

3 KEY TAKEAWAYS

Successful Arbitration of International Construction Disputes

Kilpatrick Townsend's [Randy Hafer](#) recently presented on the topic of "Successful Arbitration of International Construction Disputes" at the [2022 Risk Management in Underground Construction Conference](#). As tunneling projects get larger and more complicated, the issue of risk becomes more important. The Risk Management in Underground Construction Conference helps stakeholders navigate the latest approaches to risk management. Issues covered during the conference include: contracting practices, geotechnical baseline reports, funding and insurance, risk registers, and guidelines and best practices.

Here are Mr. Hafer's key takeaways from his session:

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In terms of industry sectors, disputes arising from construction/engineering and energy historically generate the largest number of ICC international arbitration cases – in 2020, almost 40% of all filings. Preliminary 2021 statistics show a lower number of filings than 2020 but a sharp increase in the average amount in dispute. These are turbulent times for the construction industry, and many projects around the world have been and continue to be affected in some form by delays, disruption and cost overruns.

Arbitration is by far the preferred method for resolution of international claims and disputes. Advantages of arbitration include:

- **Party autonomy** – you have a significant say in who decides your dispute, how the proceedings are conducted, and the schedule.
- **Decision-makers who know the industry** – probably the most significant attribute next to enforceability. You can have arbitrators who not only know construction but have an understanding of the particular type of project and issues at the heart of your dispute.
- **Speed** – the goal is to complete the arbitration process in 18-24 months, much quicker than is typical in litigation, especially complex litigation.
- **Confidentiality** – the proceedings are private.
- **Finality** – very limited grounds for appeal. Good result or bad, it's effectively over and you and your people can go back to business.
- **Enforceability** – under the New York Convention, which the vast majority of countries in the world have signed, your award generally can be enforced in the country where your opponent and its assets reside.

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International arbitration procedures and practices are different in many significant ways from litigation and even domestic arbitration. It is very important that you seek the counsel of an experienced practitioner in such matters.

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