

## VERDICTS &amp; SETTLEMENTS

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## The Pioneer

*As a second act, Richard Chernick chose to devote his career to the development of arbitration, and became an industry leader.*

By Nicolas Sonnenburg  
Daily Journal Staff Writer

LOS ANGELES — In 1993, Richard Chernick had a decision to make. He was finishing his service as president of the Los Angeles County Bar Association, and had spent three years devoting much of his time to the administration of the organization.

His firm, Gibson, Dunn & Crutcher LLP, had given Chernick leeway to dedicate himself to the role. During that time, many of his clients had been assigned to other partners.

“Do you start all over again to start a practice as a trial lawyer, or do you do something else?” Chernick said, remembering contemplating the work he’d need to do to build a sizeable book of business again.

Chernick, who had been at Gibson Dunn since 1971, chose a second option: Alternative dispute resolution.

While litigating cases at one of Los Angeles’ premier white shoe firms, Chernick had been an early participant in arbitration work as an advocate.

On occasion, he served as a neutral for the American Arbitration Association. But just as his time leading LACBA was ending, Triple A began building its large complex case program. Realizing that the practice was destined to grow, Chernick took a job with Triple A as the company’s first full-time arbitrator.

In Chernick’s 23 years as a neutral, he has emerged as a leader in a field that has blossomed into a significant sector of the legal industry.

“He was one of the pioneers,” said Marshall Grossman, a partner at Orrick, Herrington & Sutcliffe LLP who has known Chernick for decades and has had cases before the neutral on numerous occasions. “He was one of the first people who was active in the practice of the law and decided to specialize in arbitrations.”

Today, Chernick describes himself as a “managerial” arbitrator, a term he said he coined but that has been adopted by others in the field.

To realize the promise that arbitration is a quicker, cost-effective alternative to public litigation, he likes to ensure that cases run speedily with few hiccups.

“Arbitrators, in my opinion, ought to be very proactive from the very beginning,” Chernick said. “They



Alex Drecun/Special to the Daily Journal

ought to roll up their sleeves and work with the parties from the very first conference to figure out a process that works for that case.”

Now with JAMS, his practice focuses on complex commercial disputes, but includes employment, intellectual property, real property and international disputes.

“I would characterize [his arbitration style] as a very cerebral and law-based approach, rather than ruling from the gut or ruling from the heart,” Grossman said. “He is fair, he is neutral, he listens, he has a brilliant legal mind and he doesn’t play favorites. You couldn’t ask for a better package.”

Chernick’s goal has been to instill this approach in all JAMS neutrals.

In 2001, the company’s then-CEO, Steve Price, recruited Chernick to build its arbitration arm. Today, he directs its arbitration practice.

Consistent with his emphasis on efficiency, Chernick expects attorneys to understand the nuances of the arbitration before appearing before him. Extreme formality is unnecessary, but a completely casual tone is also inappropriate. “Histrionics” don’t work with him either, he said.

“Cool your jets,” said Munger, Tolles & Olson LLP partner John W. Spiegel when asked what advice he would give an attorney appearing before Chernick.

“Fiery rhetoric and accusing the other side of misconduct is completely unproductive,” said Spiegel, who has had three arbitrations before Chernick.

“You won’t get anywhere with

Richard on any of that. He’s looking for a reasonable outcome, particularly on all the procedural battles that occur,” Spiegel said. “He’s not going to come out all on behalf of one side.”

Attorneys who have worked with Chernick, who, like most neutrals, takes a somewhat relaxed approach to evidence, note that he has an adept understanding of what evidence to consider in an arbitration.

“I’ve never been worried that he’s going to let something irrelevant influence him,” said Jenner & Block LLP, partner Richard L. Stone. Tami S. Smason, a partner at Foley & Lardner LLP, said Chernick’s approach to discovery is “practical.” He allows plenty of document discovery, but, unless the parties have agreed otherwise, Chernick is very restrictive with depositions.

“He doesn’t allow meaningless interrogatories,” Smason said. “He lets most evidence in, but he’ll cut parties off, in a polite way, when they’re getting way off line or being repetitive.”

Although he likes cases to proceed quickly, Chernick is thorough.

He rarely grants dispositive motions, preferring cases to be heard. He estimates his rate of granting them at about one in 15. When an attorney feels a case might merit such a ruling, Chernick has a streamlined process.

He asks attorneys to write a two- to three-page memo detailing what they’re requesting, sometimes asking that they address the leading case in the area, *Schlessinger v. Rosenfeld, Meyer & Susman* 40 Cal.App.4th 1096.

**Richard Chernick**  
JAMS

Los Angeles

**Areas of specialty:**  
arbitration, business/  
commercial, international,  
construction, entertainment  
and sports, federal law,  
governmental/public agency,  
health care, insurance,  
intellectual property, personal  
injury/ torts, real property, surety

“Tell me what you want, what you think the issue is that you think is going to be the winner for you. Tell me why it’s a winner,” Chernick said.

Given his reputation as a respected neutral and an authority on the field — he chairs USC Gould School of Law’s ADR program’s advisory board and has written several treatises on the practice — Chernick has worked on several international cases.

Smason noticed that Chernick “didn’t seem put off by technical English language issues” that other arbitrators on the panel struggled with.

It was his ease that helped guide the case along, Smason said.

When resolving a case, Chernick believes the key to success is writing a well-reasoned award.

In the early 2000s, when Chernick was trying to recruit lawyers to become full-time arbitrators rather than only mediators, writing awards was their biggest fear. They thought each case would give them a temporary ally and a permanent enemy, he said. But Chernick convinced them otherwise.

“I persuaded them that if you do it right and if you write awards that accurately and adequately provide reasons for what you’re doing, you are only going to impress the parties because they are going to see that you managed the case properly, you heard the evidence, you were able to synthesize the evidence, read the case law, come to a decision, and that gives lawyers cover with clients,” he said.

Smason, whose client lost before Chernick but paid less than an initial settlement offer, saw this thoroughness in the award Chernick wrote in her case. “It was extremely detailed and well thought out,” she said.

*Here are some attorneys who have used Chernick’s services:* Eric M. George, Browne George Ross LLP; Patricia L. Glaser, Glaser Weil Fink Howard Avchen & Shapiro LLP; Bridget S. Johnsen, Sidley Austin LLP; Janet Levine, Crowell & Moring LLP; Stephen C. Neal, Cooley LLP.