



From the desk of Steve Huyghe

Announcing a New Service Line – Arbitration Neutral Expert

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Arbitration Neutral Expert

Expert Background

I spent 23 years as a large general contractor and, for the last 22 years, I have analyzed and testified about construction projects in dispute. I have testified as a construction professional on delay, disruption, construction means and methods, contractors' due diligence, and quantum/damages in many U.S. State and Federal Courts as well as in international arbitration venues, including the ICC, ICSID, DBIA and LCIA.

One of my deepest concerns experienced as a construction professional and expert has been witnessing the determination and settlement of disputes made dependent upon information presented that is manipulated, contrived, or simply not based on real construction means and methods. My participation in the process of pursuing claims related to complex construction projects has solidified my interest in assisting adjudicators in reaching fair and reasonable conclusions regarding the often highly technical facts brought before them.

Challenges

Testifying experts are supposed to be genuinely independent, with their first obligation being to assist in the understanding of multipart construction issues. Unfortunately, in practice, many party-appointed experts are "hired guns" prone to advocating strictly from their party's perspective and focusing primarily on providing testimony in support of their client. There exists, as well, the temptation to present only those parts of the available documentation that put the best face upon their party's case.

The increasing intricacy of construction projects, combined with advances in computer technology that can produce enormous amounts of data, has imposed an additional burden upon the adjudicator. I believe the traditional and previously reliable methods of determining the relative value of expert presentations no longer efficiently support the adjudicator's ability to decide issues fairly between the parties. While there may be different, but equally valid, views or



methodologies resulting in different expert opinions, there also may be inadvertent (or intentional) ways to present materials that fail to present all the facts.

For example, I have observed many appointed experts depending upon the use of flawed construction schedules. The party's expert may or may not be equipped with construction experience sufficient to enable him or her to understand whether the duration, logistics, sequencing of the work activities and the respective labour were realistic based on the type of construction work performed. Therefore, the analyses as presented, even though well communicated, may be only hypothetical and may fail to consider the actual delays and disruptions that occurred on the project.

Why a Neutral Expert is Important in Arbitration

It is disheartening to see experts, with little or no construction experience, use highly complex schedules with thousands of work activities improperly amended, impacted, or collapsed, and offer opinions based upon these contaminated schedules, such that adjudicators must devote unreasonable time trying to untangle the fact from the fiction.

Identifying construction schedule impacts and delays requires an individual with a developed understanding of the totality of the construction process – the activities involved and the resources required for each work activity – in order to authenticate the validity of the schedule as presented. Getting to the facts of the actual delays and disruptions requires specialized knowledge and expertise with regard to the use of labour/resources. Such a person can sift through the information provided by party-appointed experts and assist the adjudicator with identifying and understanding the underlying assumptions, methodology relied upon by the parties' appointed experts, and the critical issues involved.

Benefit

Adjudicators recognize the challenges and often times rules provide mechanisms for the appointment of neutral expert advisers to assist with their inquiries. The careful exposition of the role and duties of the neutral expert advisor can preclude any suggestion that the neutral expert might supplant the role of the judicial entity.

In consideration of these challenges and what are commonly perceived to be existing failings in the resolution of disputes, I have determined to offer a third party neutral service line where I



assist adjudicators in the identification and understanding of the underlying facts and issues pertaining to large, complex construction projects.

Neutral Expert Services

For more information pertaining to our **Arbitration Neutral Expert Services** and other CORE International Consulting service line offerings, contact:

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