

At A Glance

The Role of Economic Experts in Construction Disputes

Overview

International arbitration is now the preferred method of resolving cross-border disputes across a diverse range of industries and geographies. Over the last decade, the number of international arbitration proceedings has grown steadily—and so too has the complexity and value of those disputes, which often require increasingly sophisticated economic analysis and advice.

For over half a century, NERA experts have been central to client success in some of the world's highest-profile disputes, regulatory proceedings, and business challenges. Our international arbitration experts help clients through all stages of the arbitration process, providing specialized expertise in both commercial and investment treaty arbitrations. Our experts provide authoritative, independent economic analysis, valuation opinions, causation determinations, damages assessments, regulatory opinions, expert reports, and testimony. They draw on decades of experience, combined with specialized knowledge and deep expertise in regulated industries and competitive markets. NERA economists have provided these services in major arbitration venues around the world, from the US to Europe, Asia, the Middle East, and Latin America.

Construction Disputes Capabilities

Many of the most challenging construction disputes are found in the energy, water, telecoms, and transport sectors due to the scale and complexity of the projects involved. These are sectors where NERA has unparalleled economic expertise.

The damages phase of construction disputes typically concerns the quantum of additional costs arising post-contract award, and who should bear these costs—the contractor or the project owner. Complex construction disputes may also involve consequential or indirect losses, in particular due to delays, either because a liquidated damages provision is challengeable or because the owner sees other grounds to pursue such a claim. A deep understanding of the economics of contractual arrangements in the energy, water, telecoms, and transport sectors and related downstream markets is essential in such cases.

The distinctive value that NERA economic experts bring to complex construction disputes is illustrated by the following examples of our previous assignments.

International Oil and Gas Company (Australia)

Expert report in the context of a renegotiation of an Australian liquefied natural gas (LNG) contract prior to arbitration. The case required estimating the costs of serving the LNG contract in question. We undertook an assessment of the costs of constructing an LNG train and the extent to which the cost escalation that had occurred during construction would have been foreseeable at the time that the contract was signed. NERA's work included detailed econometric analysis of construction cost indices and the prices of raw materials on international markets.

European Oil Refinery

Expert testimony on compensation due to delays under a construction contract for a European petrochemicals plant. We performed an analysis of lost profits due to delays in the production of refined diesel products, including collaboration with engineering experts to frame scenarios relevant to damages assessment, forecasting of commodity prices taking account of the changed supply-demand dynamics in the local market, and cost of capital analysis.

Middle Eastern Utility

Expert testimony to value damages due to a delay in the construction of a generation/desalinization project in a Middle Eastern state. NERA's work included modeling the wholesale electricity system in the state in question to identify the impact of the delay on the utility's power procurement costs under its portfolio of power purchase agreements.

European Gas Transport Company

Expert testimony in relation to a price escalation clause related to an LNG terminal construction project. The contractor claimed for escalation in the cost of materials related to unforeseeable changes in international metals markets. We analyzed the foreseeability of the changes, the extent to which such changes would have impacted the contractor's costs, and the degree to which any cost escalation was priced-in by the contractor.

Manila Airport BOT Arbitration (Philippines)

Expert testimony on whether the build-operate-transfer (BOT) contract awarded to PIATCO (the Philippine International Air Terminals Co.) had been procured in a fraudulent manner. Our analysis demonstrated conclusively that the contract procurement process had been corrupted enough to obviate the intended benefits of a competitive process.

Our Global (and Local) Reach

With experts in more than 25 offices across Europe, Asia, and North America, our arbitration team can provide a strong local presence and broad language capabilities that enable us to articulate the independent advice and expert testimony needed for successful outcomes across all arbitration venues. Our experts understand the subtle and regional differences from one arbitration institution

to another, and excel at taking highly complex economic issues and communicating them to panels and tribunals in a clear and impactful manner.

NERA experts have testified in arbitration proceedings under all of the major institutional and procedural rules, including:

- International Chamber of Commerce
- International Centre for Settlement of Investment Disputes (ICSID)
- London Court of International Arbitration
- American Arbitration Association

We also have substantial industry-based and regional institutional experience, including:

- Japan Commercial Arbitration Association
- Vienna International Arbitral Centre of the Austrian Federal Economic Chamber
- Lands Tribunal
- Financial Industry Regulatory Authority
- New York Stock Exchange
- National Association of Securities Dealers

About NERA

NERA Economic Consulting (www.nera.com) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. With its main office in New York City, NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

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