SURETY BONDING & CONSTRUCTION RISK MANAGEMENT

2020 CONFERENCE

January 27-29, 2020 | Bonita Springs, FL
SHOW ME THE MONEY – NOW!
TIPS & CASE STUDIES ON RESOLVING COMPLEX CONSTRUCTION, SURETY & INSURANCE DISPUTES QUICKLY & EFFECTIVELY

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<table>
<thead>
<tr>
<th>2018 RANK</th>
<th>MOST COMMON METHODS OF ALTERNATIVE DISPUTE RESOLUTION</th>
<th>2017 RANK</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Party-to-party negotiation</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>Mediation</td>
<td>2</td>
</tr>
<tr>
<td>3</td>
<td>Arbitration</td>
<td>3</td>
</tr>
<tr>
<td>4</td>
<td>Dispute adjudication board (tied with 3)</td>
<td>New in 2018</td>
</tr>
</tbody>
</table>
The three most common methods of Alternative Dispute Resolution that were used during 2018 in North America were:

1. Party-to-party negotiation
2. Mediation
3. Arbitration

These results show that there continues to be a preference towards negotiated outcomes controlled by the parties involved in the dispute resolution process to avoid formal litigation proceedings. They are realizing that the further along a dispute progresses, the higher the value and cost of resolution will become. Expenses, like interest on the claim and the cost of litigation, can exceed the cost of the original claim itself. This demonstrates the value added when proactive dispute avoidance techniques are employed early in the construction process, which can aid in keeping participants away from formal claim proceedings altogether.
### Arcadis – Global Construction Disputes Report 2018

#### Dispute Value (US$ Millions)

<table>
<thead>
<tr>
<th>Region</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>North America</td>
<td>10.5</td>
<td>9</td>
<td>34.3</td>
<td>29.6</td>
<td>25</td>
<td>21</td>
<td>19</td>
<td>16.3</td>
</tr>
</tbody>
</table>

#### Length of Dispute (Months)

<table>
<thead>
<tr>
<th>Region</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>North America</td>
<td>14.4</td>
<td>11.9</td>
<td>13.7</td>
<td>16.2</td>
<td>13.5</td>
<td>15.6</td>
<td>17.7</td>
<td>15.2</td>
</tr>
</tbody>
</table>

#### 2018 Rank

<table>
<thead>
<tr>
<th>Rank</th>
<th>Dispute Cause</th>
<th>2017 Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Errors and/or omissions in the contract document</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>Owner/contractor/subcontractor failing to understand and/or comply with its contractual obligation</td>
<td>3</td>
</tr>
<tr>
<td>3</td>
<td>Poorly drafted or incomplete and unsubstantiated claims</td>
<td>New in 2018</td>
</tr>
</tbody>
</table>
Key Stats

- On average, federal court cases take 24.2 months to trial, and 36.6 months through appeal*
- On average, AAA arbitrations take 11.6 months to award *
- Approx. 95% of cases resolve before trial/arb hearing

Traditional Dispute Resolution Sequence
MacLeamy Design Curve
Early Dispute Resolution Curve

- Ability to impact cost, result
- Cost, effort of dispute
- Traditional litigation/arbitration process
- Planned early dispute resolution process
Planned Early Dispute Resolution Process Alignment

- Mediator/Neutral
- Corporate/Management
- Project Staff
- In-house counsel
- Outside counsel
- Other stakeholders (insurance, 3rd parties)

Opposing Party Group → Planned Early Dispute Resolution
Some Thoughts
Mediating Cases with Insurers
Top 5 Tips

5 - Prepare
Mediating Cases with Insurers
Top 5 Tips

4 - Be Creative
Mediating Cases with Insurers
Top 5 Tips

3 - Be Willing to Compromise Your Interest
Mediating Cases with Insurers
Top 5 Tips

2 – Stay Focused on the Settlement Horizon
Mediating Cases with Insurers
Top 5 Tips

1 – Communication
Mediating Cases with Insurers

- Communication is Key
  - Plaintiff – Spell out your claims, how they may be covered, clear damage model . . . Think Insurance
  - Defendant – Pre-Mediation reports to adjusters in a *timely* manner, verdict range, settlement range, ASK FOR $$$ AUTHORITY, make sure that the umbrella/excess insurers have necessary information
  - Pick the right mediator for the case

- Attendance of Adjusters
  - In person is MUCH better than “on the phone”
  - Provide plenty of notice
Some Observations

- Facts do matter
- Early mediations are tougher. Why?
- The lower the dollar amount, the harder to settle
AND REMEMBER: THE INSURER/INSURED RELATIONSHIP NEED NOT BE ADVERSARIAL
Q & A / DISCUSSION
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