

INTERNATIONAL DISPUTE ADJUDICATION SERVICES

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ABOUT US



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DECODING
COMPLEXITY.



HKA is one of the world's leading privately owned, independent providers of consulting, expert and advisory services for the construction, manufacturing, process and technology industries.

As trusted independent consultants, experts and advisers, we deliver solutions amid uncertainty, dispute and overrun, and provide the insight that makes the best possible outcomes a reality for public and private sector clients worldwide.

Our global portfolio includes some of the world's largest and most prestigious projects across a wide range of market sectors that include buildings, industrial, infrastructure, oil and gas, power and utilities, and technology.

INTERNATIONAL DISPUTE ADJUDICATION SERVICES

HKA acts in international dispute adjudication proceedings and on dispute boards on construction and engineering projects around the world.

Although dispute adjudication has been around for many years, with the Dispute Resolution Board Foundation (DRBF) and FIDIC being the earliest and strongest advocates of this form of alternative dispute resolution, the advantages of dispute boards and dispute adjudication proceedings, or how these processes can be used to resolve dispute effectively, quickly and relatively inexpensively in international disputes are not always fully appreciated.

Dispute boards and contract adjudication are party-agreed mechanisms for the independent and impartial resolution of disputes that arise between parties on construction and engineering projects.

A dispute adjudication board typically comprises of one or three independent persons selected and appointed by the contracting parties. The benefits of dispute adjudication boards include 'fast-track' and 'real-time' decisions given during the project. Early decisions can allow

parties to proceed with greater certainty and prevent the stacking-up of disputes at the end of projects.

Standing dispute adjudication boards, as opposed to ad-hoc dispute adjudication boards, act through the duration of a contract and allow the dispute adjudication board to build up extensive knowledge of a project and its evolving issues as well as establishing trust and mutual understanding with the parties.

These advantages can make for more effective dispute resolution processes – the vast majority of FIDIC dispute adjudication board decisions are given within 84 days and often resolve party disputes or alternatively, facilitate amicable settlement by the parties themselves, without recourse to costly and time-consuming arbitration or litigation.

Dispute boards and contract adjudication have become standard features of the most widely used international forms of contract. For example, the FIDIC Forms of Contract provide for a Dispute Adjudication Board, now referred to as DAAB under the 2017 FIDIC Suite of Contracts, as the first tier of the dispute resolution process.

Contract adjudication is included in the NEC forms of Contract with the latest edition, NEC4, providing various adjudication options, including a Dispute Avoidance Board to provide advice on potential disputes.

As a specialist in the technical, commercial, contractual and delay disciplines of engineering and construction projects, HKA has the breadth of expertise, experience and skills needed to deliver high-quality, detailed and persuasive submissions within the fast-track timescales of dispute adjudication board or contract adjudication proceedings.

In its role as party representative, HKA has typically been appointed to act at the request of a contracting party, whether directly (where, usually, the dispute is primarily technical, commercial or delay), or alongside the contracting party's legal representatives (where often HKA is engaged to provide expert reports on technical, commercial and delay issues).

Our dispute board and contract adjudication services include:

1. Appointment as adjudicator or dispute board member
2. Acting as party representative or advocate, involving:
 - Dispute strategy
 - Management of proceedings
 - Dispute evaluation
 - Written referrals and responses and oral advocacy of the case at hearings including opening and closing statements
 - Dealing with jurisdictional and other types of challenge
 - Amicable settlement and without prejudice negotiations
3. Appointment as Expert Witness on matters of quantum, delay or technical and the provision of Expert witness reports and oral testimony

WHAT WE DO – IN A NUTSHELL

ADJUDICATOR OR DISPUTE ADJUDICATION BOARD (DAB) MEMBER / CHAIRPERSON

As noted above, a DAB typically comprises of one or three independent persons who are selected and appointed by the contracting parties.

An adjudicator's basic obligation is to render a decision and his/her primary duties are to act impartially and reach a decision within the prescribed timescale.

When appointed as adjudicator HKA will adopt procedures suitable to the dispute, avoid unnecessary delay or expense, and give each party reasonable opportunity to put its case and to respond to the other's case.

Our highly experienced consultants are able and to act impartially, develop a spirit of team work within the DAB and arrive at well-reasoned decisions.

PARTY REPRESENTATION AND ADVOCACY

Whether, at a client's request, acting exclusively or as part of a team in conjunction in-house counsel and/or external lawyers, when acting as a Party Representative or Advocate

our duty is to our client. However, we also recognise that there is an over-arching duty to the Dispute Adjudication Board to act properly and in a professional manner by adhering to best practice, applicable procedural rules and codes of care and conduct in formal dispute proceedings.

As a Party Representative or Advocate, whether solely or in conjunction with legal representatives, HKA takes responsibility for the conduct and presentation of our client's case and will always act in the client's best interests. Clients who rely on our services will be represented a claims consultancy whose experience is second to none in the world.

Whether HKA is acting on behalf of the Referring Party or the Respondent, HKA will act promptly, thoroughly and proficiently.

In formulating a case, HKA will identify and define all the issues considered to be in dispute, as well as the facts and evidence that support (but also undermines) those issues.

HKA will provide submissions which are compliant with the applicable dispute adjudication procedure

and timescales. This includes all written referrals, responses and oral advocacy of the case at hearings (if requested by clients) including opening and closing statements.

HKA will in all cases where it is considered desirable or appropriate, consider whether any specialist legal or expert advice or evidence is required to support the case.

HKA will seek to promote an efficient resolution of the dispute and the ability of the dispute board to decide the dispute within the prescribed time frame by making clear and complete submission(s) identifying and addressing each of the issues in dispute with argument and available evidence.

Each dispute is unique in its facts, context and issues. Making an effective and persuasive case to a dispute board requires a holistic approach: adopting the procedural rules as the framework for the referral or response; identifying the issues in dispute; developing the theory of the case; identifying the arguments, contentions and evidence, including expert evidence (if required); drafting of clear and complete submissions based on the facts; and providing clear presentations at the hearing.

EXPERT WITNESS

At HKA, we employ expert witnesses who are highly qualified, across many disciplines.

Our engineers, architects, quantity surveyors, accountants, project managers, planners, delay and disruption analysts, and construction managers bring to bear a vast range of skills and expertise which enables them to act as expert witness in a wide variety of disputes spanning the whole construction and engineering industry.

According to the 2018 issue of Who's Who Legal: Construction

– the international guide to expert advisers on financial quantum, delay and disruption, and forensic technical issues in major construction litigation – HKA is the foremost firm in its field, with 40 consultants listed, drawn from our offices in North America, Latin America, Europe, the Middle East, Asia and Australasia.

Given the fast track nature of adjudication, time is of the essence and it is therefore highly recommended that experts are appointed as early as possible.

HKA is well-versed in the dispute adjudication processes (as well as arbitration and litigation) and can recommend the most appropriate experts to testify in any case. All experts are carefully screened for availability and potential conflicts before being put forward for consideration.

Our experts are skilled at setting out and presenting their opinions and the underlying evidence, bringing clarity and authority to their views.

AMICABLE SETTLEMENT AND WITHOUT PREJUDICE NEGOTIATIONS

Prevention is often the best form of dispute management. Many disputes can be avoided or resolved early without their escalating to formal dispute proceedings.

When the parties are nevertheless so polarised in their views of the merits and opinions of a particular case, formal dispute proceedings, such as referral to a DAB, is sometimes unavoidable.

Regular users of FIDIC will know that Sub-Clause 20.5 provides for a cooling off period to allow the Parties to seek to achieve amicable settlement after a notice of dissatisfaction has been served, but if amicable settlement is not reached then the dispute will (typically) be decided in Arbitration.

Our advice, which is informed by relevant, real-world experience, can assist the parties in their efforts to achieve resolution by means of amicable settlement, without recourse to arbitration.



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WELCOME TO THE WORLD OF

HKA>A

SELECTED PROJECTS FROM OUR GLOBAL PORTFOLIO.



HKA. DECODING COMPLEXITY.

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1. Marmaray Project, Turkey 2. Sishen Iron Mine, South Africa 3. Panama Canal Expansion Programme, Panama 4. Kashagan Development, Kazakhstan 5. Burj Khalifa, UAE 6. Medupi Power Station, South Africa 7. Pioneering Spirit 8. Jirau Hydroelectric Project, Brazil 9. Marina Bay Sands, Singapore 10. Trans-Anatolian Natural Gas Pipeline (TANAP), Azerbaijan-Turkey 11. Gerald Desmond Bridge Replacement, California, USA

AT A GLANCE

5,500+

CLIENTS WORLDWIDE

INCLUDING GOVERNMENT AGENCIES, LOCAL AUTHORITIES, INVESTORS, DEVELOPERS, OWNERS, OPERATORS, ARCHITECTS, ENGINEERS, PROJECT & CONSTRUCTION MANAGERS, CONTRACTORS, SPECIALIST SUPPLIERS, MANUFACTURERS, BANKS, LAWYERS, AND INSURERS.

100,000

PROJECT DISPUTES RESOLVED AROUND THE WORLD, VALUED IN EXCESS OF US\$250 BILLION

2,000+

ENGAGEMENTS PER YEAR

40+

YEARS OF EXPERIENCE

39

OFFICES IN

19

COUNTRIES

EXPERIENCE IN COUNTRIES ON ALL 7 CONTINENTS

100+

FLUENCY IN 30+ OF THE WORLD'S MOST SPOKEN LANGUAGES

30+

70%

INSTRUCTED BY 70% OF THE WORLD'S TOP 20 LAW FIRMS (BY REVENUE)

250+

INVOLVEMENT IN 250+ FIRST-OF-A-KIND AND GLOBAL MEGAPROJECTS

82%

CLIENTS INCLUDE 82% OF ENR'S* TOP 50 INTERNATIONAL CONTRACTORS 2017 (*ENGINEERING NEWS-RECORD)

900+ PEOPLE



200+

DELAY AND QUANTUM EXPERTS



100+

EXPERT PROJECT ADVISERS



160+

ENGINEERING EXPERTS



100+

TESTIFYING EXPERT WITNESSES

HKA CASE STUDY #1

DISPUTE ADJUDICATION BOARD - PARTY REPRESENTATION & ADVOCACY

PORTS & MARITIME - PORT EXTENSIONS & CONTAINER TERMINALS



In 2016 and 2017 Damian Waters and Craig Enderbury of HKA were appointed as party representatives and advocates for the Employer in Dispute Adjudication Board proceedings under an amended FIDIC Red Book form of Contract.

The Employer engaged a Joint Venture contractor to undertake the major extension works to an existing port terminal.

Towards the end of the Project, a dispute arose over the Joint Venture contractor's entitlement to prolongation costs as consequence of an extension to the Time for Completion.

HKA worked closely with representatives of the Employer and the FIDIC Engineer(s), presenting the Employer's case on numerous disputes before the Dispute Adjudication Board.

HKA subsequently assisted the Employer in successfully negotiating an amicable settlement with the JV Contractor.

Later in 2017, Damian Waters and Craig Enderbury were again appointed by the same Employer to act as party representatives and advocates in Dispute Adjudication Board proceedings in connection with various disputes that arose during the construction of a different major new container terminal.

During the course of 2017 and 2018, HKA advocated the Employer's position as the Responding Party at a series of hearings consisting of 3 members of a standing Dispute Adjudication Board panel.

Working on behalf of the Employer alongside its in-house legal team, the Engineer and several appointed expert witnesses, HKA were responsible for the dispute strategy and management of proceedings, the preparation and submission of all written responses to the statements of case and rejoinders, the appointment of and instructions to independent technical expert

witnesses, obtaining statements from witnesses to fact, oral and written advocacy of the Employer's position including written and graphical presentations, opening and closing statements at the hearings. This included dealing with jurisdictional and procedural challenges.

Each of the disputes culminated in attending three-day hearings in varying locations around the world

to suit the needs of the Parties and the Dispute Adjudication Board.

Ultimately having concluded several Dispute Adjudication Board proceedings, in late December 2018 HKA was delighted when the Parties reached an amicable settlement thereby avoiding the prospect of further Dispute Adjudication Board proceedings and/or costly and time-consuming arbitration(s).



HKA CASE STUDY #2

DISPUTE ADJUDICATION BOARD - PARTY REPRESENTATION & ADVOCACY

IMMERSED TUBE TUNNEL AND RAILWAY INFRASTRUCTURE PROJECT, TURKEY

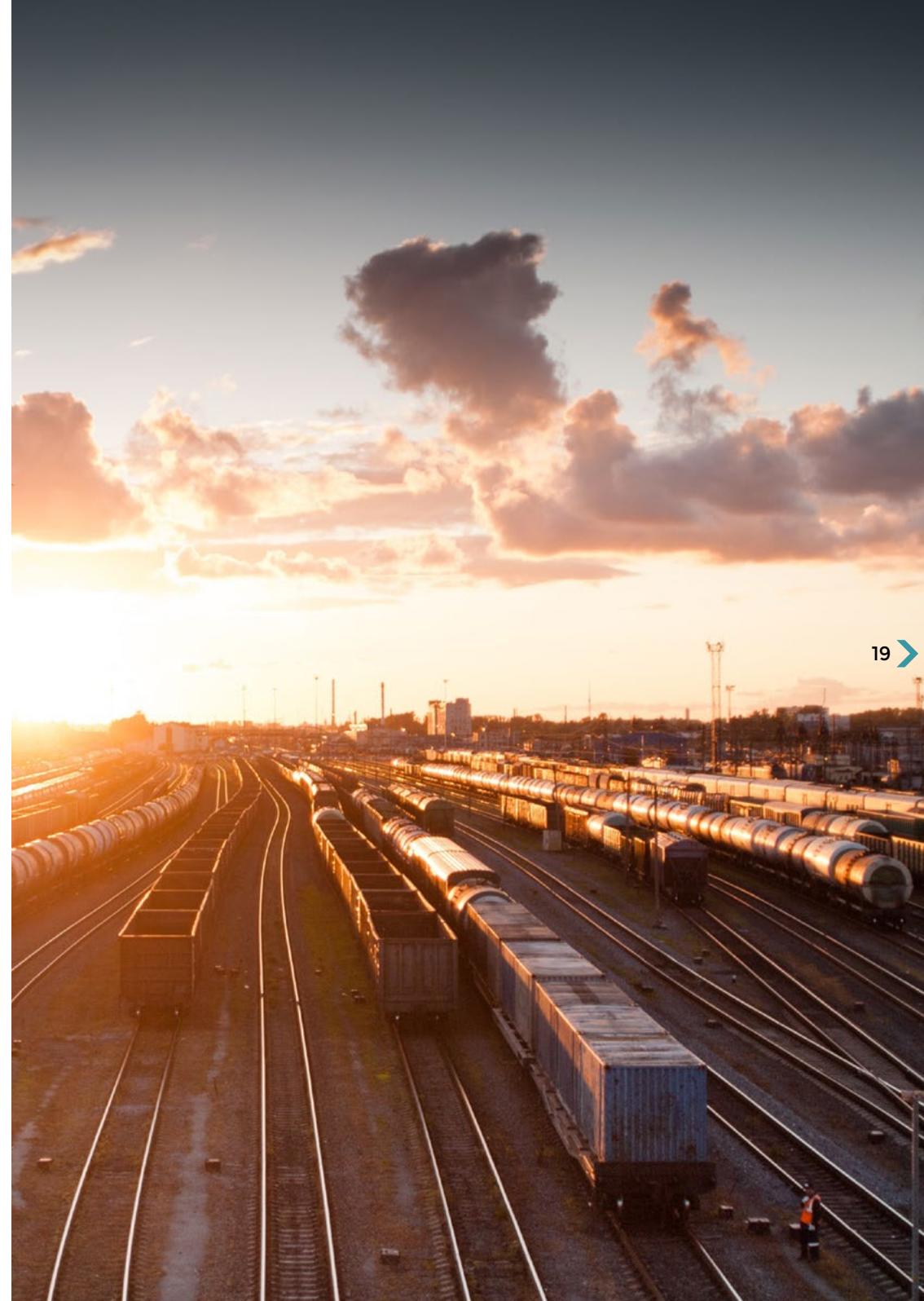


From 2009 through to 2017 Simon Longley acted as party representative and advocate for a Contractor joint venture for some 60 separate Dispute Adjudication Board proceedings under an amended FIDIC Silver Book form of Contract.

The disputes referred to the standing Dispute Adjudication Board of 3 internationally reputed members included issues of principle, contract interpretation, extension of time, quantum, and similar matters.

All the DAB decisions were given effect by the parties and finally resolved the disputes without the need for arbitration.

Mr Longley undertook and provided detailed analysis of the issues, made recommendations for strategy and approach, drafted statements of case and other submissions, and acted as lead advocate and presenter in hearings before the dispute adjudication board. With HKA assistance, the Contractor was successful in over 85% of decided referrals, securing significant time and cost recovery in the process.



OTHER EXAMPLES OF HKA APPOINTMENTS



A 5-STAR DESIGN AND BUILD HOTEL REDEVELOPMENT, AFRICA

HKA acted for the Contractor as claimant, as follows:

Franco Mastrandrea as advocate, involving pleadings, examination of factual and expert witnesses, and post hearing submissions.

In addition, HKA personnel acted as delay and quantum experts involving the production of experts' reports, oral testimony at the DAB hearing and assistance with post-hearing submissions.

The DAB comprised two engineers and a lawyer.

This involved FIDIC design/build terms with amendments, and DAB hearings in Africa and Europe.

The result was a decision for a full extension of time and a substantial financial award in favour of the Contractor, which the parties accepted.

A GAS-FIRED POWER PROJECT, UK

Franco Mastrandrea acted as Vice Chairman then Chairman of a Disputes Resolution Board over a number of years.

The Board, which comprised a lawyer, an engineer and a quantity surveyor, met with the parties regularly during the construction life of the project, involving an update on progress, a site inspection, meetings to discuss actual or potential issues, and the provision of opinions/ advice to the parties by the Board in relation to the construction contract.

The construction contract was in bespoke form. The balance of contract documents included financing and associated arrangements.

The Board considered a time and money claim advanced by the Contractor in relation to this project, involving pleadings, a hearing including examination of witnesses of fact and experts and delivered a decision, which the parties accepted

COAL FIRED POWER PROJECTS, SOUTH AFRICA

Since 2016 **Simon Longley** has been acting as lead dispute strategist and key adviser to a state energy company with respect to various dispute adjudication board and adjudication proceedings under FIDIC and NEC3 based package contracts on two major coal fired power projects in South Africa.

Working with the Employer and appointed counsel, senior counsel and delay and quantum experts, Mr Longley provides strategic advice and recommendations with respect to dispute board member and adjudicator appointments, process, procedure, timelines, the engagement and instruction of experts, and the drafting and review of submissions and responses.

ROAD INFRASTRUCTURE PROJECT, SRI LANKA

From 2010 through to 2011 **Simon Longley** acted as party representative and advocate for an international contractor for several dispute adjudication board referrals under an amended FIDIC Red Book form of contract.

Disputes referred to the standing dispute adjudication board of 3 Sri Lankan members included issues of principle, contract interpretation, change of law, VAT, land acquisition, and similar matters. All decisions were given effect by the parties and finally resolved the disputes without the need for arbitration.

Mr Longley undertook and provided detailed analysis of the issues, made recommendations for strategy and approach, and drafted statements of case and other communications with the dispute adjudication board. With HKA assistance, the Contractor was successful with the majority of decided referrals, securing significant time and cost recovery in the process.

A MAJOR HOSPITAL DEVELOPMENT, ISTANBUL

Ekrem Kaya was appointed as the Chairperson of a Dispute Adjudication Board in Turkey.

Located in Kartal İstanbul, the project was constructed on approximately 55.000 m² land area and consisted of approximately 300.000 m² closed area. Having a capacity of 920 inpatient beds, the hospital building is a seismic base isolated building with multi-storied comprising reinforced concrete construction and equipped with sophisticated electrical and mechanical services, including lifts, heating, ventilation/air-conditioning and sanitary systems.

The Dispute Adjudication Board was a standing board composed of three members. The board visited the construction site regularly with minimum 70, maximum 140 days intervals to review the construction progress and issues at site. Between 2016 and 2017, the Board had seven site visits and Ekrem Kaya drafted reports for each visit as the Chairperson.

The Board considered two time and money claims advanced by the Contractor in relation to this major hospital development in İstanbul, involving pleadings, a hearing including examination of witnesses of fact and experts and rendered two reasoned decisions.

A BEACHFRONT HOTEL DEVELOPMENT, GRAND CAYMAN

Simon Mortimer led a team that provided consulting and project management services related to the construction of a \$200 million beachfront development comprising of a 300-room resort and 93 condominiums. The on-site project team co-ordinated and validated costs and change order and schedule management. HKA services also included the investigation and analysis of claims against the property insurers for hurricane damages sustained during construction to support the Owner's interests in formal dispute resolution proceedings.

In the formal dispute resolution proceedings, Simon Mortimer prepared written expert reports and provided opinion and oral testimony at the hearing.

