



Parallel Track Settlement Counsel

*Parallel Track
Settlement Counsel*

STRADLEY
RONON

Defining Parallel Track Settlement Counsel

Parallel track settlement counsel are seasoned Alternative Dispute Resolution (ADR) practitioners who work in tandem with litigators trying a case. While allowing trial counsel to position the case for successful disposition by motion or trial, settlement counsel play the role of negotiator and facilitator, focusing on open dialogue, dispute resolution and conflict management. They interact with opposing counsel to resolve disagreements, from the smallest discovery dispute to global resolution of the entire case, leaving trial counsel free to strategize, develop and execute in order to prevail in the courtroom.



The paradigm is this: On receipt of a new case from a client, the matter is assigned to two kinds of lawyers – litigation counsel and settlement counsel. They serve distinct roles – trial counsel remain focused on motion practice and trial, while

settlement counsel stay attuned to opportunities for resolution. The heat of battle can sometimes chill diplomacy. Settlement counsel ensure that the parties do not miss chances to move toward resolution, when that is in the client's best interests.

The Value Proposition

Why hire one lawyer to litigate and one lawyer to evaluate and, if appropriate, seek settlement, when the litigator, in all likelihood, can and will ultimately settle the case anyway? The answer is cost.

SUCCESSSES

Examples of Stradley Ronon's Successful Service as Settlement Counsel

In the Southern District of New York, a major national refinery sued a Fortune 200 chemical company for an alleged breach of a long-term chemical agreement. As settlement counsel, a Stradley Ronon attorney worked with the client's national trial counsel and the business representatives of the chemical company to propose, structure and prepare for a mediation. Taking a lead role in the negotiations, the attorney helped the parties achieve a workable business solution to the problem in two days.

In Delaware Superior Court, a foreign manufacturer sued a U.S. distributor of its specialty lamps. The U.S. distributor's regular outside counsel developed and carried out litigation strategy while a Stradley Ronon litigator, acting as settlement counsel, negotiated a successful settlement with the manufacturer's U.S. law firm.

In the Eastern District of Pennsylvania, plaintiff asserted claims for trademark infringement, counterfeiting and unfair competition against our client. Stradley Ronon litigators focused on trial preparation while a Stradley Ronon IP lawyer acted as settlement counsel, brokering the terms of a favorable resolution.

This is one situation where hiring two lawyers is designed to be less expensive than hiring just one. In appropriate cases, early intervention of settlement counsel can shorten the litigation process and significantly diminish the overall expense of satisfactorily resolving the matter.

Two Different Jobs Require Two Different Lawyers

Consider for a moment how different litigation and settlement actually are. Trial is a method of resolving those rare disputes where communications between the parties have completely broken down and a courtroom victory is the ultimate goal. It involves a fight so intractable that the parties cannot find a resolution themselves. Settlement is the opposite – a process by which the parties come together to agree on a resolution that both can live with. When viewed in this light, the case for hiring litigation counsel to focus on fighting and settlement counsel to focus on compromising makes great sense.

A Different Perspective, a Different Role

Clients want to resolve disputes and find certainty. But sometimes clients



and their adversaries view advancing the idea of settlement early in a litigation as a sign of weakness. Trial counsel may need to set a litigation tone that signals firmness of position, not willingness to compromise.

Clients may foster this by demanding their litigators project an aggressive posture and a focus on winning. Settlement counsel can better appreciate the limitations of a client's case than litigation counsel, who must be set on convincing others – judges, adversaries, opposing parties – that any weakness can be overcome.

Managing Litigation Externalities

Litigation is sometimes a necessity, but most clients seek to avoid lawsuits for obvious reasons. Litigation is a distraction to management that can prevent it from focusing on the entity's business. Its cost is measured in more than just dollars spent; it sidetracks management and diverts personnel who must respond to discovery requests and testify at deposition or trial. Its focus is backward-looking fact development instead of forward-looking strategic planning. Parallel track settlement counsel provide an opportunity to limit these litigation externalities by focusing on compromise.

Most Litigation Settles

Parties resolve most civil litigation by settlement, not trial, but often not until late in the game. Some cases require significant discovery and motion practice to fully inform parties of the strengths and weaknesses of their positions. While most cases will settle, the question is when. Where

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compromise makes the most sense, settlement counsel play the role of negotiator without diminishing the litigator's place as prime adversary. Settlement counsel seek to develop early exit strategies and remain focused on resolution.

The Bottom Line

Not every case warrants use of settlement counsel. Yet, experience shows that staffing a litigation matter with settlement counsel from the outset can more than pay for itself by providing avenues of dispute resolution that might not exist without a team member whose role is that of conciliator, not adversary. In the end, settlement counsel can save clients time and money by allowing them to reach earlier solutions to their disputes, when doing so is consistent with their business objectives.

For more information on our *Parallel Track Settlement Counsel*, visit
www.stradley.com/ADR.



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ABOUT STRADLEY RONON

For more than 95 years, Stradley Ronon has helped private and public companies – from small businesses to Fortune 500 corporations – achieve their goals. With nine offices and more than 200 attorneys, Stradley Ronon is proud to help companies manage their legal challenges and grow their businesses.

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LOCATIONS

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