

Interviews with Our Editors: 360 Degrees of Perspective with Noah J. Hanft, President and CEO of CPR

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Mr. Hanft, welcome to the Kluwer Arbitration Blog! I appreciate the opportunity to share your perspective with our readers at an exciting moment, where conversations about politics, diversity, and technology are intersecting and transforming the way globalized corporations and their lawyers conceive of and approach dispute resolution.

1. ***Before we delve in, can you briefly introduce yourself and the path that brought you to CPR?***

Of course, and thank you for the invitation. Before coming to CPR, I was the General Counsel and Chief Franchise Officer at Mastercard and it was there that I truly gained an appreciation for the power and potential of alternative dispute resolution (ADR). After years of handling disputes, which resulted in both wins and losses, I found myself growing frustrated by the traditional litigation process. At the same time, I was increasingly turning to mediation to resolve some major cases. I became more and more intrigued by the process, and soon also introduced early dispute resolution to the company, including a sophisticated early case assessment protocol. As a forward-thinking and customer-centric business, Mastercard was extremely receptive, embracing alternatives to litigation and a thoughtful approach to addressing inevitable business disagreements.

2. ***CPR is more than just a provider of arbitration rules and ADR services. Can you tell us how CPR draws on its membership to establish itself as a thought leader in ADR?***

We are indeed much more. We are also the world's leading ADR think tank, utilizing our powerful and member-driven committee structure—comprising top corporations and law firms, academic and public institutions and leading mediators and arbitrators around the world—to foster and inspire thought leadership. This, in turn, leads to the development of cutting edge tools, trainings and resources and drives CPR's efforts to promote and develop an ADR culture globally. This unique and multi-level structure is part of CPR's heritage, going back to 1977 when the organization was founded by a group of corporate counsel that knew there had to be a better way, and who wanted to help themselves, and each other, prevent and resolve commercial disputes more effectively and efficiently.

3. In your prior role, at Mastercard, your responsibilities and focus were much broader than only dispute resolution. What about ADR generally, and arbitration specifically, attract you and how does this support a corporation's day-to-day business and prosperity?

You are correct, at Mastercard, I had responsibility for the traditional law and law-related functions (policy, compliance and regulatory), but also business responsibilities (that included licensing, franchise development, information security and diversity). I think the expanded business role helped me in thinking more broadly about dispute prevention and resolution and the importance of maintaining ongoing relationships with customers, suppliers and even competitors. Once you see your role as extending beyond just dispute resolution and combine it with the early identification of disputes and dispute *prevention* it becomes an extremely broad and important component of the job. It then puts you in a position to create a business imperative in terms of structuring relationships, focusing on early resolution as a way to preserve those relationships and increase commerce. Once executive management gets behind these efforts, recognizing the benefits of such a thoughtful approach, it becomes part of the day-to-day business. And, if you're doing it right, the management and even the board actually start to adopt ADR thinking in reviewing and weighing in on matters that come up, instead of going straight to an adversarial or litigation mindset.

4. For which parties, and in what types of disputes, is arbitration likely to be of most benefit?

I think it is generally accepted that, if parties know each other and want to maintain a relationship, arbitration is often the preferred approach to dispute resolution as it offers the potential to be somewhat less adversarial, speedier and more efficient—a good partner with mediation, as part of a multi-step process, if the mediation fails to resolve the matter. Of course, there are cases where one wants to establish a published precedent, where litigation is a better option. But with respect to the overwhelming number of disputes, mediation is an attractive method for resolving disputes early on in the process. And, if that fails, arbitration is often the best option for commercial disputes. It is a particularly good choice where two consenting entities want a private proceeding and want to have a say on who the decider or deciders are? In fact, I believe that if arbitration is approached and practiced in the right fashion, its inherent flexibility makes it the right choice for many different types of disputes. One such example is in the intellectual property sphere, where the expertise of an arbitrator may serve to the advantage of the parties. At the end of the day, if parties understand what arbitration can achieve and how best to utilize it depending on the nature of a dispute, it is an excellent tool for reducing expense and obtaining a reasoned opinion from an expert.

5. What is a common misconception about arbitration percolating within corporate legal departments and what can we do to address it?

One common misconception is that arbitrators tend to “split the baby.” There is this notion that, in arbitration, there is often no clear victor, that the parties often receive a compromise decision, where both parties win or lose a little. Studies on the subject bear out that this is simply not the case. This misconception gives rise to a misplaced view that if one has a strong case, they are better off litigating than arbitrating. Other misconceptions stem from a lack of understanding of arbitration including that there is no appellate right (there can be if the parties choose) and arbitration costs as

much as litigation (not if the parties take control of the process). CPR was the first to add an appellate option and now most ADR organizations have followed suit. As to cost, at CPR we've addressed the concern by building into our Rules an efficient process that provides for reasonable, but strict timeframes and allows arbitrators to limit disclosure and control the process. One final misconception, that we very clearly addressed in our new Rules for Administered Arbitration, is that one can't obtain an early disposition of a claim or defense. In fact, arbitrators have the authority to dispose of claims and defenses before a hearing, if a proper showing can be made. All of the misconceptions can be addressed through education. There is a surprising lack of understanding amongst some very sophisticated people as to how arbitration works, its benefits and potential. I believe it is incumbent upon all of us to take every opportunity we have to make it clear to users and potential users what arbitration can offer if used thoughtfully.

6. *What are some "best practices" for outside counsel as they collaborate with corporate clients to resolve disputes?*

That's a really good and important question. One of the things CPR has made available to our corporate members is a supplement to their requests for proposal (RFPs) for outside law firms which seeks information about their approaches to and expertise in dispute resolution. Our view is that it is not only important for law firms to know how to litigate and/or arbitrate, but also how to approach settlement and mediation. For outside counsel, it is important to understand, not only the nature of the dispute, but the specific corporate or commercial culture of an organization, which dictates how a resolution might practically work within the company. It really helps to understand a company's business practices, and the personalities involved in the dispute.

Also in terms of best practices, law firms need to be really upfront about both the strengths and weaknesses of their clients' cases. They also need to be prepared to move beyond mere litigation or arbitration strategy, and to think about the best way to resolve disputes from very early on, which will often involve mediation and negotiated settlements.

7. *How do emerging views on diversity support effective dispute resolution?*

Just as diversity strengthens a legal team, it strengthens the reasoning process and the resulting nuance of the outcome. In fact, a highly-regarded study has suggested that diversity can lead to better decisions. Thus one can expect a tribunal that has arbitrators from different backgrounds and/or perspectives to achieve better results than a less diverse group. Supporting effective dispute resolution, stimulating new types of creative and strategic thinking, and nudging people out of old ruts and habits, is important to the continuous development and improvement of ADR. At CPR addressing the diversity challenge has been a long-standing objective of the organization. To that end, we have been very focused on not only adding diverse neutrals to our panel, but encouraging consideration of them. Our selection rate for diverse neutrals has reached 31% and we are very proud of the progress we have made. We believe there is more to be done and, in an effort to address gender diversity, we recently published, Look Who's Joined ADR's Most Exclusive Club, which highlights many of our leading female neutrals.

8. *Why should corporations and dispute resolution practitioners pay attention to emerging technology trends, and how can they employ new technology to support*

the dispute resolution process?

Whether we are talking about diversity or new technologies, corporations and practitioners need to pay attention to any and all learnings and new developments that could possibly improve the process. The ADR world needs to take into account the increasing importance of issues like cyber and data privacy as well as the opportunities presented by AI and ODR. And there will undoubtedly be many more new technologies just around the corner, which will bring both new complexities and potential new benefits. It is an ongoing process, and certainly never boring!

9. I understand that you recently announced that, in a few months, you will step down as President & CEO of CPR and transition to launching your own ADR practice in collaboration with CPR Board member Richard Ziegler. Congratulations! Can you tell us more about your forward-looking plans, and how the lessons you've learned in-house and at CPR will inform your vision and approach?

Well, thank you. I'm very excited about this new phase in my career. I plan to be a mediator, arbitrator and settlement counsel and to consult with law departments on various dispute prevention and resolution issues and, in all of these areas, I will be applying and benefitting from the best practices I've gained from CPR. That includes participating and learning from the outstanding work done by CPR Committees as well as the many fabulous CPR training opportunities. Richard and I have both taken the intensive and exceptional CPR/CEDR mediation training and are CEDR accredited mediators. Additionally, we both benefitted from the outstanding CIARB training and are both fellows of the Chartered Institute.

In terms of the lessons I've learned, and how they will inform my future vision and approach, from an in-house perspective I've learned how important it is to think about early resolution and mediation during the life cycle of a dispute. When I was in-house, I came to realize how important it is that a mediator both be able to effectively listen and create an environment where parties are able to actively listen to each other. But now, after 5 years at CPR and having mediated many cases, I have an even richer understanding of what it takes to be a good mediator. As important as it is to create the right environment for parties to work towards a collaborative result, there is no substitute for understanding the facts underlying a dispute and the relevant law. Also, given my in-house background, I understand some of corporate counsel's concerns about arbitration, and as an arbitrator I believe I will be well positioned to address those concerns, again in large part as a result of learnings from CPR. I also believe that the learnings I've gained from other arbitrators and the best practices that I've been privy to for the last 5 years will enable me to effectively manage an arbitration and handle the many issues that arise. I am excited about this upcoming new phase and am deeply appreciative of CPR and my friends in the ADR community that have been so welcoming to me from the day I joined CPR 5 years ago.

Mr. Hanft, thank you for sharing your time and unique perspective. We wish you and CPR continued success!

This is the first of two interviews that cover CPR's innovative approach to aiding corporate legal departments with global dispute resolution. Keep an eye out for a follow up interview with Olivier P. André, Senior Vice President, International at CPR.