

Preventing Adversarial Supplier Relationships: A Standing Neutral Has Significant Promise

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The Standing Neutral will help prevent adversarial relationships GETTY

There is no magic wand that can instantly resolve disputes and conflicts as they occur. But there is a proactive way to prevent adversarial supplier relationships through the use of a Standing Neutral.

The Covid-19 pandemic caught organizations by surprise. But the fact that the pandemic has been putting additional pressure on supplier relationships should not have been a surprise. The [International Institute for Conflict Prevention & Resolution](#) (CPR) - an independent nonprofit organization established in 1977 that promotes the prevention and resolution of conflict – is a fan of shifting the focus on dispute resolution upstream to dispute prevention using prevention techniques, especially the Standing Neutral.

The ‘What’ Of A Standing Neutral

A Standing Neutral is defined as a trusted, independent expert advisor (or a panel of advisors) chosen by contracting parties at the beginning of the relationship with the goal to maintain a healthy relationship. Using a Standing Neutral shifts the emphasis from dispute resolution to dispute prevention by having a neutral become a key part of the contracting parties’ governance structure and help solve misalignments while they are small, long before they become a dispute and there is a need for mediation, arbitration or litigation.

Allen Waxman, CPR’s President and CEO and a former business executive himself at Pfizer and other companies, thinks there is tremendous value in having a trusted neutral third-party advisor on hand to help contracting parties facilitate healthy discussions around how to resolve misalignments in the day-to-day course of doing business.

He says: “Organizations enter into business arrangements with other organizations with the best of intentions to optimize value for all involved. But it is presumptuous to think that, as they enter into those arrangements, they

are able to anticipate the myriad of circumstances and dynamics that are likely to arise over the course of their relationship and that may cause conflict. Even the best of contracts that provide for guidance and guardrails on the parties' interactions will be incomplete or have gaps that create shades of grey in how to manage those conflicts. Without "real-time" measures to mitigate the conflict, too often it can develop into misalignment, distrust and, ultimately, a value-depleting dispute. Committing at the outset to putting in place a trusted advisor, a Standing Neutral, who can help the parties work through these conflicts as they arise can be the difference between a successful outcome to their arrangement and an unsuccessful one."

Standing Neutral Concept Gets a Boost

Waxman shares why CPR is keen to educate lawyers and business professionals on the benefits of using a Standing Neutral. "In the past, organizations have traditionally focused on dispute resolution. Organizations have made huge strides in expanding their approach to resolution from the default of an expensive court process to using mediation, arbitration and other appropriate dispute resolution processes. The result has been faster, less expensive, and more constructive resolution. This is huge progress, but more can be done. We should turn our focus to prevention."

In many cases – especially in larger and more complex business relationships and collective bargaining agreements – mediation and arbitration are still seen as something that happens to resolve a dispute, rather than prevent it. And even though often preferable to the more expensive litigation process,

even conventional mediation and arbitration can be costly in a variety of ways, particularly if the dispute can be avoided in the first place.

This is one reason CPR, in addition to advocating for more optimal use of mediation and arbitration, is putting more emphasis on educating individuals and organizations on using a Standing Neutral to prevent disputes. In an interview with Waxman he emphasized, “CPR is on a mission to help organizations see that the next paradigm shift will come when organizations shift their focus much farther upstream around dispute prevention versus dispute resolution.”

CPR put the concept of using a Standing Neutral front and center during their annual conference earlier this month, which featured a panel discussion on the Standing Neutral. The panel shared examples of how organizations are applying Standing Neutrals to good effect in various situations ranging from construction projects to outsourcing deals. (listen to a recording of the panel [with this link](#))

The Father of the Modern Standing Neutral Concept

Waxman considers Jim Groton “the father of the modern Standing Neutral concept.” Groton, a retired partner of the global law firm Eversheds Sutherland, received CPR’s inaugural Outstanding Leadership in Dispute Prevention award earlier this month.

Groton – an expert in preventing disputes in the construction industry – has long advocated for conflict prevention. Jim began his career as a practicing lawyer during Atlanta’s building boom in the 1950s, 1960s and 1970s. Over the

years, Groton evolved his career from being a trial lawyer, to a troubleshooter, to a behind-the-scenes counselor, to problem solver, and ultimately to pioneering in the application of proactive techniques for preventing, controlling, de-escalating, and achieving the earliest possible resolution of disputes.

In a recent interview, Groton noted how he evolved his thinking from dispute resolution to dispute prevention. “The construction industry has historically had a reputation of being very litigious, and it’s common for construction projects to experience multiple disputes. As a construction lawyer, I have represented hundreds of clients in disputes. Long ago I became an early adopter of mediation and arbitration because they offered faster and less expensive ways to resolve disputes. But over the years, I realized that traditional mediation and arbitration are too slow for fast-moving modern business activities.”

Groton then learned that some very smart geotechnical engineers had invented ‘Dispute Review Boards’ for dealing with difficult construction project engineering issues. A Dispute Review Board is a panel of three experts who meet regularly with the parties involved in a construction project with a goal to help the parties resolve issues promptly. In 1991 Groton noted that the success of Dispute Review Boards proved that by providing a neutral perspective very early in the process you can prevent disputes, and suggested that the concept could be applied to any type of business relationship. He then adapted it by piloting the idea of using one single neutral with success.

Groton adds, “The Standing Neutral technique has turned out to be by far the best existing preventive approach I have seen. Embedding a neutral as part of contracting parties’ governance process emphasizes facilitating issue resolution while misalignments are small – well before there is a dispute. I came to find that embedding a Standing Neutral has almost ‘magic powers’ to keep disputes from happening.”

Since he retired from law practice in 2001, Groton has remained as active as ever and recently co-authored a white paper “Unpacking the Standing Neutral” with the goal to help organizations and individuals learn how to put a Standing Neutral in practice.

Three Critical Elements Of A Standing Neutral Process

There are three critical elements essential to the success of the Standing Neutral technique:

Early Mutual Selection: The Standing Neutral should be jointly selected by the parties early in the relationship. By establishing a Standing Neutral from the inception of the relationship, the Standing Neutral becomes part of the team and helps to create a collaborative atmosphere. Many view a Standing Neutral as a "mutual friend," "referee," or "sensible sounding board" because their advice is respected and accepted more readily than if the parties bring in a third-party stranger (mediator or arbitrator) after there is a formal dispute.

Continuous Involvement: The best use of a Standing Neutral is when the neutral is embedded as part of ongoing governance. Thus they are “standing” rather than ad-hoc as most often seen with mediators and arbitrators. One of

the key differences between a Standing Neutral and a mediator or arbitrator is that the Standing Neutral has ongoing involvement with the parties during the life of the contract (or project, as in the construction industry). The parties routinely provide the Standing Neutral with periodic progress reports as the relationship progresses and, when possible, invite the Standing Neutral to meet occasionally with the parties absent any immediate dispute.

Prompt action on any issues: Because the Standing Neutral is “standing,” they can facilitate the parties through prompt action on any matters where there is misalignment *or* they *are* stuck and not resolving quickly. A key benefit of having a Standing Neutral embedded in the relationship is that it significantly increases the speed they can facilitate issue resolution before misalignments become disputes. In addition, because the Standing Neutral is an expert in the topic they are hired for, they are almost always chartered to give advice that helps the parties see a neutral perspective, versus taking sides.

The Bottom Line

Unfortunately, in many business relationships contracting parties do not perceive a need to engage in dispute resolution until they start to experience difficulties. By that time, the relationship can reach a breaking point, which can lead to calling on their respective lawyers to engage informal dispute resolution; this can include mediation, arbitration and if needed resolving the dispute in court.

Listening to CPR and Jim Groton share their success stories using a Standing Neutral suggests there really can be a proverbial silver bullet to prevent adversarial business relationships.
