Insights: Alerts

KT is...Construction · Alternative Dispute Resolution

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A trillion-plus dollar industry, the U.S. construction business often involves legal disputes primarily caused by choosing the wrong partner; ambiguous, incomplete, or uncoordinated contract documents — at least two-thirds of disputes result from conflicts, omissions, ambiguities, and/or broad generalities; unrealistic risk allocation; lack of trust; and/or failure to resolve problems in real time. With an estimated total cost of $12 billion per year, 80 to 90 percent of construction disputes settle before trial or arbitration, but often very late in the process. These delays increase costs, disrupt business relationships and workflow, create uncertainty, and give less time to resolve the dispute. Thus, resolving disputes early benefits all involved.

Recognized as industry leaders in the prevention and resolution of complex construction disputes, **Kilpatrick Townsend's Construction & Infrastructure Practice** focuses on real-time dispute mitigation and resolution, and has the resources and experience to bring large, complex matters through litigation or arbitration. Our multitiered dispute resolution approach includes externally contracted non-binding (mediation/facilitated negotiations, DRBs, neutral or expert evaluations, mini-trials) and binding (arbitration, private judges, DRBs, litigation) solutions. With 25 attorneys focused on construction and government contracts law, our team bring decades of ADR experience when representing public and private owners, contractors, OEMs and construction managers, EPC contractors, and design professionals on long-term, multimillion and billion-dollar major industrial and infrastructure projects.

Illustrating the advantage of real-time dispute resolution, the firm recently represented a consortium of international contractors, designers, and OEMs in a ICC arbitration involving the collapse of a hydroelectric tunnel our clients built in Panama two years previously. After the collapse, the power plant owner filed for immediate ICC arbitration, claiming $400 million damages for tunnel repairs and shutdown costs. To help our clients avoid significant litigation costs and substantial risks, our team quickly developed a sound defense. Specifically, we hired the best global experts in tunneling and underground rock behavior, focused on contract provisions limiting damages, and engaged a top construction mediator, who demonstrated each side's strengths and weakness. Consequently, we settled the case at a fraction of the original damage request — our clients' insurance carrier covered all other costs, including attorney's fees — thereby avoiding full arbitration proceedings and saving time, money, and good will.