

Expert witness v. tribunal appointed expert

Kiev Arbitration Days 2011

Bartosz Krużewski

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Party appointed experts

Criticism

- Not really independent;
- "Hired guns";
- Creditability of the reports;
- Is he / she helpful to the tribunal?
- Expensive;
- Time-consuming

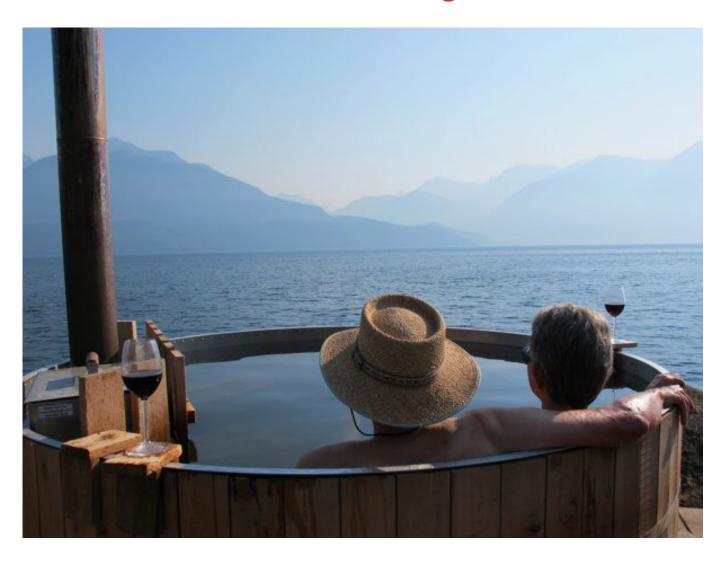
Party appointed experts

- Is it really that bad?
 - Autonomy of the parties in arbitration;
 - Adversary v. inquisitorial proceedings;
 - Standards of independence;
 - Testing the expert witnesses and their reports

Party appointed experts

- Can anything be done?
- Appendix IV to New ICC Arbitration Rules Case management techniques (...)
 - Identifying issues that can be resolved by agreement between the parties or their experts;
 - Limiting the length and scope of written submissions and written and oral witness evidence (both fact witness and experts) so as to avoid repetition and maintain a focus on key issues

Hot tubbing



Scott Schedules

Window	Dates of Windows	Periods of Prolongation	Cause of Delay	Prolongation Costs	Prolongation Costs	Assessment of	Entitlement to	Arbitrator's
	Analysis		- Claimants' Case	- Claimant's Case €			General Prolongation	
	,		(1)		(2)		Costs - expert opinion	
	10/04/2003 -							
0	04/06/2003	No net delay claimed		0	0		Nil	
	04/00/2003							
			(SoC annex 181001 - 003 refers)					
1	05/06/2003 -		NS_SOSI [141006 - 013], Delayed start to works at S Interchange, Re-				Nil	
	01/07/2003		design NS75 [141014 - 016], Delayed start to Gas Pipelines					
			N373 [141014 - 010], Delayed Start to Gas Pipelines					
		1						
		158 days between						
		02/06/2003 - 25/06/2004	(SoC annex 181001 - 003 refers)					
			NS75 [141014 - 016], Delayed start to Gas Pipelines					
	02/07/2003 -		EW 33790_1[141020 - 022], Earthwork delay at 306+620 to 306+975					
2	31/07/2003		EW 12 [141023 - 025], Earthwork delay at 306+560 to 306+640				Nil	
	,,		NS76 [141026 - 028], Delay to gas pipeline - method of connection					
			NSC150 [141036 - 038] Delay to 150 diameter culverts under the motorway					
			inotorway 					
	1						1	

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www.cliffordchance.com

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