



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

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