SPECIAL SUPPLEMENT

Analyzing Company ADR Systems Practices

Settlement Counsel; Problems with Billable Hours; and more

On Oct. 9–10, the CPR Institute for Dispute Resolution held its first ever Fall Meeting for CPR members, members of CPR's Panels of Distinguished Neutrals, and guests. More than 100 practitioners, academics, and ADR Counsel met at the Four Seasons Hotel in Chicago to exchange alternative dispute resolution strategies, improve their skills, and examine the practice.

CPR MEETINGS

Four meeting seminars are summarized below. Four seminars will appear in the next issue of *Alternatives*. One seminar, on using decision-tree analysis in conflict resolution management, included the participants in a similar panel at the CPR Spring Meeting held in Carlsbad, Calif., in May 2003; a summary of the decision tree session is available in the Spring Meeting Supplement at 21 *Alternatives* 179, 183 (October 2003). A separate 21-CLE hours mediators' training session ran concurrently at the same Chicago location in October.

Registration is now available for the 2004 CPR Spring Meeting later this month, open to CPR members and members of the CPR's Panels of Distinguished Neutrals. Online registration and full information is available at www.cpradr.org. There will be concurrent mediators' training seminar.

I. MEASURING THE EFFECTIVENESS OF CORPORATE ADR SYSTEMS.

The CPR Fall Meeting started by focusing on ADR results at in-house law departments. Three Fortune 500 counsels discussed how their companies measure program results.

Panelist Theodore B. Van Itallie Jr., of Johnson & Johnson in New Brunswick, N.J., described in detail how his company defined measurement criteria. Van Itallie, who is an associate counsel, said the in-house litigation group defined its fundamental mission and strategic objectives. The group identified what it needed to do to achieve its goals, and the "business processes" it needed to establish or improve. At that point, he said, his department looked at measurements that would indicate whether it was on the right track toward its objectives.

This was a "long-winded process," he said, "but an interesting one."

Van Itallie said that the company uses too many ADR measurements to list them all, but discussed highlights, including:

- "Dispute cycle time," which he said was a conventional measurement, but a good indicator for the amount of management and legal time taken up by a dispute;
- The percent of cases where early intervention resulted in successful early resolution; and
- Total costs, including transaction and settlement payments.

"We decided we couldn't measure the distraction to the business," he said, "although I think that's an overwhelming consequence" of litigation. The focus, he said, was "the dollars that were going out the door."

Johnson & Johnson applied the measure to its first ADR program, a mandatory mediation program for employment disputes. The company found that 80% of its cases were resolved at the second stage, a facilitated negotiation by a corporate human resources staffer, between the employee and the local human resources staff. Van Itallie said it was a "dramatic success," and the costs were "really quite easy to measure." The result: The mediation setting costs almost a third less than the traditional litigation processes' cost, he said.

So the J&J litigation group experimented to extend the results elsewhere, Van Itallie reported. He said the company adopted the use of settlement counsel to get early resolution of commercial cases. The data analyzing effectiveness "didn't really speak to us," he said, so the company undertook a clinical study. It had enough product liability cases to analyze, so it focused on certain product categories. There were three tracks: the first was traditional litigation processing; the second pushed for a mediation session, or at least an information exchange within three months of the filing. The third "cell," as Van Itallie called it, was the use of a settlement counsel with 90 days to attempt to resolve the case.

The company tracked the processes in each of the three categories, including information exchanges, receptivity of opposition counsel, and estimated dollar values. The purpose, explained Van Itallie, was that the data would enable the company to identify the features that are important for early settlement.

He said that preliminary data show more than 50 cases in the program, with 17 mediations being conducted in "cell three," which involves settlement counsel. He also noted "a persistence of unclosed cases" in the first category, traditional litigation processes.

Van Itallie concluded by noting that the early returns show that "there's no question you can force" early mediations and

early resolutions. But he said "what we don't know the answer to yet is whether that is automatically a good thing to do or not."

P. Elpidio Villarreal, counsel for litigation and general policy at General Electric Co. in Fairfield, Conn., opened his segment by noting his company has "a kind of cradle-to-grave approach to dispute resolution processes, from the initiation of the dispute—not the lawsuit but the dispute—to its conclusion." He said that measuring results has been harder than setting up ADR processes.

GE's four key data measurement points, said Villarreal, are legal costs, including costs of accountants and experts; resolution costs, which include settlement and judgment costs; resolution methods; and cycle time.

The company has "several thousand pieces of litigation at any given point in time," he said, "with the corporate headquarters focusing on the toughest cases, usually about 250 of the existing cases." GE measures the ratio of litigation costs against revenue of the company. GE's conflict resolution practices have helped lower that ratio, he reported.

In 1999, Villarreal said that 44% of the company's total outside legal expenditures was devoted to litigation. That percentage had declined to 28% by 2002, he said, adding that dollar amounts have "remained flat for the last four years," despite 30% increases in the company's revenue base, and in the rates charged by outside counsel. "Cycle time," he added, is "trending down."

Much of GE's data, Villarreal said, comes through its outside counsel management system, which collects data on early case assessments and in turn helps the in-house attorneys evaluate outside counsel.

Janice Innis-Thompson, senior litigation counsel at New York-based International Paper Co., said that conflict resolution processes still need to be sold internally at her company. Measuring and disseminating the results showed the nonlegal executives that "we're not just simply spending their money every 60 to 90 days after a dispute had been filed, but that we were actually earning our keep as litigation lawyers for the company."

She said that the company began increasing conflict resolution practices in 1999 by hiring a mediation counsel. Business attorneys were told to add mediation and general ADR provisions to their contracts, Innis-Thompson said. "And it worked very effectively in ... acquisitions and divestitures because we tend to have fewer litigations out of the deals now than we did before."

The next step, she said, was analyzing existing litigation. International Paper found that it dealt with about 650 litigation matters annually. She said settlement costs and cycle time were examined. Business managers were surveyed on how much time they spend on litigation, and, specifically, on discovery, depositions, claim specifics, and the effect on customer relationships.

The cases were personal injury and property damage, commercial or contract cases, bankruptcy, and product liability. The company does not have an employment program, Innis-Thompson said. The company developed the median figures on costs, cycle time, management time expended, and the effect on relationships.

She discussed the results, which showed that many of the personal injury cases it faced were coming from third-party contractors. New indemnification language was designed for those contracts as a result, she said, but the ADR language made the contracts more effective.

Since the ADR programs began five years ago, she said, International Paper has reduced fees and costs by about 25%, and the cycle time for personal injury claims and cases has been reduced to about six months. "So by the time the lawsuit is actually filed, many of the times, we know a lot of the

An Automaker's ADR Numbers

Thomas A. Gottschalk, senior vice president and general counsel of General Motors Corp. in Detroit, addressed the first CPR Fall Meeting last October, describing how the world's largest automaker deals with thousands of disputes annually.

Gottschalk, who has been involved in CPR Institute efforts to boost ADR use for two decades, said the speaking invitation prompted him to look at GM's ADR use. "We rely on ADR in every facet of business," he said. The only exception is employment disputes with salaried, nonunion workers. He said that GM management believes that installing an employment ADR system for those workers would provoke "anxiety" over layoffs.

Gottschalk said that arbitration clauses in cross-border commercial contracts are standard operating procedure, as well as contracts with major "relationship partners" like Suzuki and Fiat. He said arbitration isn't typically included in U.S. supply contracts.

Mediation, he reported, is used in product liability cases.

He described GM's huge franchise programs, which he said involve 8,000 franchise dealers. He said a 1990 overhaul of the GM dealer franchise agreements resulted in four agreement formats, three of which have mediation as a key component.

Last year, GM sold 8.6 million cars and trucks worldwide. Gottschalk said that the company fields about 2 million customer assistance calls.

Gottschalk detailed the disputing numbers. He said that 20,000 cases went before state Better Business Bureau-style arbitration boards in 2002—but nearly 80% were resolved without arbitration.

He said that the company had 310 litigation matters in U.S. courts between 1999 and 2001, while at the same time it conducted 101 mediations. The 3-to-1 ratio is now closer to 1-to-1, Gottschalk reported.

Mediation also is having a positive effect on union grievance procedures, which use informal arbitration processes too. He said about 57,000 union grievances were filed with GM in 2002.

And in the product liability arena, Gottschalk said the company averages 1,000 cases annually, and 100 to 150 are mediated. The mediated cases are personal injury and property claims.

groundwork, we know a lot about the case, and we have enough information to make the decision regarding whether we want to settle it," she said.

During the Q+A period, Villarreal said GE tried to maintain a mediator list, but it was abandoned "because, frankly, if you use a mediator too often, the other side to the mediation gets uncomfortable." But Janice Innis-Thompson said that International Paper has had success maintaining a list, and it provides consistency.

"I don't think there's any question," added Theodore Van Itallie, that "the quality of the mediator is frequently outcome determinative."

II. THE NEUTRAL AS CASE MANAGER.

The second fall meeting session presented two longtime practitioners weighing trends for ADR neutrals in mediation and arbitration.

First, Paul M. Lurie, a senior partner at Chicago's Schiff, Hardin & Waite, focused on mediation issues. He was followed by veteran labor arbitrator Stanley P. Sklar, a partner in Chicago's Bell, Boyd & Lloyd.

Lurie said he is most interested in why mediations fail, because those situations provide roadmaps to improving processes. The first failure spot, he said, is in the preliminary stage—when parties won't follow through on dispute resolution clauses they have constructed, or are resistant to a judge referral to mediation.

Lurie, who focuses on construction law ADR, said that the problem requires that neutrals and advocates involve the people responsible for the original ADR requirement, to get them to "sell the process" to less ADR-sophisticated colleagues. He said that the neutral is usually the best person to bring the correct people at the parties to the negotiation table.

He said that processes without individual design elements tailored by the neutral to the parties are candidates for mediation failure. He warned that former judges are neutrals who are prone to "use cookbook approaches to mediation." He said that setting up a mediation requires a lot of contact between the neutral and the party, and that mediators should avoid rote scheduling and briefing practices.

He said he prefers process design by institutions, such as the court or the parties, rather than the mediator. But he said that "the real world is [that] it's going to be the mediator that is going to design the process."

He explained that advocates need to embrace the educational aspect of the mediation process, and said he asks key party personnel, judges, or appointing authorities to urge mediators to communicate with resistant parties.

Lurie said the formality of the often-requested mediation brief usually is unnecessary. He said commercial cases often involve contract performance, and that brief-worthy legal issues are rare. "Sometimes the lawyers have some sort of an internal need and really want to file a brief," said Lurie. "I really try to prevail on the parties to minimize expenses to their client by not going through that exercise."

Lurie said that as a mediator he tries to develop a relationship with a letter to the parties to build confidence in him—touching base, he said, to "try to begin to develop some empathy." The first letter includes proposed telephone conference dates, sets aside calendar time, and other ministerial requests. Then, Lurie said, he sends the parties a long list of questions—the basis of information exchange—designed to get to the bottom of the dispute.

'It's amazing how experts can work in a cooperative venture when they're told by a mediator to do so ...'

He said that he encourages parties to retain an arbitrator in case mediation doesn't work. He said the implied threat of the potential failure of their preliminary arguments before an arbitrator helps them reach more reasonable positions in mediation.

He said that the neutral's role of facilitating information exchange between the parties "is extremely critical to the process design." He told mediators to take advantage of the ability to have ex parte communications during the information exchange. He said he urges parties to call him if they aren't getting what they need from the other side.

Lurie said that the role of mediation experts is a potentially "big failure point," particularly in technical cases like construction. He cited two extremes: The lack of experts is a problem, but also, he said, parties invest a lot in their experts' opinions, and that creates problems too.

Experts need to be present at the mediation, according to Lurie. "And I do not allow any negotiation to take place," he said. "The purpose is information exchange. Let the experts talk to one another—and I've even given the experts assignments to go back and, 'Mirror your differences.'" The purpose, he said, is so that when the parties come to the mediation they "have something to talk about [such as] 'Where's the gap?'" Lurie added: "[I]t's amazing how experts can work in a cooperative venture when they're told by a mediator to do so, as distinguished from being in an advocate-type situation when they are told by the lawyers that they're there to represent a party."

Lurie said that parties and mediators often come to mediation as though they already were on trial, ready to attack opponents.

He said that decision makers need to be empowered. He said that he tells the parties that an arbitrator isn't any smarter than a party. Like the party, the neutral understands industry practices and contracts. So, Lurie says, he asks each party to "sit and listen to what the other side has to say as if you were the

arbitrator or as if you were the judge or as if you were the jury." He says he asks them to open their minds and listen.

Lurie returned to process design considerations, noting that time commitments are an important tool for the neutral. "I like to keep people late at night," he said. "I like to wear them out."

He said that mediators "should always say to the parties 'I'm making progress' even if [they are] not making progress, because incremental progress is extremely important to the process."

Lurie concluded with a discussion of settlement agreements. "[I]f the case is settled," he said, "I do not want the parties out of my sight without a written memorandum of settlement."

Stanley Sklar focused his portion of the session on arbitration. He advocated a stronger presence on process issues for arbitrators than they traditionally take. "I am a firm believer that arbitrators are paid not only to make a decision, but to manage the process," he said.

Arbitration process problems come from poorly written clauses, he explained, which provide the arbitrators the authority to deal with process issues. "How many transactional attorneys," he asked, "addressed the dispute resolution mechanism with the same degree of care that they addressed the economics … and the terms of the deal?" Sklar, who also concentrates on construction work, endorsed step processes.

He said key points he addresses in clause drafting are:

- Punitive damages: "[A]s much as I like ADR, there is no way that I am going to permit a nonjudicial body to impose punitive damages."
- Nondisclosure.
- The structure of the prehearing conference, which should be focused on moving the case forward, not merely rehashing the dispute.
- Discovery limits.

The most important issue for parties going into arbitration, Sklar said, is the panel's quality.

He said that discovery is the most common cause of major pre-hearing disputes. He urged arbitrators to take control to ensure that arbitration is a more efficient process than litigation. He asked, "Do you really need all those depositions? Do you really need all of these items?" adding, that as an arbitrator, "I won't allow interrogatories. Interrogatories are a total waste of time because the answers are prepared by counsel. …" He said he will put hour limits on depositions to rein in litigation-like practices.

Sklar briefly discussed a variety of arbitration issues before taking audience questions, including document production, dispositive motions, and experts. He said that the only evidence rule that an arbitrator should consider is whether the evidence is relevant and reliable, noting that hearsay isn't a danger where the arbitrators have subject matter expertise.

During the audience discussion, Paul Lurie, agreeing with Sklar's point, said that arbitration deposition requests must be controlled by the neutral. "I really think that a lot of facilitation can happen on the arbitration side and eliminate depositions," he said.

III. THE UNINTENDED CONSEQUENCES OF THE BILLABLE HOUR.

Decrying the billable hour, a first-day meeting panel urged imaginative fee arrangements between clients and lawyers that panelists said would save clients' money and spark better work.

Moderator Mitchell A. Orpett, of Chicago's Tribler Orpett & Meyer, opened with anecdotes relating to law firms' efforts to raise billable hours among associates and track hours more closely, using increasingly sophisticated software.

Former American Bar Association President Robert E. Hirshon was the first panel presenter. During his 2001–2002 ABA tenure, Hirshon formed a commission that looked at the effects of billable hours on the legal profession.

He said that the "concept of billable hours" was responsible for "unease" in the profession, particularly for younger lawyers who said that work requirements prevent them from doing community service and pro bono work. He said that lawyers at all professional stages said that "there has to be a better way" than judging one another's worth than the amount of hours they work.

The most important thing is 'creating value out of the relationships.'

Hirshon, who is chief executive officer of Tonkon Torp, a Portland, Ore., law firm, reviewed the history of the billable hour, noting that it replaced fee schedules, which were the predominant pricing models in the 1940s and 1950s.

He said that the average Wall Street firm associate is expected to work 2,400 hours annually, which has huge implications for the level at which they perform, their attention to ethical details, and their personal lives.

Hirshon said a recent ABA study showed lawyers leaving the practice at the highest rate ever. "They're paying off their debts, which are at an all-time high," he said, "and then they're getting out of the profession."

Moderator Orpett asked the panelists which of the negative consequences of billable hours mattered to clients, citing diminished mentoring, ethics, professionalism, pro bono work, access to justice, and affordability.

"[C]ompanies do care and they don't care," responded Thomas J. Sabatino Jr., senior vice president and general counsel at Baxter International Inc., a medical products company in Deerfield, Ill. "Obviously the most important thing for us is value creation, and creating value out of the relationships."

Sabatino explained that for companies, the value was in the result. He said that corporations are more concerned about societal needs, such as access to justice issues, than the work life concerns of law firm associates.

Davis D. Carr, senior vice president of claims at Chicago's CNA Commercial Insurance, which is a unit of CNA Financial Corp., had similar views, and suggested that there is a correlation between honesty, ethics, and the best practitioners. He said that a failure to mentor has hurt law practice in recent years, and was a result of the need to bill more and devote less time to development.

Carr said that convincing senior management that higher-priced lawyers are a better bargain for the company is "a tough sell."

Sabatino added that increasing complexity and numbers of cases has made for "high-stakes poker" in litigation decisions, meaning that value determinations must be more precise. "[P]ublic corporations need [a] level of certainty so they [can] predict what's going to happen this year and next year," he said. He said that alternative billing arrangements require law firms "to assume real risk, not just … 'facial risk.'" He said that Baxter is a plaintiff in an intellectual property case in which its outside counsel has discounted its fees 55%–and "if they win, they get three times that unbilled amount."

Davis Carr said that both lawyers and clients are too timid about clearly communicating expectations and goals. The problem is "a disconnect between what the client expects and what the law firm is doing."

Moderator Orpett said to Bob Hirshon that, based on the panelists' reactions, it doesn't appear that "the unintended consequences of the billable hour are … as dramatic to our clients" as Hirshon indicated in his opening remarks. Hirshon countered that the panelists are older and have gone through a different process than young lawyers.

Opportunities for good trial experience often don't exist at either large or medium firms, he said. The in-house counsel on the panel "can get the lawyers that they want," Hirshon said, adding, "my concern … is the next generation." He repeated his earlier point: young lawyers are leaving the profession at an "alarming rate," because the experience they are getting often is poor.

Mitch Orpett added, "I've become convinced that the more I got into managing my firm … that law firms as traditionally structured … have as little to do with client interests as any business I've ever seen on any side of any profession." He added:

> I see good minds coming in and with all good intentions dedicated, committed to be good lawyers—to serve their clients—and within a year, even in the more liberal low-pressured firms, [they] are thinking billable hours.

During a question-and-answer period, an audience member said that attorneys need to be vigilant about using, for example, "uninformative arbitration clauses that don't specify rules about discovery and the like," and as a result, "maximize billable hours" instead of realizing litigation-alternative savings. Davis Carr said that billable hours pressure has made ADR "into a much more expensive thing than any of us had ever anticipated."

The audience member replied, "So we are saying that the unintended consequences of the billable hour is ADR and another unintended consequence of the billable hour is that ADR looks just like litigation."

Settlement counsel are like an alter ego that embraces the company philosophy and management.

Another audience member said that alternative fee arrangements work when there is a long-established relationship between outside counsel and a corporation. "It's a little bit harder when you have a new relationship to enter into creative alternative arrangements," the meeting participant said.

IV. SETTLEMENT COUNSEL: MOST RECENT APPLICATIONS OF A PERSISTENT CONCEPT.

Two veterans of litigation over defective tires discussed building settlements by hiring attorneys specifically to negotiate resolution, rather than to work in the courtroom.

Lawrence Curtis, of the Rockville, Md., office of Ringler Associates, a firm that consults on structured settlements, and Thomas Woodrow, a partner at Holland & Knight in Chicago, discussed their experiences with Firestone Tires.

Curtis was senior counsel for product liability/risk management, for Akron, Ohio-based Firestone Tire & Rubber Co. in the 1970s, and faced product liability litigation. Woodrow is one of successor Bridgestone/Firestone Americas Holding Inc.'s settlement counsels for the more-recent suits stemming from the failure of Firestone tires on Ford Explorers.

Curtis said the litigation 25 years ago over a radial tire resulted in more than 1,000 cases filed against the company. He said most were negotiated into settlement, but in those early days of corporate ADR, it took nearly a decade, and the company shouldered 10 years of defense costs and risk.

The current tire woes have existed since 2000, with most of the settlement work being accomplished in less than three years. Curtis, who also is working on the current cases, credited the use of settlement counsel, which he defined as "an attorney representing a client for the purpose of settlement and not for the purpose of litigation defense."

He said the "new model" exists because of "client frustration; decentralized models for case handling; tighter resources; the problem of costs; lengthy and unpredictable

dockets; how fast these cases come up; barriers to early resolution and evaluation; the inability to gather information quickly enough; the organization of the plaintiffs' counsel; and different levels of the quality of handling across the country."

According to Curtis, settlement counsel need "a long history" with the client. They must understand the client's litigation needs, processes, and resources. He said that settlement counsel are like an "alter ego" that embraces the company philosophy and management. He said settlement counsel should know the local judges and jurisdictions where the litigation will take place. The settlement counsel, said Curtis,

> has to be diplomatic. There has to be a trust relationship developed; the person has to have authority and be able to speak authoritatively on all of the aspects of this litigation. And the individual has to be compassionate. It has to be a person who can sit down at the mediation table, meet people for the very first time—some of them angry and frustrated by the fact that they have suffered injury as a result of a nationally publicized product failure—and be able to develop a human relationship. But the person must also be a negotiator and understand the process of mediation [and] be a mediation advocate. And be willing to cut to the chase, [and] cut through red tape to achieve a timely result.

Thomas Woodrow briefed the audience on the history of Bridgestone/Firestone's current tire litigation. He said that until 2000, and except for the period discussed by Curtis, the company carried "in the relatively low double-digits of cases on an annual basis—something that was manageable and something that the company was willing to take on in the courtroom." He said the company has a small in-house litigation staff.

Woodrow added, however, that the company litigated the cases hard. "We wanted to get in there and dig down and defend the product because we absolutely believed the product was safe, competent, there were no issues with it and if the product failed, we can find the reason for it."

The strategy didn't work after the Ford Explorer's recall. Between the beginning of 2000's fourth quarter and the end of 2001's first quarter, the litigation increased from double digit numbers to "quadruple digits." The U.S. Department of Transportation's National Highway Traffic Safety Administration was investigating the tire maker, and state attorney generals were looking at the recall too.

Woodrow said that the courts in which the litigation was situated—Texas, Florida, and California—are considered dangerous for defendants. Finally, he noted there were international cases and "issues with our co-defendant," Ford Motor Co., of Dearborn, Mich.

The principal action, explained Woodrow, centered on Texas. He said he hadn't acted as settlement counsel before. He said that consolidation was a problem in Texas because of arcane rules that required consolidation within administrative regions. Eventually, one region took control, and the others followed the lead.

A case management order was developed and later adopted that included a mediation session before trial. The company and Holland & Knight set up two tracks, one to defend the company, and another to deal with potential settlement. "We actually had a letter go out from the client to all of the plaintiffs' lawyers in Texas telling them that for settlement purposes they were to talk to the designated settlement counsel, and for all other matters to talk to our defense lawyers," Woodrow said.

He said that Bridgestone/Firestone, which is the U.S. subsidiary of Tokyo-based Bridgestone Corp., retained a Texas plaintiffs' attorney to be a settlement counsel too. "And that opened an extraordinary number of doors that I could not have opened by myself and that Holland & Knight could not have opened by itself," he said.

Bridgestone/Firestone pushed harder for settlements by mid-2001, Woodrow said, when the company asked for a more detailed case management order. The order contained a settlement program with time limits, participants, and locations, and was now called the Early Resolution Program. Under the order, plaintiffs were required to address discovery early for the settlement conferences, and needed to provide Bridgestone/Firestone the actual, damaged tire; accident reports; and medical and other damages information forming the claim's basis, including lost wage and future medical provisions.

The result, said Woodrow, was that the defense could get the information it needed to settle the cases expeditiously "without interrogatories, without production requests, [and] without any of the other nonsense that we usually have to go through. ..."

He continued: "The quid pro quo was we had to set up a meeting in a place that was convenient, at a time that was convenient, and we had to show up in good faith with enough money to settle the case—or at least to make a good attempt at it."

Woodrow said a defense "attitude adjustment" was needed to make the case management order process work. "[W]e were not going to be successful at our job if the only objective was to settle the case for the absolute rock-bottom dollar possible," he said.

"We had to shift our attitude a little bit in order to reduce the docket by approaching this from the standpoint of fairness," said Woodrow, citing, for example, the company's adoption of a position that demonstrated "We are here to settle this case with you for a fair amount. Now, we may differ about what that is."

'The ability to resolve the cases and to have a track record of resolving the cases also shut down the bad verdicts.'

The consistency of the company's approach toward the diverse Texas plaintiffs' bar was the "critical component" in making the program work, according to Woodrow, noting that mediation is second nature to Texas litigators. The challenge, Woodrow said, involved making the mediations fair and efficient for all the parties and neutrals.

Woodrow said that as of the CPR meeting, there had been no verdicts against Bridgestone/Firestone. "[T]he ability to resolve the cases and to have a track record of resolving the cases also shut down the bad verdicts," he reported.

During the audience question segment, Lawrence Curtis told a questioner that pledges of confidentiality didn't have much of an effect on the tire litigation settlement discussions. He said, "[T]he reality is in this kind of an atmosphere, where the lawyers are consolidating cases and there's a well-organized plaintiffs' bar transferring information, there's hardly any cases that are confidential. Don't fool yourself. … [T]he reality of the lack of confidentiality established the sincerity of the program that we were undertaking."

[At the CPR Annual Meeting in New York in January, Bridgestone/Firestone received an Outstanding Practical Achievement Award during CPR's 21st Annual Awards Program, for the company's Early Resolution Program and its use of national settlement counsel in the litigation described in this article. Seminar panelist Thomas Woodrow, along with two Holland & Knight partners and two Bridgestone/Firestone executives, accepted the award at the meeting. For more details, see CPR News, 22 Alternatives *18 (February 2004).]*

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Next month, *Alternatives* will feature four more sessions from CPR's first fall meeting, including summaries of seminars on electronic discovery and class action arbitration.

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