



International Distribution Institute

# **Early Dispute Resolution: 30 Days from Inception -- No or Limited Arbitration**

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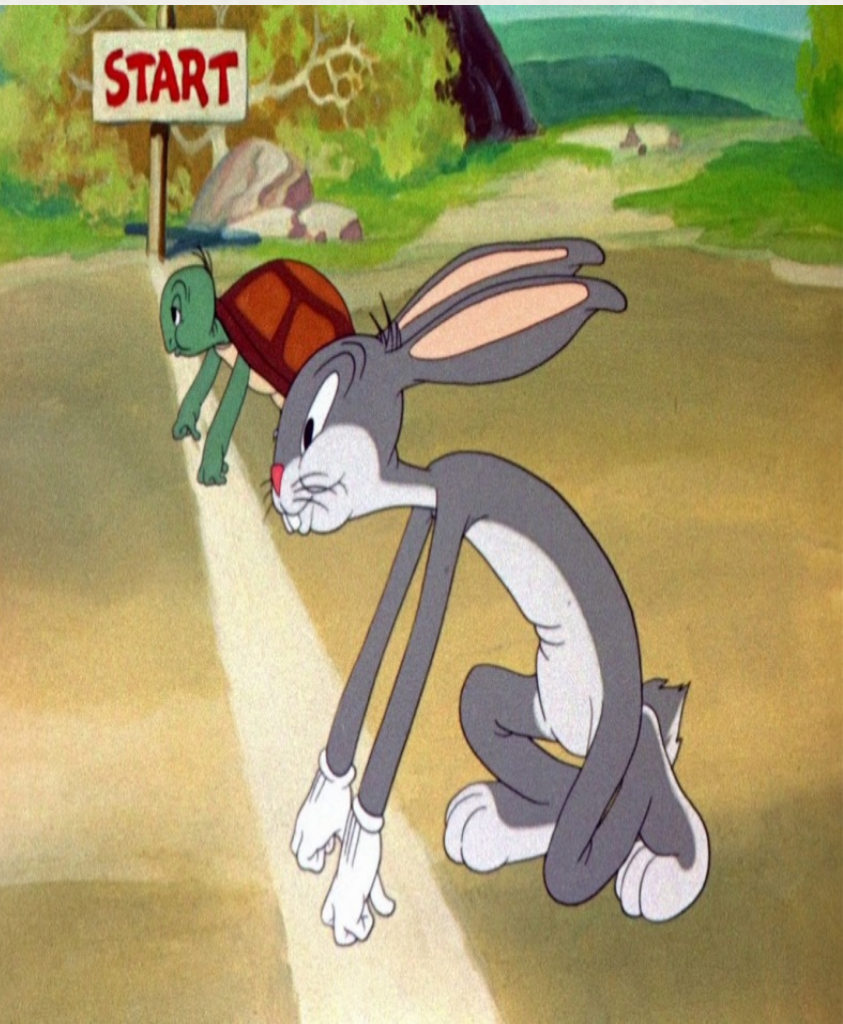
# Early Dispute Resolution

- I. Why it works**
- II. What it is**
- III. How to start doing it**

# I. Why settle early? (the big picture)







# The tortoise & the hare

(now the hare always wins)



# Is EDR Feasible?

Survey says. . . . .

**YES!**

# What We Did

- Surveyed 165 lawyers
- Asked about confidence when forecasting tasks



# The Results

(IDI = 29 participants)

- 10 minute presentation – **57%**  
– (IDI – **58%**)
- key documents/witness - **62%**  
– (IDI – **62%**) -
- Full discovery/motions – **64%**  
– (IDI (written submission of evidence) – **72%**)





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# II. How it works



## The *Necessary Conditions*

- Reasonable parties
- Skilled, ethical counsel
- Want fair result
- *Sufficient Knowledge*

# *Sufficient Knowledge*

You don't need to know everything, just enough to:

- understand the merits of each side's position and leverage, and
- make an informed judgment as to the value of each side's case.





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# **Outline of a 30-day plan**

6

Process	# of bus. days
Internal early case assessment	6
Document and information exchange	7
Case valuation	3
Negotiation or mediation	6

# 1. Early Case Assessment

- Assess litigation risk – *HONEST*
- settlement options (economic/non-economic)
- Determine what needed for *sufficient knowledge*

## 2. Document and information exchange

- Get real: documents, witness interviews or short depositions?
- Reciprocity
- Neutral
- Ethics – *compliant response*



## 2a. Experts

- Adds time
- *Sufficient knowledge* for expert?
- Joint?
- EDR report without prejudice?

## 3. Case valuation

- Attorneys' fees
- Best and worst outcome?
- Reasonably likely outcomes (with odds)

## 4. Negotiate or mediate to resolution

- Fairness-based, interest-based, and adversarial negotiation
- Use of mediator

# What if it doesn't resolve?

- Neutral expert?
- Limited, rapid discovery schedule?
- Single issue, baseball, night baseball, arbitration?
- Continue use of neutral?



# C. How to get started



# EDR contracts and protocols

- Mandatory pre-dispute contract clause
- Voluntary agreement
- Practice protocols



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Questions?