

New Eyes: A Different Perspective on Appropriate Dispute Resolution

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As recent PLM graduates, our exposure to conflicts within the oil and gas industry has been minimal, allowing us to approach conflict from a perspective that is relatively unbiased from past experiences. Our involvement with the C2C Taskforce has given us a great opportunity to interact with various professionals within industry and has exposed us to varying opinions on several issues. We would like to take this opportunity to discuss, from a basic industry perspective why we believe Appropriate Dispute Resolution (ADR) makes sense to all Landmen.

ADR has also been referred to in the past as “Alternate Dispute Resolution”. One must be careful not to confuse this with Appropriate Dispute Resolution. Although their differences may appear semantic in nature, they have two very different meanings. Appropriate Dispute Resolution is exactly as the name describes; *appropriate*. It is *appropriate* to the situation, *appropriate* to the parties in conflict, and *appropriate* to all affected stakeholders. It can be a multi-tracked process that aids the participants in finding the best course of action to deal with conflict. ADR does not necessarily mean a change in the current process or status quo; it is simply a mechanism to properly evaluate each individual situation in order to find the most cost effective and beneficial process for dispute resolution.

Three key factors in ADR will be the focus of this article and are outlined below. Relationships, communication, and costs, are all issues that are fundamental in why we believe that this process makes sense.

Relationships

ADR at its core is relationship based. The Land community being relationship focused makes it an ideal environment for its implementation. When looking to employ the process, the steps involved in ADR are familiar to everyone, as they are utilized in everyday life. An illustrated example of this could be the role adults play in a conflict between their children; children are first encouraged to resolve the issue amongst themselves (negotiations). Beyond that the parent provides guidance (situation assessment), without dictating a solution (facilitation), gradually becoming increasingly more involved if the conflict escalates (mediation, arbitration). At some point the parent may force a resolution upon the quarrelling children (regulatory processes, litigation). Ideally the conflict is resolved in the earliest stage possible with the least amount of parental involvement necessary.

This is similar to the purpose of ADR, because it allows conflict to be resolved as early as possible by empowering parties to solve their own problems with as little outside interference as the parties deem necessary. This process permits a great deal of empowerment of the parties by allowing them to come to their own solution, versus having a third party come up with a decision that may not be in the interests of either party. Aside from empowering the parties involved, the process recognizes that

relationships are long-term and that parties will likely deal with each other in the future, making maintenance of the relationship a governing paramount.

Communication

Our education provided us a foundation and understanding of contracts, finances and ethics, but effective communication and relationships are not something that can be taught in a classroom. These skills come about through experience and a desire to learn more about the person that you are dealing with, which is often as simple as having lunch or coffee. As Landmen we pride ourselves on our ability to communicate effectively with all facets of the industry. Unfortunately, our impression to date is that often in times of conflict, Land skills are negated and parties become entrenched in positions rather than addressing the problem. This retrenching is most obvious when individuals talk to defend their position and stop listening to the problem.

ADR helps industry professionals refocus on the issue and promotes effective communication. This includes not only discussion but listening to one another in order to solve problems. Effective communication is necessary to resolve conflict and is promoted by the C2C Task Force's principles of talking to each other early, using the tools to address the problem, and seeking outside assistance when additional expertise is required.

Cost Effectiveness

The resolution of conflict can be less expensive than you think. If you direct your resources efficiently through the ADR process you can minimize lost opportunities, capital, relationships, and reputations. Ultimately these resources can be directed towards more profitable ventures. Some conflicts go unresolved because the cost of resolution exceeds the financial benefits; the process of ADR mitigates resolution costs, creating an effective opportunity to solve lingering issues. ADR is a process to resolve conflict along a continuum of options that become increasingly costly. ADR offers the opportunity to visit less costly resolution options such as further negotiation or facilitated meetings first, without forfeiting the option to peruse more costly and binding alternatives such as arbitration or litigation.

Our profession is based on relationships, partnerships and communication. ADR is another tool that empowers the Negotiator to pursue these interactions in an efficient and cost effective manner, and offers streamlined options that ensure companies get on with business. The skills that a Landman brings to the table are invaluable, but a greater knowledge of ADR supplements these skills, so that they can be utilized to their maximum benefit.

As new participants in the petroleum industry, it has become apparent that no two situations are identical, and a key factor that distinguishes Landmen is the ability to bring flexibility and creativity to the process of negotiation.

Appropriate Dispute Resolution is a tool that can greatly enhance the options available in a conflict and can greatly increase the likelihood of a mutually beneficial agreement. In summation, as our careers as Landmen begin we can expect to be challenged with a

variety of issues and unique situations. Using the options, processes, principles and tools that the C2C Task Force has devised, we will be more aware of the negotiations process and better able to isolate the issues directly related to the problem at hand rather than focusing on external concerns. Overall, these process and ideals will leave us better equipped to meet the challenges of the future.

If you are interested in learning more about Appropriate Dispute Resolution, the ADR Toolkit will be made publicly available.....

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