

Expert Determination Clauses: A Tailored Alternative for Construction Projects?

“Construction disputes face additional challenges compared to other commercial disputes for various reasons,” post James Ebert and Steven W. Fleming in *Jones Day’s Insights*, “including:

- projects involve a multitude of participants and stakeholders, including principals, contractors and subcontractors with a range of different interfaces and interests;
the disputes concern complex technical matters in addition to legal issues;
- huge volumes of documentation from many sources are generated during projects, including technical documents, correspondence and emails; and
- participants are required to balance the legal and commercial aspects of claims and timely resolution of disputes with good project execution and the maintenance of ongoing relationships.”

“To overcome these challenges in major projects, parties often agree to adopt independent expert determination for disputes that may arise. This is a process in which an independent expert is appointed to decide disputes. The types of dispute that can be determined, the relief that can be awarded and whether the expert’s decision is binding will depend on the terms of the expert determination clause.”

Read the post.