

MAXIMIZING THE VALUE OF DRB'S

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MAXIMIZING THE VALUE OF DRBs

- 97% of DRB decisions are accepted
- Focus more on the scheduled regular meetings and avoid formal hearings
- The DRB process is suitable for many industries with the same characteristics as construction

THE DRB PROCESS WORKS

- Amounts disputed in construction are substantial
AND
 - Construction is technically complex
BUT
 - Parties are not patently dishonest
AND
- Parties desire to resolve their differences amicably
(need to preserve long term relationship)

THE MAJOR AREAS OF DISPUTE IN CONSTRUCTION

- Interpretation of the contract
- Changes and extra work

THREE MAJOR ELEMENTS TO REACH FAIR AND JUST CONCLUSIONS

- The law (rules)
AND
- The facts (evidence)
AND
- Credibility of witnesses

PROCESSES AVAILABLE TO RESOLVE DISPUTES

Negotiation

- Parties bargain and decide for themselves.
- Potential Claim Management/Contract

Administration Plan

- Agree on entitlement before work is performed
- Identify necessary evidence and assure facts are accumulated and preserved

PROCESSES AVAILABLE TO RESOLVE DISPUTES

Mediation

- Little attention to law and facts.
- Objective is to lower parties' expectations so that an agreed settlement becomes possible
- “Best” result if both parties are equally dissatisfied with the outcome

PROCESSES AVAILABLE TO RESOLVE DISPUTES

Arbitration

- Arbitrator has limited opportunity to understand and consider legal theories.
- Arbitrator has limited opportunity to review and understand the facts
- Has to rely on his/her judgment of witnesses
- Arbitrator is human
- Expensive, time consuming, final even if wrong

PROCESSES AVAILABLE TO RESOLVE DISPUTES

Litigation

- Limited opportunity for judge to understand and consider complex legal theories.
- Limited opportunity for judge to review and understand the facts
- Rely on his/her judgment of witnesses
- Judge is human
- Expensive, time consuming, if wrong the right to appeal has limited consolation

PROCESSE AVAILABLE TO RESOLVE DISPUTES

A DRB Focusing on Formal Hearings

- Except that there are three persons who will police each other, similar to arbitration

A DRB Maximizing the Use of Scheduled Regular Meetings

- Get to know the contract in detail
- Are personally familiar with the facts
- Know the witnesses
- DRB members are also humans, but...

Maximize The Value of DRBs

- Manage the DRB process to promote self resolution (negotiation)
 - Ask penetrating questions
 - Encourage owner and contractor to establish and follow internal dispute resolution procedures
 - Only allow a hearing after all other owner/contractor efforts failed

Maximize The Value of DRBs

- Involve DRB as early as possible after notice to proceed
- Assure the owner/contractor keep the DRB informed of everything and don't allow them to hide unresolved issues.
- Don't skip scheduled DRB meetings.
- Unless there are no outstanding issues, don't extend the frequency of DRB meetings

Maximize The Value of DRBs

- Force owner/contractor to prepare properly for every DRB meeting
 - Assure owner/contractor inform the DRB early of any disagreements on the interpretation of the law/contract so that DRB members can educate themselves and ask the right questions .
 - Insist on well-planned job tours to assure that the DRB members are and stay on top of the facts.
- Conform strictly to the Contract and Specifications

Maximize The Value of DRBs

- Before or as soon after a request for a DRB hearing is/was made by any of the parties, attempt to assure that “top” management are aware and get involved. They will act and if necessary remove un-cooperating personalities early to avoid a hearing.

CONCLUSION

- Although DRB members are also human, it is the most objective, informed, unbiased, fair and just process that either owner or contractor will ever participate in on any dispute not resolved through negotiation
- Hence, if well managed, it will avoid formal hearings, claims and litigation
- If used properly it will enhance trust and maintain good relations between owner and contractor
- Focus on the scheduled regular meetings

CONCLUSION

Any industry where:

Amounts in dispute are substantial

AND

Are technically complex

BUT

Parties are not patently dishonest

AND

Parties desire to resolve their differences and maintain a long
term relationship

Will benefit from using the DRB process