

Arbitration Data

**An Interview with Bill Slate,
Chairman and Chief Executive Officer, Dispute Resolution Data**

EDITORS' NOTE Bill Slate led AAA/ICDR for 19 years and he has served as both an arbitrator and a mediator. For 12 years, he was a member of the UNCITRAL Arbitration Working Group. He founded CAMCA (the Commercial Arbitration and Mediation Center for the Americas), and has been a visiting senior fellow in negotiation, mediation, and arbitration at Duke University Law School, and a visiting professor at Seton Hall University Law School, University of Richmond Law School, Virginia Union University, and Virginia Commonwealth University. Slate holds a Juris Doctor Degree from the University of Richmond Law School, and an M.B.A. Degree from the Wharton School of the University of Pennsylvania.

COMPANY BRIEF Dispute Resolution Data (disputeresolutiondata.com; DRD) enables users to discover the value of arbitration and mediation through the exploration of aggregated international case data. DRD provides cost, time, and other valuable process information for users to formulate strategies that transform their levels of service to the end user. DRD is headquartered in Charleston, South Carolina and works with data contributors and subscribers worldwide.

Would you talk about your vision for what this opportunity was and what made you feel this would fill a need?

One of our co-founders, and my mentor, Peter Scotese, asked me a while back what my legacy was and I said data in arbitration and mediation globally. There was no data because of the belief that arbitration and mediation must be confidential. As a consequence, it was thought that everything that happens in an arbitration is confidential when, in truth, confidentiality only relates to the identity of the parties, and perhaps the advocates and arbitrators and mediators. There is a process that goes on from the time it is disputed until it's completed that people worldwide have put their faith in but there is no data to back up why they should be doing this.

The global economy relies on commercial agreements and arbitration is the assurance that promises will be kept. We're entering into a deal and signing a contract, the pre-dispute clause, which suggests that if we ever have a dispute we won't sue one another, but we will use arbitration or mediation as the assurance that promises will be kept.

We wouldn't have a global economy without arbitration, which is so important because there is a global UN treaty that was developed in the late '50s in New York, which now has over 150 nations

as signatories. It's the Treaty on the Recognition and Enforcement of Foreign Arbitral Awards.

Each nation that signed that agreement has agreed that an arbitration award about a commercial matter will be treated in their nation as if it came from their highest court.

The interesting parenthetical is there is no similar treaty for court awards because people don't trust other nation's courts – but they will trust international arbitration, so that makes the global economy work.

As someone who had been in the field for 20 years leading an international entity, I felt that the absence of data was in some measure inhibiting growth because with very savvy commercial parties using arbitration all the time, there is a bit more information I'd like to have about predictability, risk management, costs, and time. Why does this information have to be confidential? There is no good reason.

I left a position that I greatly enjoyed because I realized this could not be accomplished by one institution. I knew that other institutions in the world would not share their data with another institution but they would share it with a freestanding entity.

For the past three years, I have been meeting with the people who want and need this data. They include large law firms who are advocates globally in this field of arbitration, insurers, and reinsurers because in almost every major international commercial case there is an insurance policy in place; corporate legal departments – there is probably no greater proselytizer in the world for the use of arbitration and mediation than corporate legal departments; and third-party insurers who have been around a long time insuring litigation at the domestic level, and they have moved conservatively into international arbitration. They look at disputes in a very scientific way.

Is an education process necessary since the need for this hasn't been recognized?

Yes, in our industry there is a lot of anecdotal information but there are not a lot of facts. In April of 2014, we met with 10 significant arbitral institutions and laid out the concept for what we would do and how we would do it. The arbitral institutions saw this would be of value to the users and it is information that could and should be shared.

Everybody in this field is interested in confidentiality, and what we had to sell each one of these institutions on is the reality that we want no confidential information; we want the process information. Out of 10 institutions, all said they were interested in pursuing discussions.



Bill Slate with wife and co-founder, Debora Slate, at the marketing launch of DRD at the IBA in Vienna, Austria in October 2015

The template is very detailed but also very straightforward. There are 99-plus data points in every arbitration case that we ask questions about and if parties use mediation first, there are about 45 data points for each mediation case.

In order to have a base, we have asked institutions to give us five years of historic data. In those historic data cases from 2010 to 2015, for instance, some entities weren't used to collecting data, and all have varying degrees of historical data, so we have fewer questions to cover the most frequently asked data questions.

No one knows today how many international commercial arbitrations exist on an annual basis and thus, the question we hope to answer is "How many cases are there?" We've come up with an estimate of about 9,000 international commercial arbitrations per year and we have data as we commence this initiative approximating 3,000 cases – representing about 120,000 data points.

Worldwide, when an arbitration is filed, about 50 percent of those cases settle before there is ever an award – but at what point do they settle? Before the hearing or on the proverbial "courthouse steps"?

As an attorney, planning for how this might go is very important. This information has not been seen in this way before. Our exclusive relationship with arbitral institutions allows attorneys to get under the hood and learn more around how arbitration and mediation are being conducted around the world.

Do you have to work throughout the firms to build this relationship?

Most large law firms have discrete sections that are devoted to international commercial arbitration, but it's not unusual to have 100 lawyers in a given firm working in this area.

There are the advocates and those who serve as arbitrators, and there are transactional lawyers who are writing contracts and they take the last arbitration contract off the shelf and just plug it in. However, down the road when that case comes to arbitration, it's chaos when it ultimately doesn't apply.

To address this, presently we have 28-plus case types beginning with aerospace cases and going to warranties, and everything in between from mergers and acquisitions to intellectual property, finance, banking, construction, etc.

Now, when someone has an opportunity to write an arbitration clause, he or she can access the DRD database and look at risk management factors, timeframe, strategies, budgets, and cost and build their own pre-dispute resolution clause around the data that has informed them how to best protect their client. ●