



International Experience on DSD: TAM & Air France Cases

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Introduction

- **Circumstance of the Accidents**
 - **CI 3054 (2007 TAM case)**
 - **PI 447 (2009 Air France case)**



The Existing System

- **Individual Negotiation – Litigation**
- **Features of the Dispute:**
 - Anger
 - Distrust
 - High Expectations
 - Fear of Opportunistic Offers



The Existing System (2)

- **Problem**
 - High level of litigation
 - Brazilian “Justice Crisis”
 - *Foro non conveniens* decisions in US Courts
- **A new system?**
 - Available procedures
 - Better outcomes



CI 3054: A New Strategy

- **Transparency**
- **Equal Treatment**
- **Objective Criteria**
- **Government Participation**
- **Efficiency**
- **Careful Treatment of the Parties**
- **Organized ADR Procedures**



The Groundwork

- **Legal Issues**
- **Stakeholders**
 - **Getting the right parties involved (highest value players, potential blockers, influential parties with wrong incentives, those who approve, those who implement, too many?)**



The Right Sequence

- **Secretariat of Economic Law of the Ministry of Justice**
- **Public Defenders Office**
- **Public Prosecutors Office**
- **PROCON Foundation**
- **Family Members Association**
- **TAM**
- **AIG and Reinsurers**



The Challenges

- **Political Risks**
- **Public v. Private Distrust**
- **Principal-Agent Issues**
- **Unprecedented Collective Treatment**
- **Education & Motivation**

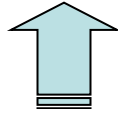


The System

- **Objectives**
- **Direct understanding of the parties (focus on interests, loops back to negotiation)**
- **Use of facilitative hybrid processes (early neutral evaluation, mediation, advisory arbitration)**
- **Constant review and incorporation of learning from experience (Board of Directors)**

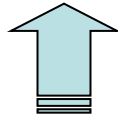


PAYMENT



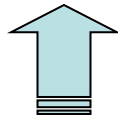
FINAL MEETING

PROPOSAL
DISCUSSION OF EXTRAORDINARY
CIRCUMSTANCES OR ERROR



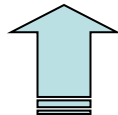
MEETINGS AND HEARINGS

MEDIATION (OBSERVER)



CLAIM INTAKE

ELIGIBILITY AND INFORMATION EVALUATION

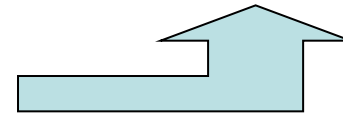


ASSISTANCE DIVISION

EARLY NEUTRAL EVALUATION &
PREPARATION

NON-BINDING ARBITRATION

GOVERNMENT OFFICIALS/MAGISTRATES



MONTHLY MEETINGS

REPRESENTATIVES FROM
GOVERNMENT AND COMPANIES
CONSTANT EVALUATION



CI 3054: Results

- **Situation Before System**
 - 80 families in litigation
 - Around 30 settlements
- **Situation After System**
 - 220 beneficiaries from 55 victims compensated
 - 90% of litigation settled
 - Increased satisfaction of the parties
 - Over 92% of the total conflict resolved in less than 2 years



Perspectives of DSD in Brazil

“This was perhaps the most humane project carried out in the Ministry of Justice in my term”

Minister of Justice Tarso Genro (December, 2009)

“The accident with TAM flight 3054 entered the history as the largest aircraft disaster in the country. Almost one year later, it enters the history of National Law, as an innovative experience on negotiation and compensation: the Câmara de Indenização 3054”

O Estado de São Paulo (July, 2008)



Moving Forward: Air France Case

- **Strong Points for Persuasion**
 - Precedent
 - Reputation
 - Full Political Support
 - Higher Motivation and Education



New Challenges

- **Over 32 Nationalities Involved**
 - Cultural Differences (form of communication, time preference)
 - Time Constraint
 - Smaller Scope
- **Diverse Stakeholders**
 - Brazilian Government
 - French Government
 - Family Members Association
 - Air France/AXA and Insurance Companies



The PI 447 System

- **Very Similar to CI 3054 (with improvements)**
- **Track A and B**
- **Ongoing Case**



Perspectives of DSD in Brazil

- **Introduced by CI 3054 and PI 447**
- **Wide attention in the country – Justice Crisis**
- **Leap from a timid ADR culture to a cutting edge experience**
- **Bill of law reforming class action procedures in Brazil: entire section on ADR**
- **Fostered academic interest on DSD**
- **New cases**
- **Government research on possible applications – other laws and cases**



Brazilian Experience on DSD: Lessons Learned

- **It is possible to solve seemingly untractable problems with a hard-headed and creative approach**
- **Participation is key to success: share control**
- **Learn problem-solving negotiation and how to deal with difficult tactics**
- **Be committed to the cause: work as an ADR activist**
- **DSD and negotiation classes really work!!**

