

The Global Pound Conference Series: What We Learned, What We Know, Where We Go

The North American Perspective

by Bryan J. Branon and Kathleen A. Pierz



This month's guest columnist, Bryan Branon is a member of the ADR Section. He poses some provoking questions around the purpose and outcome of the Global Pound Conference, an internationally renowned series of conferences about dispute resolution. There are questions about the increase of access to justice, the challenge to have commercial users participate more meaningfully in commercial alternative dispute resolution, and "the current state of the non-adjudicative process of dispute resolution." We hope you enjoy his research, findings, and perspectives. If you have a position on this or any other ADR topics send your pieces, points of view, and comments to fedbaradr@gmail.com.



Kathleen A. Pierz has a special focus on the expansion of arbitration and mediation in developing economies as a tool to build investment opportunities. Bryan J. Branon is the Director of ADR Services for the American Arbitration Association (AAA) in their Seattle regional office.

Forty years after the original Pound Conference named in honor of Harvard professor Roscoe Pound, who introduced the concept of the "multi-door courthouse"—that access to justice needs to embrace alternative and, indeed, "appropriate" dispute resolution such as mediation, the Global Pound Conference Series (GPC Series) took a pulse on the current state of civil and commercial dispute resolution and identified areas for future growth and improvement throughout the world. Beginning in Singapore in March 2016 and ending in London in July 2017, 28 conferences were held in 24 countries bringing diverse stakeholders together to begin a conversation about shaping the future of dispute resolution and providing access to justice. The program included: users (in-house counsel), advisers (private practice lawyers), non-adjudicative providers (mediators/conciliators and their supporting organizations), adjudicative providers (judiciaries, arbitrators and their supporting institutions), and influencers (academics, government officials and policy-makers) to begin a conversation about shaping the future of dispute resolution and providing access to justice. In total over 3,000 stakeholders heeded the call to join this global conversation including 489 in North America where conferences were held in Mexico City, New York, Toronto, Austin, San Francisco, Los Angeles, Miami, and Baltimore (the Mid-Atlantic GPC). In short, the GPC Series is a seminal event in the history of dispute resolution.¹

THE GPC SERIES

The GPC Series grew out of the International Mediation Institute (IMI) conference in London in October 2014, *Shaping the Future of International Dispute Resolution*, where over 150 delegates from diverse stakeholder groups representing 20 countries produced data that suggested significant gaps may exist between what disputants expect versus what is currently being provided by advisers, providers, practitioners, educators, and policy-makers.

What began as a hope of 15 conferences blossomed into 28 where a Central Organizing Group created a template for Local Organizing Committees (LOCs) to create their own GPC conferences. Using interactive, state-of-the-art voting technology and the generous support of nine global sponsors and more than 50 global partners, the GPC Series events were divided into four panels, each with a moderator, to discuss: "Access to Justice & Dispute Resolution Systems: What do Parties/Users Need & Expect," "How is the Market Currently Addressing these Party/User Needs and Expectations," "How can Dispute Resolution be Improved? (Overcoming Obstacles and Challenges)," and "Promoting Better Access to Justice: What Action Items Should be Considered and by Whom?"

After introducing each topic, attendees used their mobile devices to cast their votes and provide commentary on a thoroughly vetted standardized set of core questions be used at each GPC Series conference. Results were made immediately available for discus-

sion at each conference and a full report comparing results from the GPC Series in its entirety will be reviewed and analyzed by a committee of independent academics and made available free of cost on the GPC Series website: globalpound.org. The goal of compiling such data is to engage and provide stakeholders with reliable, comparable, and actionable information, locally and across borders, in order to understand the current state of dispute resolution and to help to shape its future. What follows is a summary of what was learned, what is known, and where we go moving forward using the aggregate results from all 28 Global GPCs compared to the eight North American Series events.²

WHAT WE LEARNED

Stakeholder Demographics

Data from the Global GPC Series and the North American Series results were similar—non-adjudicative providers constituted the largest share of stakeholder attendees—31 percent and 33 percent, respectively. Users, in contrast constituted the least amount of stakeholders—15 percent of attendees globally and 16 percent in North America. The Austin GPC was the only North American Series conference which attracted a majority of users employing a creative “invitation-only” approach. In Miami, advisers constituted the overwhelming majority of stakeholders—49 percent which was 10 percent more than all other stakeholders combined. Mexico City also had a majority of adviser stakeholders—33 percent, also 10 percent more than all other stakeholders combined (globally 26 percent). New York was the most balanced and well-attended event in North America with a six percentage point spread among all of the stakeholders—the majority of which were Adjudicative Providers (26 percent globally, 24 percent in North America). The remaining four GPC North American Conferences were a majority non-adjudicative providers (31 percent globally, 29 percent in North America). Accordingly, the North American GPC series is a representative sample size of the Global GPC Series to compare.³

Stakeholders Prefer Non-Adjudicative or Hybrid Processes to Resolve Their Disputes

Mediation, pre-dispute evaluation, and the use of hybrid dispute resolution processes (those which combine elements of two or more separate processes into one) stood out as the most effective commercial dispute resolution processes according to the GPC Series results.⁴ When asked where governments, administrators, and policy-makers should look to promote better access to justice for those involved in commercial disputes, it wasn't legislatures; rather the Global and North American stakeholders preferred mostly non-adjudicative processes such as pre-dispute evaluation, compulsory mediation, and protocols to promote alternative dispute resolution (ADR).⁵ What processes should be prioritized to improve the future of commercial dispute resolution? Non-adjudicative processes or a hybrid combination were the top three choices. Stakeholders further indicated litigation or arbitration should be the least prioritized process utilized. Of interest, 30 percent of Austin's majority-user stakeholders thought litigation or arbitration would be important to improve commercial dispute resolution. In contrast, in New York, where the majority of stakeholders were adjudicative providers (judges, arbitrators and their affiliated institutions), arbitration and litigation were the least prioritized.⁶ The takeaway: when even adjudicative providers indicate a preference for non-adjudicative processes; therefore, it may be safe

to assume that this is the preferred dispute resolution process among GPC stakeholders.⁷

Stakeholders Won't Hold Non-Adjudicative Providers Responsible for Promoting Access to Justice or to Influence Change

Further, when asked who has the greatest responsibility for taking action to promote better access to justice, the Global stakeholders voted for every demographic offered ahead of mediators. The North American stakeholders' preference was that mediators were the fourth most responsible ahead of the parties and in-house counsel.⁸ Which stakeholders have the potential to be most influential in bringing about change in commercial dispute resolution? Stakeholders aren't entirely sure but it's definitely not mediators—both the Global and North American stakeholders placed mediators last. Rather, the adjudicative providers and judges or the government voted, though the results were fairly evenly spread.⁹

Education

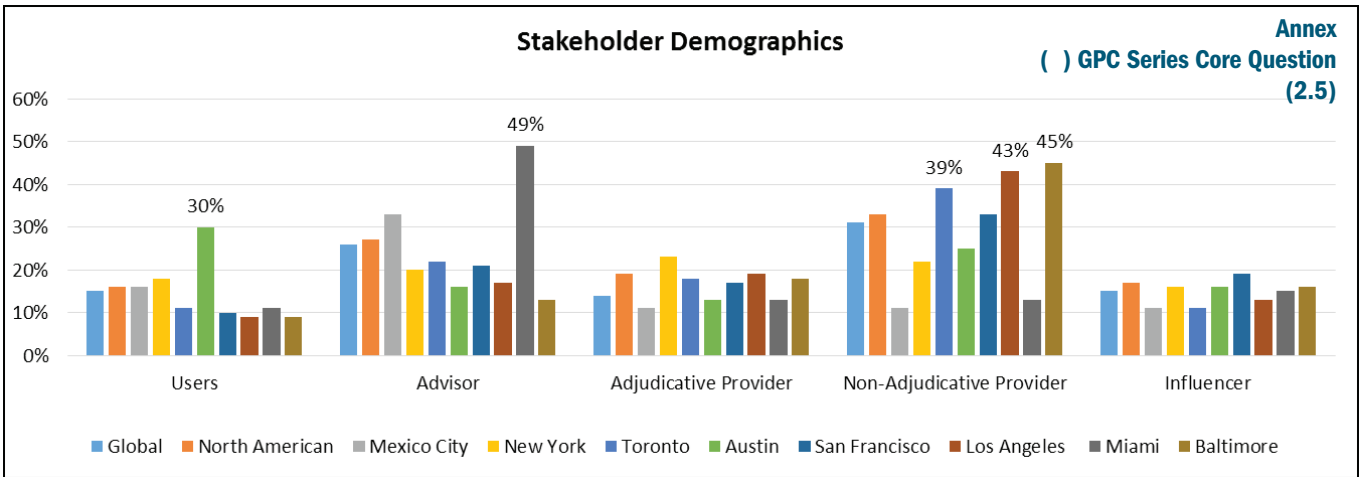
Lack of knowledge was voted the second most important obstacle or challenge facing parties seeking to resolve a commercial dispute. Financial or time barriers were the most important obstacle. So what is the most effective way to improve parties' understanding of the different commercial dispute options available? Seventy percent of North Americans chose education in business or law schools, (91 percent of Toronto stakeholders) while 64 percent of Global stakeholders said the same. Is this realistic? Would law school or business school provide *access* to justice or serve as a barrier? Collaborative community ADR centers were selected by 30 percent of stakeholders in North America and 34 percent globally. Further, the Mid-Atlantic GPC discussed the use of technology to bridge this gap. Online courses at a low cost or free of charge are readily accessible to a commercial party. Out of these three options (though technology was not included in this Core question), it would seem the stakeholders chose a barrier to accessing justice since law schools and business schools are both expensive and would require additional time—the No. 1 obstacle facing parties in a commercial dispute. If the GPC Series stakeholders' are really concerned with providing access to justice, why affirm an option that, in practice, would serve as a barrier? Surely, the future of dispute resolution should supply easier *access* to dispute resolution and avoid additional *barriers* which add time and expense.¹⁰

Technology

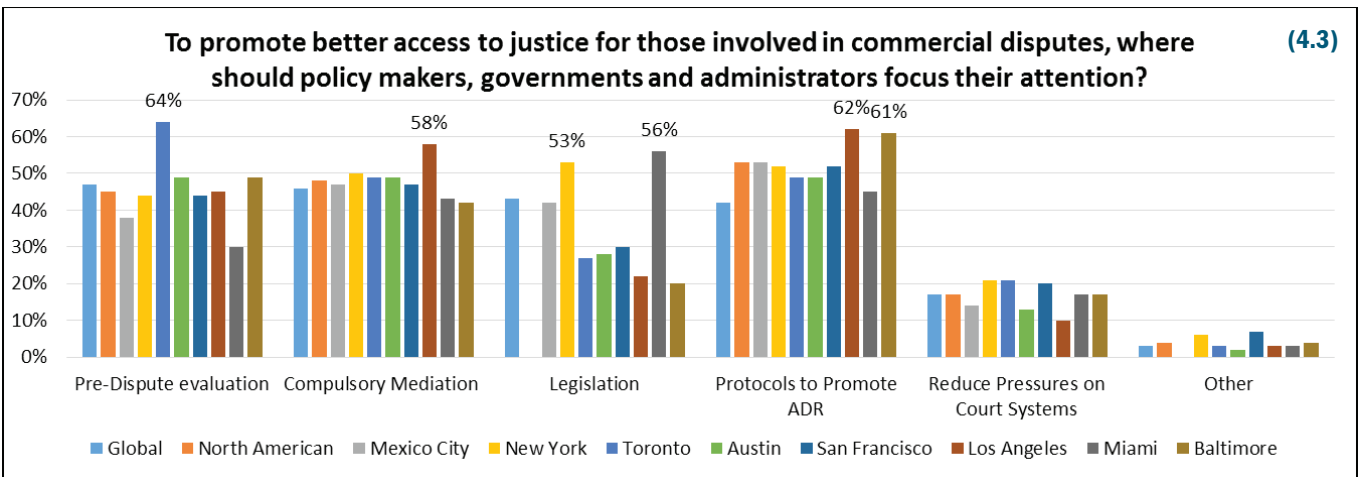
Surprisingly, when stakeholders were asked what innovations or trends were going to have the most significant impact on the future of commercial dispute resolution, 30 percent of North American stakeholders chose technical innovations—the third choice behind great collaboration and changing corporate attitudes. Further, technology ranked fifth out of six choices globally. Topics such as the use of artificial intelligence (AI) and online dispute resolution were discussed at length at conferences around the world. Why is technology not more of a priority? If stakeholders are talking about AI and online dispute resolution now, it seems technology would continue to advance and integrate into the legal profession even further. It would seem it would help shape the future of dispute resolution.¹¹

Relationship or Financially Oriented?

Another interesting consideration the GPC Series raised was whether parties and counsel value financial considerations more or



Demographics	Global	North American	Mexico City	New York	Toronto	Austin	San Francisco	Los Angeles	Miami	Baltimore
Users	15%	16%	16%	18%	11%	30%	10%	9%	11%	9%
Advisor	26%	27%	33%	20%	22%	16%	21%	17%	49%	13%
Adjudicative Provider	14%	19%	11%	23%	18%	13%	17%	19%	13%	18%
Non-Adjudicative Provider	31%	33%	11%	22%	39%	25%	33%	43%	13%	45%
Influencer	15%	17%	11%	16%	11%	16%	19%	13%	15%	16%



	Global	North American	Mexico City	New York	Toronto	Austin	San Francisco	Los Angeles	Miami	Baltimore
Pre-Dispute evaluation	47%	45%	38%	44%	64%	49%	44%	45%	30%	49%
Compulsory Mediation	46%	48%	47%	50%	49%	49%	47%	58%	43%	42%
Legislation	43%	43%	42%	53%	27%	28%	30%	22%	56%	20%
Protocols to Promote ADR	42%	53%	53%	52%	49%	49%	52%	62%	45%	61%
Reduce Pressures on Court Systems	17%	17%	14%	21%	21%	13%	20%	10%	17%	17%
Other	3%	4%	0%	6%	3%	2%	7%	3%	3%	4%

inter-party relations in a commercial dispute resolution proceeding. Before starting a commercial dispute resolution process, the outcome parties most often want in North America and globally was financial—76 percent in North America and 69 percent globally. In comparison, relationship-focused outcomes accounted for only about a third of the parties' first priority. Further, the data from the GPC indicates providers tend to prioritize financial outcomes over a relationship focus by nearly a 2-to-1 ratio. Clearly, stakeholders place a higher value on money than maintaining relationships—even as it is cited as the top obstacle facing commercial disputants and a movement away from adjudicative processes.¹²

WHAT WE KNOW

We know that the North American Series was a representative sample size of the global results. Non-adjudicative providers globally and

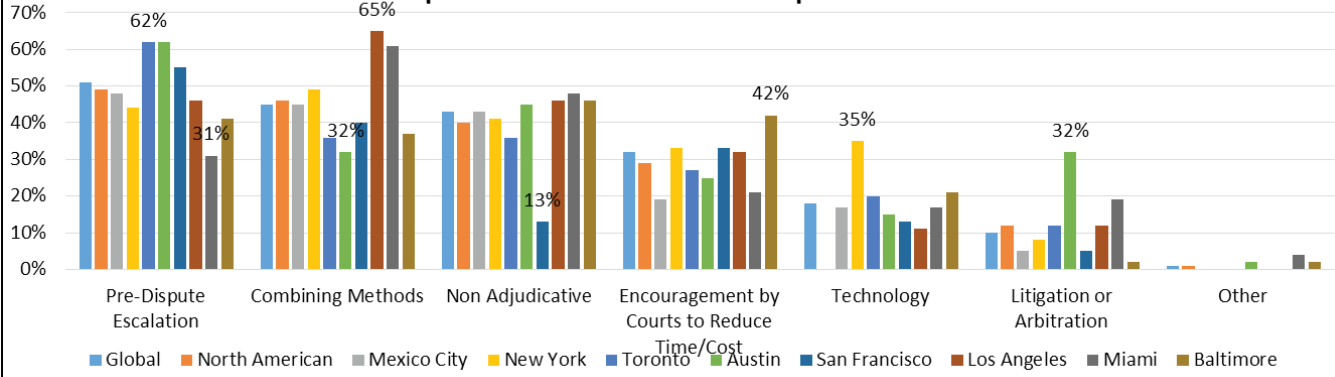
in North America have taken more of an interest in the GPC Series than any other stakeholder demographic. We know that the collective demographic data favors non-adjudicative providers' processes or a hybrid while allowing this demographic to avoid responsibility for promoting access to justice or to influence change. Further, though time and cost are cited as the No. 1 obstacle for commercial parties, an overwhelming majority of stakeholders think they should be educated at law and business schools. Technology, though discussed, was not given priority in shaping the future of dispute resolution and providing access to justice.

WHERE WE GO

The GPC Series was a tremendous accomplishment for the dispute resolution field, built primarily on the backs of volunteer LOCs. Thousands answered the call to be a part of the global conversation

To improve the future of commercial dispute resolution, which of the following processes and tools should be prioritized?

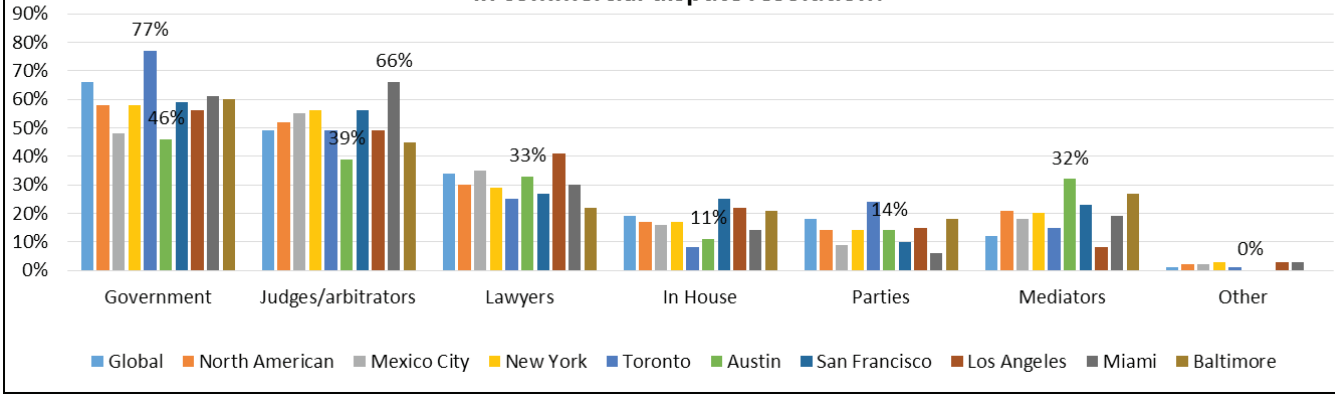
(3.2)



	Global	North American	Mexico City	New York	Toronto	Austin	San Francisco	Los Angeles	Miami	Baltimore
Pre-Dispute Escalation	51%	49%	48%	44%	62%	62%	55%	46%	31%	41%
Combining Methods	45%	46%	45%	49%	36%	32%	40%	65%	61%	37%
Non Adjudicative	43%	40%	43%	41%	36%	45%	13%	46%	48%	46%
Encouragement by Courts to Reduce Time/Cost	32%	29%	19%	33%	27%	25%	33%	32%	21%	42%
Technology	18%	17%	35%	20%	15%	13%	11%	17%	17%	21%
Litigation or Arbitration	10%	12%	5%	8%	12%	32%	5%	12%	19%	2%
Other	1%	1%	0%	0%	0%	2%	0%	0%	4%	2%

Who has the greatest responsibility for taking action to promote better access to justice in commercial dispute resolution?

(4.1)



	Global	North American	Mexico City	New York	Toronto	Austin	San Francisco	Los Angeles	Miami	Baltimore
Government	66%	58%	48%	58%	77%	46%	59%	56%	61%	60%
Judges/arbitrators	49%	52%	55%	56%	49%	39%	56%	49%	66%	45%
Lawyers	34%	30%	35%	29%	25%	33%	27%	41%	30%	22%
In House	19%	17%	16%	17%	8%	11%	25%	22%	14%	21%
Parties	18%	14%	9%	14%	24%	14%	10%	15%	6%	18%
Mediators	12%	21%	18%	20%	15%	32%	23%	8%	19%	27%
Other	1%	2%	2%	3%	1%	0%	0%	3%	3%	0%

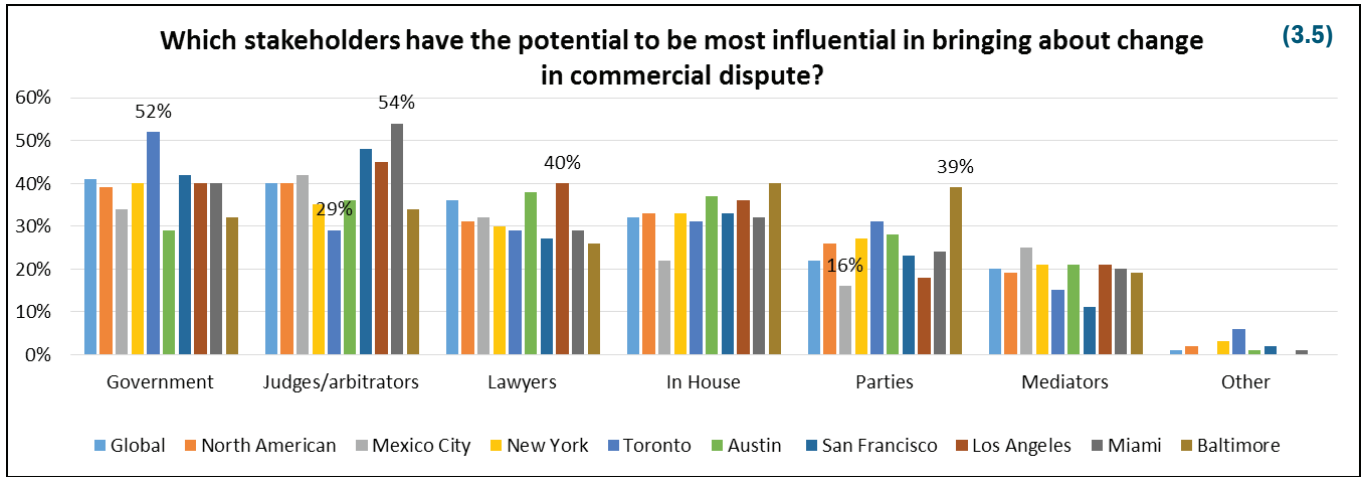
and play an active role in shaping the future of dispute resolution and improving access to justice. Extremely useful data was collected and important considerations were raised. But, we must keep the conversation going.

If we're discussing the future of dispute resolution why weren't young people a key demographic? There is evidence of their absence in the data where the importance of technology is not shown to be a priority. The core questions did not provide great emphasis on diversity in the profession though discussed at length an important consideration at this time. Inconsistencies abound in the data that requires further discussion. Did stakeholders think law school and business school would increase access to justice for the popula-

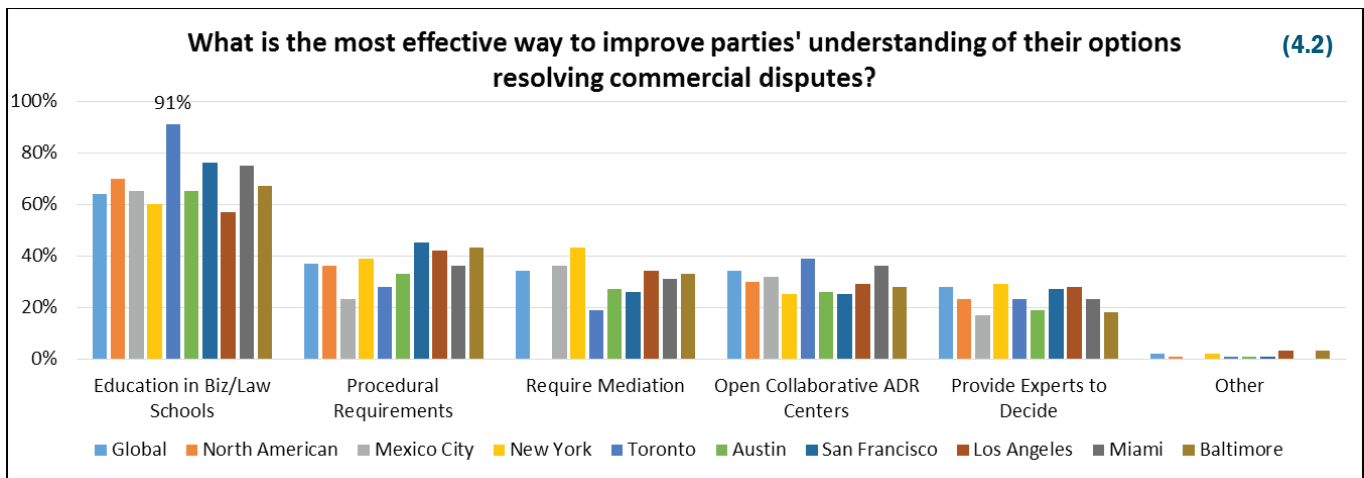
tion at-large? And if the GPC Series is concerned about the future of commercial dispute resolution, how do we get the commercial users to participate in greater numbers? These questions and more mean that the GPC Series did what it set out to do. It engaged the international dispute resolution community, provided actionable data and, ultimately, helped shape the future of dispute resolution and provided access to justice. ☺

The views, examples and opinions expressed in this article are those of the authors and do not necessarily reflect the official policy or position of the American Arbitration Association or Judicial

continued on page 28



	Global	North American	Mexico City	New York	Toronto	Austin	San Francisco	Los Angeles	Miami	Baltimore
Government	41%	39%	34%	40%	52%	29%	42%	40%	40%	32%
Judges/arbitrators	40%	40%	42%	35%	29%	36%	48%	45%	54%	34%
Lawyers	36%	31%	32%	30%	29%	38%	27%	40%	29%	26%
In House	32%	33%	22%	33%	31%	37%	33%	36%	32%	40%
Parties	22%	26%	16%	27%	31%	28%	23%	18%	24%	39%
Mediators	20%	19%	25%	21%	15%	21%	11%	21%	20%	19%
Other	1%	2%	0%	3%	6%	1%	2%	0%	1%	0%



	Global	North American	Mexico City	New York	Toronto	Austin	San Francisco	Los Angeles	Miami	Baltimore
Education in Biz/Law Schools	64%	70%	65%	60%	91%	65%	76%	57%	75%	67%
Procedural Requirements	37%	36%	23%	39%	28%	33%	45%	42%	36%	43%
Require Mediation	34%		36%	43%	19%	27%	26%	34%	31%	33%
Open Collaborative ADR Centers	34%	30%	32%	25%	39%	26%	25%	29%	36%	28%
Provide Experts to Decide	28%	23%	17%	29%	23%	19%	27%	28%	23%	18%
Other	2%	1%	0%	2%	1%	1%	1%	3%	0%	3%

Arbitration and Mediation Services nor does it constitute legal advice.

Beyond Alternative is a column of the ADR Section, for the promotion of ADR as an integral and necessary part of dispute resolution. It includes practice tips, issues, case discussions, commentaries, and answers to questions for all things ADR.

Endnotes

¹The Global Pound Conference Series 2016-2017, <http://www.globalpound.org>.

² *Id.*

³See Annex t61 2.5.

⁴*Id.* t61 4.2.

⁵*Id.* t61 4.3.

⁶*Id.* t61 3.2.

⁷*Id.* t61 3.1.

⁸*Id.* t61 4.1.

⁹*Id.* t61 3.5.

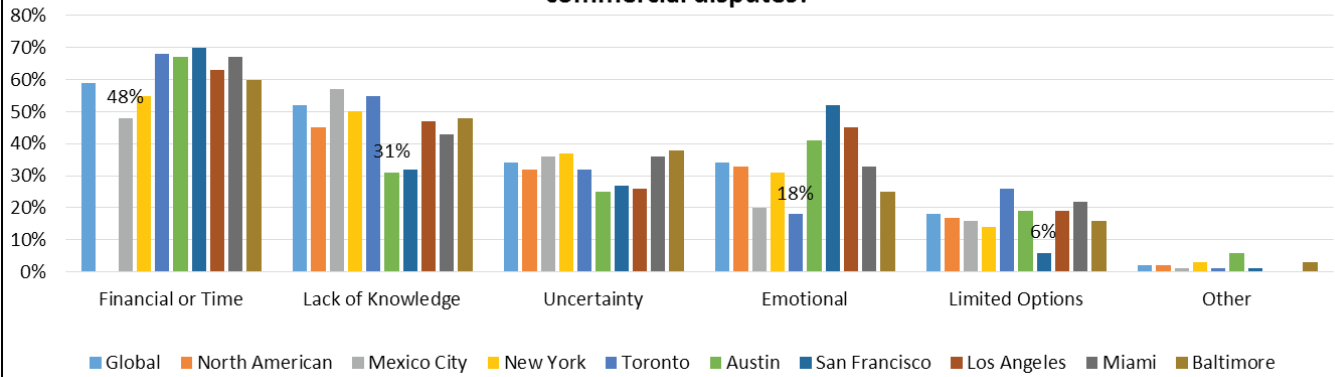
¹⁰*Id.* t61 3.1.

¹¹*Id.* t61 3.2.

¹²*Id.* t61 2.1.

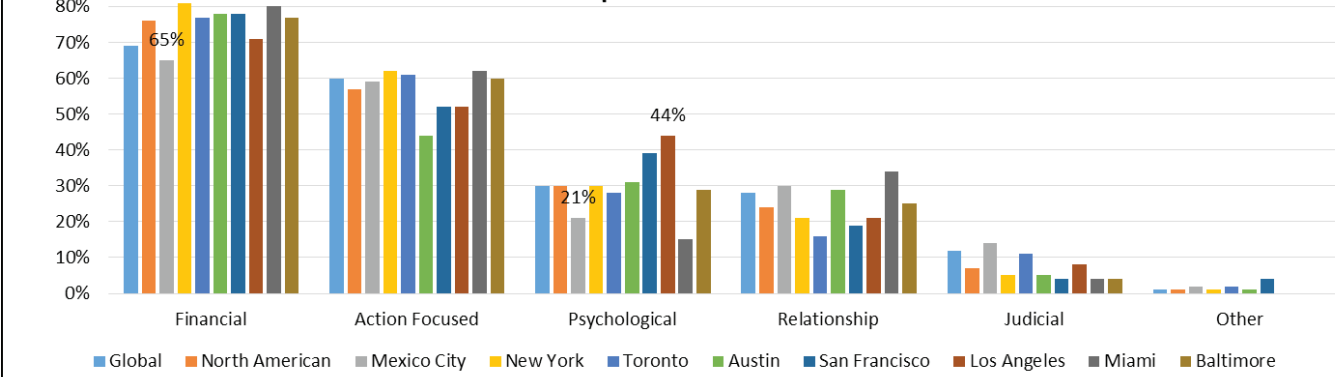
continued on page 42

What are the main obstacles or challenges parties face when seeking to resolve commercial disputes? (3.1)



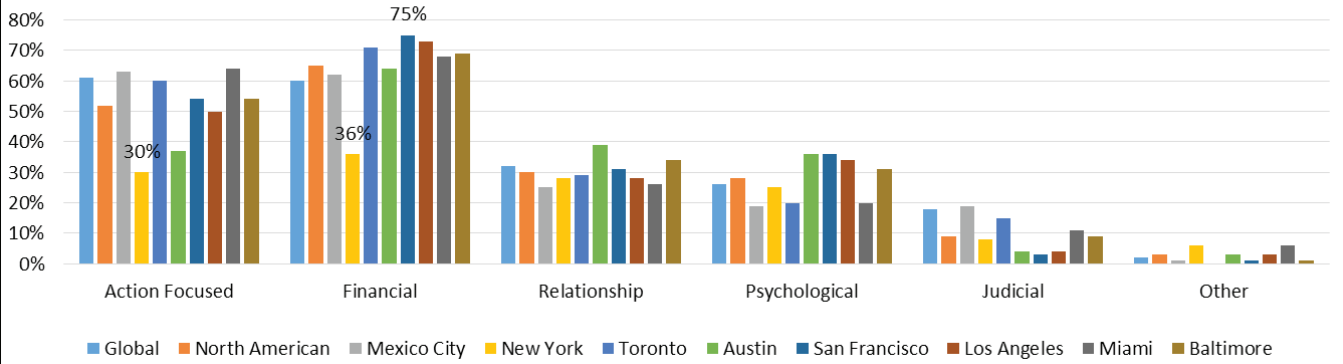
	Global	North American	Mexico City	New York	Toronto	Austin	San Francisco	Los Angeles	Miami	Baltimore
Financial or Time	59%	48%	55%	68%	67%	70%	63%	67%	60%	
Lack of Knowledge	52%	45%	57%	50%	55%	31%	32%	47%	43%	48%
Uncertainty	34%	32%	36%	37%	32%	25%	27%	26%	36%	38%
Emotional	34%	33%	20%	31%	18%	41%	52%	45%	33%	25%
Limited Options	18%	17%	16%	14%	26%	19%	6%	19%	22%	16%
Other	2%	2%	1%	3%	1%	6%	1%	0%	0%	3%

What outcomes do parties most often dispute want before starting a process in commercial civil dispute resolution? (1.1)



	Global	North American	Mexico City	New York	Toronto	Austin	San Francisco	Los Angeles	Miami	Baltimore
Financial	69%	76%	65%	81%	77%	78%	78%	71%	80%	77%
Action Focused	60%	57%	59%	62%	61%	44%	52%	52%	62%	60%
Psychological	30%	30%	21%	30%	28%	31%	39%	44%	15%	29%
Relationship	28%	24%	30%	21%	16%	29%	19%	21%	34%	25%
Judicial	12%	7%	14%	5%	11%	5%	4%	8%	4%	4%
Other	1%	1%	2%	1%	2%	1%	4%	0%	0%	0%

What outcomes do providers tend to prioritize in commercial dispute resolution? (2.1)



	Global	North American	Mexico City	New York	Toronto	Austin	San Francisco	Los Angeles	Miami	Baltimore
Action Focused	61%	52%	63%	30%	60%	37%	54%	50%	64%	54%
Financial	60%	65%	62%	36%	71%	64%	75%	73%	68%	69%
Relationship	32%	30%	25%	28%	29%	39%	31%	28%	26%	34%
Psychological	26%	28%	19%	25%	20%	36%	36%	34%	20%	31%
Judicial	18%	9%	19%	8%	15%	4%	3%	4%	11%	9%
Other	2%	3%	1%	6%	0%	3%	1%	3%	6%	1%

**Earn your LL.M.
from UA
(without a GPS)**

**We've taken geography
out of the equation
to bring top quality
education to you.**

The University of Alabama School of Law delivers live online lectures and interactive instruction by leading scholars and practitioners from across the country to wherever you are.

Earn your LL.M. in Tax or Business Transactions online from The University of Alabama and see how far you can go.

AlabamaLLM.ua.edu/fedbar



ALABAMA LAW
THE UNIVERSITY OF ALABAMA®
Online Programs