

## Reallocation Actions and Settlement Agreements: What Did We Settle?

By Stacy L. La Scala, Esq.

The purpose of a settlement and release agreement is to fully and finally dispose of a disputed matter. However, more and more often, a dispute cannot be fully resolved where non-parties to the dispute have contributed defense and indemnity amounts on behalf of one or more of the parties and have reserved the right to seek recovery of those amounts in subsequent litigation.

In particular, where insurance carriers have actually provided a defense and/or indemnity in an action, those carriers in a number of jurisdictions have potential rights against their insureds, pursuant to reservation of rights for uncovered claims; potential rights against those entities who are principally responsible for the loss; and potential rights against contractually obligated indemnitors of

their insureds. The carriers are typically not part of the action and are not signatories to the settlement agreement.

### Who owns the right to pursue the claim?

An essential step in any settlement negotiation, and one that is often missed, is the determination of who owns the right to the claims being asserted. The question becomes complicated where the parties to a dispute have an underlying contractual relationship that includes a defense and indemnity obligation and an insurance carrier has agreed to defend. So if a party is being defended by an insurance carrier, does that party own the right to assert and recover those fees, or does the carrier that actually paid the fees own the right?

[> See "Reallocation Actions" on Page 6](#)

## The Duties and Responsibilities of Expert Witnesses

By Charles O'Neil, FCI Arb



I recently attended an international arbitration conference in Europe, which included a session on expert witnesses. Comments from several participants displayed a surprising lack of understanding of the role, with several people saying that if lawyers and their clients engaged an independent expert and paid his or her fees, then that expert should support their case.

I discussed the matter with colleagues who are experienced international lawyers and arbitrators, and they told me that they regularly experience exactly this type of misunderstanding and (sometimes) blatant misuse of expert witnesses.

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# Collaborative Construction Claims Process: Another ADR Tool and Perhaps the Lawyer Advocate's Best Tactic?

By Roy E. Wagner, Esq.<sup>1</sup>

Most construction projects involve some disagreement along the way. And the larger and more complex the construction project is, the greater the chance for something to go wrong. The American Arbitration Association (AAA) recently stated that in 2015, nearly \$2.6 billion in construction claims were filed, the most ever.<sup>2</sup> In fact, this total outranked all other major industries combined, including the pharmaceutical, financial services, telecommunications, and energy sectors.<sup>3</sup> And that was only claims filed with AAA.

It is well-known, with all of these construction disputes occurring, that parties are increasingly shying away from litigation and embracing some form of ADR.<sup>4</sup> In reality, as Terrence Brookie wrote in 2014, “[m]ost construction litigators spend more time preparing for and participating in ADR than they do in litigating construction disputes in court.”<sup>5</sup> Contractors, professionals, and owners alike desire to resolve disputes as inexpensively and as quickly as possible in order to complete existing projects and, if possible, maintain working relationships.<sup>6</sup> ADR has become a popular alternative to construction litigation, with such methods as mediation, arbitration, mini-trials, dispute resolution boards, and partnering.<sup>7</sup> But clients often want even more cost-efficient resolutions to their disputes than traditional ADR can afford.

Another lesser-known option that may help address the needs of construction clients is the collaborative construction claims (CCC) process. This ADR method requires attorneys and parties to identify



the problems and to collaboratively resolve them through various self-administered techniques. Parties and their lawyers can help maximize an efficient resolution while minimizing expert costs and lawyers' fees. As the construction industry keeps moving toward an “ever-increasing emphasis on quick and inexpensive dispute prevention and resolution mechanisms,”<sup>8</sup> lawyers should consider adding the CCC process to their repertoire. Since it is lawyer initiated, the CCC process may alleviate clients'

concerns that their lawyers have a financial interest in steering the dispute to more expensive ADR options.

## History and options of construction ADR

ADR is not a new phenomenon in the construction industry. It has essentially been around since the industry came into existence.<sup>9</sup> Although arbitration has been used within construction disputes for nearly a half century,<sup>10</sup> ADR did not

become routine until the 1980s.<sup>11</sup> More and more players within the construction industry became frustrated with litigation and sought more cost-effective ways to resolve their construction disputes.<sup>12</sup> Even judges wanted no part of construction lawsuits and “spare[d] no effort to divert such cases to any available form of alternative dispute resolution.”<sup>13</sup> Since the ADR boom in the 1980s, its use has become a mainstay in construction disputes, and it has “continued to gain widespread use.”<sup>14</sup> There are now negotiators, facilitators, mediators, and arbitration providers through numerous organizations such as AAA, JAMS, ICC International Court of Arbitration and CPR.

Parties have several ADR options at their disposal to resolve their problems. The most-used form of ADR within the construction industry is mediation,<sup>15</sup> which involves hiring a mediator to facilitate discussions amongst the parties to “instill realistic expectations in the parties and attempt to find middle ground.”<sup>16</sup> The goal is to reach a settlement without too much lawyering. Mediation is so prevalent in the construction industry that most disputes go to mediation at least once, and the courts often mandate parties to mediate before going to trial.<sup>17</sup> Timing may be the most crucial part if the parties decide to mediate; the earlier it is attempted in the process, the greater the opportunity for saving legal fees.

Another ADR option is partnering. This is an agreement that focuses on project planning at the beginning of the project, with various dispute resolution methods laid out if a problem occurs.<sup>18</sup> Partnering keeps communication open and may result in better opportunities for informal dispute resolution.

Other ADR forms that have been used to resolve construction disputes include conflict management systems, early neutral evaluation in mini-trials, dispute resolution boards (DRBs) or standing neutral panels, internal decision-makers, and arbitration. Arbitration used to be the most popular form of ADR, but the Association for International Arbitration (AIA) removed the mandatory arbitration provisions in its contracts because of the amount of attorneys’ fees and related costs imposed on clients. Many consider arbitration to be litigation without an appeal.

### **Lawyer criticism in the evolution of construction ADR**

The increased use of ADR in the construction industry has not come without its criticisms, especially those aimed at lawyers as they become a more expensive component. The newer ADR processes have marginalized lawyers, and some have even removed them altogether from the dispute resolution process to “facilitate quick and inexpensive settlements.”<sup>19</sup> This is a result of the perception that construction lawyers are used to being litigators and only get in the way of producing cost-effective settlements.<sup>20</sup> Lawyers are viewed as “profit eaters” or “unnecessary overhead” who drive their fees up as a result of formalistic and time-consuming dispute resolution processes.<sup>21</sup> Construction professionals are dissatisfied with the “legal profession’s inability to guide a dispute towards efficient settlement” and would rather resolve the dispute on their own.<sup>22</sup>

As a result of this negative perception of lawyers, the construction industry has turned to non-lawyer alternatives. Such examples include integrated project delivery (IPD), design-build projects, lean design/construction, ConsensusDocs, non-lawyer neutrals, design review boards (DRBs),

and even changes to the AAA, which allows for fast-track and a la carte services tailored to the situation. These alternatives minimize the role of lawyers and prevent them from churning the ADR process to generate more billable hours.

### **How does the CCC process address the lawyer criticism?**

The CCC process is a lawyer- and party-driven process that identifies “eligible” construction disputes. After the attorneys and parties identify the issues, they come together to solve the dispute, which may include exchanging various “currencies” to reach a financial settlement. These settlement currencies may include more than the usual money and release exchange; they could include, for example, the contractor committing his forces to actually fix the construction defect. The ultimate goal of the CCC process is to minimize attorney or expert fees and to achieve a quicker result. While this process is not much different from routine lawyer settlement efforts, if properly presented to clients and adversaries, its implementation may have significant tangible and intangible benefits that other forms of ADR may not be able to offer.

To facilitate this form of ADR, a construction lawyer doesn’t necessarily need any new skills. The lawyer needs to have a deep understanding of construction law principles, how the industry works, insurance coverage, and all of the parties involved. It is also beneficial to have knowledge of architecture, the engineering and construction industry, owner/developer needs and priorities, and emerging trends and technology. The lawyer must be more of a problem solver and consensus builder than a litigator who can identify win-win opportunities for the parties involved.

## Here's how the CCC process works:

1. The attorney evaluates if the claim is “ripe” for the CCC process.
2. The attorney consults with his or her client, describing the CCC process, its flexibility, and ultimate goals.
3. After the client agrees to use the CCC process, the attorney proposes to the adversary or adversaries to use it. The proposing attorney should anticipate potential obstacles, such as whether the adversaries are insurance lawyers or brokers even willing to participate in the CCC process.
4. Both sides should identify and address any legal or procedural issues that could affect the CCC process, such as contract mandates, statute of limitations, or tolling agreements.
5. Both sides will then negotiate the CCC process; everything should be committed to writing if possible. An example is an agreement stating that the CCC process is a settlement communication and therefore not admissible in court.
6. Both sides will then need to agree on the proper procedure to identify the construction issues:
  - a. For defect claims, hire a technical third-party neutral or have party experts collaborate to identify and agree on the problem (i.e., the sharing of defect and repair information between experts).
  - b. For issues relating to changes in scope; differing site conditions; delay, disruptions, acceleration, and other time-related problems; and insufficient plans / specifications termination, have a single neutral

identify the issues or let the party experts collaborate.

7. Both sides will then negotiate the division of responsibility going forward.
8. If allocation of financial liability hits an impasse and cannot be achieved by the parties and attorneys alone, a third-party neutral should be engaged to help “push the deal over the goal line.”
9. A resolution may entail various forms of settlement currencies, including:
  - a. Money from a party;
  - b. Performance from a party (i.e., contractor repair);
  - c. Money from the insurance company;
  - d. A promise or commitment from a party to complete future work; and
  - e. A confidentiality and non-disparagement agreement.
10. The settlement documents are signed and executed.

## Advantages of the CCC process

There are several advantages for clients when selecting the CCC process. First, it can reduce legal and expert fees. Another important benefit is that the process is collaborative, not adversarial, and that helps maintain positive working relationships among the parties—especially when

the project is underway. Allowing experts to collaborate eliminates attorney-led discussions, gives the parties a better understanding of each side's position, and can lead into a better investigation and suggested result. The entire CCC process offers flexibility at any time, which can be tailored to the needs of the parties or the project. Finally, instead of just procuring a financial settlement and termination of a business relationship, the CCC process can help ensure the project is completed or repaired, which is the ultimate goal.

Lawyers benefit through the use of the CCC process as well. Perhaps one of the biggest intangible benefits to the lawyer is client goodwill. No longer will the lawyer be viewed as a “profit eater,” but rather as a problem solver. Even if the adversary declines to use it, the lawyer demonstrated to his or her client an effort to avoid more expensive dispute options. If litigation ensues after the CCC process, expert efforts can be leveraged or reused. Participating in the CCC process may also enhance a lawyer's role as a possible future neutral.

## What types of construction claims are candidates for the CCC process?

Although the CCC process has several advantages to help resolve the construction dispute in a collaborative and non-adversarial manner, the attorney must decide at the outset if the case is appropriate for it.



The following are instances when the dispute is “ripe” for the CCC process:

1. There are no contractual dispute resolution boards or standing neutral frameworks that will hijack the lawyer’s suggestion of using the CCC process;
2. The lawyer adversary is open to collaboration;
3. The parties to the dispute have a long-standing relationship, with the potential to work together in the future;
4. The dispute is about a defect with defined facts and damages, but it requires technical expertise where non-lawyer experts may collaborate and mutually find a better fix;
5. The dispute involves sophisticated and claim-experienced owners who disfavor lawyer-intensive arbitration or litigation and would prefer a more collaborative approach; and
6. The dispute arises during the construction project, and the parties desire to resolve the issue and complete the work.

The following are situations in which the CCC process may not be appropriate:

1. The adversary either does not have his or her own attorney or is relying on insurance-appointed counsel, who may not want to participate in the CCC process;
  - a. Insurance defense and coverage lawyers and adjusters may not be ideal for the CCC process because their law practice business model, and absence of a long-term relationship with the construction professional, or even lack of construction industry knowledge, may impede collaboration.

2. A no-show party is missing from the dispute because it is out of business, has no money, or refuses to participate in the CCC process, which could chill others’ participation;
3. The dispute involves a public construction project. Public projects have dispute laws and rules to comply with. Also, there may be political or public scrutiny if the CCC process is attempted;
4. There are too many parties involved in the dispute, which can increase the difficulty of attempting to use the CCC process, because of an increased chance of one party’s objection to participation;
5. Delay and impact claims may involve multiple subjective factors, requiring sifting through mountains of documents and data to determine the cause of the delay;
6. A party has E&O coverage, and the design professional’s deductible is high;
7. Legal or procedural issues exist, such as statute of limitations or claim tardiness; and
8. One of the parties is insolvent.

### Goals of the CCC process

The ultimate goal of the CCC process is to avoid litigation through a lawyer-driven collaborative process. Instead of pointing fingers, the CCC process endeavors to reach an agreed-upon resolution through party, attorney, and expert dialogue by narrowing the issues early in the process. The resolution is one that maintains the relationship between parties and provides the framework on how to resolve the dispute. Through discussion with experts, parties will set up their respective liabilities and responsibilities moving forward. This may lead to a “supervised fix” by the

responsible party. Legal and expert fees will be reduced, leaving more money on the table for repairs or settlement. Even if CCC efforts are unsuccessful, they can be leveraged in litigation or in another ADR process. Finally, the client will view the lawyer as a problem solver and not the problem. •

<sup>1</sup> This topic was originally presented at the ABA Forum on Construction, Division 1 Lunch in October 2016, Chicago, Illinois. Trace P. Hummel, Esq., assisted with this article.

<sup>2</sup> Vidya Kauri, *Construction’s \$2.6B In Claims Easily Tops At AAA In 2015*, Law360 (April 6, 2016).

<sup>3</sup> *Id.*

<sup>4</sup> Don W. Gregory & Peter A. Berg, *Construction Lawyer: Problem or Problem Solver? The Need for Cost-Effective Dispute Resolution in the Construction Industry*, 33 CONSTR. LAW. 16, 16 (2013).

<sup>5</sup> Terrence L. Brookie, *Construction ADR*, 34 CONSTR. LAW., 32 (2014).

<sup>6</sup> Gregory & Berg, *supra* note 3.

<sup>7</sup> *Id.*

<sup>8</sup> Darrick M. Mix, *ADR in the Construction Industry: Continuing the Development of a More Efficient Dispute Resolution Mechanism*, 12 OHIO ST. J. ON DISP. RESOL. 463, 465 (1997).

<sup>9</sup> Gregory & Berg, *supra* note 3, at 17.

<sup>10</sup> *Id.*

<sup>11</sup> Mix, *supra* note 7, at 464.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* [citing Charles M. Sink, *SPECIAL MASTERS: ADR’S LAST CLEAR CHANCE BEFORE TRIAL*, IN *ADR: A PRACTICAL GUIDE TO RESOLVE CONSTRUCTION DISPUTES* 253, 253 (Alan E. Harris et al. eds., 1994)].

<sup>14</sup> Gregory & Berg, *supra* note 3, at 17.

<sup>15</sup> *Id.* at 19.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Gregory & Berg, *supra* note 3, at 19.

<sup>19</sup> *Id.* at 16.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*



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# Reallocation Actions Continued from Page 1

In many jurisdictions, in order for a party to pursue contractual damages in the form of defense fees, that party has to actually incur the fees (as opposed to an insurance carrier paying those fees on its behalf). This concept pairs with the common law notion of subrogation, wherein a carrier is subrogated to the rights of its insured to the extent of its payments. A general liability insurer that has paid a claim to a third party on behalf of its insured may have an equitable right of subrogation against other parties who are legally liable to the insured for the harm suffered by the third party, including defense and indemnification agreements. These rights are derived from the contract of insurance and include its insured's rights against tortfeasors principally responsible for the loss and contractual indemnitors.

## So how can you limit potential reallocation actions?

In recognition of a non-party carrier's putative rights, parties to the underlying litigation have responded with a number of strategies to expand the scope of the release agreement. For instance, the parties can:

1. Include any carriers as part of the negotiations and add them as releasing entities to the settlement agreement;
2. Include a requirement that the claimant defend and indemnify the settling parties as part of any settlement;
3. Require a pre-settlement assignment of claims to the claimant and have the claimant release those claims as part of a settlement; and/or
4. Have the carrier intervene in the

action or force the carrier into the action by way of a cross-complaint and include it in a global settlement.

## Is counsel well-versed in these types of settlement agreements?

Counsel is ethically charged with understanding the dynamics involved in settling a matter and negotiating a settlement agreement and release that provides as much protection for their clients as possible. In the American Bar Association's *Model Rules of Professional Conduct*, Rule 1.1 requires the following: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."

The pitfalls for the novice in negotiating the scope of a settlement agreement and release are plentiful. Counsel has to be conversant with not only the claims against his or her client, but also who owns the rights to those claims. Should there be known third-party claims, they have to be discussed, bargained for, and, if possible, included in the settlement agreement and release. Where the third-party claims are not part of the settlement, counsel needs to understand the potential for a subsequent action, advise his or her client on the risk, and negotiate release language to put the client in the best-possible position should subsequent litigation be filed.

Of course, finding a neutral that understands non-party rights and the limitations in settlement negotiations can significantly contribute toward the successful resolution of the matter and substantially reduce the likelihood of future litigation.

## Are unknown claims going to be released as part of the settlement?

Seeking a full and final resolution of the matter, which would eliminate any future litigation arising from the subject matter of the dispute, is a lofty goal. Typically, the parties must first acknowledge that a general release does not release all known and unknown claims (pursuant to public policy, common law, or statute). As such, the parties to the negotiation must negotiate and specifically waive any limitations for unknown claims. For instance, in California and many other jurisdictions, to obtain the broadest form of release, the parties must set forth the limitations contained in California Civil Code Section 1542 and specifically waive those provisions.

While including and waiving this provision in a settlement agreement is a good step toward obtaining a full and final settlement among the signatories to the agreement, it does not necessarily resolve claims of non-parties to the action. In particular, a carrier's potential rights against its insureds and its derivative rights against third parties can provide the basis upon which a subsequent action can be maintained against the settling parties. As such, the parties to the release, the scope of the release, and third-party rights need serious consideration by counsel when negotiating a settlement and drafting the terms of the settlement and release agreement. ●



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# Expert Witnesses Continued from Page 1

Therefore, this article seeks to provide an overview of the role, summarize the essential principles, and produce concise guidelines that one should follow in accepting and undertaking an appointment as an expert. These links and case references primarily reflect United Kingdom protocols and law, with some from the United States.

## Expert witnesses and expert evidence defined

The Royal Institution of Chartered Surveyors (RICS) in the U.S. and the U.K. provides an apt definition for an expert witness:

“An expert witness is a person engaged to give an opinion based on experience, knowledge, and expertise. The overriding duty of an expert witness is to provide independent, impartial, and unbiased evidence to the court or tribunal.”

There is an important difference between opinion evidence from a layperson and an expert in regard to what is acceptable evidence. Lay witness evidence is normally restricted to factual matters that are within someone’s personal knowledge; he or she is not permitted to express opinions.

Evidence from an expert is used when the evaluation of the issues in dispute involves technical or other subject knowledge that only real experts would have and that would likely be outside the knowledge of laypersons and those trying the case.

## Primary duties and responsibilities of an expert witness

Expert witnesses have a primary obligation to assist the court or tribunal on matters falling within their expertise and are not bound to the party that has appointed

them and is paying their fees. This is quite often misunderstood, and it is common for clients and their legal advisers to lean on experts to make their opinion supportive of the client’s case. This compromises the independence of the expert and should be strongly resisted, to the point of turning down the appointment. The client is free to appoint an expert adviser for this purpose if they so desire (see below).

In *Ikarian Reefer* (U.K.), Mr. Justice Cresswell provided a succinct summary:

“A misunderstanding on the part of some of the expert witnesses has taken place concerning their duties and responsibilities, which has contributed to the length of the trial.”

He then proceeded to outline the duties and responsibilities of expert witnesses in civil cases. Among them were:

- Facts or assumptions upon which the opinion is based should be stated together with material facts, which could detract from the concluded opinion.
- An expert witness should make it clear when a question or issue falls outside his or her expertise.
- If the opinion was not properly researched because insufficient data was available, then that has to be stated with an indication that the opinion is provisional. If the witness cannot assert that the report contains the truth, the whole truth, and nothing but the truth, then that qualification should be stated on the report.

- If, after exchange of reports, an expert witness changes his or her mind on a material matter, then the change of view should be communicated to the other side through legal representatives without delay and, when appropriate, to the court.

The findings in the report must be signed off as being those of the expert only, based on the facts provided and the expert’s own expertise. If the report was prepared with the assistance of a team, the lead expert must understand and agree with every detail in it, as he or she will be the only one in the witness box.

Resist any pressure to slant a report toward a party’s case; do not compromise your independence. You can clarify points, but do not alter your basic findings unless new evidence changes your assessment. Any partiality or bias will be detected and will be damaging to your professional reputation.

## The difference between an expert adviser and an expert witness

This difference should be clear, at least to lawyers, but this is where misunderstanding remains. Independence is the key to this difference. An expert witness has a primary obligation to provide an independent, impartial, and objective assessment to the court or arbitration tribunal, which supersedes his or her duty to the instructing party.

This independent opinion may not turn out to support the case of the instructing party or counter the evidence of the other party, but professional experts will not be swayed by who appointed them in arriving at their conclusions. If the report does not suit the



appointing party, then it may not be able to just bury it in the bottom drawer, because this is not allowed in some jurisdictions. Expert advisers have quite a different role. As well as providing their opinion and advice to clients, they can also discuss related matters and case strategies, knowing they will not have to appear as witnesses and be cross-examined, or have their opinions critically reviewed by other experts. Advice provided by an expert adviser is privileged.

### Qualifying as an expert

Experts are generally approached because of their reputation in a field, but prior to appointment, they will normally be asked to affirm that they have real expertise in the specific issues identified in the brief. Sometimes parties will invite someone to participate as an expert who may be well-known in the industry but not a particular expert on the specific issues in question. In this situation, the appointment should be declined. It is far wiser to decline than to expose yourself to the risk of being humiliated by real experts and opposing counsel in a hearing.

### Accepting expert appointments

Experts need to confirm that they have real expertise in the required area, providing detailed information that satisfies the appointing party. Experts should make a declaration that they have no conflict of interest, or alternatively provide a statement advising of a relationship with one of parties but confirming that they will be able to act impartially, as well as explaining why. Perceived conflict of interest can be a difficult area and probably should be avoided by declining the appointment, even for those who feel they can act impartially. The fees for experts are normally payable by the appointing party, or become a cost of the case if appointed by the court/tribunal, and they should not be contingent on the outcome of the case.

### Disclosure of expert reports, instructions, and briefing documents

It is common for parties to think they can bury an expert's report in the bottom drawer because it does not support their case, treating it as privileged. However, this is not necessarily the situation. If the

opposing party hears that an undisclosed expert report exists, then it may be able to request an order that it be tabled and that the author appears as an expert witness. This will depend on the rules for the particular jurisdiction. There is no general rule across jurisdictions in regard to privilege and disclosure of instructions, case material supplied, draft reports, and undisclosed expert witness reports. A safe way to proceed is to assume that all communications between legal advisers and experts have the potential to be disclosed to the opposing party.

### Professional liability and immunity

Provided an expert maintains a high standard of care and professionalism in accordance with his or her jurisdictional rules, professional negligence should not be an issue. Nevertheless, a prudent practitioner should carry PI insurance, mainly to cover the costs of defense in the event of a challenge on some basis, such as a technical error that influences a proceeding and leads to an unjust finding against a party.

In *Jones v. Kaney* [2011], the U.K. Supreme Court decided that expert witnesses did not have immunity from claims for professional negligence. This reversed a line of authority dating back 400 years. •



**Charles O'Neil** has 40 years of experience in construction and facilities management, predominantly D&C and PPP projects, in Australia, New Zealand, Southeast

Asia, Chile, U.K., Europe, and Canada. Currently, he specializes in risk management and dispute resolution for infrastructure projects and serves as an arbitrator, DRB member, expert witness, and neutral negotiator. He has participated in more than 160 disputes internationally.

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## New Additions

JAMS announced the addition of **Hon. Geraldine Brown (Ret.), Gill S. Freeman and Patricia Thompson, Esq. Judge Brown** is based in the JAMS Chicago Resolution Center and will serve as a neutral in a variety of disputes including Construction, Business/Commercial, Employment, Intellectual Property and Professional Liability. **Gill S. Freeman**, retired Judge 11th Circuit, is based in the JAMS Miami Resolution Center and will serve as a neutral in a variety of disputes including Construction, Construction Defect, Business/Commercial, Estate/Probate/Trusts, Family Law, Professional Liability and Real Property. **Patricia Thompson, Esq.** is also based in the JAMS Miami Resolution Center and will serve as a neutral in a variety of disputes including Construction, Banking, Business/Commercial, Employment and Financial.

## Honors/Upcoming Events

**Philip L. Bruner Esq.** will present a series of lectures on International Arbitration at the University of Stuttgart Law School on May 18-20, 2017, as part of the University's Master's Program on International Construction Practice and Law.

**Richard Chernick, Esq.** will participate in the Los Angeles Metro Global Pound Conference in March 2017.

**Bruce A. Edwards, Esq.** will participate in the San Francisco Metro Global Pound Conference in February 2017.

**John W. Hinchey, Esq.** contributed to a new publication entitled *Guide for Presenting Expert Witness Testimony*, by the American Bar Association, Forum on Construction Law.

**Roy Mitchell, Esq.** was recently named a Fellow of the Chartered Institute of Arbitrators in the U.K.

## Representative Matters

**Zee "Zee" Claiborne, Esq.** mediated a dispute that arose out of a contract with a national laboratory to remediate soil contaminated with hazardous wastes and chemicals, including radioactive isotopes.

**Kenneth C. Gibbs, Esq.** served as a neutral evaluator regarding significant claims between a design-build contractor and a public entity involving a freeway-widening project in Southern California. His evaluation led to a settlement of the dispute.

**Hon. Curtis E. von Kann (Ret.)** mediated a successful settlement of a \$40-million lawsuit over major construction defects in a 400-unit apartment complex in Maryland. On Day 1, they settled between the property owner and the general contractor and on Day 2, they worked out separate settlements with about 20 subcontractors.

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