



Creative Dispute Resolutions

Update

Creating Value With the IDM

As the 2007 AIA documents begin to emerge into the marketplace, many are considering how the new option of designating a third party Independent Decision Maker ("IDM") should be addressed. The default position of allowing the architect to retain the IDM responsibility is the easy choice. However, selecting a third party neutral as IDM can create significant value for the owner, architect and contractor.

Bringing a proactive neutral into the process and prompting more timely resolution to claims, provides an opportunity to minimize the "collateral damage" from a prolonged claim dispute and may even allow alternative solutions that may avoid a claim altogether. Further, with the prospect of a third party scrutinizing potential claims, project team members may "step up their game" to prevent looking bad in front of the rest of the team.

Let's consider some of the issues relative to selecting an IDM for your upcoming projects:

Qualifications

While the AIA documents do not list specific qualifications for the IDM, there are some practical considerations in selecting the right IDM:

Field experience – The IDM is allowed to suggest alternative solutions relative to submitted claims so field or design experience is a critical qualification for the IDM to provide significant value to the process. The IDM should have the capability and field experience to observe and understand the root causes and consequences of potential claims and provide suggestions or at least limit the damages by achieving a quick resolution to the claim.

Neutral training – The IDM functions as an embedded neutral for the project. Mediation and arbitration training are essential qualifications to effectively perform this role. Successful resolution of the claim at the initial decision stage is highly dependent upon how much credibility the parties assign to the competence and impartiality of the IDM. The claim is more likely to be resolved with the initial decision if both parties feel the decision is fair and likely to be upheld in further dispute resolution proceedings.



Creative Dispute Resolutions provides neutral services for construction related disputes.

Roger Harper is on the commercial panel of the American Arbitration Association.

Mr. Harper is also listed by the Tennessee Supreme Court as a Rule 31 Civil and Family Mediator.

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Document knowledge – The IDM is required to provide the initial decision in writing with supporting reasons. A working knowledge of the contract documents and requirements of the parties is essential to effectively preparing the initial decision document.

IDM Rider

A separate agreement between the owner and the IDM or an IDM rider to the contract is advisable to better define the role of the IDM, termination, standard of care, indemnification, and administrative functions. These issues are not addressed in the A201 and should be more fully defined in the rider.

Selection of the IDM

While the selection and cost of the IDM is the responsibility of the owner, involving the other members of the project team in the selection of the IDM, particularly the contractor, is advisable. Arrival at a consensus choice between the parties is essential for the IDM to be effective and create maximum value.

Cost and Scope Considerations

The scope of the IDM services should include an initial orientation to the project, quarterly progress visits to the site to stay apprised on evolving disputes, and an hourly or per diem rate for the actual resolution of claims. The total cost for the IDM function is obviously dependent upon the number of claims that progress to the initial decision phase. However, the investment in a competent, qualified IDM will pay dividends in reduced dispute resolution costs by dispensing with claims early and quickly.

Conclusion

The IDM function is here to stay, as owners and contractors continue searching for ways to limit the cost and schedule impact of construction claims. The opportunity to prevent claims progressing to the point where significant discovery and litigation costs are incurred is a real opportunity to provide significant value to our projects. Selecting the right IDM is the linchpin of this opportunity.

Creative Dispute Resolutions provides construction claim neutral and real estate consulting services. Roger Harper, Principal of Creative Dispute Resolutions is on the construction panel of the American Arbitration Association as well as a listed Rule 31 Civil Mediator by the Tennessee Supreme Court.

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