WHY ADR IS SMART BUSINESS

PANEL DISCUSSION

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Why ADR is Smart Business - Panel Discussion

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34
WHY ADR IS SMART BUSINESS

• Corporate Contractor Perspective – Bob Ingersoll, Vice President Contracts and Pricing, Boeing

• Wall Street View – Wolfgang Demisch, Managing Director, Dresdner Kleinwort Wasserstein
ADR – Tools for a Successful Settlement

• **Scheduling Analysis** – Greg Crider or Jennifer Oen, Directors at Peterson-Barrington

• **Independent Pricing in ADR** – Brian Hammer, Chief Financial Officer, Tucker Alan Inc.
Alternative Dispute Resolution
The Boeing Company

Robert J. Ingersoll
Vice President,
Contracts & Pricing
The Boeing Company
Alternative Disputes Resolution

- Why ADR?
- Gunship Experience with ADR
- Boeing’s Commitment
- Key elements for ADR Success - Using ADR for a Win-Win
Why ADR?

- No perfect contracts - unforeseen problems occur
- ADR Facilitates open information exchange
- Involves stakeholders - increases buy-in
- Focuses on facts
- Provides structured environment/process
- Reduces adversarial nature of conflict management
- Dispute cycle time reduction and cost avoidance
- Improves long-term partnering
The ADR approach facilitated moving long standing dispute issues to resolution...

- 10 years in “pouring cement” around our respective positions
- Affordability, cycle time and the relationship were blurred by past attitudes and litigation process
- 3 years in FCC - once ADR identified, settlement reached in 6 months
Why ADR Worked

- Participation by high level executives on both sides with limited prior program ties
- Environment of mutual respect & dedication at program management level
- Well-developed document base existed
- Availability of key program personnel
- Open exchanges by all involved
- Knowledgeable, well respected & truly neutral mediator
Boeing’s Commitment

- Boeing ADR Agreements:
  - Initial company to execute Air Force “Overarching Agreement for ADR”
  - CPR pledge agreement signed

- Boeing working to deploy ADR approaches company-wide
  - Targeted for application on all programs
  - Engaging suppliers in use of ADR
  - Using ADR for employee/company disputes
  - Process Councils have a Stakeholder responsibility
Key Elements for ADR Success

- Commitment from Leadership
- Re-enforcing attitude & behavior
- Take the right issues into ADR
- Training and awareness
- Keep the ADR process simple (user friendly)
- Fund & resource the process
- Promote common sense resolution
- Success: win-win resolutions!
Wall Street View

Wolfgang Demisch, Managing Director,
Dresdner Kleinwort Wasserstein
Air Force/NDIA ADR Conference:
Why ADR Is Smart Business

The Expert’s Role in the ADR Process

Jennifer Oen, Director
Greg Crider, Director

Peterson Barrington Consulting

San Antonio, TX - April 17, 2001
Key Elements for ADR Success

- Adequate Preparation
- Effective Presentation
- Accurate Litigation Risk Assessment
Adequate Preparation

- **Schedule Experts:**
  - Analysis of issues
  - Identification of impact ("causal link")
  - Assessment of responsibility for delay

- **Cost Experts:**
  - Quantification of damages

Objectives, independent assessments of:
  - causation
  - schedule impact
  - financial impact
Effective Presentation

- Role of Schedule Expert
  - Assessment of “As-Planned” schedule
  - Assessment of “As-Built” schedule
  - Identification of critical path
  - Analysis of issues
  - Assessment of responsibility for delay and disruption
Schedule Expert’s Role

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<tr>
<th>Task</th>
<th>CY 01</th>
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As-planned
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## Schedule Expert’s Role

### As-planned Critical Path

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Schedule Expert’s Role

As-Built Delay Quantification

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Total Delay = 12 months
### Schedule Expert’s Role

**As-Built Delay Quantification**

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**Schedule Details:**
- **Engineering:** 3 mos
- **Avionics:** 1 mos
- **Weapons Systems:**
- **Special Equipment:**
- **H/W S/W Integration:** 2 mos
- **Software:**
- **Aircraft Mod:** 1 mos
- **Flight Test:** 4 mos
- **Production:** 2 mos
Schedule Expert’s Role

Issue Analysis and Causation

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<th>ISSUES</th>
<th>CY 01</th>
<th>CY 02</th>
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<tr>
<td>Green A/C Delays</td>
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<td>Avionics Delay</td>
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<td>Software Development Changes</td>
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<td>Design Changes</td>
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<td>TOTAL Issue Impact To Critical Path:</td>
<td>3 months delay</td>
<td>1 month delay</td>
<td>2 mos delay</td>
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- **Responsibility**
  - Red: Air Force
  - Blue: Contractor
  - Green: Shared
Accurate Litigation Risk Assessment

- Combined effort of company, counsel and outside experts

- Realistic assessment of potential litigation risk associated with each issue/cause of action
  - Legal/entitlement risk
  - Quantum/pricing risk

- Basis for making/assessing settlement offers
Alternative Dispute Resolution

Brian M. Hammer
Chief Financial Officer
TUCKER ALAN INC.
Topics

• What Makes ADR Successful?

• How Does An Independent Assessment Benefit The ADR Process?

• Improving Linkage Between Entitlement, Causation And Pricing

• Some Differences Between Litigation And ADR
What Makes ADR Successful?

- Both Parties Willing To Have Open Discussions
- Decision Makers Are Motivated And Have Authority To Settle Case
- Sufficient Time At ADR For Each Side To Tell Its Story
- Proper Focus On Big Ticket Issues
- Neutral Mediator / Arbitrator
- Proper Timing
Using Independent Assessments In The ADR Process

• Independent Parties Can Include
  – Internal “Non-Advocate” Review Teams
  – Outside Counsel
  – Outside Consultants

• Perform Assessments Prior To ADR

• Provide An Impartial View Of Case Strengths And Weaknesses To Decision Makers
What Do Independent Parties Bring To The Process?

• ADR Experience

• An Understanding Of Litigation Risks / Likely Outcomes

• Ability To Communicate Complex Issues In Simple Terms

• Alternative Approaches And Solutions

• Independence That Can Help Break Through Communication And Trust Issues
Elements Of A Claim

Entitlement → Causation → Pricing

ADR Is Smart Business
Linkage Between Entitlement, Causation And Pricing

- Entitlement And Causation Determine Appropriate Pricing Methodology(ies)
  - Total Cost, Modified Total Cost, Discrete, Other

- Effort Should Be Balanced Between Entitlement, Causation And Pricing Issues

- Don’t Waste Time On Issues With Little Or No Financial Impact
The Two-Pronged Approach To Improving Linkage

- Two-Pronged Approach
  - Price Issues Identified During The Legal Review
  - Quantify Cost Growth By Function, Task, Time And Determine Causes Of Growth

- Perform Overall Reconciliation Of Cost Growth, Claimed Costs And Unclaimed Costs By Element

- Don’t Miss The “$500 Million” Gorilla
Some Differences Between Litigation And ADR

• Litigation “Filters” Communications
  – ADR Allows Decision Makers To Hear Directly From Attorneys, Fact Witnesses And Experts

• Litigation Discovery Is Formal And Restrictive
  – ADR Often Allows Subject “Experts” To Discuss And Resolve Issues Face-To-Face

• Analyses Fully Supported By Time Of Trial
  – ADR Often Takes Place “Mid-Stream”
  – Requires Flexibility On Both Sides

ADR Is Smart Business