

BostonSolv



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Interview with Principals at BostonSolv

High-Profile recently had the good fortune to meet with Blasdel Reardon and Roland Kluver, two of the five principals of BostonSolv, for this informal interview. BostonSolv is a newly formed group that helps the construction community to resolve disputes in nonadversarial ways but also provides training at the beginning of projects for dispute recognition, team building, and dispute management. Here is what they had to say:

High-Profile: Could you tell us a little about what you offer the construction industry?

Kluver: We are a group of five individuals all whom have considerable experience in construction. Generally, we have backgrounds in construction, subcontracting, management, and design. The five of us have a common interest in solving problems through mediation. We feel it is a more appropriate, less costly, and more speedy solution to construction disputes than litigation or arbitration.

We are offering our services primarily in the Boston Area, but can offer our services to clients anywhere.

HP: Has this been around for a while or is it new?

Reardon: Mediation is relatively new. Unlike litigation or arbitration where, after hearing evidence, someone makes a decision for you, mediation is different. In mediation the parties to the dispute decide among themselves how they want to resolve the matter. The role of the mediator is to facilitate their trying to come together.

HP: Does mediation work for contractor/subcontractor, owner/contractor, or both?

Reardon: Yes. All of the above. It could be between owner and contractor, contractor and subcontractor, subcontractor and subcontractor, contractor and designers ... like in any dispute it only takes two to tango, it can be

any two people or any two firms on a construction project. Mediation is less costly, more timely, and a less acrimonious way to resolve the dispute.

Kluver: One of the distinctive features of mediation is that the disputants are in control of the process. They can have a sense of where they are going. The facilitator is trying to bring them together, trying to help them avoid litigation, which is more costly — more protracted. If it fails there is always the alternative to go into litigation or arbitration. But we feel that mediation has many merits over the other two, and that is why we are offering it.

One of the things that we offer is that we have subject matter knowledge, so combined with our interest and skills as mediators we have knowledge of what people do in the construction industry.

HP: When would someone realize that they need your help? I assume if they were sued that would be too late.

Kluver: No, it is not too late, but it does mean that litigation has to be suspended while all attempts at mediation are undertaken. In some cases the judge will ask the disputants in a law suit, "Have you tried mediation?" and will ask that they attempt to do so before the court proceedings go on.

Reardon: Actually many courts, federal courts in particular, are requiring that you go through a set of hurdles,

such as mediation, before you can ever get into the courthouse with your construction case.

HP: Can mediation be just between the two parties or does it require a third party?

Reardon: Mediation implies that you have a third party working with you. If you have only the two parties, that is the process of negotiation. Whereas with the mediator or mediation team, there is more of an attempt to establish what are your mutual interests, whether it's two parties to the dispute or many parties to the dispute.

HP: What makes a good mediator?

Reardon: The characteristics of a good or successful mediator is to be knowledgeable and also to be able to be trusted by both of the parties.

To earn that trust you need to show that you know what their needs are. That you can take things in confidence in a typical mediation, somewhat like in a court proceeding, but not as formal, where each party is able to state with or without counsel, what their complaint is, what the issue is. The other side is asked to listen politely and give their rebuttal. The mediator presides, and establishes a certain standard of decorum. The mediator then very often meets privately with each of the disputants. These private sessions can be very important because in them the mediator can forecast what would be the outcome if the mediation is not successful, such as litigation where you would, in effect, lose control of the process.

Parties to a dispute may have counsel, but usually it is more beneficial to the mediation to have the responsible representatives of the parties, the disputants themselves, as the primary presenters or participants in the mediation, because they know deep down what it is that they are willing to do. For example I was in a court ordered mediation recently, where it was a requirement of the mediation that someone from the firm be in the mediation to help make decisions. There is no question that he made decisions and concessions and worked totally differently, than the person who was first on the scene.

HP: How fast is the process?

Reardon: Mediation can be quite quick. Members of BostonSolv are available to appear in a mediation within days. Timing is so critical. It is important to resolve things quickly. There is an old expression, "Construction

disputes are not like fine wine; they are more like fish: After a few days they can get bad."

Kluser: Mediation has the advantage that it strives to keep work going. If there is a dispute that threatens to stop work and you can get to the mediation table, there is a good chance to keep the job going.

HP: Are there other areas that BostonSolv offers its services?

Kluser: There are two other areas: One is to function as a neutral. Although when people start projects they don't like to think that they will end up with disputes. Big projects can benefit by having someone as part of the team from the very beginning. It's called a Neutral or it might be one person or a dispute resolution board with more than one person. The purpose of the person is to be familiar with the project. To understand the players, to be available, to in effect, like a family doctor, be at their service whenever these things come up. To watch for disputes, help head them off, and help resolve them.

And a second aspect of where we offer our services is in the area of training. Sometimes people don't know where disputes come from, and one of the things we feel we can offer because we have been kicking around in the industry for a long time is to be able to talk to owners, institutions, people who have construction programs, and give them training; whether it be from two hours to a half day, or a whole day of training, to let them know where disputes come from, what causes them, how to watch for them, how to see them, and how to deal with them.

HP: Does BostonSolv serve public work or private?

Reardon: We make very little distinction between whether the work is public or private. Sometimes the public work may have different procedures, but we are actively involved in both.

HP: What size are the projects you work on?

Reardon: Right now we have proposals in with owners with almost billion dollars in projects and another with a three million dollar one. I have been asked to contribute input on a \$150,000 project, but nonetheless a potential dispute that could become serious.

Blasdel Reardon and Roland Kluser are principals at BostonSolv LLP in Boston, Mass.