



# RHarper Consulting Update

## Effectively Managing Construction Disputes



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While construction-related disputes don't arise on every project, they occur often enough to generate significant unbudgeted costs when you least expect them. Regardless of the method chosen for resolving disputes, the costs of resolution - preparing the claim, discovery, legal fees, expert witnesses, and opportunity cost - are always higher than anticipated, and often exceed the amount of the original claim.

While it may not be possible to avoid the time and costs of litigation on all claims, putting them on a "fast track" to resolution can both reduce expenses and provide a more timely resolution.

Claims of \$75,000 or less can be handled through the American Arbitration Association's fast track process for arbitration and mediation, which allows the dispute to be resolved quickly, generally in less than ninety days, with minimal discovery and hearings limited to one day. The cost benefits over a more traditional litigation method are obvious.

Other suggestions to minimize costs and time associated with construction related disputes:

Utilizing a project neutral or initial decision maker as an independent third party can speed up settlement of both claims and on-site, in-process disputes, as well as preventing litigation.

Breaking claims down into smaller, more manageable components will keep issues simple and understandable. Claims are often broadened to encompass a number of issues, related or unrelated, which can allow complicated issues to obscure less apparent ones. Presenting claims individually can help them be more readily resolved by mediation or arbitration.

Starting the process as close to time of occurrence as possible will prevent many issues from being rolled into one comprehensive claim and counterclaim after Substantial Completion. Much more expedient and cost-effective methods are available, as described above, to resolve disputes as they arise.

Providing a full set of options for dispute resolution in the construction contract—requires the parties and their counsel to focus their dialogue on that resolution by specifically providing a framework and requirements for mediation, fast track processes, project neutrals, severability, discovery limits, and specific notice requirements. Making both parties aware of all options encourages a full examination of remedies, and supports a mutual goal of making dispute resolution as fair and cost-effective as possible.

Alternative dispute resolution has gotten too much like litigation. Much of our industry understands that, and many of our organizations are trying to change it, both for financial and operational reasons. Keeping claims as small as possible, and addressing them as quickly as possible, is one proven way to accomplish more cost-effective and timely dispute resolution.

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*RHarper Consulting Group provides development consulting, program management, and owner representation services focused on the senior living and mixed use sectors. In addition, Mr. Harper is also a listed mediator and arbitrator providing dispute resolution services for the construction and real estate industries.*

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