

EDR and Settlement Counsel Two-Sides of the Same Coin

- **Same objective:**
 - EDR and **settlement counsel** aim to provide clients, as early as practicable, the information they need to make a prudent business decision and engage in principled resolution negotiations.
- **Same core tools:**
 - Early risk assessment/outcome analysis
 - Realistic cost estimates (financial, non-financial, intangible)
 - Exchange of information each party needs to make a business decision¹
 - Plan the exit strategy and engage

- **The underlying common discipline? Our take:** “Something old is new again.”² Years ago there was a more practical approach to most disputes – a focus on how to resolve the matter as soon as possible. The attraction of the high profile, gunslinging attorney that wins regardless of the merits has fueled the litigation industry – which often seems to be more about billable hours than dispute resolution.

Our view is the EDR and settlement counsel professionals return to a focus on the resolution objective (not maximizing fees or building reputations at the client’s expense).

After all, if over 98% of all cases are resolved by negotiated settlement – why do we delay getting to the most likely event?

- **How can these tools be used?** These tools can be, and should be, used in **all** dispute resolution processes (by all players):
 - EDR neutrals and EDR attorneys
 - *Any* mediator (training is good, but anyone can insist on a risk assessment)
 - Settlement Counsel
 - Trial Counsel: Of course, nothing prevents trial counsel from using these same tools to help the client better understand where they stand sooner rather than later

How the tools are deployed will vary depending upon who is using them, the type of proceeding and the nature of the matter; but as long as they are put into play, you are on the right track. And as we all know – focus brings results.

- **Resolutionaries:** These days it seems important to brand what you do. As an associate dean at the University of Oregon said to us long ago – we are **Resolutionaries** - champions of returning to what is best for the client – an expedited path to a principled resolution.³

¹ Without jeopardizing the litigation strategy – it is critically important to foster “safe” discussions.

² We believe the concept of focus on early risk assessment and resolution effort was really given life by **Roger Fisher** in 1983 in what we believe is the seminal article in this area “*What about Negotiation as a Specialty,*” followed by his 1985 article “*He Who Pays the Piper*”.

³ In the end if what we do does not work, then the client knows they always have what most see today as the real Alternative Dispute Resolution option - try the case!