



INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

NEGOTIATION, MEDIATION and ARBITRATION: COMPARISONS and SYNERGIES



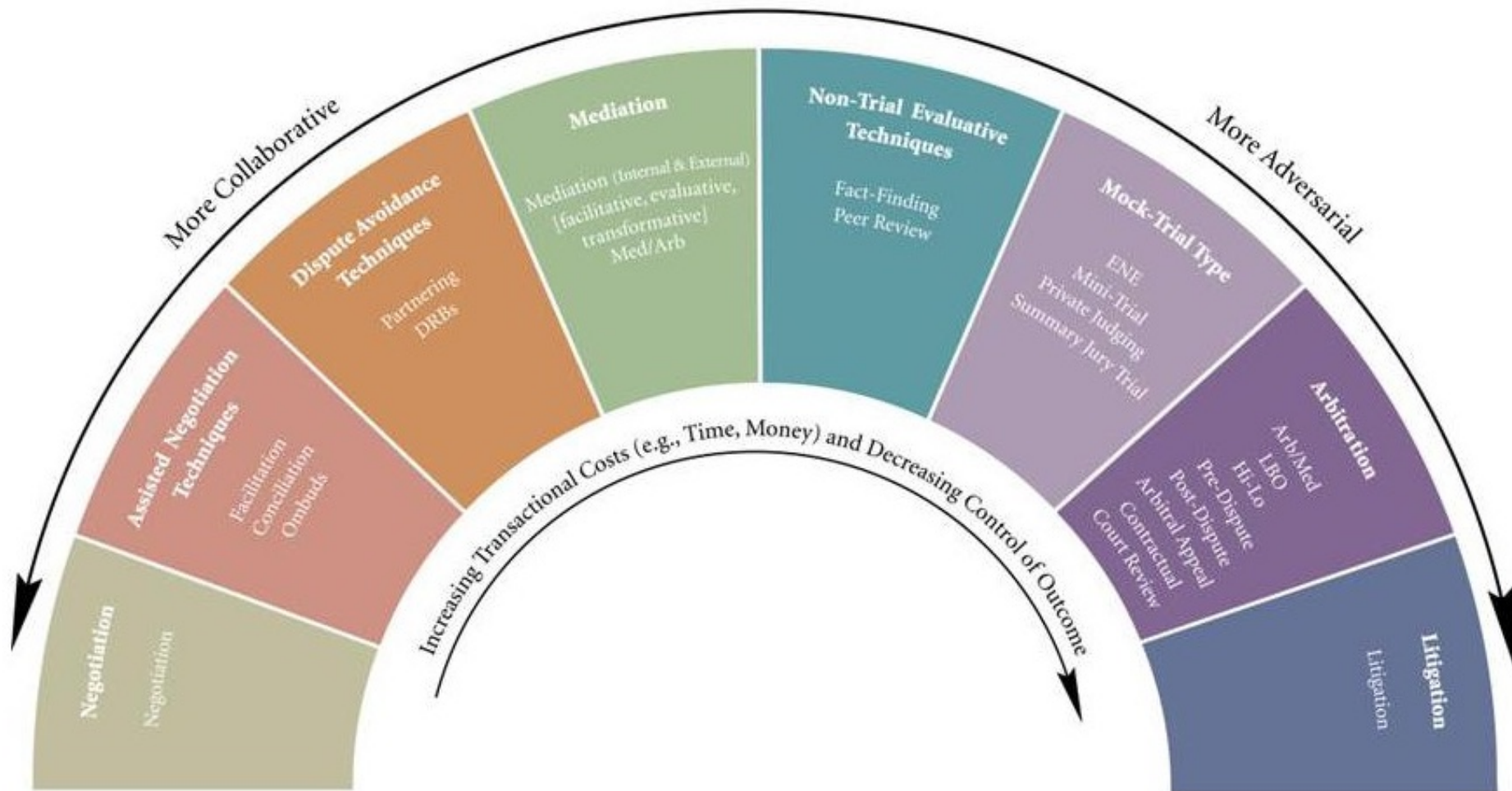
Mark Appel
Intellectual Property Mediation Conference
Alicante, Spain | 29-30 May 2014

*“I'm not looking for process.
I'm looking for solutions.”*

*~ Wolf Von Kumberg
Legal Director; Assistant General Counsel
Northrop Grumman*



The Dispute Resolution Continuum



Negotiation, Mediation and Arbitration are **NOT** Stand-Alone Options

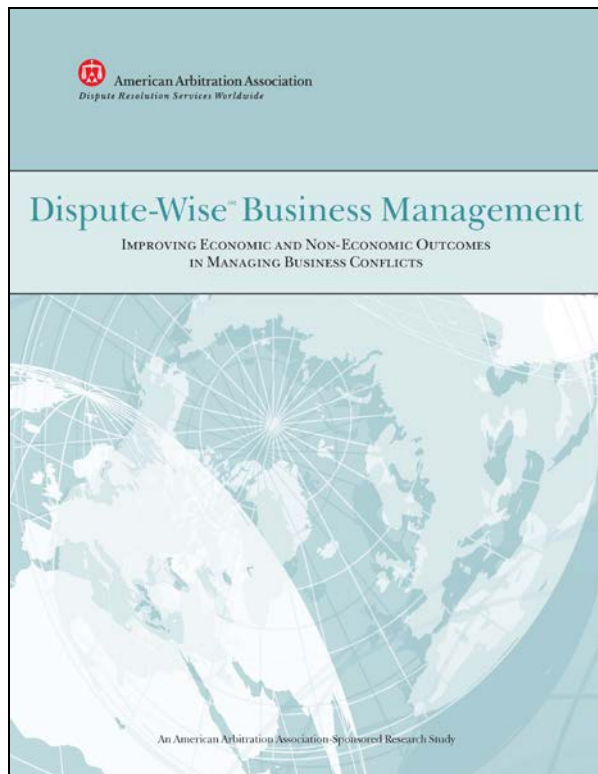


This
Integrative
Approach to
Conflict
Management
has lessons
for:

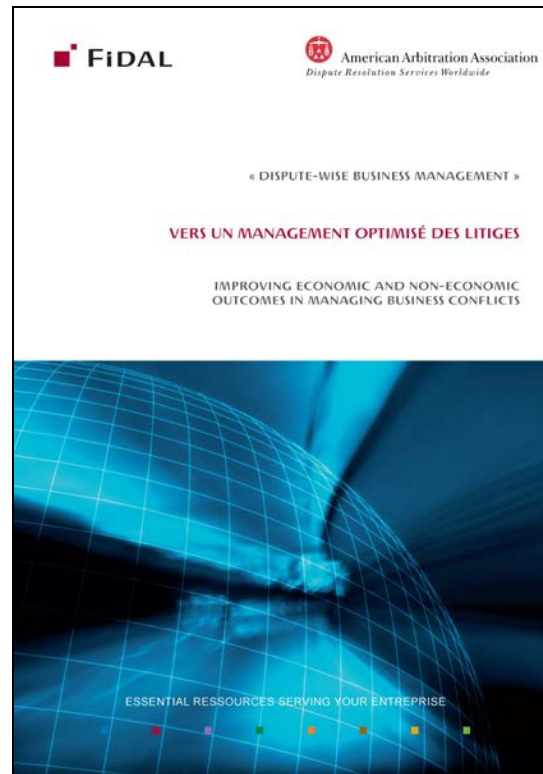
- Policy Makers
- Courts
- Dispute Resolution
Provider Organisations
- User Community
- Legal Counsel



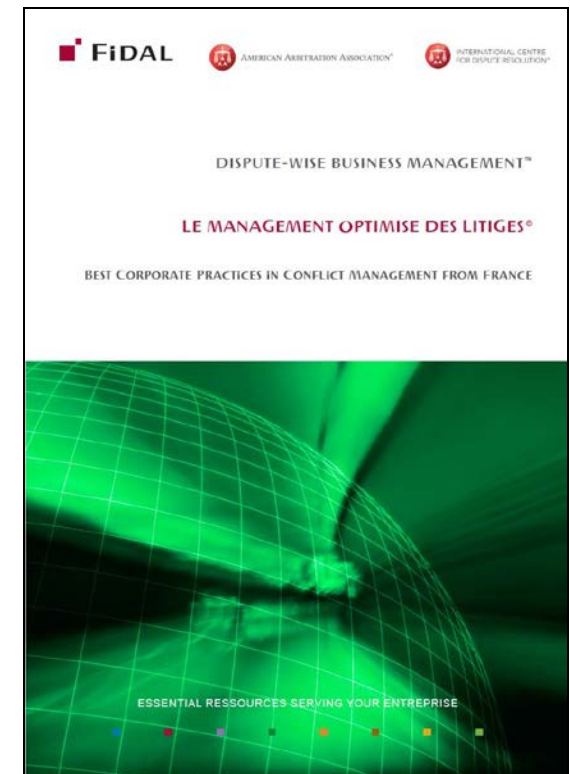
Dispute-WiseSM Business Management Reports



United States Report – 2004
Improving Economic and
Non-Economic Outcomes in
Managing Business Conflicts



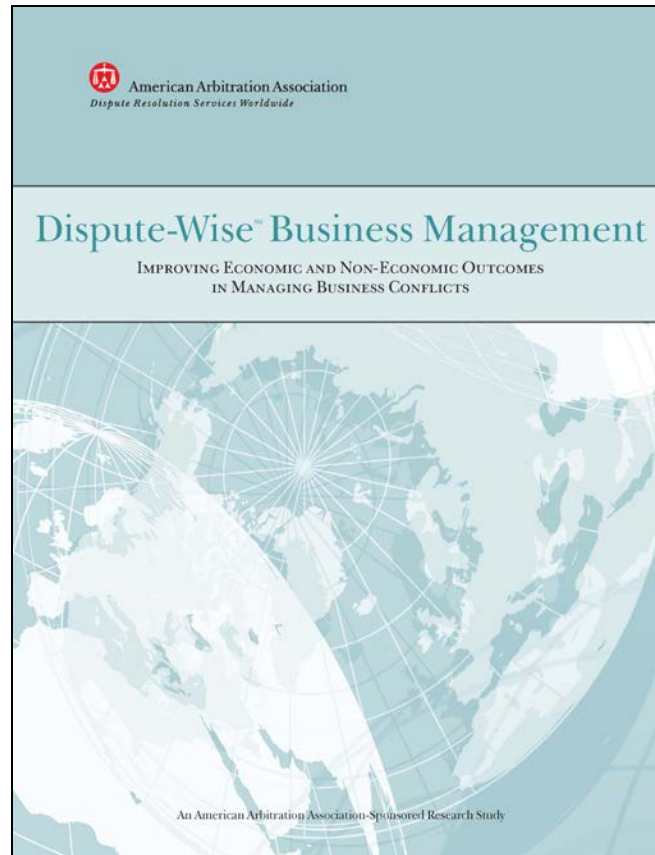
France Report – 2009
Improving Economic and
Non-Economic Outcomes in
Managing Business Conflicts



France Report – 2013
Best Corporate Practices
in Conflict Management
From France



Dispute-WiseSM Business Management – U.S. Report



United States Report – 2004 Improving Economic and Non-Economic Outcomes in Managing Business Conflicts



Our Initial Study Objectives Included:

- To explore the ADR practices of a broad range of companies
- To identify companies that might be characterized as **Dispute-Wise**.
- To examine the relationship between **Dispute-Wise Business Management practices** and favorable “outcomes” of both an economic and non-economic nature.



The Study Was Conducted For the American Arbitration Association By An Independent Data Research Company.

- Based on a sample of 254 corporate general counsel, associate general counsel or people in similar positions and levels.

- They were drawn from three company sizes/types:
 - 101 from Fortune 1000 companies
 - Mean revenue: \$9.09 billion

 - 103 from midsize public companies
 - Mean revenue: \$384 million

 - 50 from private companies
 - Mean revenue: \$690 million



5 Items Are Positive Indicator Statements of Dispute-Wise Business Management Practices:

- The legal staff has a very good understanding of the broader business issues facing the company and industry.
- The legal department is highly integrated into the general corporate planning process.
- Senior management in this company is focused on preserving relationships and settling cases rather than just winning cases.
- A lot of our time is spent on highly complex and technical issues.
- A lot of our time is spent on international issues.



3 Items Are Indicator Statements of Behaviors That Are Counter to Dispute-Wise Business Management Practices:

- Our primary focus is on reviewing contracts and agreements.
- We often favor litigation over ADR.
- When disputes arise we usually take an aggressive approach.



The “most dispute-wise” companies are more likely to describe the following relationships as excellent / very good.

- Customers
- Partners
- Suppliers
- Employees



U.S. Report 2004 – Concluding Thoughts

- One thing that came across loud and clear in our many hours of interviews: Dispute-Wise Business Management is as much about strategic business thinking and relationships as it is about disputes.
- It's about creative, flexible problem solving oriented towards creating win-win situations on a regular basis.
- Dispute-Wise Business Management practices are good business practices.

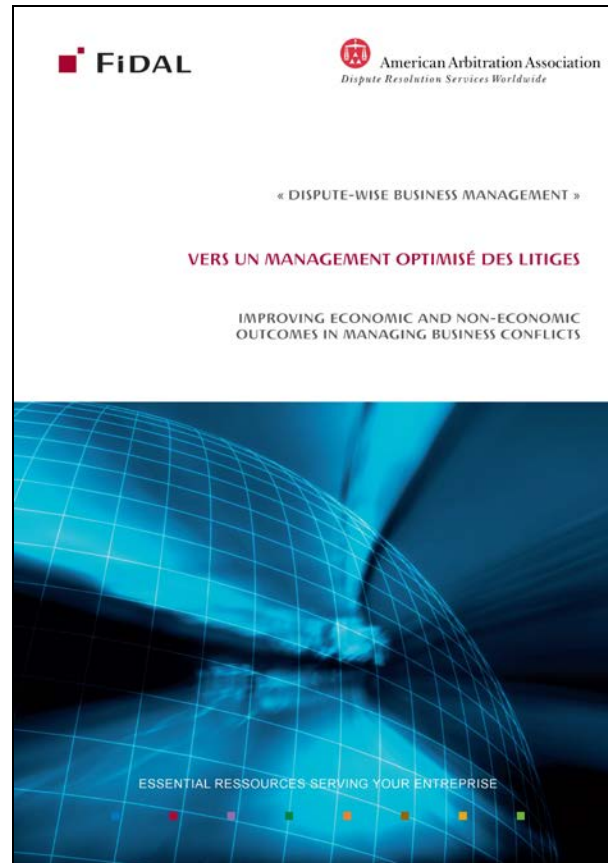


Recognising that each relationship and conflict situation is different, the most dispute wise companies take a "portfolio" approach to conflict management.



"Fitting the Forum to the Fuss"





France Report – 2009 Improving Economic and Non-Economic Outcomes in Managing Business Conflicts



France Report 2009 – Why This Survey?

On the Basis of the 2004 AAA / ICDR Dispute-Wise Business Management Report:

- Conducted with American Companies
- Highlighted the Economic Advantages of ADR
- Outlined the Dispute-Wise Business Management Concepts

On the Basis of the Fidal / AAA 2009 Compared Survey:

- Point of View of the Companies, Not Specialists
- Confirms Interest in ADR Beyond U.S. Borders
- Provides 5 “Best Practices” of an Optimized Dispute Resolution Management System



ADR is Not Yet Used Systematically in France As It Is In the U.S.

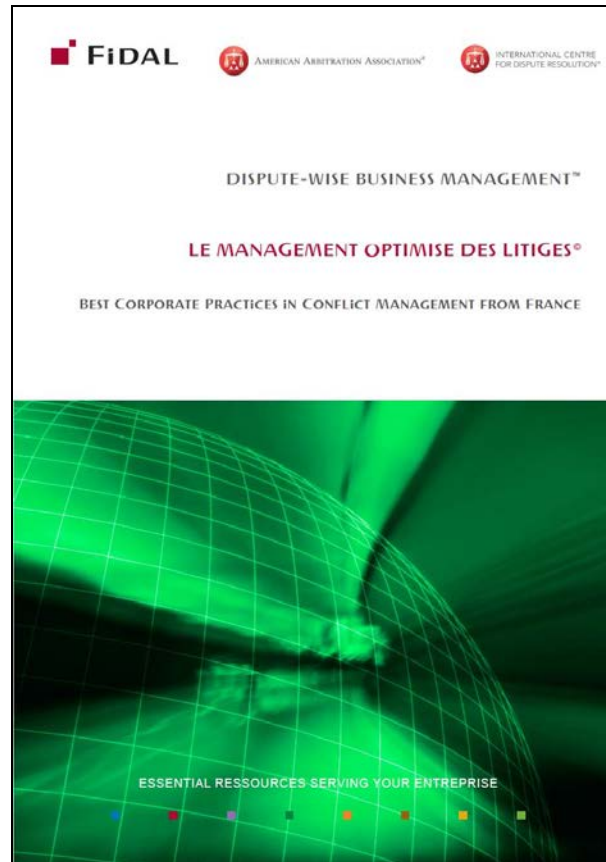
- The overall ADR usage rate is still much higher in the United States: 95% compared to 62% in France
- Only 39% in France have had recourse to mediation in France. Almost all the US companies (85%) have tried mediation
- Arbitration is also less frequently used in France (only 48% of the companies) than in the United States (72% of the companies)
- Other ADR as early neutral evaluation, dispute boards, MED ARB are very little known in France (less than 6%)



The French “Dispute-Wise” Companies Have Also Developed Some “Best-Practices” That the Study Isolated With Reference to Other Companies

- Establishment of a Dispute-Management Policy (62.5%)
- In-House ADR Training (58%)
- Mediation / Arbitration / ADR Model Clauses
- A Strategic Recourse to ADR
- An Internal System for Monitoring Contracts





France Report – 2013 Best Corporate Practices in Conflict Management From France



France Report 2013 – What the Study Showed

- French companies increasingly view the effect of disputes as a strategic consideration, with potential impacts on corporate policy, financial results and brand image.
- Law departments are endeavoring to work more closely with business units and to take the business dimension into account when crafting solutions.
- Law departments' dispute-wise, organizational and functional practices vary greatly from one company to another.
- The need to be agile in cross-border transactions, disputes and relationships has driven these developments and the emergence of these best practices.
- These evolving trends in French legal practices can thus offer valuable lessons and food for thought even beyond the French territory.



- The most Dispute-Wise companies consider that dispute management is of strategic importance in reducing the negative impact of conflict on their brand reputation, corporate policy and financial results.
- They anticipate disputes before they arise by improving the organization of their legal department, e.g.:
 - By encouraging in-house counsel to work more closely with business staff, and vice versa;
 - By encouraging more business-oriented legal services;
 - By fostering early dispute-detection and communication within the company;
 - By favoring the use of ADR methods when a dispute cannot be avoided and by viewing litigation as a very last resort.



- They train both their legal and business staff on ADR techniques, so that they have the right reflexes at the right time.
- They draw lessons from past errors so as to avoid repeating them and seek to anticipate and control risks.
- They no longer simply outsource cases to outside counsel, but instead team up with law firms to constantly seek the best tailored solution to the dispute and issues at hand.
- They try to integrate the legal department into top management, so that it is involved in all of the company's strategic choices, and to put in place internal rules that foster better risk management.



Lessons for Users and Their Counsel

Portfolio
Approach to
Conflict
Management

Develop Policy
Approach to
Dispute
Resolution

Address in
Model Contract
Clauses

Foster Active
Communication
Regarding
Problems

Focus on Early
Dispute
Resolution

Integrate
Negotiation,
Mediation and
Arbitration
Strategically to
Accomplish
Goals



Lessons for
Public Policy
Makers and
Dispute
Resolution
Provider
Organisations

Foster and Integrate Use of ADR Options, Particularly Mediation, Into Public and Private Justice Systems

Incentivise Use of Early and Effective Dispute Resolution

- Legislation
- Arbitration and ADR Systems
- Model Contract Clauses
- Costs
- Education and Training of Dispute Resolution Professionals
- Education and Training of User Community



Know Your Client's
Business and Culture

Explore Goals of Client in
Each Conflict Situation

Prepare for Arbitration or Litigation
BUT

LOOK for Opportunities to Use
Negotiation and Mediation

Develop ADR Skills



Lessons for Arbitrators and Mediators



Thank You

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