

Management of Documentary Evidence in Arbitration

The following presentation shall deal with documentary evidence from the view of the Contractor being the Claimant in a Construction Dispute

Other perspectives are also possible:

- 1) Arbitrator
- 2) Counsel
- 3) Respondent

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Steps of gathering documentary evidence

1. Identify sources

- ❖ Correspondence between parties
 - Contractor, Engineer, Employer, Authorities, Subcontractor etc
- ❖ Daily Reports from Site / Record of resources / Meteorological data
- ❖ All monthly applications and certification and connected correspondence
- ❖ Baseline programme and updated programmes
- ❖ History of National Bank Interest rates, Exchange rates
- ❖ Photographs and drawings
- ❖ Invoices, Accounting Data, Intercompany crosscharges

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Establish relevance

Relevance is not often obvious at first

Inclusion of all possible correspondence in submission whether referenced to or not

Relevance sometimes becomes clearer after Respondents' submissions

Use suitable software to scan and store and retrieve documents by keywords

Witness Statements

These should be recorded early in the proceedings after having studied all correspondence. These statements are part of the documentary evidence and are given credibility by the courts if correspondence is missing.

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Origins of documentary evidence

1. All correspondence is potential evidence unbeknown to the author at the time
2. The organization of storing, finding and retrieval of correspondence is at the heart of every project, it needs to be initiated by the contractor in the first instance.
3. Own correspondence is often overvalued, Respondents undervalued

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FIDIC and Correspondence

- FIDIC is helpful in keeping a minimum of Correspondence with various Sub Clauses, the more important being 4.21, 4.26, 8.3, 20.1

Conclusion

Management of documentary evidence starts at the beginning of each project. It is in the interest of the legal profession to play a part in educating contractors towards this goal.

All this has been preached many times from many pulpits, nevertheless it remains true.

Thank You