions. An alternative to an in-person orientation is a Webcast "Town Hall" meeting. This is an effective way to communicate with employees in a global company.

In DRPs involving third-party claims that will be assessed for early case disposition, companies generally provide the legal staff and perhaps key business people with negotiation training and sometimes collaborative communications.

Regardless of the type of DRP, staff attorneys and managers should be trained to approach disputes with an early dispute resolution mindset. In the case of a consumer DRP, or one that is product-driven (such as a DRP that receives claims of injury because of a product malfunction or claims of damages due to misuse of corporate intellectual property), lawyers and business people who negotiate contracts should be trained to bring up the DRP during initial business negotiations in order to incorporate the DRP into business agreements.

Ideally, training should not be "once and done" but should be continuous in order to introduce the DRP to new users and inform them of new developments concerning the DRP. This continuity will reinforce the culture of efficient dispute resolution. When successful in creating this kind of culture, the company may be ready to take the next step, which is to promote dispute avoidance, and when that goal cannot be achieved, the earliest possible dispute resolution, in order to maximize cost savings.

A communication plan is the tool companies use to market the DRP to potential users. These plans vary, depending on the type of program and who will be using it. However, they all have the same goals: to familiarize users with the DRP and make them feel comfortable with it.[10] Brochures, "pocket handouts," and a Web page that describes the program are some of the materials that can help market a DRP to users.

Tracking the result of the DRP is critical to its future. The data tracked becomes the foundation for ensuring that a DRP receives continued support since it demonstrates changes over time and the achievement of the DRP goals. The department responsible for administering the DRP should have a simple software program to track relevant data about the DRP, including the type of users, outcomes, dispute resolution time and cost, user compliance with procedures, and the overall effectiveness of the program. The software program may also help identify business and legal management trends that could help the company become more proactive in its approach to disputes.

Another useful data-gathering tool is the user evaluation form. The feedback on this form can determine user satisfaction levels and identify problematic areas. The questions on the form should be probing and encourage feedback. The number of questions should be limited to encourage user participation and gather the most useful information.

Changes in corporate leadership, as well as business fluctuations and legal changes, could adversely affect support for a DRP. To achieve long-lasting success and survive these changes and other inevitable adjustments within the corporate setting, a DRP must become integral to the functioning of the business. Achieving this level of stability involves constant attention to communicating the value of the DRP, the performance of the DRP, the quality of its administration, and user satisfaction. By regularly communicating to management the successes of the program, maintaining its quali-

Resource Allocation Considerations in Companies with DRPs

A DRP typically involves employees assuming certain duties with respect to the claims and suits they manage that were previously delegated to outside counsel. The DRP may require these employees to contact plaintiff's attorneys directly, arrange a voluntary exchange of needed discovery, and initiate negotiations prior to filing a lawsuit, or shortly after receipt of the complaint. Bringing these tasks in house saves legal fees, but can be time-consuming. It also may require employees to learn a new skill set. When the goal of the DRP is to resolve claims before a lawsuit is filed, the workload may be further increased since these steps often generate information not usually produced until after litigation commences. Nevertheless, this proactive approach allows companies with DRPs to learn more about claims in their early stages, shorten cycle time, and reduce the number of total disputes being managed, resulting in greater net savings.

—B. Rose Miller

ty and tracking statistical data that show monetary savings from the program, skepticism about a DRP during corporate transitional times can be deflected. The same information could ease the transition to a new sponsor, if that were to become necessary.

Working with ADR-Savvy Counsel

Just because a dispute the company referred to the DRP was not completely resolved using one or more of the DRP's ADR processes does not mean the company has given up on resolving the dispute as soon as possible.[11] If the case must be litigated, it is important to keep the momentum going in order to take advantage of other resolution opportunities if the company would still like to settle. This can be done most effectively with the right outside counsel.

For many years, when a company engaged an outside lawyer to represent it in litigation (whether anticipated or actual), its focus was on the trial skills of the lawyer. However, most cases never reach the trial stage.[12] So this focus seems misplaced, especially for a company that is determined to resolve disputes early and expeditiously. Fortunately, lawyers are now more literate about ADR processes and many of them have experience representing clients in mediation and arbitration. A good number of lawyers work at firms that have formed ADR departments or practice groups that also provide training in mediation and arbitration advocacy to all its attorneys. Some lawyers are themselves part-time mediators and/or arbitrators.

Out of necessity, lawyers are becoming sensitive to the dispute resolution objectives of their business clients and adjusting legal strategies (for example, later is always better) to better serve them. As a result, the outlook for selecting ADR-savvy counsel is much improved. This means that a company that has adopted a DRP should always seek to build relationships with outside counsel who are ADR-savvy and committed to their clients' strategic and economic goals through early dispute resolution and development of innovative ADR processes.

The best way to find an ADR-proficient lawyer is by a recommendation from a trusted source. It is also a sound idea to research the attorney. A good place to start is the Web site of the lawyer's law firm. The page where information about the attorney is posted should reveal the practice group the attorney works in (being in an ADR Practice Group is a plus), and whether he or she has experience representing parties in mediation or arbitration or both; has served as an arbitrator or mediator; is a presenter at ADR conferences

Incorporating Online Dispute Resolution into a DRP

No discussion of DRPs is complete without considering how technology can make these programs more efficient, while saving money and time for the companies implementing them. For example, advances in the quality and availability of video conferencing make it possible to replace in-person meetings and attendance at arbitration hearings, thereby eliminating the burden and expense of long-distance travel. It is also possible for parties to transmit mediation requests and arbitration demands online and exchange information in the same manner.

Since part of a mediation and arbitration can be handled online, why not the whole process? That is an option. Online dispute resolution (ODR) has been a trend for several years and will likely become even more mainstream. As in the case of video-conferencing, using ODR eliminates burdensome travel expenses. As long as the parties have access to a computer, they can complete the ADR process online. Moreover, ODR provides a quicker resolution. In addition, parties may have better access to files they need to negotiate effectively when they are negotiating from their desk.

ODR can take the form of mediation or arbitration. It can also involve methods for facilitating compromise and formulating negotiation strategies.

One example of an ODR tool is offered by Picture It Settled. This company's software helps disputing parties analyze their cases and refine their negotiation strategies. There is an "app" (e.g., the "lite" version of this software for the iPhone and Android phones) that allows parties to track the dollar amounts exchanged in negotiation and the time elapsed between each offer. This information helps parties picture whether and when they might reach a deal.

Another ODR option for resolving small cases is offered by the American Arbitration Association (AAA). This mediation process is entirely online and useful to resolve small, straightforward disputes that do not warrant the cost of traditional face-to-face mediation. Here, cases must be between two parties and the amount in controversy must not exceed $10,000. Both parties must agree to the online process. Once the AAA receives the responding party's agreement to the process, a mediator is appointed within 48 hours. The mediator "meets" with parties through chat rooms and instant messaging. Most cases are resolved within 30 days.

An ODR platform that does not limit claim size or the number of parties is Smartsettle. This company offers both online mediation and arbitration. The mediation system employs a system of "blind bidding." For one-issue disputes, the claimant enters its proposal (or demand) as well as a walk-away value. Only the proposal is revealed to the respondent, who then enters its offer and walk-away value. If there is an overlap between the claimant's proposal and the respondent's offer, the case will be settled within that range. If there is no overlap, the parties may opt for online arbitration. Smartsettle's arbitration process is called "Dampened Pendulum Arbitration" and resembles a final offer arbitration process in which the arbitrator's decision is based on one party's proposed resolution.

Another ODR example is ZipCourt, which provides an online arbitration process for simple and complex disputes, including commercial, construction, consumer, employment, healthcare, intellectual property, personal injury, and real estate. ZipCourt offers three kinds of service: one for simple disagreements that do not involve a legal matter, another for commercial disputes, and a third for complex disputes involving dozens of documents.

These are just a few examples of ODR tools available for incorporation into a company's DRP. ODR has a great deal of potential to promote the efficiency of DRPs and should be explored as an option to drive savings.

and seminars; and has written one or more articles in the field of ADR.

If, in the unusual case where a recommendation for an ADR-savvy lawyer cannot be obtained, a company can look for a law firm that has an ADR practice group[13] (even one that has been honored for its ADR work[14]), and then select one of its attorneys. Having a practice focused on ADR demonstrates that a firm understands the importance of non-judicial dispute resolution methods and that the attorneys in that group know how to employ them on behalf of clients.

A law firm's commitment to ADR training is another indication of its ADR proficiency. A firm that has an ADR training requirement for both partners and associates demonstrates the commitment to learning at the highest levels in the firm.

In 2008, Chartis required all of its in-house attorneys who are in the "staff counsel law firm unit"[15] to attend a mediation advocacy training program.[16] The training applied concepts from Prof. Hal Abramson's book, *Mediation Representation*. The initial training was followed by advanced mediation seminars for the Chartis lawyers. Training commitments such as these reinforce the competency of attorneys to secure the best results.

The lawyer's style should also be compatible with that of the company. For example, a company that tends to be aggressive in litigation may want a lawyer who understands that aggressive advocacy can be used in mediation to achieve desired results.

Outside counsel must be made to understand the client's business and dispute resolution objectives, which are vital to deciding what tools are necessary to push resolution of a dispute.[17] The road to achieving desired results is through understanding the interests of each side, recommending the right resolution approach based on the nuances of the case, knowing how to select and manage the mediator, recognizing the importance of problem solving, and exploring alternative ways to resolve disputes that may not be available through trial.

Another important consideration in deciding which outside legal provider will advance a company's dispute resolution objectives is the way the firm prices its mediation and arbitration services. Complaints about the high cost of litigation have led dispute-wise companies to explore alternative fee arrangements (AFAs) that tie lawyer compensation to favorable results in litigated cases. A lawyer who is willing to discuss an AFA in the context of providing ADR services signals recognition that achieving efficient and cost-effective results through ADR is an important client objective.

A compensation structure can be developed for an AFA that provides incentives and/or rewards to early settlement. Under such an agreement the interests of the attorney and the company are closely aligned. This can give the company a strategic advantage.

The Role of Settlement Counsel

Businesses seeking to further advance their dispute resolution goals may also consider retaining a specialist in ADR and negotiations strategy to serve as settlement counsel. By using a settlement counsel who is separate from outside litigation or trial counsel, companies introduce an effective advocate for the resolution process into their negotiations. The settlement counsel role is not a new concept, although it has been expanded and is now utilized by an increasing number of dispute-wise companies to assist with early assessment of liability and damages in certain disputes.[18] Settlement counsel can be integrated into the DRP pre- or post-suit, or they may be retained to assist with negotiations all the way up to the announcement of a verdict.[19] It is probably more common for them to participate only pre-suit.

An experienced settlement counsel can serve many roles to propel negotiations and settlement. For example:

- Recruiting otherwise wary parties to the negotiating table.
- Addressing objections or concerns by explaining that the role of settlement counsel ends if the case does not settle.
- Assisting in gathering outstanding records or information needed to evaluate the case.
- Identifying possible stumbling blocks to resolution, such as additional parties needed at the negotiating table.
- Devising creative solutions that could meet the parties' needs.[20]
- Helping to negotiate liens to facilitate settlement.[21]

The first task, recruiting parties to the mediation table, can be of enormous help to the company when internal efforts to resolve a dispute have failed. Many claims cannot be settled pre-suit because opposing counsel has not provided sufficient factual support for its theories of liability or evidence of damages to warrant making a realistic offer. Settlement counsel can help manage the information gathering and exchange so that negotiations can resume. This is a critical time in which the "window of opportunity" may be used to solicit the opposing party's interest in pre-suit negotiations. Limiting the role of settlement counsel to the pre-suit period applies pressure to the other side to strongly consider what they really need to resolve the case. If opposing counsel shows no interest in negotiating, he or she risks losing the

momentum built towards resolution and the interest of the defendant in settlement. The opposing side must consider the prospect of having to face new counsel driven to "win." It may also have an incentive to come to the table by the prospect of high legal fees billed by the hour.

Settlement counsel can provide a fresh set of eyes from which to view the dispute and then provide the company with an objective and unbiased analysis of each side's case, potential liability risk, and other critical issues. This can serve as a "reality check" and refocus the company on the business value of settlement versus pursuing costly litigation, particularly where discovery disputes have already arisen and attorney communications between the parties' counsel are deteriorating. In this situation, settlement counsel may be able to encourage both sides to work towards a resolution before the dynamics of negotiation wane and those of litigation begin, or where the parties' negotiators have hit a wall over perceived issues of credibility, or there is simply too much personal animosity.

The concept of using settlement counsel has proponents and detractors. On the positive side, outside trial counsel learns more about the case during negotiations and can "hit the ground running" if the dispute must be litigated, thereby saving time and money. However, the negative side is that claimants and counsel are usually far more open to participating in settlement negotiations and ADR if they do not have to face the same counsel in litigation.

Conclusion

A dispute-wise company is one that implements strategies and processes to save time and money and takes steps to resolve claims efficiently. One important way to achieve these goals is to develop a corporate DRP. For any DRP to be successful, it must be carefully created and supported by the company at multiple levels. A clear plan for success, which incorporates some or all of the tools reviewed here, should be prepared and promoted by internal stakeholders. Together, these steps will foster an ideal environment for the company to maintain a competitive edge and accomplish corporate goals more efficiently. ■

ENDNOTES

[1] Disputes can arise out of any type of transaction or relationship, including employment, insurance, commercial, corporate, construction, and real estate, to name just a few.

[2] The term "dispute-wise" was coined in an American Arbitration Association study, "Dispute-Wise℠ Management: Improving Economic and Non-Economic Outcomes in Managing Business Conflicts" (2002).

[3] Resolution in court is expensive and time-consuming. Legal rules of procedure (particularly broad discovery and jurisdictional and other challenges), and the ability of lawyers to use these rules to their advantage, are said to be largely responsible for the high cost of litigation. A compelling 2002 study found that only 1.8% of federal civil cases are resolved by trial. It is inevitable that cases will settle. The question is how much that settlement will cost. See Marc Galanter, "The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts," 1 *J. Emp. L. Stud.* 459 (2004).

[4] The authors of this article are personally involved in establishing and administering DRPs. This article draws on their experience.

[5] See "Choosing a Mediator Within ADR Constraints," *For the Defense*, 53 (August 2009) (stating that Home Depot's pre-suit ADR program achieved a settlement rate of over 70%, and reduced the volume of new general liability claims by 30% and significantly reduced litigation costs).

[6] Six Sigma is a strategy to improve the quality of a process, usually a manufacturing process, by eliminating errors or defects. The strategy was originally designed by Motorola in 1986.

[7] The needs assessment involves an investment that requires the go-ahead of management. Before it can be suggested, the sponsor and project team must have an idea of the kind of DRP they want. They may then discuss their idea with one or more consultants. Once the needs assessment is performed, a recommendation for a DRP can be submitted to the top executives. If the proposal is approved, then the project team gets to work on making the program a reality.

[8] Resource allocation is likely to be needed to address changed responsibilities for work that will be moving in-house as a result of the DRP. See sidebar on page 44.

[9] For example, see William Bedman, "ADR: The Halliburton Experience," 6(4) *ADR Currents: The Newsletter of Disp. Resol. L. & Prac.*, 20 (Dec. 2001-Feb. 2002).

[10] The content of a communications plan is beyond the scope of this article.

[11] It is likely the DRP processes advanced the case by refining the disputed issues through information gathering, communication, and negotiations.

[12] See Galanter, *supra* n. 3.

[13] A company can also consult their local and state bar organizations or prominent legal organizations, such as the Defense Research Institute (DRI) or International Association of Defense Counsel (IADC), which have ADR committees, in the search for ADR-savvy outside counsel.

[14] For example, the CPR Institute issues an annual Law Firm Award.

[15] The attorneys in the Chartis staff counsel program represent insureds and are an alternative to outside counsel.

[16] The program ("Mediation: Creative Choices for Better Results") was developed with Hal Abramson of Touro Law School, and Stephen Younger of Patterson Belknap Webb & Tyler, LLP.

[17] It is incumbent on in-house counsel to make its dispute resolution objectives clear to the attorney.

[18] Trucking companies, manufacturers, and retailers are some of the businesses that have retained settlement counsel to handle individual disputes.

[19] See Jim Golden *et al.*, "The Negotiation Counsel Model: An Empathetic Model For Settling Catastrophic Personal Injury Cases," 13 *Harv. Neg. L. Rev.* 211 (2008); Jim Golden, "The Negotiation Counsel Model," 24 *Neg. J.* 371 (2008). Golden is a former general counsel of Covenant Transportation who is now settlement counsel with a specialty in transportation losses. He calls his approach "the negotiation counsel model."

[20] This could include, for example, a structured settlement, an apology, a revised business agreement, and/or the addition or deletion of a term in the existing agreement.

[21] See Golden *et al.*, *supra* n. 19.