

Questions Regarding the Choice Between ADR or Litigation

The following series of questions may assist in deciding between whether to pursue ADR or to litigate. A (a) response below indicates a case characteristic suggestive of alternative dispute resolution. A (b) response indicates a case characteristic suggestive of litigation.

1. Does a party seek to secure a decision in a public setting?
 - (a) no
 - (b) yes

2. Does a party want to prevent the possibility of a massive or unpredictable jury award?
 - (a) yes
 - (b) no

3. Is establishment of precedent or articulation of public policy an important goal for either party?
 - (a) no
 - (b) yes

4. Do the parties have an ongoing business relationship that they value and would like to retain?
 - (a) yes
 - (b) no

5. Is a vital corporate interest or “bet the company” case involved that requires the full array of procedural protections afforded by a court, including full appellate rights?
 - (a) no
 - (b) yes

6. Is there a need for continuing court supervision of the case or parties?
 - (a) no
 - (b) yes

7. Is the ability to have some degree of control over case scheduling issues an important objective for either party?
 - (a) yes
 - (b) no

8. Does either party (or both) seek to retain unabridged appellate rights?
 - (a) no
 - (b) yes

9. Is the selection of the decision-maker an important objective for either party?
 - (a) yes
 - (b) no

10. Does the case require an understanding of complex or technical factual issues?
 - (a) yes
 - (b) no

11. Is the ability to conduct full discovery an important objective for either party?
 - (a) no
 - (b) yes