



LEGAL ADVICE

Avenues of Alternative Dispute Resolution (ADR)

ADR CAN AFFORD BUSINESSES MANY BENEFITS ESPECIALLY
WITHIN THE CONTEXT OF A BACKLOGGED COURT SYSTEM.

BY GEORGE N. SALIBA, CONTRIBUTING WRITER

TWO FORMS OF ALTERNATIVE DISPUTE RESOLUTION (ADR) – mediation and arbitration – are increasingly popular not just because the court systems have enormous backlogs that are significantly delaying trials, but for other reasons including confidentiality and cost-savings advantages. Both mediation and arbitration have their benefits, and although they remain distinct from each other under the ADR umbrella, companies are opting for them.



Arbitration

Expediency and confidentiality are key in the ADR sphere. Some businesses are building arbitration clauses into their shareholder and operating agreements so that if a legal dispute later arises, the parties will not find themselves in a courtroom, but instead in front of an experienced arbitrator (often a retired judge). Even without a prior contract, parties can always agree to arbitration. Proceedings are, again, confidential, and thus keep the public's and industry competitors' prying eyes away from sensitive business methods/processes, intellectual property, and the overall bad-press negativity associated with corporate disputes.

Having legal matters heard

by subject matter experts is yet another arbitration advantage: While court trials are overseen by judges who handle a variety of cases, arbitrators can be selected for specialized knowledge.

"Law is becoming more complicated," The Hon. Noel L. Hillman (Ret.), former US District Court judge for the District of New Jersey, who now chairs the ADR practice at the law firm of Gibbons, P.C. tells *New Jersey Business Magazine*. "[Lawyers] have become hyperspecialized in the [legal] areas that they [practice], and cryptocurrency is a good example. The average lawyer doesn't know anything about cryptocurrency, but there are lawyers who spend their whole practice day dealing with emerging

issues in that area." He similarly explains that people want to "be in a place where they can choose the adjudicator who understands their business, understands their market sector, and [will] be able to resolve the dispute in a way that adds a level of expertise."

Cost-savings via arbitration can, again, be a benefit, but it's not always a clear-cut win. Many retired judges sometimes charge more than \$1,000 an hour, and there may be perhaps three mandatory arbitrators for a case. Even if the \$3,000 per hour fee is split by the disputing parties to \$1,500 an hour, each side's additional legal counsel fees apply. That said, a study by Micronomics cited by the American Arbitration Association

**ARBITRATION
AND MEDIATION,
DEFINED**

ARBITRATION: Arbitration is referral of a dispute to one or more impartial persons for final and binding determination. Private and confidential, it is designed for quick, practical, and economical dispute resolution. Parties can exercise additional control over the arbitration process by adding specific provisions to their contracts' arbitration clauses or, when a dispute arises, through the modification of certain aspects of the arbitration rules to suit a particular dispute. Stipulations may be made regarding confidentiality of proprietary information used; evidence, locale, number of arbitrators; and issues subject to arbitration, for example..."

MEDIATION: Mediation is a meeting among disputants, their representatives, and a mediator to discuss settlement. The mediator's role is to help the disputants explore issues, needs, and settlement options. The mediator may offer suggestions and point out issues that the disputants may have overlooked, but resolution of the dispute rests with the disputants themselves...

SOURCE: "A Guide to Commercial Mediation and Arbitration for Business People," American Arbitration Association

showed that arbitration generally accelerates dispute resolution and saves resources when compared to the often years longer time it takes for a court trial to commence.

Arbitration is also binding, which is good for resolving a dispute in finality, but it could be challenge for the losing party. Short of proving that an arbitrator engaged in fraud or corruption (such as in the extremely rare case of accepting a bribe), the outcome cannot be overturned.

As Michael A. Saffer, co-chair of the litigation department at Mandelbaum Barrett, P.C., explains, "The difficulty is [when] the arbitrator or arbitrators make a decision that you know is just flat-out wrong, factually. You can't appeal

contract, are not a smart choice. You really have to think about transactional lawyers, and think about the nature of the agreement before entering into binding arbitration as a contractual matter."

Another arbitration caveat is the potential for limited discovery, meaning that in the name of expediency, only a certain number of witnesses and/or information may be permitted for consideration – a downside for complex litigation.

Mediation

Another form of ADR – mediation – is mostly more flexible and retains many of the benefits of arbitration, including, for example, confiden-

"The difficulty is [when] the arbitrator or arbitrators make a decision that you know is just flat-out wrong, factually. You can't appeal that because the arbitrators didn't engage in fraud or corruption. So, you're stuck."
—Michael A. Saffer, co-chair of the litigation department at Mandelbaum Barrett, P.C.

that because the arbitrators didn't engage in fraud or corruption. So, you're stuck. That's a real, legitimate ... downside/negative to engaging in arbitration. If the arbitrator makes a good faith mistake, you can't appeal his or her decision." Other attorneys offer caution, but some note that the American Arbitration Association, for example, vettes its arbitrators extremely carefully, and that these individuals often have decades of experience.

Judge Hillman concludes, "Ultimately, businesses want to put their disputes behind them and make money, and any litigation can be a diversion from that. [However], I think a concern is that mandatory arbitration provisions, [put in place] by rote or automatically for every

tiality, cost-savings, the ability to select a specific mediator, and time efficiency.

Suzanne B. English, president of the New Jersey Association of Professional Mediators (NJAPM), tells *New Jersey Business Magazine*, "... It is important to remember that mediation is a voluntary process; even when court ordered, the participants must be there voluntarily. When the parties come together voluntarily, then the mediator is there to act as a guide. Mediation is a much less formal, more congenial process, whereby each of the parties has an opportunity to express and address their concerns. When this happens, it opens the door for the parties to produce their own solution. Hopefully and ideally, this

results in generating a written and signed agreement.”

English also says, “When someone utilizes mediation, they can explore greater flexibility and innovative outcomes to a dispute. As the parties mediating work together towards creating an agreeable outcome, most people leave mediation under amicable circumstances because they both have ownership of the resolution. This leaves an opportunity to continue having a future relationship, which is a further benefit to a small business seeking to protect their brand and reputation.”

Several experts note that if mediation does not result in an outcome to which both parties can agree, then a court trial can be undertaken.

Peter J. Smith, partner at the law firm of Connell Foley, says, “Mediation is available [at any time], whether the ultimate dispute resolution form is arbitration, or whether the dispute resolution forum is left to our judicial system – and by that, I mean [mediation is available] even before an arbitration demand is filed, or before a court proceeding is filed, and at any point up until and through a court proceeding.”

Conclusion

Experts generally agree that the US legal system has only become more litigious and complicated with increased statutes and remedies ... and more attorneys. Smith concludes, “I see alternative dispute resolution as only growing in the years to come. I don’t see it slowing down. I think [intelligent] businesspeople think about how disputes are going to be resolved at different stages of their business relationships as disputes arise, or after disputes are formalized in court, or in arbitration. There should always be an evaluation as to how disputes can be resolved efficiently and economically.” ◉



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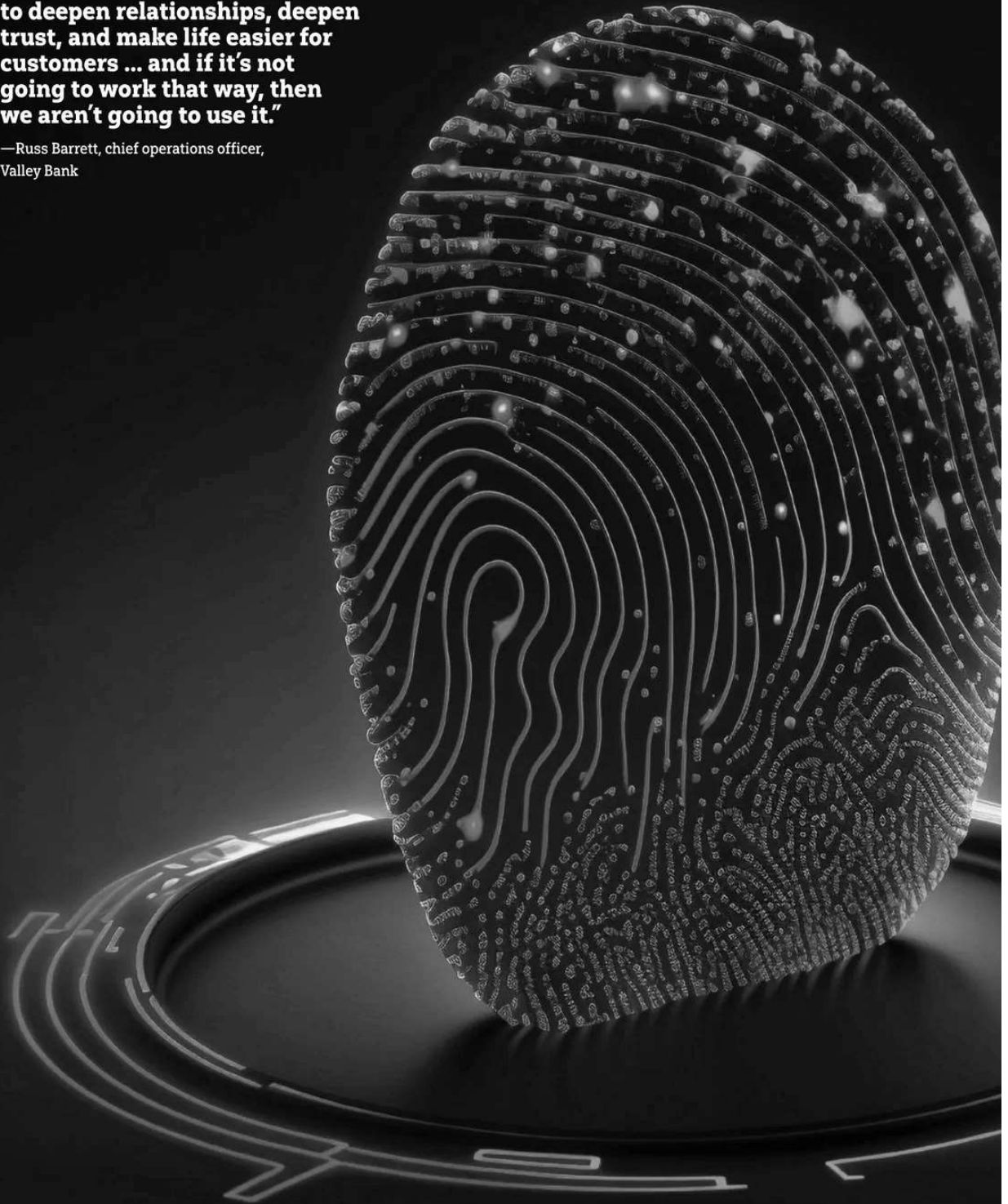
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“We believe strongly that we will be able to use AI’s automation to deepen relationships, deepen trust, and make life easier for customers ... and if it’s not going to work that way, then we aren’t going to use it.”

—Russ Barrett, chief operations officer,
Valley Bank



How AI Will Transform the Banking Industry – Now and in the Future

FINANCIAL INSTITUTIONS ARE LEARNING HOW TO BALANCE THE POWER OF ARTIFICIAL INTELLIGENCE WITH A RENEWED COMMITMENT TO PROVIDING A PERSONAL TOUCH FOR CUSTOMERS.

BY JENNIFER LESSER, CONTRIBUTING WRITER

AS ARTIFICIAL INTELLIGENCE (AI) TRANSFORMS industries ranging from healthcare to manufacturing to customer service, its development also seems to have a myriad of applications for the banking and financial services industries, not the least of which is in improved efficiency, fraud protection and innovation. As banks of all sizes across the Garden State slowly deploy generative AI to improve day-to-day operations for employees as well as enhance the customer experience, they are continuing to learn how to balance its potential with an ongoing commitment to developing personal, human relationships with their customers.

“AI has the potential to significantly impact the banking industry by enhancing security through advanced fraud detection, improving service with chatbots and virtual assistants and increasing efficiency through automation of routine tasks such as transaction processing,” explains Ravi Vakacherla, executive vice president, chief digital and innovation officer at Provident Bank.

While the machine learning aspect of AI has been around for quite some time, Sanjay Sidhwani, chief data and analytics officer for Valley Bank, says it’s the more recent development of generative AI that may have the greatest impacts on the industry in the future. “Since generative AI can analyze data and predict what’s next, financial institutions are already starting to use that capability for efficiency purposes when it comes to their internal documentation,” he explains. “Not only does this help make employees more efficient, but it allows them to focus more of their time on customer-facing activities.”

Russ Barrett, chief operations officer for Valley Bank, agrees that because banks produce such an extensive amount of data, AI will enable their institutions to start to leverage that data to better anticipate customers’ needs while at the same time serving the needs of employees.

While the future possibilities of AI within the banking industry are seemingly endless, Vakacherla notes that AI is currently influencing areas such

TECHNOLOGY TRENDS

as customer interactions, fraud prevention, and data analysis. “Looking ahead, we anticipate continued growth in AI applications, especially in risk management and predictive analytics,” he adds.

Bank of America is already implementing AI-driven solutions like Erica, the first widely available virtual financial assistant, to help with customers’ banking needs and simplify their financial lives. A Bank of America spokesperson says that the institution is seeing more clients engaging with their finances digitally overall; in 2023, 67.1% of Bank of America clients in New Jersey were digitally active, and nearly one-third, or 28.9%, of clients interacted with Erica. The 24.1% increase year-over-year indicates the appetite for client-centered

AI solutions, the spokesperson notes. However, data also shows that while customers are using digital tools more than ever, many still prefer to handle more complex transactions within the financial centers.

Clients across Bank of America businesses, including Merrill and Private Bank, are also increasingly using Erica to help resolve questions and simplify their finances. “The technology can assist by proactively detecting duplicate charges on an account, notifying clients of increased spending or low account balances and addressing transaction-related questions,” she adds. “Bank of America is investing in AI to better understand individuals’ financial decisions as well as deliver tailored insights, personalized advice and relevant resources in real-time.”

But perhaps one of the greatest impacts of AI in the banking world will be within the realm of fraud – an area that financial institutions of all sizes continue to grapple with on a daily basis. “The reality is that fraudsters tend to be very sophisticated these days, and what AI will hopefully be able to do is make customers more sophisticated than the fraudsters,” Barrett explains.

Another key impact of AI in the banking industry lies in reinforcing the trust between both banks and customers as well as banks and regulators. Barrett notes that improvement in the quality of credit underwriting or risk management processes all plays into the capabilities of what AI can do for banks. “The bedrock of banking is trust, and these capabilities relate to the repeatability, consistency and quality that AI can accomplish to help create that atmosphere of trust,” he says. “It certainly won’t be the most elegant of all the potential applications, but I think it’s the one that’s going to be the most meaningful for the banking industry.”

As with any new technology, the implementation of AI within financial institutions could also present some challenges along the way. Vakacherla explains that these challenges may include navigating complex regulatory landscapes, addressing potential biases in algorithms, and ensuring responsible use of customer data. “Balancing innovation with ethical considerations and data privacy remains a focal point for the industry,” he adds. “Striking the right balance between automation and human oversight is crucial to mitigate risks.”

According to Sidhwani, the size of the institution seems to be playing a role in which banks are already investing in AI. He predicts that its usage will become more widespread as banks determine the optimal ways to take advantage of its capabilities. “AI is a transformative technology, and much

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