



Out of the Jungle: A Better Approach to Construction Industry Disputes

By Blase Reardon

Recently a friend asked me, “What are you passionate about professionally?” My immediate answer was that I would like to see less conflict in our industry. I would especially like to see more people in the construction industry work to resolve differences among themselves instead of relying upon others, such as arbitrators and the courts, to hand down a decision. In arbitration as well as in the courts, participants involved in disputes have little or no control over the outcome and generally have little or no knowledge of why such a decision was reached.

As a civil engineer and contractor involved with the construction industry for more than 35 years and currently a mediator/arbitrator in this industry, I enthusiastically agreed to write a series of articles for *High-Profile* about the construction industry and dispute resolution.

In preparing this first article, one particular issue seems to stand out: Why is the construction industry becoming so fraught with disputes? (By “construction” I refer to all aspects of our business, including planning, design, construction, contracting/subcontracting, from residential remodeling and home building to large commercial building and infrastructure projects.) The reasons are many, but they seem to focus mainly on four common threads:

- technical uncertainty,
- human behavior (or misbehavior, depending upon one’s perspective),
- poor communications, and

- faulty management of the design and construction process.

Technical uncertainty is the absence of, or inconsistency of, information between drawings, specifications, contract documents, and site conditions. By human behavior (or misbehavior) I mean everything from unfair risk sharing to the way we deal (or don’t deal) with our coworkers (partners) on a project. Poor communications evolves from numerous participants in a single project failing to inform each other in a timely way about their respective concerns and objectives, or failing to recognize their common goals and interests. Lastly, faulty management implies not having the leadership and business procedures in place to meet the complete requirements of the project.

Given the foregoing scenario, construction has become a jungle in which the participants frequently find themselves embroiled, instead of enjoying the experience. Worse yet, when the time comes to extract themselves from a project, the participants (owners, users, designers, contractors, public authorities, neighbors, and financiers) tend to rely upon others (who are not usually constructors themselves) to resolve their conflicts. The result is often a lengthy, very costly, and acrimonious process.

Fortunately, there are encouraging signs that many people in the construction industry are moving away from such adverse approaches. Increasingly, participants are making an effort to anticipate potential conflicts and recognize impending disputes. When such disputes do occur, participants are employing various techniques to try to resolve them in a civil manner without resorting to arbitration or litigation.

These techniques — which include Partnering, Dispute Review Boards, Early Neutral Intervention, and Mediation — are collectively known as Alternative Dispute Resolution, or A.D.R. My forthcoming articles, written with assistance from some of my peers, will look at how these methods work and how people can use them not only to resolve problems, but also to retain working relationships. Meanwhile, I look forward to your comments

and suggestions. Together, I hope we can bring the construction industry out of the contentious jungle and onto the plain of enjoyment, where we can share the satisfaction of completing sound and worthwhile projects without acrimony.

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