



Leveraging ADR to Deliver on Strategic Goals in Organizations: Evidence and Applications from the U.S.

Ariel C. Avgar
Cornell University

J. Ryan Lamare
University of Illinois

David B. Lipsky
Cornell University

ILR School
ADVANCING THE WORLD OF WORK

Presentation Road Map

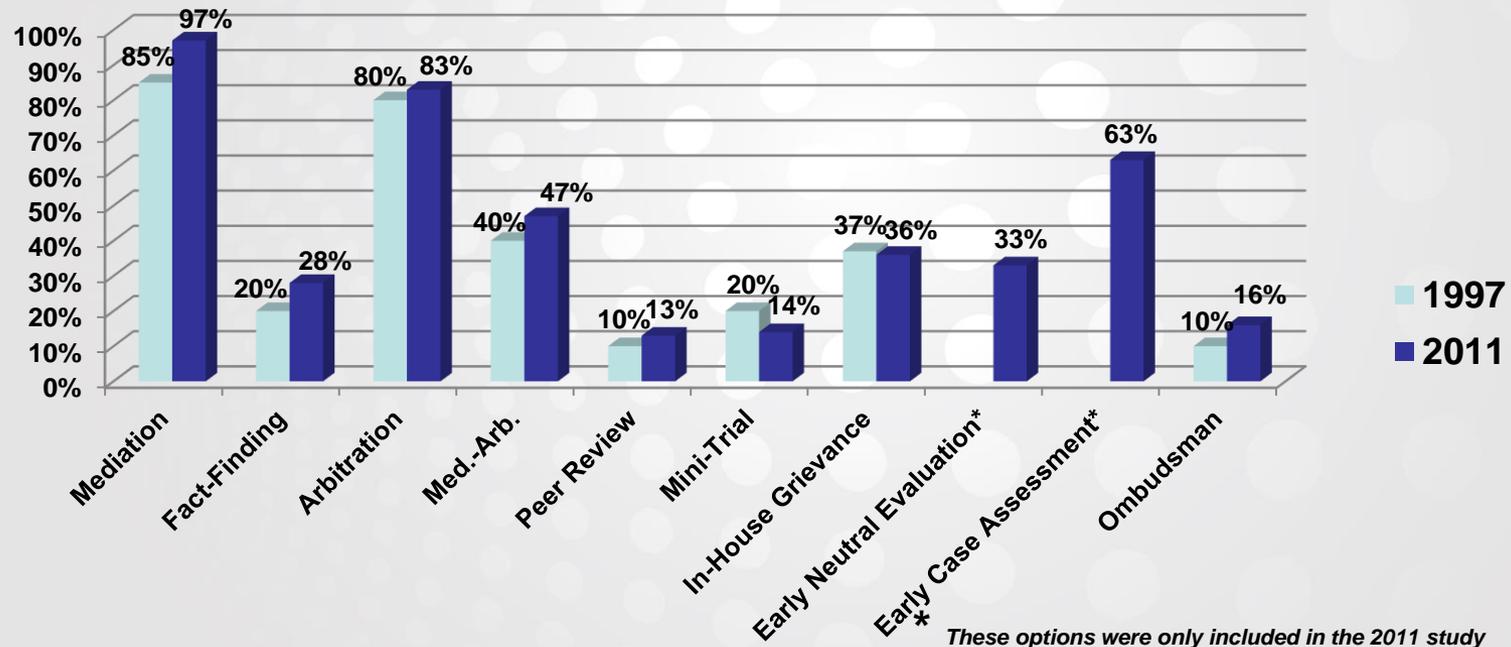
- ❑ State of organizational conflict management: Evidence from Fortune 1000 firms
- ❑ Traditional explanations for the rise of sophisticated conflict management practices and systems in organizations
- ❑ The strategic underpinnings for the adoption of conflict management practices and systems
- ❑ The link between union status and ADR use for nonunion employees
- ❑ Lessons from the U.S experience over the past thirty years

Overview: Developments in the Management of Conflict in the U.S

- ❑ The dramatic ***growth in the use of ADR*** by many U.S. employers, especially major corporations, over the past 40 years
 - ❑ ***ADR: The use of arbitration, mediation, and other dispute resolution techniques to resolve workplace conflict***
- ❑ The emergence of “***integrated conflict management systems***” in many U.S. organizations
- ❑ A parallel rise in the use of ***mandatory techniques***, especially arbitration
- ❑ The recent shift toward a ***strategic approach*** to the management of conflict

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

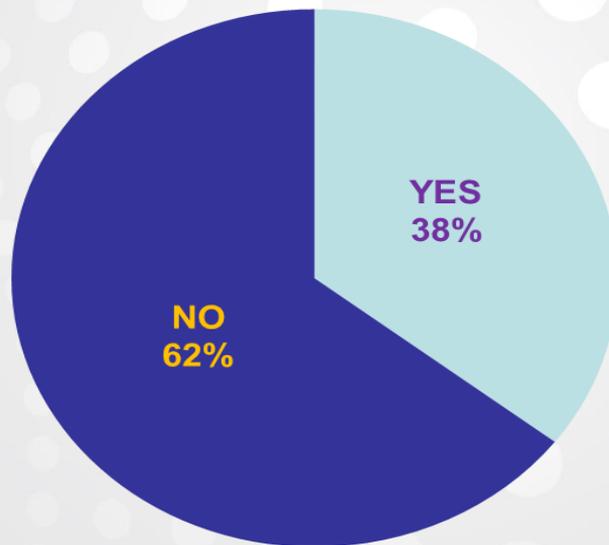
Resolving Employment Disputes

“What Proportion of Your Employees are Covered by ADR?”

Proportion of Employees	Percentage of Companies
More than 75 percent	19.0%
Between 51 and 75 percent	3.5%
Between 26 and 50 percent	3.5%
Between 1 and 25 percent	19.4%
Zero	43.3%
Don't know	11.3%

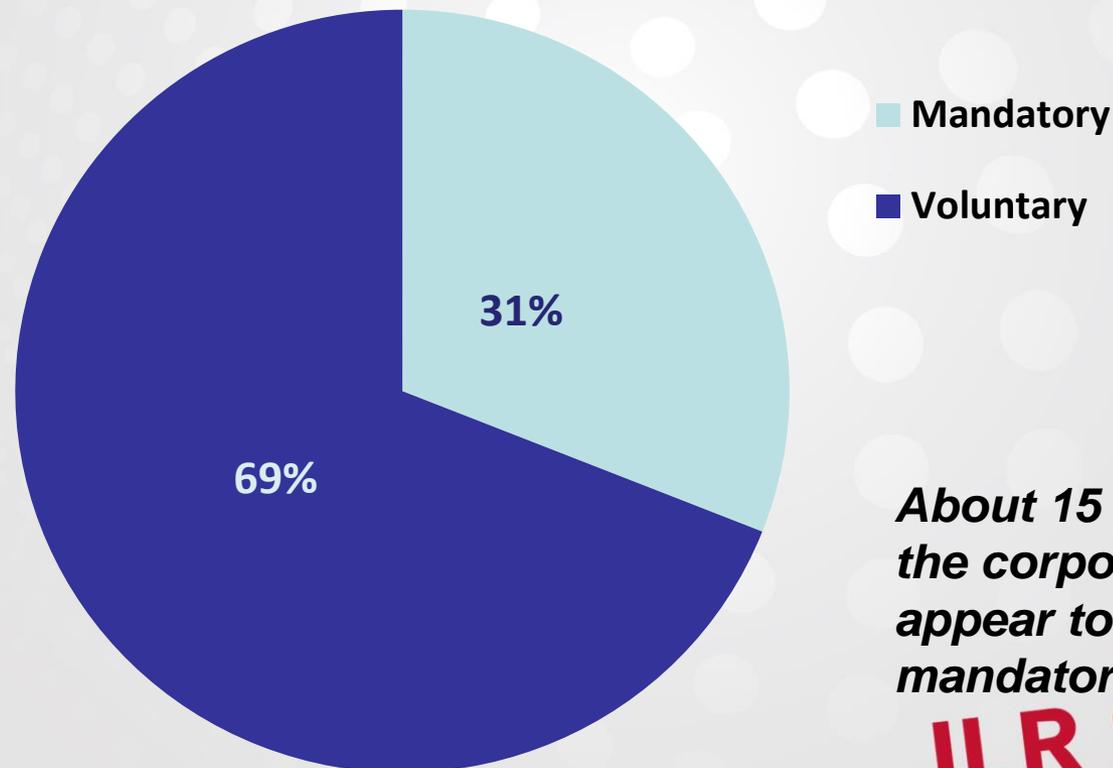
Conflict Management System

Does Your Company Have an Office or
“Function” Dedicated to Managing Your
Dispute Resolution Program?



Mandatory vs. Voluntary ADR Procedures In Employment Disputes

Proportion of Corporations with Mandatory ADR Procedures vs.
Proportion of Corporations with Voluntary ADR Procedures



*About 15 percent of
the corporations
appear to use
mandatory arbitration*

Traditional Explanations for the Rise of New Conflict Management Practices

- ❑ The *new social contract* in U.S. employment relations
- ❑ The so-called “*litigation explosion*”
- ❑ The *dramatic decline of the labor movement*
- ❑ Globalization and *increasing market competition*
- ❑ The *deregulation* of industry
- ❑ The *reorganization of work* and the decline of hierarchy
- ❑ The pace of *technological change*

What Explains ADR and CMS Adoption Patterns?

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Adoption of ADR and
Conflict Management
Systems

Strategic Choice and the Study of Organizational Conflict Management

- ❑ Most of the existing explanations view ADR and CMS as a reactive response to either external or internal pressures
- ❑ We have proposed a strategic approach through which to assess ADR and CMS adoption patterns
- ❑ ***Firms, according to our argument, are adopting conflict management practices as a function of strategic choice and not as a mere reactive response to organizational and environmental pressures***
- ❑ In doing so, we build on the seminal industrial relations research on the strategic choices managers make in adopting and implementing organizational practices

Strategic Choice and Organizational Conflict Management: Three Elements

- ❑ **Strategic Orientation**—*What are the anticipated benefits delivered to the organization through the adoption of conflict management practices?*
- ❑ **Commitment to Conflict Management Practices**—*Once practices are in place, what proportion of the firm's employees are afforded access to them?*
- ❑ **Previous experience with dispute resolution practices in the unionized context**

Our strategic Framework: Proposed Strategic Orientations

- ❑ Improving **efficiency**
 - Conflict resolution is a tool for reducing the logistical and administrative costs of disputes
- ❑ Enhancing **sustainable and satisfying** resolutions
 - Consistent with research that is focused on the relationship between ADR, on the one hand, and internal organizational needs
 - Providing managers with better tools for dealing with a range of conflicts and managerial challenges
- ❑ Limiting **litigation** exposure
 - Litigation pressures have played a major role in the rise of ADR as a well-established organizational method of addressing conflict

Organizational Commitment to ADR

- ❑ Need to distinguish between a firm's strategic orientation towards conflict and **the extent to which it is committed to making conflict resolution practices available** to employees
- ❑ Does the presence of ADR or CMS reflect a **genuine commitment** on the part of firms to provide employees with real access to these practices?
- ❑ We propose that there are several **signals** firms can reveal regarding actual commitment:
 - Making conflict resolution practices **widely available** to the workforce
 - **Requiring the use** of these practices to resolve workplace conflicts
 - Including ADR as a function of **company policy set by management**
 - Providing comprehensive **due process protections** for employees that use ADR
 - Making use of these practices to resolve a **broader array of conflicts** and disputes

Benefits from Experience? The Unionized ADR Spillover Effect

- There is *very little if any research* on the relationship between firms' experience with union-based dispute resolution and their adoption of ADR for nonunion employees
- Two hypotheses regarding the relationship between union status and ADR in the nonunion context
 - Substitution and avoidance
 - Complementarity
- Does experience with union grievance systems influence decisions regarding nonunion systems?
 - Availability
 - Coverage
- Does union experience affect a firm's strategic orientation to ADR?

What Explains ADR and CMS Adoption Patterns?

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Adoption of ADR and
Conflict Management
Systems

Proposed Antecedents to ADR and CMS Adoption Patterns

Conflict Management Strategy

Efficiency

Litigation Avoidance

Sustainable Resolutions

Commitment to ADR

Dispute Resolution Experience
in the Unionized Setting

Adoption of ADR and
Conflict Management
Systems

Survey Design and Methodology

- Cornell conducted **the first comprehensive survey** of ADR practices used by Fortune 1000 corporations in 1997
- Our new survey of the Fortune 1000 was conducted in 2010-11
 - Designed in part to **replicate the 1997 survey**, and in part to **capture new ADR developments** adopted over the past 15 years
- **Our objective was to interview the general counsel (GC)** of each corporation; 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 corporations**; in the 1997 survey we conducted interviews in 606 corporations
- In the current survey, **46 percent of the respondents were GCs** and 54 percent were other attorneys in the GC's office

Results: A Four Factor Model of Strategic Choice

- Efficiency:** saves time; saves money; has limited discovery
- Satisfaction:** gives more satisfactory settlements; provides a more satisfactory process; preserves good relationships between disputing parties
- Sustainability:** provides more durable resolution (compared to litigation); allows parties to resolve disputes themselves; preserves good relationships between disputing parties
- Exposure limitation:** preserves confidentiality; avoids establishing legal precedents; has limited discovery

Results: Strategic Choice and Total ADR Usage

	Total ADR Practices (Linear)
Efficiency	No Effect
Litigation Avoidance	Positive***
Sustainable Resolution	Positive*
ADR Commitment	Positive***

Results: Strategic Choice and Use of Specific Practices

	Mediation Usage Frequency	Arbitration Usage Frequency	Dual Procedures (Mex x Arb)
Efficiency Strategy	Positive	No Effect	No Effect
Sustainability Strategy	No Effect	No Effect	No Effect
Satisfaction Strategy	Positive	Positive	Positive
Exposure Limitation Strategy	No Effect	No Effect	No Effect
Commitment to ADR	Positive	Positive	Positive

Results: Unionized Findings

- Union status was **not significantly related** to the *number* of **ADR practices available** to nonunion employees
- However, union status did have a **significant effect** on the *specific practices used*
 - Unionized firms were more likely to use *arbitration* and *med-arb*
- Union status was associated with an *increase in ADR coverage* for nonunion employees
 - Unionized firms appear to be *more committed* to ADR than their nonunion counterparts
- Union status affected the *firm's strategic orientation* to ADR
 - Unionized firms placed a stronger emphasis on ADR's capacity to *sustainable resolutions* (no difference for litigation avoidance and efficiency orientations)

Lessons from the U.S Experience with ADR and Conflict Management Systems: A Mixed Assessment

- ADR and conflict management systems have become *institutionalized, embedded, and a key feature of the U.S. nonunion employment relations system*
- The deployment of conflict management in organizations has become *increasingly strategic* in nature
- *Organizational commitment* to genuine use of conflict management in organizations *varies greatly*

Lessons from the U.S Experience with ADR and Conflict Management Systems: A Mixed Assessment

- As conflict management has grown and become more strategic, ***it has also become controversial***, especially the use of mandatory practices, such as arbitration
- ADR and conflict management systems have yet to fully ***deliver on their promise in the U.S.***
- For some firms ADR and conflict management systems have provided a ***powerful organizational tool to address workplace conflict***