

Can Tech Firms Get Better Results in Common Legal Disputes?

In the fast-paced world of tech, staying nimble and profitable includes making sure common legal disputes with customers, partners, suppliers, or employees do not needlessly eat up precious company resources. More than 90 percent of business legal disputes are not bet-the-company threats, but each of these lesser disputes does threaten to consume far more time, money, and stress than it is worth. In such “limited stakes” cases, neutral-driven dispute resolution (NDR) delivers a low-risk, low-cost path to fair settlement while letting tech manufacturers keep their time and attention focused on core business.

Innovation in Contracts

Wave Computing, a promising early-stage artificial intelligence (AI) firm in Campbell, California, has chosen to specify NDR for their contracts. Paul Alpern, VP and general counsel, says, “We found and have chosen an innovative solution for our contracts that fits the broad array of common disputes we may encounter as an international tech startup. International partners especially are wary of the U.S. jury system and our courts’ excessive and unpredictable costs.”

Similarly, Dominique Black of Advanced Software Talent, an IT temporary staffing and consulting firm based in Burlingame, California, now specifies NDR in his company’s contracts. Black says, “As a business owner, I don’t want to pay lawyers more money than is at stake to resolve the everyday kinds of misunderstandings that can arise among consultants, manufacturers and IT contractors.”

The NDR Process

If a contract is written with a provision for NDR, the process begins when a company finds itself in a dispute. The first step is for the parties to choose who will neutrally investigate and decide the dispute. This makes NDR unlike a traditional court process, in which the judge or jury have the final say.

NDR is more like popular alternative dispute resolution (ADR) processes, such as arbitration and mediation, in which the disputing parties select who will determine the outcome of their case.

An independent NDR service provider, such as Just Resolve, Advantage ADR or Anywhere Arbitration, will provide several options from which the parties may choose — usually by process

of elimination — their neutral investigator and decision-maker. These neutrals may be retired judges, industry experts or other reputable professionals.

Where different expertise is needed, there may be more than one neutral. At least one of the providers, Just Resolve, promises to deliver its version of NDR at a fixed or not-to-exceed cost.

The second step is for the neutral to investigate the facts and applicable law. This is where NDR and the better-known forms of ADR part company. Instead of being a passive recipient and judge of arguments and information gathered by battling attorneys, an NDR neutral proactively and personally delves into what happened through interviews, records collection and any other pertinent information, all with the authority to compel prompt and full compliance from the disputing parties.

The final step is for the neutral to resolve the dispute, either by facilitating a negotiation (like mediation) or by written decision (as in arbitration), which can be tentative and subject to comment or challenge, ultimately binding, or advisory, as the parties have agreed. In some versions, either party can appeal to a panel of additional neutrals, with the cost of the appeal borne by the appealing party.

Benefits of NDR

Investigation replaces discovery. One of the biggest time and money sinks in typical court proceedings, arbitrations and mediations is the information-gathering stage. Discovery can last for months, with lawyers on both sides billing hundreds of hours and asking for seemingly endless additional information.

While this may be necessary in high-stakes cases, it makes no sense in limited-stakes disputes. For example, NDR uses straightforward, truth-focused interviews to replace depositions, which costs thousands of dollars in legal and court reporter fees, along with countless hours of management time to schedule, prepare for and endure. Alpern of Wave Computing says, “The discovery process is distortive. It’s a nineteenth-century throwback that lets pretrial cost get huge — out of hand.”

Costs are pared and predictable. While the court system is open-ended in terms of time, cost and potential for proliferation through triggered emotions and egos, the NDR process is controlled, greatly reducing risk to all involved. Attorneys are limited to advisory roles, so neutrals’ fees can be fixed beforehand

or laid out in a not-to-exceed commitment by the neutral, who can reasonably estimate what to charge based on stakes and projectable workload.

Robert Christopher, director and founder of Just Resolve, says, "We have found that using NDR will resolve disputes comparably to going to court, but save each party three to five times the cost and do so in two to three months instead of one to three years."

Relationships and reputations are preserved. When it comes to business relationships, tech businesses like Wave Computing and Advanced Software Talent increasingly recognize that what is best for business may be to collaborate in resolving disagreements by focusing on truth, finding out what went wrong, and accepting that reality.

In a court battle waged with dueling lawyers, that opportunity will most likely be lost. Hidden costs include shame, loss and rage

over what is done or said. It is far better to allow both parties to walk away with their dignity intact and their reputations unsullied. When all parties are heard but are not pitted against one another, ego and emotional triggers can be minimized. This opens the door to salvaging strained business relationships with potential future benefit to all.

Contact:

Just Resolve

111 N. Market Street, Suite 300

San Jose, CA 95113

Phone: 855-280-2588

E-mail: contact@justresolve.com

Web: <http://www.justresolve.com>