

## ALTERNATIVE DISPUTE RESOLUTION

When confronted with a square peg and a round hole, many law firms bring out the hammer. The result is predictable. We prefer searching for a new peg, refining the hole, or finding a better fit somewhere else. Very often, an important part of the solution to a client's problem is determining, as a practical matter, how most effectively to resolve present or future disputes with other parties. We don't deal with ADR at public policy or theoretical levels; we employ it every day in practice, in order to accomplish the outcomes that are best for our clients.

Gilbert LLP lawyers have substantial experience in complex, multiparty negotiation, binding and non-binding mediation, AAA and other private arbitration, mini-trial procedures and court-sponsored ADR. Our lawyers have designed these processes, we have participated as advocates, and we have served as mediators and arbitrators. We also are not afraid to challenge these private processes where arbitrators have overstepped their bounds, and we have done so successfully under the Federal Arbitration Act.

Scott Gilbert was a pioneer in the use of ADR to resolve insurance coverage disputes. He was the principal drafter of the Wellington Agreement, an insurance treaty among over 35 asbestos defendants and 15 of their insurers that resolved numerous disputes among the defendants and between the defendants and their insurers, and that provided multilayer ADR procedures to address remaining disputes. Those ADR procedures have been employed for more than 20 years, and the Wellington Agreement remains one of the largest insurance coverage settlements in U.S. history.

Integral to the effectiveness of our ADR practice has been the substantial use of settlement counsel. Under this dual-track approach, we have one team responsible for litigation or arbitration of the matter, as the case may be, and another lawyer or lawyers responsible for settlement. Settlement counsel are able to operate independently of pre-trial discovery burdens and disputes, as well as of the ups and downs of trial. We can be even more effective in settlement negotiations when our settlement lawyers have not deposed the principals on the other side, and when our litigators can continue at full throttle until notified by settlement counsel that a deal has been done. Indeed, it is not uncommon for our settlement counsel to establish long-standing, constructive relationships with principals of our clients' adversaries, permitting more principal involvement and direct negotiation. Our lawyers began employing this approach decades ago, and our experience has confirmed its significant positive impact on the likelihood and amounts of settlements.