



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

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# Presentation Road Map

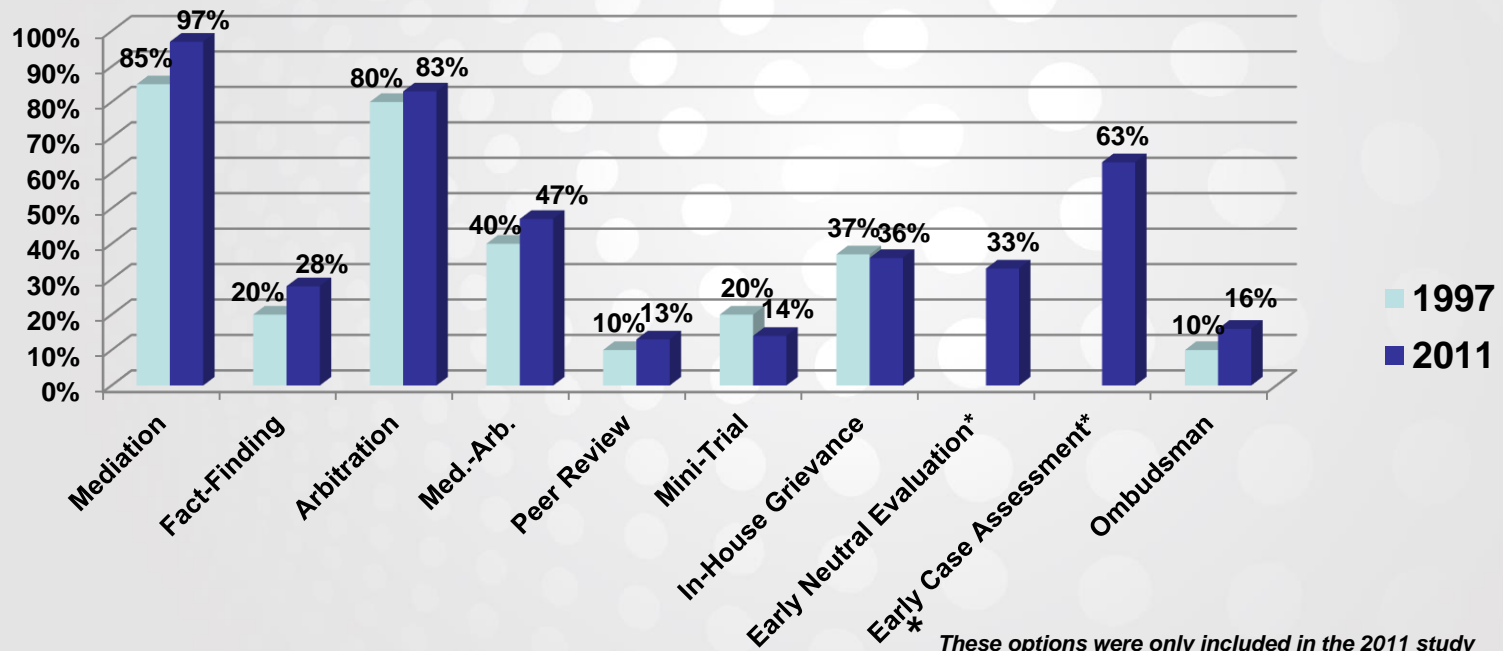
- State of organizational conflict management: Evidence from Fortune 1000 firms
- Traditional explanations for the rise of sophisticated conflict management practices and systems in organizations
- The strategic underpinnings for the adoption of conflict management practices and systems
- The link between 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*

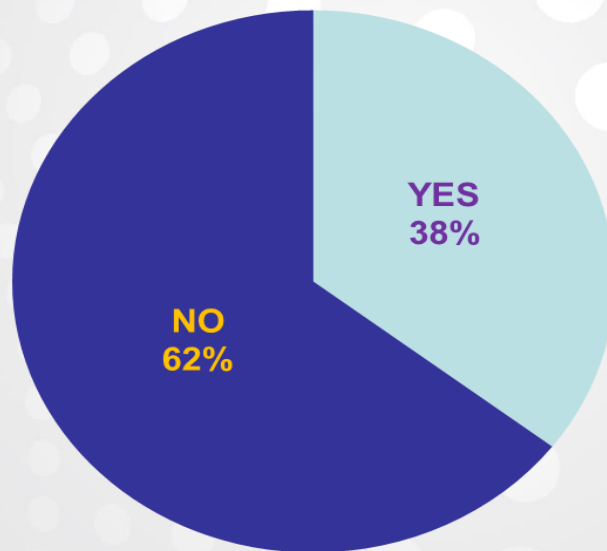
# Resolving Employment Disputes

**“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%

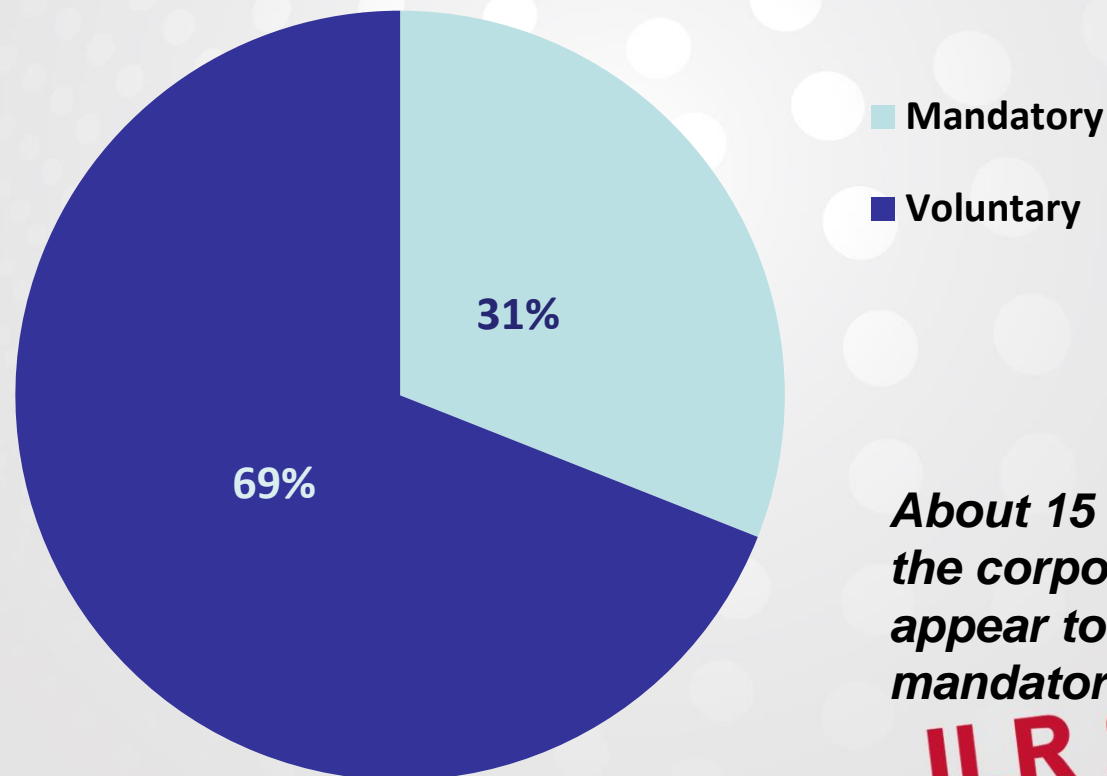
# Conflict Management System

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*

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# 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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# 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

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# 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	<b>Positive</b>	No Effect	No Effect
Sustainability Strategy	No Effect	No Effect	No Effect
Satisfaction Strategy	<b>Positive</b>	<b>Positive</b>	<b>Positive</b>
Exposure Limitation Strategy	No Effect	No Effect	No Effect
Commitment to ADR	<b>Positive</b>	<b>Positive</b>	<b>Positive</b>

# 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***