Insights: Publications

4 Key Takeaways | Insights from Arbitrators and Advocates: The Pros and Cons of Alternative Delay and Damages Quantum

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Kilpatrick's **Gautam Reddy** joined a panel of fellow thought leaders at the 2025 Construction Super Conference to discuss "**The Pros and Cons of Alternative Delay and Damages Quantum."** The panel discussed delay and disruption claims in construction disputes where each side is armed with experts providing competing opinions on delays and damages. They explored the risks and rewards of various approaches through the perspectives of experienced construction lawyers, scheduling experts, and arbitrators.

Gautam provides the following takeaways from the discussion:

1. Construction arbitrators want defendants to provide a quantum alternative instead of simply challenging entitlement and providing no opinion on damages. The arbitrators on the panel emphasized that they are comfortable with the cognitive dissonance of a party contending there is no entitlement to the claimed damages, but also providing a damages model in the event entitlement is found.

2. The panel agreed that there are limited circumstances in which a party should not provide an alternate delay analysis and instead only attack the opposing party's delay analysis. These factors generally include the amount in dispute and the forum. You must be absolutely sure that the finder of fact is comfortable with independently evaluating a delay analysis and drawing their own conclusions. Other factors include the availability of documentation, the posture of the parties, and the complexity of the project.

3. Transparency is the key with any expert analysis, whether damages or delay. Arbitrators consider candor by the expert witness to be the most important factor in evaluating the credibility of an expert. Experts should make concessions when necessary and avoid overstating their position or appearing inflexible in the face of credible, adverse evidence.

4. Arbitrators are not necessarily opposed to a party's project scheduler serving as the party's expert on delay. There are certainly pitfalls here, primarily that project schedulers are generally unaccustomed to testifying or preparing expert reports. However, this approach is cost-effective and the project scheduler can come across as more authentic than a professional forensic scheduling expert.

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