



AMERICAN ARBITRATION ASSOCIATION®

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

April 4, 2019
3:00-4:00

Don't Forget the Damages – You Can't Win on Entitlement Alone

Neal Eiseman, Goetz Fitzpatrick LLP; New York, NY

Richard Greenleaf, Berg Hill Greenleaf & Ruscitti LLP; Boulder, CO

Courtney McKendrick Green, General Counsel, Jordon Foster Construction; Fair Oaks Ranch, TX

Paul Pocalyko, HKA; Philadelphia, PA

Moderator:

Michael Powell, Vice President, Construction Division, American Arbitration Association



FAILURE TO PARTICULARIZE DAMAGES

- AAA Demand Forms
- Initial Pleadings



FAILURES IN THE PRELIMINARY HEARING

- Making a First Impression
- Categories of damages
- Revising the numbers
- Expert and joinder considerations



FAILURE TO FOCUS ON DAMAGES – TOO MUCH ON LIABILITY – TIME CONSTRAINTS

- When to Start Discussing Damages
- Prehearing Briefs



FAILING TO USE (OR PROPERLY USE) DEMONSTRATIVE EVIDENCE

- Why use them?
- Content of Demonstratives
- Conformance with Proof



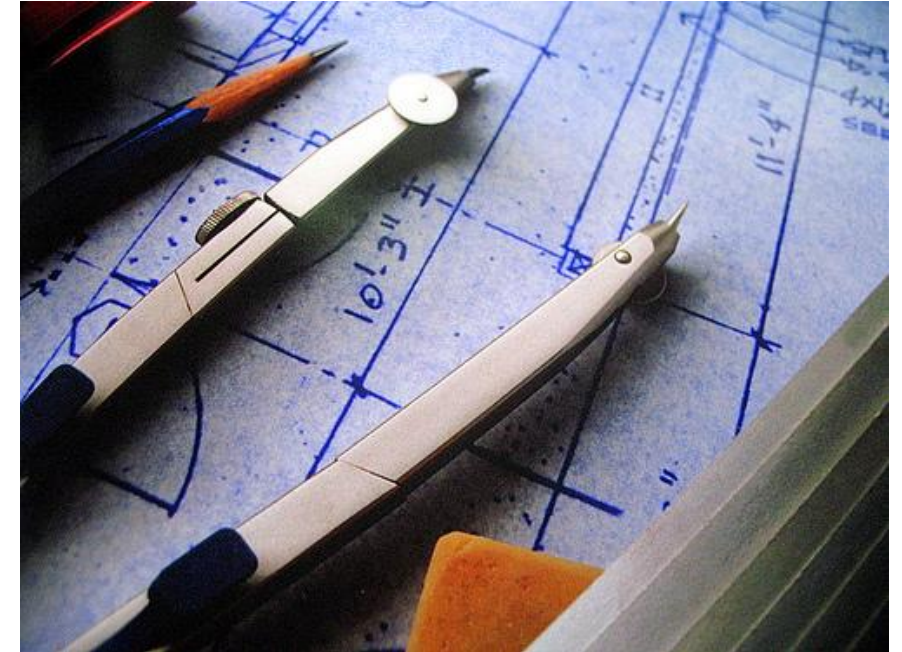
FAILING TO CONSIDER ALTERNATIVE DAMAGES

- Alternative Damages = Splitting the Baby?
- How Panels View Alternative Damages Theories



FAILING TO FURNISH BACK-UP CALCULATIONS

- Complex Damage Calculations
- Breakdowns
- Using Stipulations
- Getting the Parties' Positions on the Numbers



FAILURE TO GIVE ADEQUATE CONSIDERATION TO DAMAGES WHEN INSURANCE ISSUES AND CONTRACT CLAUSES ARE AT PLAY

- Awarding Within Coverage
- Assessing Limitation of Liability Clauses
- Punitive Type Damages and Tort Claims



FAILURE TO CONSIDER THE NEED FOR “REASONABLE CERTAINTY”

- The Standard
- Proportionate Claims
- Leaving the Award to the Arbitrator’s Imagination



FAILURE TO PROPERLY CONSIDER WHEN AN EXPERT IS NEEDED

- Experts with personal knowledge of the project
- Weighing expert costs against the claim amounts
- Contract provisions which affect expert use



FAILING TO CONSIDER INTEREST

- Prehearing briefing
- Back up calculations
- Use of stipulations





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