

Why do IT Projects Fail?

And how to Keep Them Going With Standing Neutrals and Dispute Review Boards

We will...

- Explore why IT projects fail
- Share leading academic research about the important role Standing Neutrals can play in conflict prevention
- Provide insight from two experts who have successfully operated as Standing Neutrals



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About Our Research on Standing Neutrals



Our work is birthed from a supply chain perspective to create successful outsourcing deals and keep them healthy.

We began promoting the use of Standing Neutrals in 2011 with a great deal of success.

This white paper is a culmination of over a decade+ of learning and practice.



UNPACKING THE STANDING NEUTRAL

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The What and Why of a Standing Neutral

WHAT

- An innovative and proactive improvement on traditional Alternative Dispute Resolution (ADR) techniques
- A highly qualified and respected pre-selected expert who helps parties resolve issues while they are small
- The Standing Neutral is incorporated into your governance structure (not brought in ad hoc)
- You give the Standing Neutral the authority you feel comfortable with
 - Advice only
 - Formal recommendation (non-binding)
 - Formal recommendation (binding)

WHY

- Proven approach for facilitating problem solving in timely/cost effective manner
- Helps the parties see each other's perspectives
- Creates proactive and constructive dialogues and day-to-day discussions, with the aim to provide continuous alignment and prevent issues altogether



How a Standing Neutral Works

- The parties select a trusted neutral expert as the “Standing Neutral” to assist in the prompt resolution of any misalignment throughout the life of their relationship
- A Standing Neutral is different from a mediator
 - A mediator is typically brought in ad-hoc by the attorneys once an issue turns to a full-blown dispute
 - A Standing Neutral is a standing (ongoing) part of the governance structure and is typically used by the Service Delivery, Commercial Management and Relationship Management roles in governance to work through issues in a non-threatening manner
- The Standing Neutral ***is integrated into your governance and escalation process***



Dispute Resolution Continuum

A Standing Neutral can look and feel like different based on how they are used. The earlier they used in the dispute resolution continuum the more effective.

Figure 5: Dispute Resolution Continuum

Least Expensive/ Preventive		Most Expensive/ Adversarial		
Prevention	Problem Solving	Dispute Control	Facilitated Resolution (non-binding)	Binding Resolution

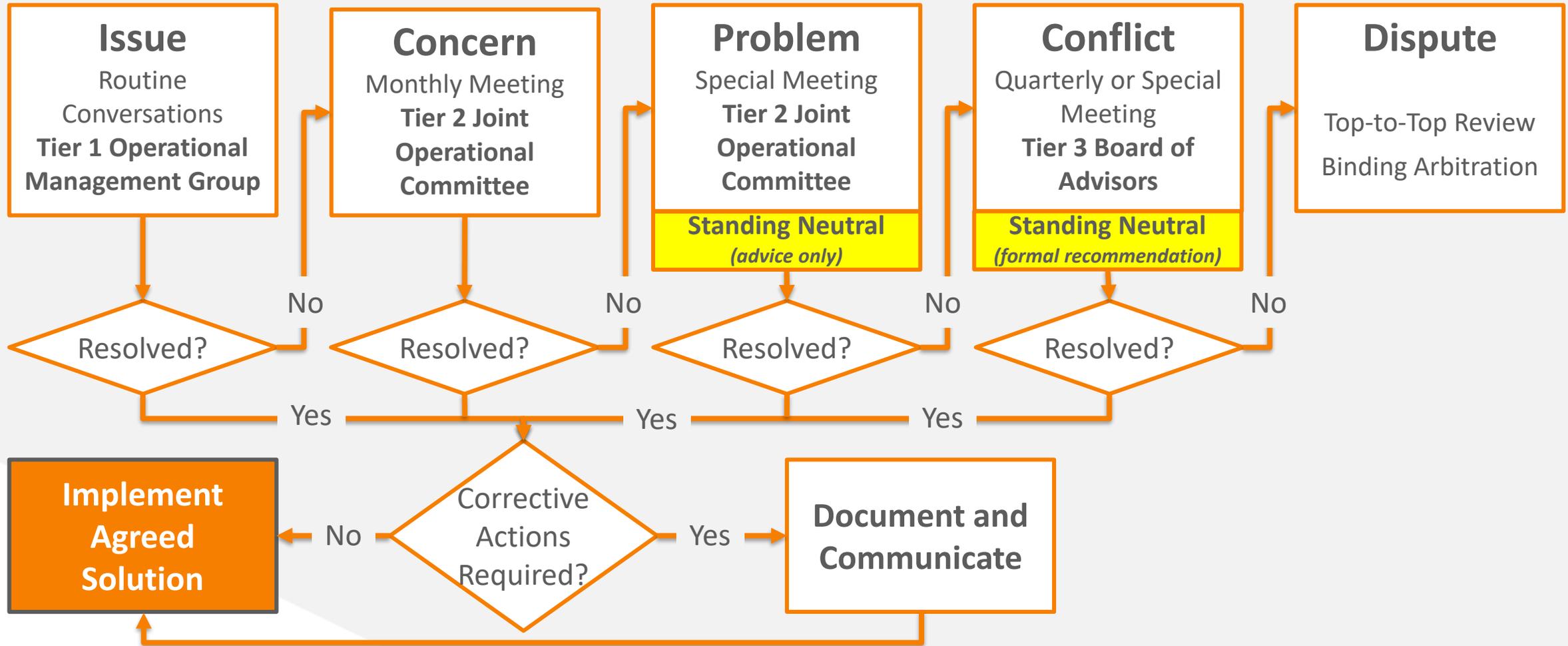
Examples in Practice

Pre-Contract Signing	During Contract Performance			
Prevention (pre-contract signing)	Problem Solving	Dispute Control	Facilitated Resolution	Formal Dispute Resolution
	1. Dispute Board (common in the construction industry)			1 Dispute Adjudication Board
	Single Standing Neutral			
		2. Standing Expert (Microsoft Outsourcing)		
	3. Standing Mediator (South Korea Ombudsman Office)			
				4. Standing Arbitrator (Toyota)
	5. Deal Architect/Partnering Facilitator (Telia/Veolia)			
	6. Branding & Licensing Example			
		7. Franchise Wise-Persons Committee		
	8. Outsource Agreement Embedded Governance			
		9. Real Estate Development Standing Arbitrators		
9. Labor Services Deal Architect				
	11. Non-Profit NGO Wise-Persons Committee			
	12. Outside Director Role			



A Standing Neutral is “Standing” (or at least “Standby”)

If you do not embed a Standing Neutral into the overall governance, you should at least embed one in your Issue Resolution process (triggered well before a dispute).





Why The Standing Neutral Works

- Misalignment can be handled early while it are still manageable; the Standing Neutral is a proactive in ‘Keeping the Peace’¹
- Research has shown that the existence of a trusted third party neutral causes the parties to the arrangement to “Self Monitor” and prevent issues arising²
- The early mutual selection process for the Standing Neutral is part of its success – both parties take ownership of their choice
- Research shows that in most cases the Standing Neutral is not required to make a recommendation; however, when they do, the recommendation is accepted in 95% of cases
- Continuous access to the Standing Neutral, not just when a problem arises, builds trust and confidence³

Sources: ¹ James P. Groton, “Jobsite Dispute Resolution,” *Preventing and Resolving Construction Disputes* (Chapter 6) CPR Institute 1991.

² Henry Adobor and Ronald S. McMullen, “Strategic purchasing and supplier partnerships—The role of a third-party organization,” *Journal of Purchasing and Supply Management*, December 2014, 263-272.

³ Dan Ariely has found that people act with greater honesty if they are being observed.



Who are Standing Neutrals?

There is no “one” type of Standing Neutral

- They may or may not be...
 - A lawyer
 - A professional mediator or arbitrator
 - A consultant or advisor
- They are always...
 - An expert in the subject matter of your deal
 - Neutral and can provide an objective “dose of reality”
- They can be...
 - An academic
 - A respected business person in your industry
- They should not...
 - Work on only one side – they work on behalf of both, and are ideally paid equally by both parties



Process For Engaging the Standing Neutral

- In appointing their Standing Neutral, the parties must ask themselves a number of questions (see Standing Neutral Worksheet in Materials tab)
 - Does the prospective Standing Neutral understand our agreement and relationship?
 - Is the proposed Standing Neutral independent of both parties?
 - Has the Standing Neutral candidate been part of the relationship/agreement creation process?
 - Can the candidate provide expertise and advice regarding the application of the parties' vision and intended behaviors to avoid problems?
 - Does the candidate understand the contractual, economic and relationship model chosen by the parties, and the methods of governance these choices have driven?
 - How should I best design the role of my Standing Neutral?



Decisions To Make When Designing Your Standing Neutral Program

Factors to Consider	Typical Post Contract Standing Neutral Options			
Number of Neutrals	One		Three	
Depth of Engagement	All levels of governance	Mid-levels of governance		Only the highest levels of governance
Level of Involvement	Continuous involvement (embedded as part of ongoing governance)		Ad-hoc (only when called upon)	
Authority	<i>Expert Evaluator</i> Advice only	<i>Ombudsman</i> Makes formal recommendation (non-binding)	<i>Mediator</i> Non-binding decision	<i>Arbitrator</i> Binding decision
Fact-Finding Latitude	May only receive information and evidence provided	May investigate personally		Ability to hire outside experts
Types of Support	*Transition support *KPI/Performance Mgmt Alignment *Onboarding Support *Training *Review *Relationship Health Monitoring *Issue Resolution *Mediation *Arbitration			



Examples You Can Learn From

1. Dispute Review Board (Construction Industry)
2. Standing Expert (Performance Mgmt - Microsoft)
3. Standing Mediator (United Nations, Universities, South Korea)
4. Standing Arbitrator (Toyota Motor Sales)
5. Partnering Facilitator/Deal Architect (Telia)
6. End-to-End Expert Involvement (Branding and Licensing Agreement)
7. Franchise Agreement Wise Persons Committee
8. Non-Profit NGO Wise Persons Committee (Emmaus International)
9. Ongoing Governance Support (Outsourcing Agreement)
10. Single Standing Neutral (Real Estate Development)
11. Relationship Reset (Government Labor Services Agreement)
12. Outside Director (Various Examples)



2. Standing Expert (Microsoft)

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Standing Expert

Background

- Standing Experts are technical experts – typically without legal training
- They are most useful in relationships where complex technical, accounting, cost, or quality standards could be at issue.

How it Worked

- When Microsoft first outsourced its facilities management services to Grubb & Ellis, it created a scorecard to measure Grubb & Ellis's performance.
- A portion of Grubb & Ellis' compensation was based on performance as defined by the scorecard.
- Initially there was a significant gap in expectations and performance as measured by Microsoft versus Grubb & Ellis.
 - For example, Microsoft believed Grubb & Ellis score on a particular item was a "3" while Grubb & Ellis perceived their performance to be a "5".
- The Standing Expert (with experience in facilities management) reviews Grubb & Ellis' performance and helps the parties determine what the actual performance is; Microsoft would then use the Standing Expert's score to calculate Grubb & Ellis' incentive payouts.
- Over the first two years, the Microsoft and Grubb & Ellis perception gaps on performance decreased by 91.5 percent, resulting in tight alignment between the two companies on what performance meant.

For more information:

- Chris Owens and Michele Flynn, "Locking in the Benefits of Outsourcing: Innovation, Cost Reduction, and Continuous Improvement at Microsoft," *Leader*, September 2005, 2–5.

6. End-to-End Involvement (Branding and Licensing Agreement)



Factors to Consider	Typical Post Contract Standing Neutral Options			
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Branding and Licensing Agreement

Background

- Two parties engaged in a long-term branding and licensing agreement.
- The parties engaged a well-known IP attorney as their Standing Neutral for both pre and post-contract support (a conflict of interest check was performed before formally engaging the attorney).

How it Works

- Pre-contract, the Standing Neutral was chartered to review the overall contract language pertaining to IP between the parties to ensure the parties allocated risks realistically.
- The Standing Neutral helped design the governance mechanisms into the agreement outlining a formal process for managing issues and concerns, with the goal to prevent disputes.
 - As part of the process, the parties embedded a step-negotiation process to facilitate the timely resolution of issues at the lowest possible level with protocols for how and when a disagreement would be escalated to the next level (e.g., from issue to concern or from concern to dispute). Each step was time-bound to encourage timely resolution.
 - If the parties' governance mechanisms failed to resolve a disagreement, they agreed that the Standing Neutral would act as both a mediator and an arbitrator as needed. First, the Standing Neutral would act as a mediator.
 - If the parties could not come to a solution after a set time frame, the Standing Neutral was given the authority as an arbitrator to make a binding decision.
 - The Standing Neutral was also chartered to provide contract language changes if needed.



Cherrie Fisher

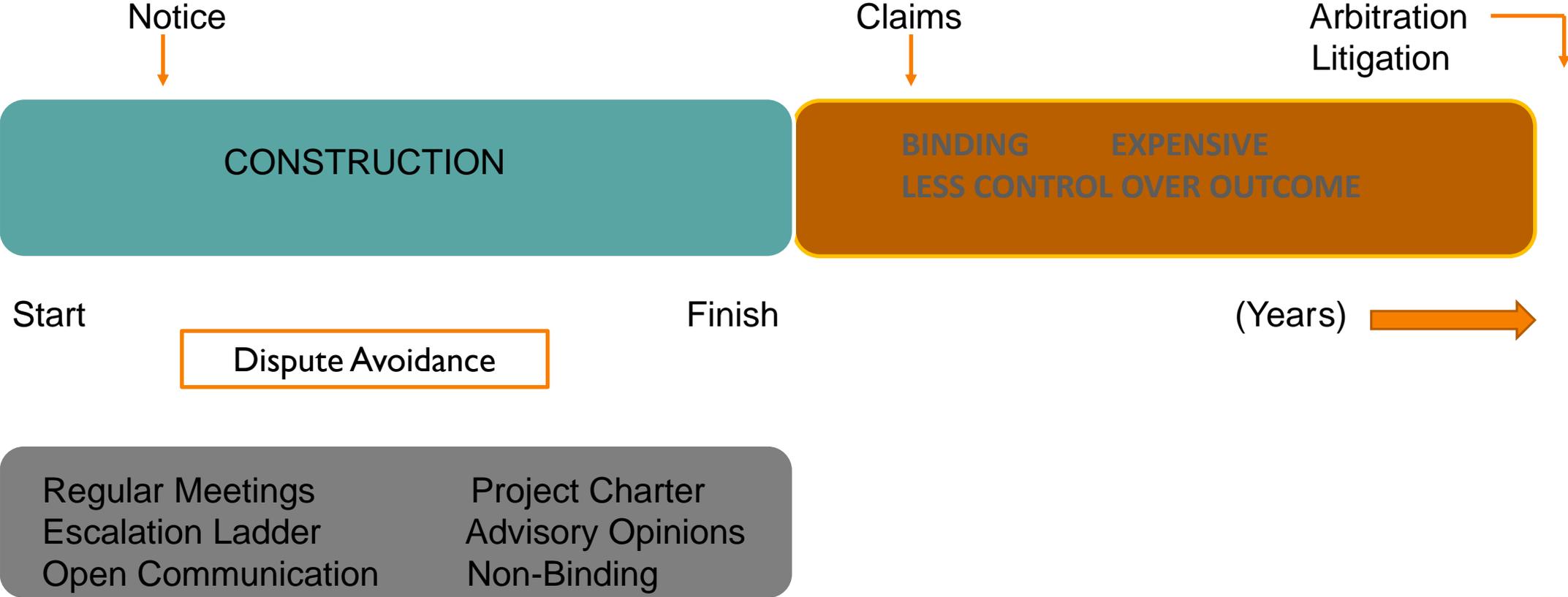
Construction Neutral

American Arbitration Association

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Proactive/Reactive Dispute Resolution Timeline





David Frydlinger

Partner & Managing Partner
Cirio Law Firm

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Partnering Facilitator/Deal Architect (Telia)

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Partnering Facilitator/Deal Architect (Telia)

How It Works

- When Telia set out to craft a deal with Veolia for facilities management across 16,000+ network sites, the complexity of the deal led them to expand the role of the neutral party to include not just a Certified Deal Architect from Cirio law firm, but also neutrals from EY Advisory to provide support services for a comprehensive project management role which would serve both parties.
- Together, Cirio law firm and EY's management consultants played the role of a neutral "coach" from concept to creation of the actual agreement.



Feedback

“Playing the role of neutral facilitator was key. It was a good way to build trust and spur innovation.”

Andreas Sahlen
Head of Estate Mgmt. & Real Estate Law
Telia



Ingrid Wallgren
Senior Sourcing Manager
Telia

“The really good part was that our CDA coach was not sitting on one side. They were on both sides, both supplier and buyer. So, they were really good at handling the facilitator role and not taking one perspective in the different discussions we had. They managed to drive the discussions from both sides very well. And that was good for us.” Telia’s Ingrid Wallgren (procurement leader on the deal)



Partnering Facilitator/Post Contract (IT Deal)

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Questions?

Reach Out If You Have Questions!



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