



AMERICAN
ARBITRATION
ASSOCIATION®

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

THE 2022 AAA®
CONSTRUCTION
CONFERENCE

Effectively Preventing, Managing, and Presenting

CONSTRUCTION

DISPUTES in the

“NEW NORMAL”

THURSDAY, JUNE 09, 2022

8 AM-5 PM

NEW YORK LAW SCHOOL | NEW YORK, NY

The American Arbitration Association (AAA) would like to thank the sponsors of the 2022 AAA Construction Conference: *Effectively Preventing, Managing, and Presenting Construction Disputes in the Age of the "New Normal"* for their generous support.

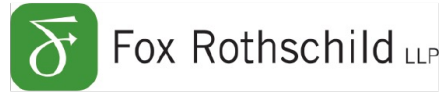
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**June 9, 2022
10:15-11:15**

Key Issues in Presenting Disruption and Delay Cases

Faculty:

John R. Dingess, DFL|LEGAL; Pittsburgh, PA

Carol A. Reardon, HKA; Minneapolis, MN

Paul A. Varela, Varela, Lee, Metz & Guarino, LLP; Tysons Corner, VA

Wm Cary Wright, Carlton Fields; Tampa, FL

Moderator: **Thomas M. Ventrone**, Vice President, International Centre for Dispute Resolution®

COVID RELATED CAUSES OF DELAY/DISRUPTION

- Government shutdowns
- Quarantines affecting manpower
- Labor shortages
- Social Distancing
- Daily testing/temp checks and COVID safety meetings
- Cleaning tools and surfaces
- Use of PPE during workday



COVID RELATED CAUSES OF DELAY/DISRUPTION (CONTINUED)

- Inability to co-locate
- Delayed government inspections and permitting
- Material/Supply shortages and supply chain issues
- Morale



CONTRACTUAL BASIS FOR RELIEF

- Force Majeure clause
- Changes clause
- Change in Law/Change in Project Standards clauses
- Differing Site Conditions/Hazardous Materials clause



DISTINGUISHING ATTRIBUTION

- EPCM or DB Contracts
- The “COVID excuse” phenomenon
- Project Status



SPECIAL PROBLEMS WITH COVID DELAY AND DISRUPTION CLAIMS

- Multiple events or a single occurrence?
- Uncertainty of duration of delay event
- Wax and wane of impacts with each new variant
- Public Statements
- Public Data



POSITIVE OUTCOMES

- Reduction of travel time and increases to productive work hours
- Use of virtual platforms
- Improved collaboration
- More efficient teams
- Date and document management systems
- Improved site safety
- Better leverage of offsite construction technologies and methods



FUTURE CONTRACTS

- Compensation for Force Majeure events
- Relief from labor shortages due to Force Majeure
- Material and Labor Price Escalation clauses



PUBLISHED STUDIES ON IMPACT OF COVID THAT CAN BE USED TO QUANTIFY DAMAGES

- *“Early Impacts of the COVID-19 Pandemic on the United States Construction Industry”* published in January 2021 by the International Journal of Environmental Research and Public Health
- *“ASCE Guidelines for Responding to COVID-19 Pandemic: Best Practices, Impacts, and Future Research Directions”* published by ASCE 2021
- *“COVID-19 Pandemic Impacts on Construction Projects”* published by ASCE in 2021
- *“PANDEMICS AND CONSTRUCTION PRODUCTIVITY: QUANTIFYING THE IMPACT”* published by Electri International in July 2020



Questions?





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