

CCA ASSOCIATES PROGRAM QUARTERLY MEETING - JUNE 30, 2023

“BEST PRACTICES FOR AVOIDING SURPRISES AT THE INITIAL PREHEARING CONFERENCE, FINAL PREHEARING CONFERENCE AND HEARING”

ATTENDEES: Richard Greenleaf (Keynote Speaker), Tyrone Holt, Gene Commander, Holly Stein Sollod, Harrie Samara, Mark Heley, Joanne Barak, Jiyun Lee, Scott Evans

MINUTES:

Introductions were made.

Greenleaf provided a brief professional biography that included 23 years as a construction lawyer.

Initial Prehearing Conference

Holt began the program by emphasizing the necessity to anticipate surprises during the Initial Prehearing Conference, Final Prehearing Conference, and Hearing.

Greenleaf stated that the arbitrator should be extremely organized and let the parties know who is running the show. Don't let counsel "self-medicate".

Greenleaf added that he is a big fan of status reports and scheduled periodic calls to insure the arbitration is progressing. Holt later added that he schedules status conferences every 30 to 45 days.

Holt advised that establishing rapport with the parties at the Initial Prehearing Conference ultimately results in a more efficient hearing.

Greenleaf discussed his requirement for the parties to meet and confer before coming to the panel for relief.

Holt stated that all of the anticipated dates and deadlines through the award should be discussed at the Initial Prehearing Conference. Revisions are common and updates should be immediately dispersed to all parties.

Final Prehearing Conference

Holt stated that there should be a logistical conference discussing everything from the location of the hearing to the technology needed for the hearing.

Barak and Holt discussed the deadline for the issuance of a Final Award. They stressed the need to indicate if a final award will be issued more than 30 days after the hearing is closed.

Holt and Greenleaf discussed having the parties provide an “order of proof” with “will call” witnesses.

Greenleaf and Holt stated that the Final Prehearing Conference should include how exhibits will be handled, MIL, sequestration, and witnesses. They both gave specific examples of how to handle these matters.

Hearing

Holt discussed the necessity for the chair to manage the panel as well as the parties and process. He also mentioned the importance of considering the time necessary for panel deliberations when scheduling the final award.

Lee posed questions about how to close a hearing in certain situations. Greenleaf advised that issues of attorney’s fees, etc. must be decided before the hearing is closed. An interim award can be awarded pending the final award. Holt advised to work with the case manager regarding an extension of time for the issuance of an award.

All of the fellows gave their various opinions about the use of transcripts.

Greenleaf, Holt, Barak, and Stein Sollod explained the use of the chess clock at the hearing. (Stein Sollod followed up with an email to the associates providing more detail regarding the use of the chess clock.)

Barak – explained how to handle rebuttal witnesses during the hearing. Holt stated that he typically asks the claimant if they are going to reserve some of their time for rebuttal witnesses. Greenleaf stated that he allows very little time for rebuttal witnesses.

Stein Sollod emphasized the need to take time at the end of the day to discuss the next day, i.e. witness, logistics, etc. Later, Healy and Lee discussed scheduling the next hearing day on or off the record.

Greenleaf explained how he allowed expert testimony admitted via their expert reports and then followed up with a cross-examination of the expert witness.

Closing Thoughts

Greenleaf ended by stating that it takes a village to have effective and efficient hearings.

Holt ended the meeting by stating that it was okay to ask other arbitrators for advice.