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Subject: ***Presentation on Neutral Evaluation of Complex Construction Claims and Lawsuits; Valuing Construction Defect Cases***

On July 26, 2012, Robert M. Freedman, Esq. of Tharpe and Howell,¹ participated at the VEADR 2012 Key West Symposium focused on alternative approaches to resolving complex construction claims and lawsuits. Following is an overview of Mr. Freedman's presentation.

Valuing complex construction cases for trial and settlement purposes can be a challenge, and is one of the primary reasons construction cases are expensive to litigate and take longer to resolve. Insurers report that litigation expenses for construction lawsuits are four times more than most other litigated matters; one of the highest ratios of any litigated claims categories.

The primary ADR options to avoid high risk and expensive court trials are arbitration and mediation. While mediation is the go-to approach, the mediation process is cumbersome, expensive, and does not always result in equitable resolutions. Further, the answer to the ultimate question of "what is the case worth" is rarely determined until late in the mediation "process," after the litigation expense has been incurred.

Forward thinking experts such as Ed Martinet of LiMa Solutions, have taken leadership roles in facilitating resolution through the use of "neutral experts." This technique involves the use of trained and experienced construction professionals to conduct an early, unbiased and transparent factual investigation, analysis, and valuation - *from a construction professional's perspective*. While this results in a reliable valuation of the construction, it does not take into account the legal and insurance issues that typically need to be addressed to achieve a resolution.

Building upon the neutral expert technique, Mr. Freedman and his team have developed a comprehensive protocol to address the legal and insurance issues that typically need investigation and evaluation to achieve early and cost-effective resolution of complex construction cases. Modeled on the Early Neutral Evaluation programs adopted by the Federal Courts and many State Courts, and utilizing generally accepted methodology, the "neutral legal" technique provides an unbiased and transparent investigation, analysis and valuation of construction cases from a *legal and insurance perspective*.

When combined with the "neutral expert" technique, the "neutral legal" approach provides an integrated, seamless and turnkey strategy for establishing reasonable case values. Now, the question, "what is the case worth?" can be answered, sooner rather than later. With this information in hand, the parties, insurers and mediators have a distinct advantage in facilitating early settlements of construction disputes.

¹ Robert Freedman is a Partner of the law firm of Tharpe and Howell LLP. He and his team have represented property owners, developers, contractors, design professionals and insurers in matters in California, Nevada, Illinois, Washington and Florida. For more information, or to arrange for a presentation, contact Mr. Freedman or Senior Associate Peter S. Bauman at (818) 205-9955, or by email at rfreedman@tharpe-howell.com and pbauman@tharpe-howell.com.