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TOP TEN COST-EFFECTIVE WAYS TO RESOLVE CONSTRUCTION DISPUTES

“Rapid Resolution” of disputes is a continuing demand of the construction industry. Construction disputes come in all forms, shapes and sizes, and it is widely recognized that among ADR processes “one size does not fit all” and that flexibility in selection of the appropriate method – particularly after the dispute arises – is essential. Contract drafters and litigators – both before and after disputes arise - are pressed to develop and tailor an ADR process that leads to “rapid resolution” with maximized efficiency and minimized cost. Under the 2007 American Institute of Architects forms, parties are compelled to select an ADR process at the time of contracting to avoid litigation as the default option.

This ALI–ABA Webinar will walk you through the Continuum of Best Construction ADR Methods and how they can be tailored to be most cost-effective and efficient.

The faculty is comprised of distinguished JAMS Engineering & Construction Group panelists:

Philip L. Bruner of Minneapolis, Chicago and New York, Moderator. 30 minutes. He will introduce the panel, and then present a brief history of construction ADR, an overview of the construction ADR continuum, and a review of the most common and earliest used “rapid resolution” methods of Informal negotiations/partnering and Structured negotiations and implications of the new American Institute of Architects concept of Independent Decision Maker.

John W. Hinchey of Atlanta. 30 Minutes. He will discuss in detail three innovative “rapid resolution” ADR methods that invoke non-binding processes – the Independent Decision Maker, the Project Neutral, and Expert Determination and how these pre-mediation methods flow into the more formal dispute resolution processes.

Zela (“Zee”) Claiborne of San Francisco. 30 Minutes. She will explore the effective use of mediation in settlement of construction disputes, how mediation can be improved to minimize failure, and what mediation participants can do to assure success.
Harvey J. Kirsh of New York and Toronto. 30 Minutes. He will address three innovative non-binding ADR methods used only infrequently in the United States: The Dispute Review Board, the UK concept of Adjudication, and the Ad Hoc “Hearing/Mini-Trial”. Statistics bear out that these methods are extraordinarily effective at rapidly resolving construction disputes.

Professor Thomas J. Stipanowich of Los Angeles. 40 Minutes. He will review ADR’s ”Rapid Resolution” implications on the “vanishing trial”, why Arbitration frequently is viewed as an unacceptable ADR option, what can be done to improve Arbitration, and how to make arbitration efficient and cost-effective.

Panel “Q & A”. 20 minutes. Following all formal presentations, the faculty will address questions sent in from the audience.

This interactive seminar will give you the opportunity to submit your questions to the speakers before and/or during the program. In addition, all registrants will receive a set of downloadable course materials and free access to the archived online program later.

Total 60-minute hours of instruction: 3.0; Total 50-minute hours of instruction: 3.6.

Suggested Prerequisite: Limited experience in subject matter

Educational Objective: Acquisition of knowledge and skills to develop proficiency as a practitioner; maintenance of professional competence as a practitioner; provision of information on recent legal developments

Level of Instruction: Intermediate
ALI-ABA Topical Courses

Top Ten Cost-Effective Ways to Resolve Construction Disputes
Wednesday, June 16
12 noon – 3:15 p.m. EDT

Cosponsored by JAMS - The Resolution Experts

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Philip L. Bruner, Esq.
Engineering & Construction

Philip L. Bruner, Esq. is an accomplished Dispute Resolver, Mediator, and Arbitrator, and is the Director of JAMS’ Global Engineering and Construction Group, which provides mediation, arbitration, and other dispute resolution services to the national and international engineering and construction industry. Prior to joining JAMS on January 1, 2008, he practiced construction law for 43 years, the last 17 of which were as a senior partner and founding head of the Construction Law Group of the international law firm of Faegre & Benson LLP.

Mr. Bruner is the co-author of Bruner & O’Connor on Construction Law (2002, supplemented annually), the 8-volume, 7500 page legal treatise regarded as the most authoritative ever written on American law governing construction. Since its publication in 2002, the treatise has been cited in over 140 U.S. reported judicial opinions rendered by U.S. Circuit Courts of Appeal, U.S. District Courts, state supreme courts and appellate courts, and U.S. and state claims courts. The treatise also has been cited in countless lawyer briefs and in numerous administrative and arbitration decisions.

Engineering and Construction Law Experience and Qualifications

- Proactive evaluative counselor, mediator, and arbitrator of U.S. and international disputes arising out of engineering and construction projects.
- Areas of expertise include U.S. and international arbitration and mediation, engineering and construction law, surety/fidelity law, architect/engineer professional liability law, international construction law, and government contract law.
- Former lead trial counsel in major litigated or arbitrated construction disputes venued in more than 30 states, including among others over 80 construction arbitrations.
- 43 year law practice was devoted to representation of clients in the construction field, including contractors, owners, developers, public agencies, architects, engineers, designers, sureties, insurers, subcontractors, specialty contractors, and material suppliers. His practice involved all types of public and private construction projects, such as commercial buildings, highways, airports, power plants, industrial plants, refineries, wastewater treatment plants, hard and soft ground tunnels, prisons, mines, wind farms, dams, levees, paving of all types, hotels, convention centers, stadiums, shopping centers, theaters, civic and private office buildings, research and manufacturing facilities, excavation, shoring, underground utilities, underground structures, pipelines, bridges, concrete structures, steel structures, curtain-wall structures, institutional and residential high-rise and low-rise complexes.
- Areas of experience include all types of engineering and construction claims, defenses, and disputes arising out of the formation, award, performance, completion, and warranty of engineering and construction contracts. Subject areas include bidding, bid alternates, negotiation, cost reimbursement, U.S. and international design and construction standard contract forms, differing site conditions, extras, formal and constructive change, cardinal change, breach and material breach, delay, force majeure, acceleration, disruption, suspension, terminations for default and convenience, design-build, aligning, dispute review boards, building information modeling, design professional liability, indemnity, building codes, surety rights and liabilities, insurance claims, lender rights and liabilities, product sales forms, contractor bond and mechanics lien issues, construction damage measures and issues, equitable adjustments, quantum merit, betterment, economic loss, workmanship defects, negligent design or construction, building leaks, and other types of claims.
- Sought after lecturer on construction law subjects and presenter of over 280 lectures in the United States, Europe, and Asia over the past 35 years. International construction law lectures were presented to global conferences in London, Singapore, Manila, Barcelona, Quebec City, Los Angeles, New York, Chicago and Washington DC. Recent lectures include those presented to The Canadian College of Construction Lawyers (Chicago 2009), The Montana Bar Association (Bozeman 2009), The Wisconsin Bar Association (Milwaukee 2009), The Joint Meeting of The American College of Construction Lawyers and the Society of Construction Law of the United Kingdom (London, 2008), The Inter-Pacific Bar Association (Los Angeles 2008,
Zela "Zee" G. Claiborne, Esq.
Engineering & Construction

Ms. Claiborne’s extensive career as a mediator and arbitrator includes work on numerous large-scale construction disputes involving both public and private projects. She has worked with owners and developers, design teams, general contractors, sub-contractors and suppliers, construction managers, sureties, and others involved in the development and construction process. Ms. Claiborne’s experience includes the resolution of issues related to construction contracts, design errors, claims for cost overruns and delays, professional liability of architects and engineers, financing issues, soils issues, and construction defects.

Representative Matters

- Arbitrated $14 million claim involving construction of a large research facility
- Architectural firm’s claim against a group of doctors/investors for fees arising out of work on a hospital project in New Delhi
- Chair of arbitration panel for claim by contractor against owner arising out of a fast-track contract for expansion of wafer fabrication plant in Silicon Valley
- Claim by architectural firm for over $1 million in fees and counterclaim by developer alleging errors and omissions and fee overcharges. The project, including four office buildings in the Silicon Valley, was cancelled during an economic downturn.
- Claim by contractor against structural steel fabricator and erector arising out of the construction of a college resource center
- Claim by developer of an office building against a contractor and an architect for alleged defects in the curtain wall that allowed water intrusion. After a jury trial and an $8 million verdict, the case settled in mediation before appeals were filed.
- Claim for payment by subcontractor arising out of work to furnish and install mechanical systems for construction of a rocket launch pad at Cape Canaveral
- Claim of $14 million+ arising out of a major expansion to a manufacturing plant. The general contractor/design-builder claimed that recent county code requirements changed the structural design criteria in the contract and required an increase to the GMP. The owner denied the request for a change order and claimed that the cost overruns were due to the over design of the structure, an inaccurate bid, and various contractor inefficiencies.
- Claims by design team for fees arising out of work on five schools, including both new construction and renovation of existing facilities. Counterclaims by school district for breach of contract and errors and omissions.
- Claims by public owner for damages in excess of $1 million against design-builder of a wastewater treatment plant arising out of a landslide near the plant
- Mediated a dispute between a public agency owner and electrical contractor regarding improvements to a hydroelectric power plant
- Mediated a dispute between a university and an electrical contractor involving the construction of an ambulatory care facility
- Mediated a dispute involving a general contractor and the developer over the construction of a large apartment complex
- Mediated a multimillion dollar claim against a public entity involving a micro-tunneling operation to install storm water and sewer lines under a river and airport runway near Seattle
- Mediated claim against a rapid transit agency for delays and cost overruns arising out of a project to extend the train system
- Mediated claim by electrical contractor against national laboratory arising out of work performed on an underground duct bank and manhole system
- Mediated claims by contractors over cost overruns for the construction of roads in a Nevada city
- Mediated claims by owner of high-rise office building against an architectural firm for deficient plans and specifications
- Mediated dispute arising out of a contract for seismic retrofit of the Golden Gate Bridge
- Mediated resolution of a $5 million+ claim by a school district and a general contractor against the project design team, including the architect, structural engineer, and MEP subconsultant
- Mediated resolution of a multi-million dollar claim by a school district in the Midwest against the
construction manager and architect for an $80 million project
- Mediation involving construction of a $137 million medical center in Alaska
- Sole arbitrator for claims of delay and cost overruns arising out of construction of a $330 million drug rehabilitation and prison facility

Honors, Memberships, and Professional Activities
- Recognized as a leading practitioner, Alternative Dispute Resolution Category, Who's Who Legal: California, 2009
- Judge pro tem, San Francisco Superior Court
- Faculty, ABA Arbitration Training Institute, San Francisco, 2009
- Speaker on a variety of ADR topics before professional organizations including the American Bar Association (Dispute Resolution Section, Forum on the Construction Industry, Litigation Section), CPR Institute, International Centre for Dispute Resolution, Intellectual Property Owners, Patent Law Institute, American College of Construction Lawyers, the ICC, the AAA, Canadian Bar Association, New York Bar Association, California Judges Association, National Conference on Financial Management, Construction Industry Institute, and others
- Panelist, International Institute for Conflict Prevention and Resolution (CPR) and CPR China Panel; International Chamber of Commerce; and DPR Hawaii
- Fellow, College of Commercial Arbitrators (Board of Directors); American College of Construction Lawyers
- Former Member, American Arbitration Association Board of Directors, National (AAA) and International (ICDR) Rosters of Mediators and Arbitrators for large and complex cases
- Member, American Bar Association, Forum on the Construction Industry (Governing Committee, 1996-1999), Litigation Section, and Dispute Resolution Section; Association of Business Trial Lawyers (ABTL Report, Editorial Board, 1991-2001); California Bar Association; San Francisco Bar Association; California Dispute Resolution Counsel

Background and Education
- Full-time mediator and arbitrator, 1998-present
- Partner/Associate, Bronson, Bronson & McKinnon LLP, San Francisco, 1982-1998
- J.D., University of California at Berkeley, Boalt Hall, 1982
- M.A., University of Texas, Austin
- B.A., Beloit College, Wisconsin
Representative Matters

- **Representative U.S. and International Engineering/Construction Arbitrations**
  - Regional Justice Center, Nevada. Arbitrator of owner, contractor, and subcontractor construction claims aggregating $130,000,000 arising out of workmanship and delay disputes.
  - Condominium Conversion Project, New York City. Sole arbitrator and Tribunal Chair deciding disputes exceeding $125,000,000 arising out of a warehouse condominium conversion project.
  - Power Plant, New York State. Arbitrator of nine figure claims between an owner, EPC contractor, and turbine manufacturer on a $500,000,000 combined cycle power plant project.
  - Power Plant, Pakistan. Arbitrator of international construction disputes in the high eight figures between an owner and an EPC contractor on a $360,000,000 combined cycle power plant project.
  - Ethanol Plant, Ohio. Arbitrator of disputes between an owner and EPC contractor arising out of a $75,000,000 contract for the design and construction of a 50 MG PY ethanol plant.
  - Commercial Building, Bahamas. Arbitrator and Tribunal Chair of multi-million dollar international construction disputes arising out of delay and workmanship issues on a commercial building project.
  - Luxury Hotel, Barbados. Arbitrator and Tribunal Chair of multi-million dollar international construction disputes arising out of delay in completion of hotel project construction.

- **Representative U.S. and International Engineering/Construction Mediations**
  - Court House/Hall of Justice, New York City. Mediator selected by 25 parties to mediate claims aggregating more than $300,000,000 arising out of the construction of a metropolitan court house and jail facility.
  - DisneyWorld, Florida. Mediator of successful settlement of multi-million dollar construction disputes between an owner, contractor, pipe supplier, and insurers over failure of installed pipe at an amusement park.
  - European Headquarters, Switzerland. When a multi-million dollar European headquarters project for a Fortune 100 U.S. corporation came to a standstill because of disputes between a Swiss architect/engineer and a British construction manager, Mr. Bruner was retained by the U.S. owner to analyze and sort out the problems, mediate disputes, counsel the owner’s executives and consultants, and get the project back on track. The project was completed on schedule.
  - Steel Plant Renovation, Colorado. Mediator of successfully settled multi-million dollar disputes involving an owner, engineers, general contractor, and over eight subcontractors and suppliers related to delayed completion of steel plant renovations.
  - State Water Pipeline, North Dakota. Mediator of successfully settled multi-million dollar claims involving differing site conditions and delay between an owner, contractor, and subcontractors arising out of the construction of a major water pipeline for the State of North Dakota.
  - Interstate Highway DRB, Minnesota. Chair of the Dispute Review Board established to provide advisory opinions and mediation assistance regarding disputes arising out of the design and construction of a $250,000,000 interstate highway project.

Honors, Memberships, and Professional Activities

- Recipient of the 2005 Cornerstone Award, The American Bar Association Forum Committee on the Construction Industry’s highest award for “exceptional service to the construction industry, the public, and the legal profession”.
- Founding Fellow and President (2006-2007), The American College of Construction Lawyers.
- Honorary Fellow, The Canadian College of Construction Lawyers.
- Fellow, College of Commercial Arbitrators.
- Life Fellow, American Bar Foundation.
- Fellow, National Contract Management Association.
- Cited by *The International Who’s Who of Business Lawyers* as “one of the world’s most highly regarded construction lawyers”.
- Named as one of Minnesota’s "Super Lawyers" by *Minnesota Law and Politics* magazine.
● Lecturer, The Masters Institute in Construction Contracting (1992-present)
● Chair, Thomson Reuters/West Group Construction Industry Advisory Board (1992-present)
● Vice Chair, Inter-Pacific Bar Association International Construction Projects Committee (1995-1997)
● Chair, American Bar Association Fidelity and Surety Law Committee (1994-1995)
● Chair, Supreme Court of Minnesota Board of Continuing Legal Education (1994-1998)
● Adjunct Professor teaching construction law, University of Minnesota Law School (2003-2007), and William Mitchell College of Law (2006-2008); Adjunct Professor teaching government contract law, William Mitchell College of Law (1970-1978)
● Noted Lecturer of more than 280 presentations
● Served to Captain, Judge Advocate Generals Department, U.S. Air Force (1964-1967); awarded Air Force Commendation Medal (1967)

Publications
● Co-Author, Bruner & O’Connor on Construction Law, the frequently cited 8-volume, 7500 page legal treatise regarded as the most authoritative ever written on American law governing construction
● Author, Global Engineering and Construction ADR: Meeting an Industry’s Demand for Specialized Expertise, Innovation and Efficiency, 51 IPBA Journal 11 (September 2008)
● Co-Author, Generalship of the Complex Construction Surety Case, in Managing and Litigating the Complex Surety Case (P. Bruner and T. Haley eds., 2d Ed. 2007)
● Author, Risk Allocation Under Concept of ‘Control’ as Basis for Liability and Exculpation, 24 Construction Litigation Reporter 3 (2003)
● Author or co-author of over 40 other construction law articles

Background and Education
● Senior Partner, Faegre & Benson LLP, 1991-2007
● M.B.A., Syracuse University, 1967
● J.D., University of Michigan Law School, 1964
● A.B., Princeton University, 1961
John W. Hinchey, Esq.
Engineering & Construction

John W. Hinchey, Esq. is recognized as a national and international leader in the practice of construction law, with extensive experience in resolving significant construction disputes as a mediator and arbitrator. He has served as President and fellow of the American College of Construction Lawyers; Chair and recipient of the highest achievement “Cornerstone” award from the world’s largest organization of construction lawyers, the American Bar Association Forum on the Construction Industry; Chair of the Atlanta Bar Association, Construction Law Section; President of the Georgia Arbitrators Forum; Co-chair of the International Bar Association, International Construction Projects Committee; and Counsel of Distinguished Advisors to and guest lecturer of The Strauss Institute, Pepperdine University School of Law. He is a fellow of the College of Commercial Arbitrators, member of the Chartered Institute of Arbitrators, CPR Distinguished Panel of Construction Arbitrators and serves on the Advisory Board of West Publishing Company’s Construction Contract Law Report. He is the co-author of International Construction Arbitration Handbook (ThomsonWest, 2008); Co-author, International Construction Law: A Guide for Cross-Border Transactions (ABA, 2009); Co-author, Handbook on Arbitration Practice (2009); Co-author, Construction Law Glossary (ABA, 2010); Author, “Taming Construction Disputes Through Rapid Resolution”, Engineering News-Record (2009), and has presented many papers and spoken to multiple groups on construction and dispute resolution topics over the last 30 years.

Supplementary Matters
- As a partner of the international firm of King & Spalding, LLP, he has represented many clients across a broad spectrum of construction, contracting, and procurement activities including
  - United Parcel Service (UPS) as core counsel for its worldwide construction transactions and related dispute resolution matters
  - Wal Mart, Inc., in multi-state construction litigation
  - The Coca-Cola Company in a significant construction case in the United Kingdom
  - Holder Construction Company, involving significant projects in the Southeastern United States
  - Blue Cross, Blue Shield involving the design and construction of their headquarters facility

Representative Matters
- Arbitrated, mediated, or served as advocate in a variety of large national and international complex construction disputes, including the re-construction of a power generation plant in Northwest India: the design and constructin of an ethanol plant in the Midwest: design and construction of a large electric power generation plant in Boston; construction of the World Congress Center in Atlanta; ICC arbitration concerning a mining project in Peru; litigation in London involving the world’s largest beverage concentrate plant in Ireland; construction of a large resort in the Cayman Islands; an offshore intake system for a power plant off the Western Coast of Mexico; and the design and construction of a fibre optic transmission system covering the Eastern Seaboard of the United States
- Involved in all aspects of Turner Broadcasting System’s $1.2 billion construction programs
- Negotiated or performed risk analyses of a variety of design build, turnkey, and EPC agreements for such projects as the
  - Al Udeid Air Base Fueling Facility in Qatar
  - Yale University construction program
  - Turner Field in Atlanta
  - Houston Astros Stadium
  - New England Patriots Stadium
  - Philadelphia Eagles Stadium
  - Proposed new Tacoma Narrows Bridge
  - Monorail project in Las Vegas, Nevada
  - Renovation of the Bethpage USGA golf course for the U.S. Open (1997)
- Served as principal counsel in drafting the design, construction, and procurement agreements and resolution of disputes for the 1996 Summer Olympic Games and the 2004 G-8 World Conference
Honors, Memberships, and Professional Activities

- Designated with the highest level ranking (Band 1) in Construction, *Chambers USA*, 2008
- Recognized as a “Top 100” Georgia SuperLawyer by *Law & Politics Magazine*, 2004-2007
- Cited by *Legal 500 United States* as “thorough, competent and good at communicating issues,” 2007
- *Georgia Trend’s* “Legal Elite,” 2007
- Recipient of the Cornerstone Award, highest lifetime achievement award for distinguished service by the American Bar Association, Forum on the Construction Industry, 2006
- 1st Band, Georgia’s Leading Individual Lawyers (Construction), *Chambers and Partners*, 2005
- Former President and Board of Governors, American College of Construction Lawyers, 2008
- Past Chair, American Bar Association, Forum on the Construction Industry (1996)
- Past Chair, Atlanta Bar Association, Construction Law Section (1999-2000)
- Past Chair, Georgia State Financing and Investment Commission (GSFIC) (2005)
- Fellow, College of Commercial Arbitrators (2009-date)
- CPR International Institute for Conflict Prevention and Resolution Distinguished Panel of Neutrals-Construction, 2007-present
- Council of Distinguished Advisors, Guest Lecturer, The Straus Institute for Dispute Resolution, Pepperdine University School of Law, 2006-present
- Guest Lecturer, Georgia State University, Global Partners MBA Program (2008-2010)
- Member, Chartered Institute of Arbitrators, 2001-present
- Member: U.S. Supreme Court, Georgia Supreme Court, London Court of International Arbitration

Representative Publications and Presentations

- Author, Taming Construction Disputes Through ‘Rapid Resolution’, Engineering News-Record (July 8, 2009)
- Contributing author, JAMS Global Engineering and Construction Newsletter (2009-date)
- Speaker and Panelist, Construction Managers of America (CMAA) Annual Conference, Orlando, Florida (2009)
- Speaker and Panelist, ABA Section of Dispute Resolution, ABA Mid-year Meeting on the topics: “Current Trends and Developments in International Arbitration” and “Reigning in Costs and Delays in Commercial and Construction Arbitration” (Orlando, Florida, 2010)
- Speaker and Panelist, International Litigation and Arbitration Conference on Regional Developments in the United States (Miami, 2010)
- Speaker and panelist for the Annual Meeting of the Canadian College of Construction Lawyers, Vernon, British Columbia (June, 2007)

Background and Education

- M.Litt., (Comparative Law), Oxford University, England
- LL.M., (International Law), Harvard Law School
- LL.B., Emory University
- A.B., Emory University
Harvey J. Kirsh, Esq.
Engineering & Construction

Harvey J. Kirsh, Esq., has more than 35 years of experience as a litigator, arbitrator, and mediator in the resolution of complex, multi-million dollar construction claims and disputes arising out of infrastructure, engineering, industrial, commercial, and institutional projects. As a senior partner and Co-Chair of Osler, Hoskin & Harcourt LLP’s Construction & Infrastructure Group, he manages a practice that has represented a wide spectrum of clients across Canada, including owners, contractors, engineers, architects, sureties, and lenders.

Mr. Kirsh, who holds an LL.M. from Harvard Law School, an LL.B. from Osgoode Hall Law School (Toronto), and a B.A. from the University of Toronto, is an Adjunct Professor at the Faculty of Law, University of Toronto, where he created and teaches a course entitled “From Blueprints to Buildings: Legal Issues in the Construction Industry”. He was the Founding President and is a Governor of the Canadian College of Construction Lawyers, and has been certified by the Law Society of Upper Canada as a “Specialist in Construction Law” (CS).

ADR Experience and Qualifications

- Mr. Kirsh has been certified as a Chartered Arbitrator (C. Arb.) by the ADR Institute of Canada, and serves as President of Canadian Construction Arbitration Services Ltd. He has acted as arbitrator under the auspices of the International Chamber of Commerce’s International Court of Arbitration, and has been a member of the panels of the International Centre for Dispute Resolution (American Arbitration Association), the American Dispute Resolution Centre, and the International Arbitration Forum.
- Mr. Kirsh has been appointed by Infrastructure Ontario (Crown agency of the Government of Ontario) as Mediator and Adjudicator for its major infrastructure projects (hospitals, nuclear facilities, highways, courthouses, correctional facilities).
- Mr. Kirsh has resolved substantial and complex disputes dealing with delay, loss of productivity, impact and acceleration claims, construction and design deficiencies and errors, scope-of-work issues, professional liability and negligence, economic loss, tendering and procurement issues, and lien claims. He has mediated, arbitrated, and litigated disputes and claims related to a wide range of facilities — public and private — including bridges, subways and transportation facilities, roads and highways, casinos, resorts, airports, stadiums and arenas, water and wastewater plants, hospitals and healthcare facilities, court houses, manufacturing and distribution facilities, commercial office towers, high-rise condominiums and hotels, municipal projects, university buildings, schools, shopping centers, and a range of energy projects including co-generation, electrical transmission, and nuclear facilities. He has also advised municipal, provincial (as an appointee of the Attorney-General), and federal governments on construction-related legal issues and legislation.
- Mr. Kirsh has been involved in the development and in the prosecution, defense, and resolution of complex claims relating to many high-profile facilities and public entities, including the following representative matters.

Representative Matters

- **Cement Finish Mill:** Arbitrator with respect to more than US $16 million in claims arising out of the construction of finish mill facilities in West Virginia
- **Oil Refinery:** Arbitrator with respect to more than US $12 million in claims arising out of the design and construction of an oil refinery in Utah
- **Halifax Harbour Solutions Sewage Collection System Project:** Arbitrator with respect to claims arising out of the CDN $112 million project
- **Brewery Facility:** Mediator with respect to issues arising out of the design and construction of a brewery facility in Nova Scotia
- **Confederation Bridge** (one of the world’s longest suspension bridges, spanning the Northumberland Strait between the provinces of Prince Edward Island and New Brunswick)
- **Four Seasons Centre for the Performing Arts** (home of the Canadian Opera Company and the National Ballet of Canada)
Greater Toronto Airport Authority (also known as Lester B. Pearson International Airport)

Niagara Fallsview Casino Resort

Toronto Transit Commission’s $900 million Sheppard Subway

580-megawatt Brighton Beach Power Plant (Windsor, Ontario)

CANDU 9 nuclear reactor project (Bruce Nuclear Generating Station)

City of Sudbury Water Reservoir (Sudbury, Ontario)

Deerhurst Resort (one of Canada’s largest all-season luxury golf, spa, and family resorts)

Kingston Regional Sports and Entertainment Centre (home of the Kingston Frontenacs hockey team)

Marriott Toronto Downtown Eaton Centre Hotel

Municipality of Metropolitan Toronto Archives

Northland Power’s 110-megawatt Iroquois Falls, Ontario cogeneration plant

Numerous University of Toronto construction projects, including fiber optics installation program, Varsity Arena renovations, construction of student dormitories, renovation of law school, dental school facilities, etc.

Sewage pumping station (Wasaga Beach Ontario)

Shoppers’ Drug Mart’s Mississauga Distribution Centre

Sunnybrook Health Sciences Centre

The “Dudley Do-Right” floating flume and roller coaster ride system in Universal Studio’s “Islands of Adventure” theme park (Orlando Florida)

The Residences at the Ritz Carlton (luxury high-rise condominium and hotel)

Wastewater treatment plant (Orangeville, Ontario)

Honors, Memberships, and Professional Activities

- From “In Brief” (London, England): “Construction is the largest industry in Canada, contributing millions of dollars to the economy. The leading practitioner in this field is clearly Harvey Kirsh, recommended to us by most leading City firms.

- From “The Canadian Legal LEXPERT Directory”: “Harvey J. Kirsh is referred to as one of the leading practitioners most frequently recommended to us, who warrants special comment in that he enjoys a very strong national reputation in this practice area.

- Listed as one of the leading construction lawyers in Canada by “The Best Lawyers in Canada Directory”

- Listed as one of the leading construction lawyers in Canada by “Lexpert/American Lawyers Media Guide to the Leading 500 Lawyers in Canada”

- Nominee for Distinguished Service Award, Canadian Bar Association

- Nominee for Law Society Medal, Law Society of Upper Canada

- Nominee for David W. Mundell Medal for Legal Writing

- Founding President and a Governor of the Canadian College of Construction Lawyers

- Consultant and Member, Attorney General of Ontario’s Advisory Committee on Construction Dispute Resolution

- Member, Attorney General of Ontario’s Advisory Committee on the Draft Construction Lien Act

- Attorney General of Ontario’s Civil Procedure Revision Committee

- Legal Counsel and Director, Ontario Building Envelope Council

- Consultant, Newfoundland Law Reform Commission, Mechanics’ Lien Act Revision Project

- Member, Advisory Committee on Legal Publishing, McGraw-Hill Ryerson Limited

- Past Chair of both the National and Provincial Construction Law Sections of the Canadian Bar Association

- Listed in Who’s Who in Canada, and various other professional directories

Publications and Presentations

Mr. Kirsh is the Founding Editor-in-Chief of the Construction Law Reports, and the Founding Editor of the Construction Law Letter. He is also the author of more than 150 articles in the field of construction law and alternative dispute resolution, as well as a number of leading texts, including:

- The Annotated Construction Contract (CCDC 2 - 1994)

- Annotated Stipulated Price Construction Contract

- The Canadian Construction Law Dictionary (Judicially Considered)

- Kirsh’s Index to Canadian Construction Law Literature

- Kirsh’s Construction Law Casebook (2 vols.)

- Kirsh’s Construction Lien Case Finder (4 vols.)

- Kirsh’s Guide to Construction Liens in Ontario (1st and 2nd eds.)

- The Construction Lien Act: Issues and Perspectives

- Lien Legislation in Canada (1st and 2nd eds.)

- Construction Liens Across Canada

He regularly speaks on various aspects of construction law and alternative dispute resolution,
acting as Chair, Course Director, or Presenter at conferences and seminars across Canada and the United States.

**Background and Education**

- Senior Partner and Co-Chair of Construction and Infrastructure Group, Osler, Hoskin & Harcourt, LLP, 2000-present
- Specialist in Construction Law (C.S.) certification
- Chartered Arbitrator (C. Arb.) certification, 1990
- LL.M., Harvard Law School, Cambridge, Massachusetts, United States, 1971
- LL.B., Osgoode Hall Law School, Toronto, Ontario, Canada, 1970
- B.A., University of Toronto, Ontario, Canada, 1967
Thomas J. Stipanowich, Esq.
Engineering & Construction

Thomas J. Stipanowich, Esq. is among the best known experts in the field of construction dispute resolution today, and has extensive experience resolving large, complex cases as an arbitrator, mediator and special master.

Professor Stipanowich’s experience extends to all kinds of public and private projects, including hospitals and health care facilities, manufacturing and power generation facilities, commercial and university buildings, condominiums and residential facilities, government facilities, hotels, pipelines and transportation systems. He has dealt with virtually every kind of construction claim or dispute, including complex delay and disruption, changes (including cardinal change), differing site conditions, defective work, MBEs, PPP, design/build and turnkey projects.

He also brings to the table unique insight regarding rules, procedures and administration, having served as CEO of the International Institute for Conflict Prevention & Resolution (CPR Institute) from 2001 to 2006 as well as worked with many of the world’s leading corporate general counsel, senior attorneys, judges and scholars. He also served on the Board of Directors and as a Resident Scholar at the American Arbitration Association, and is a leader on the JAMS General Engineering and Construction Team.

A popular trainer and teacher, Tom conducts training and educational programs on negotiation and conflict management topics to leading corporations such as General Electric, Shell Oil, General Mills, and Siemens, as well as leading law firms, and international and national organizations on four continents. He has done arbitration or mediation training for the Straus Institute, CPR, AAA, and the Chartered Institute of Arbitrators.

Representative Matters

- Avoidance or resolution of numerous jobsite issues as project neutral in the construction of a large, federally-funded housing project
- Commercial arbitration and mediation experience involves resolution of issues surrounding corporate breakups, long-term supply contracts, and regulatory issues, as well as insurance coverage issues
- Facilitated a number of partnering programs on construction and commercial projects, as well as strategic planning or consensus-building efforts for a major designer-builder and other public and private clients
- Resolution of differing site conditions claims and delay claims regarding improvement of rail facility
- Resolution of disputes involving design and construction of aerobic biological digestion system at waste water treatment facility
- Resolution of large, complex disputes involving Toyota automobile manufacturing facility, including cardinal change, abandonment and other issues
- Served as a standing mediator (project neutral) charged with helping to avoid or resolve disputes to keep projects on track, and has experience with other innovative approaches such as med-arb and arb-med
- Settlement (through med-arb) of insurance claims associated with mine collapse
- Settlement of claims surrounding environmental remediation at a major federal arsenal
- Settlement of numerous disputes involving design and construction of large power generation facility

Honors, Memberships, and Professional Activities

- Appointed to Beijing Arbitration Commission Panel of Arbitrators, 2009
- Recognized as a leading practitioner, Alternative Dispute Resolution Category, Who's Who Legal: California, 2009
- Recipient, D’Alemberte/Raven Award, American Bar Association Section of Dispute Resolution, 2008
- Selected as one of 500 outstanding lawyers in America in a survey conducted by Lawdragon
As a construction and government lawyer and long-time professor of law, he is an expert in contract theory and practice; as a federal district court special master he authored a leading published decision on cardinal change and abandonment issues.

Professor Stipanowich is co-author of *Resolving Disputes: Theory and Practice for Lawyers* (Aspen 2005), a book and set of teaching materials for law schools on dispute resolution. He has co-authored two of the leading books on commercial arbitration law and practice, including *Federal Arbitration Law: Agreements, Awards and Remedies* (Little, Brown & Co./Aspen 1994), a five volume treatise cited by the U.S. Supreme Court and many other federal and state courts. As the Director of the CPR Commission on the Future of Arbitration and the CPR/Hewlett Professor of Law, he edited an extensive set of guidelines, *Commercial Arbitration at Its Best: Successful Strategies for Business Users* (2001). His many articles have appeared in the Northwestern, Boston University, Wisconsin, Iowa, and Indiana law reviews, and numerous other periodicals. He played an advisory role in national efforts at statutory reform (the Uniform Arbitration Act and Uniform Mediation Act), served as chief drafter of a protocol for consumer ADR programs, and played an important role in the development of the leading construction and securities ADR rules and policies. He has looked very closely at practices surrounding business arbitration and mediation and recently authored a major study on the growth and impact of ADR for the *Journal of Empirical Legal Research*.

Served as a Public Member and Chair of the Securities Industry Conference on Arbitration (1997-2004), on the Board of Directors of the American Arbitration Association, and Chair of the Advisory Committee to the Global Disputes Research Center. In 2000, he was also the inaugural Hoellering International Visiting Scholar at the AAA.

First non-British member of Companions of the Chartered Institute of Arbitrators, a Fellow of the American College of Construction Lawyers, and a Founding Fellow of the American College of Commercial Arbitrators

**Background and Education**

- William H. Webster Chair in Dispute Resolution, Academic Director and Professor of Law, Straus Institute for Dispute Resolution, Pepperdine University
- Practiced construction and government contract law with the nationally known law firm of Smith Currie & Hancock and as counsel with Stites & Harbison
- J.D., *magna cum laude*, University of Illinois, 1980 (Order of the Coif)
- M.A., University of Illinois, 1976 (Ryerson Traveling Fellowship, AIA School Medal)
- B.A., *highest honors*, University of Illinois, 1974 (National Merit Scholar, Bronze Tablet, Alpha Rho Chi Medal)