

Educating the Board to Act on Construction Claims



Introductions

Tim Keeley, Moderator

- *Assistant Superintendent for Business, CSBO*



Terry Fielden, Speaker

- *Vice President/Director K-12 Education, International Contractors, Inc.*

- *Former Board Member Naperville 203 (2007-2019)*



Kenneth M. Florey, Speaker

- *Attorney, Robbins Schwartz*

Robbins Schwartz

Carrie Matlock, Speaker

- *President, DLA Architects, LTD.*



STRONGER TOGETHER. SMARTER TOGETHER.

Board Members are not a Dispute Board

They need to
be prepared for
the worst





Board Members are the School Board



Administration was Planning:

**Construction is
not a walk-in
nature**

**Instead, you got
a rocky path
surrounded by
the beauty of
new learning**



Critical Tasks:
**Listen and Ask
Questions**

**Remember the
kids**

Open School

**Pick up the
check**



Be prepared!





Administration Critical Tasks:
Present Information
Timely
Gather **ALL the facts**

**Make a
recommendation to
resolve**



Board must act and decide

1. Pay the cost
2. Reject the cost
3. Redirect Administration
4. Litigate

WHAT
YOU
NEED
TO
KNOW?



Checklist

- ☒ What is a construction dispute??
- ☒ Why do disputes happen??
- ☒ How are disputes settled?
- ☒ How much money?
- ☒ When do we litigate?
- ☒ Who should I trust to help resolve?
- ☒ Other Experts?

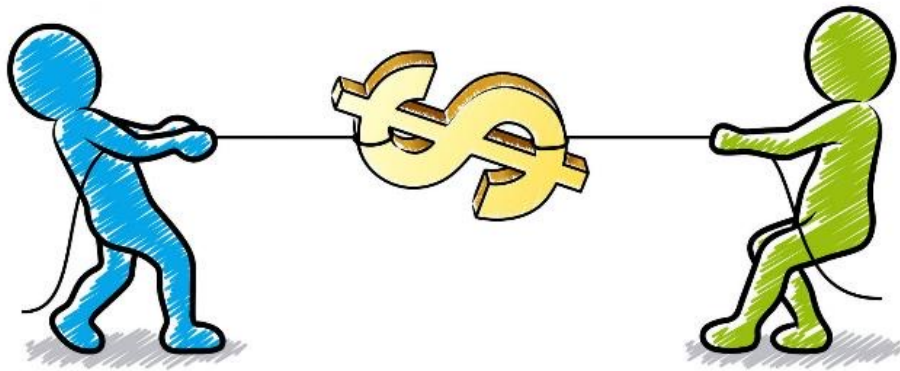
The Power of the D.A.R.C Side

- **Disputes:** are normal.
- **Address:** don't procrastinate
- **Resolutions:** seem distant and costly.
- **Compromise:** saves money/agonny



What is a construction dispute?

Disputes: one side wants **money, time or both**



Disputes may not always involve **money**.

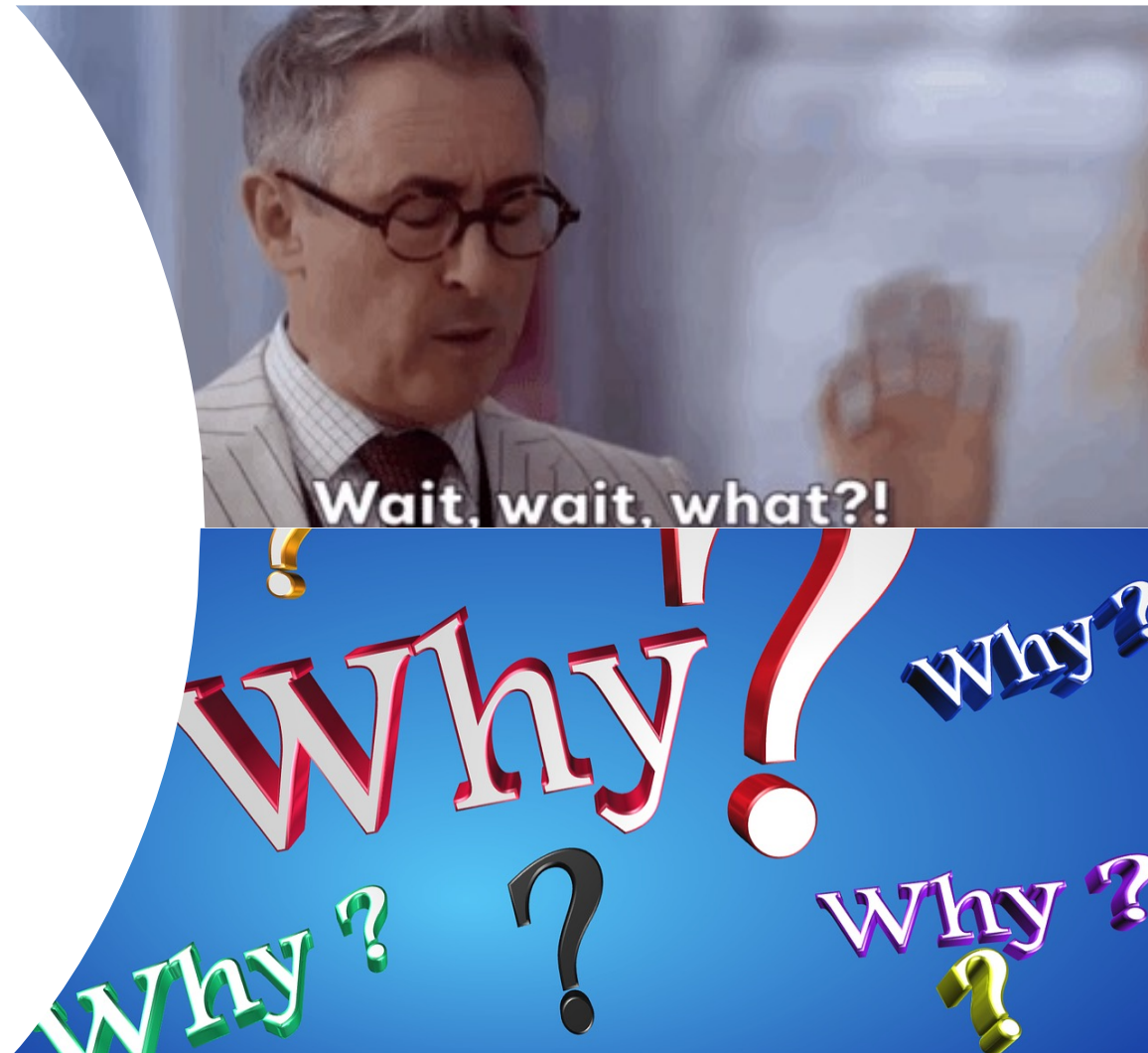


BE
READY
MAKE A PLAN

**Educate the
Board on
claims**

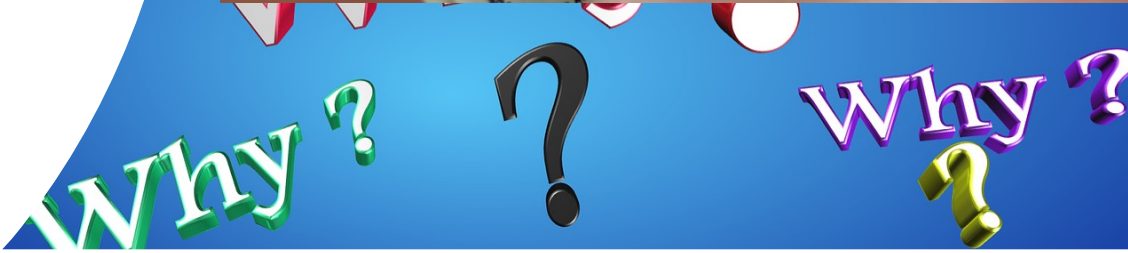
**Board Role:
Pay the bill**

Budget: contingency money to resolve



Because The District
can be financially
responsible to resolve
the disputes

Administration's role:
open the school



Types of Disputes

**Change
Order**

**Failure to
Complete on Time**

**Extras
Claim**

**Defects
Claim**

**Delay
Claim**

**Warranty
Claim**

Change Orders



Contractor wants more money, time or both.

District driven scope changes

Unforeseen conditions are discovered

Plans/specifications: missing or incorrect information.

Dispute: actual cost of the work versus owed as part of bid

Change Orders

Appoint staff to review,
approve and report

Let them do their job



**Plan: Assign a Board Authorized
responsible gate keeper**

**Responsibility: review all changes
present to Board for Action**

Change Orders

*Could you do me
a favor?*

scope changes during construction

**Plan: Assign a Board Authorized
responsible gate keeper to make
changes**

**Responsibility: make sure that there is
budget money**

Change Orders



Unforeseen conditions are always discovered

Explain to Board: Assume they are present and need to be paid

Plan: ensure budget includes allowance

Responsibility: settle rapidly to avoid delays

Change Orders



My bad.

Plans/specifications: missing or incorrect information.

Missing is not free

Missing is still needed

Plan: ensure budget includes contingency

Responsibility: settle rapidly to avoid delays

Common Disputes

Weather



Contractor
Lead time
Errors



Industry/Economic Force
Majeure



Owner added
extra scope.



Weather

Weather delays can be legitimate

Costly as well



Contractor Lead Time Errors



JANUARY 30, 2000 / RAMS VS TITANS

- **Generally rejectable**
- **Unless another entity dropped the ball**



**Formally a unicorn
claim**

Until COVID

“Force Majeure” My Attorney will write the magic



Understand the notice timeframe



Demand back-up



Actively follow shop drawing approvals



Demand proof of material ordering



Demand proof of manufacturer delays



Situations are not “precedent setters”



Risks????!!!

Plan: explain Force Majeure to Board

Responsibility: ensure there is contingency

“Force Majeure” Paying as follows:

material is
verified
“available”

on
presented
merit



school will not
open otherwise

Students First



Owner Added Scope

**Change
your mind
and open
the wallet**

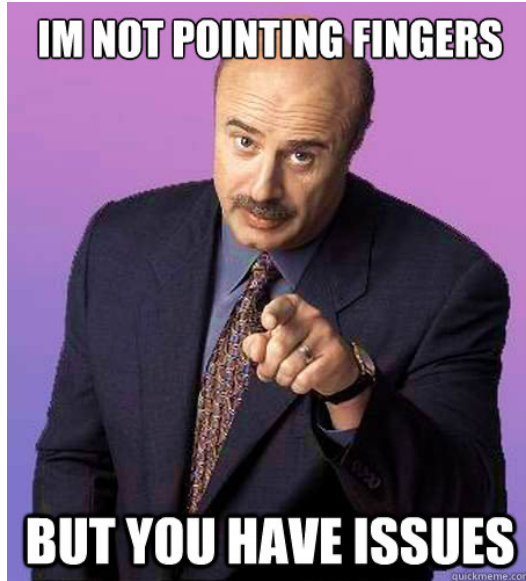


Plan: Stick to the plan

Responsibility: pay the bill

Architect “Design Errors”

Rare and very infrequent



Must always be addressed and paid by the District

Negotiate some settlement

Plan: not an expectation, listen to explanation before going to Board

Responsibility: Explain to Board that they must pay the bill



Contractor Error

District hired the contractor

District can litigate-perhaps best to settle??



Plan: Contractor problem is your problem

Responsibility: litigation takes time and energy

Extras Claim – Unresolved by Change Order

Who is responsible to pay for the claim?

Bond Company

Insurance Company

Owner

Architect

Contractor

Construction Manager

All the above



Plan: hire strong consultants

Responsibility: bring in third party if necessary

Change Orders:

What did you learn?

Or

What did we not teach?



**Audience Responsibility:
Discuss options**

Change Orders:

Board did not choose color of
the bricks

Delaying the project.

Contractor: extended
schedule, additional
supervision,
acceleration costs



Responsibility:
Contractor problem is
your problem

Change Orders:

Boiler missing from documents

Contractor: extended
schedule, additional
supervision,
acceleration costs



Responsibility:
Contractor problem is
your problem

Change Orders:

Administration changed paint color

Contractor: extended schedule, additional supervision, acceleration costs



Responsibility:
Contractor problem is
your problem



Questions and Answers

We thank you for your time!

Panel Information:

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