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INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

The 2023 AAA® Construction Conference

Effective dispute avoidance & resolution

throughout the project lifecycle

June 8, 2023

Hilton Santa Monica Hotel & Suites, Santa Monica, CA



The American Arbitration Association (AAA) would like to thank the sponsors of the 2023 AAA Construction Conference: *Effective Dispute Avoidance and Resolution Throughout the Project Lifecycle* for their generous support.

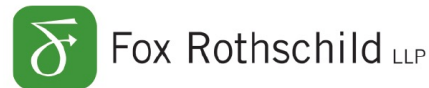
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June 8, 2023
10:15-11:15 AM

Risky Business: Construction Disputes as Risk Management Problems

Faculty:

Lisa Colon, Saul Ewing LLP; Fort Lauderdale, FL

Troy L. Harris, Harris Arbitration; Detroit, MI

Lauren McLaughlin, Smith Currie; Tysons, VA

Michael P. Subak, Troutman Pepper; Philadelphia, PA

Session Moderator:

Michael A. Marra, Vice President, Construction Division, American Arbitration Association



What is Risk?

The definition of risk is “the effect of uncertainty on objectives.”

Risk has both up-side and down-side potential, such as the “fixed-price contract.”

POSSIBLE OBJECTIVES IN CONSTRUCTION ARBITRATION

- Win the Case
- Experience of Fact Finder
- Time to Hearings/Schedule Efficiency
- Cost Mitigation
- Form of Hearings/Evidence
- Confidentiality
- Position Dispute for Settlement



POSSIBLE UNCERTAINTIES – ARBITRATOR SELECTION

- Predispositions of arbitrator candidates
- Availability of candidates
- Candidates' case management style
“Litigation dressed as Arbitration”
- Candidates' credibility with potential co-arbitrator's
- Conflicts



POSSIBLE UNCERTAINTIES REGARDING INFORMATION EXCHANGE

- Subpoenas/Third Parties
- Scale/Scope of Document Exchange
- Timing
- Depositions – costs associated with savings
- Alignment vs. Adversarial Process with Opposing Counsel

Number of Depositions

Number of Interrogatories

Contrast to Federal Rules



UNCERTAINTIES IN EVIDENCE PRESENTATION

- Written vs. Live Direct Testimony
- Chess Clock Approach
- Hot-Tubbing of Expert Testimony
- Virtual vs. In-Person Testimony
- Scheduling/Consecutive Hearing Days
- “Engaged” Arbitrator(s)



AWARD PHASE

- Timing of Award
- Form of Award: Itemized vs. Reasoned vs. Findings of Fact & Conclusions of Law
- Costs of Award
- Enforcement/Vacateur



Questions?





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