



June 20, 2014

ARBITRATING CONSTRUCTION DISPUTES
AMERICAN ARBITRATION ASSOCIATION – SUPPLEMENTAL RULES

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Arbitration is a preferred method of alternative dispute resolution in New Jersey, especially in the construction industry. Many construction industry professionals recognize the potential cost and time savings inherent in resolving a dispute via arbitration as opposed to litigation. Moreover, due to the prevalence of technical, document intensive construction disputes, parties that utilize arbitration often benefit from a process that has numerous objective benefits:

- Matters are presided over by a knowledgeable and experienced construction arbitrator or board of arbitrators;
- Hearings are more informal than court proceedings, with less restrictive evidence rules;
- Flexible scheduling of site inspections, hearings and conferences;
- Only limited discovery is permitted;
- Heightened confidentiality; and
- Arbitration rules require timely issuance of awards, which can be entered as a judgment that may only be modified or vacated by a court under a limited, discrete set of circumstances.

However, there are noted drawbacks to submitting a construction dispute to arbitration:

- Extra costs due to arbitrator, filing (typically based on the dollar amount in controversy) and administrative fees;
- Severely limited rights to appeal;
- Inability to join necessary parties;
- An arbitrator may disregard legal principles with no potential recourse;
- The lack of clear time restrictions can frustratingly delay the completion of arbitrations; and
- Arbitrators may be granted great latitude to award costs and fees in contravention of the “American Rule.”

In an effort to address many of the negative aspects of construction arbitration, on June 15, 2014 one of the leading alternative dispute resolution organizations, the American Arbitration Association (www.adr.org) (“AAA”), released a set of Supplemental Rules that offer streamlined procedures for arbitrating construction disputes. Parties electing to use the Supplemental Rules are subject to: a hard cap on the number of days provided to complete arbitration proceedings based upon the amount in dispute; page limits on all submissions; receipt of a standard award; and, most importantly, set maximum prices for all phases of arbitration. Notwithstanding, parties can seek relief from the Supplemental Rules pursuant to SR-4. The new Supplemental Rules can be downloaded at go.adr.org/FixedTimeandCost.

From a practical perspective, the Supplemental Rules should be strongly considered before commencing arbitration, especially for construction disputes that are limited in scope. However, for a number of construction industry disputes subject to arbitration these Supplemental Rules may be too restrictive to adequately address what are oftentimes complicated claims.

Should you have any questions regarding this issue, please do not hesitate to contact any of the members of Construction Law Practice Group at Schenck, Price, Smith & King, LLP.

DISCLAIMER: This Client Alert is designed to keep you aware of recent developments in the law. It is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of the client. If someone you know would like to receive this Client Alert, please send a message to Joseph R. Haftek, Jr., Esq., an associate in the Construction Law Practice Group at jrh@spsk.com.

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