

Lindemann, Knox Author Article in ABA Forum on Construction Law's *Under Construction*

In the News

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Stinson LLP Partner [Steve Lindemann](#) and attorney [Jessica Knox](#) authored an article, "Compelling Subcontractor Participation in Owner-Contractor Arbitration Using a Joinder Clause," for *Under Construction*, the newsletter for the American Bar Association's Forum on Construction Law.

"Your client is a sophisticated design-build contractor. Their general counsel has been through litigation a few times and strongly believes that arbitration is the right choice for resolving construction disputes, but she wants to make sure that all parties involved in the dispute will be included in the same case. Your client has done everything right," the attorneys write. "Yet their subcontractors – especially their design professional subcontractors – keep fighting arbitration. The subcontractors have even tried to stop arbitration proceedings by filing lawsuits and contesting jurisdiction of the arbitration panel over them. Why is this happening? What can they do about it?"

Lindemann and Knox address the importance of having a mechanism built into contracts and subcontracts that will allow contractors to bring all of their subcontractors together into one dispute resolution process with the owner when the subcontractors' scope of work is at issue in a dispute with the owner. They focus on recent court cases involving disputes with design subcontractors to a design-build contractor, and they provide context for contracts between the owner and prime contractor that describe the dispute resolution process for these two parties.

"If you are representing a subcontractor or design professional on a design-build project that has a joinder clause in their contract, don't fight it," the attorneys emphasize. "If your client insists that they don't want to arbitrate with the owner, prime contractor and/or subcontractor in the same arbitration, explain to them that this is a losing battle. There is a time and place to make creative arguments, but this is not one of them."

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Whether a contractor prefers or the owner insists on arbitration of disputes, Lindemann and Knox stress that a contractor should be careful to not only require arbitration with its subcontractors, but also require the subcontractor's agreement to join and be consolidated into the owner arbitration.

Lindemann represents contractor and design professional clients in trials, arbitrations and mediations involving design and construction defects, delays, disruption, energy efficiency guarantees, mechanic's liens, payment bonds, construction cost audits, claims for extra work and catastrophic fire loss. He has extensive experience representing energy services companies in connection with performance contracts and helping other clients involved with government contracts and P3 projects. Lindemann also counsels construction and energy clients on a broad range of issues, from contract negotiation to dispute avoidance.

Knox is a litigation associate who assists clients with complex business and commercial matters. She has a comprehensive understanding on issues relating to construction, real estate, property tax and premise liability.

[Read](#) the full article.

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