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Untangling the Web: Managing single project multi-track dispute resolution

Construction projects often involve multiple contracts with different dispute resolution clauses, and California law allows attorneys to manage these multi-track conflicts effectively by using a mediation-arbitration approach to reduce costs, avoid inconsistent rulings and resolve disputes efficiently.

By Hon. Keri Katz (Ret.)

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Construction contracts are sometimes like large spider webs into which unsuspecting visitors end up being caught. These projects often involve not just one, but a whole series of contracts — between the developer, the general contractors, subcontractors, and suppliers. Each party prepares its contracts with the intent of protecting its interests, and these contracts can include distinct dispute resolution clauses. Some may mandate mediation, others binding arbitration, and still others recourse through the local courts.

So what happens when a dispute from a single project involves multiple parties, each subject to a different dispute resolution process? The issues arising out of one construction project could end up being litigated in three different venues — all at the same time.

When a project calls for different forums for dispute resolution, hard decisions will have to be made by lawyers and their clients. Which process happens first? How will conflicting results be reconciled? How will the parties manage parallel processes that are running on multiple tracks?

Different processes

The legal blueprint for a single construction project whose issues are resolved in multiple forums is, more often than not, a picture of confusion. There may be evidentiary issues, inconsistent verdicts, and different findings on common issues of law and fact. For counsel and the client, managing the various proceedings could be like keeping numerous plates spinning simultaneously at the ends of multiple poles.

Imagine a construction dispute that calls for the parties to use arbitration and mediation. In such a case, the mediation should take place first. But what about a contract that only requires arbitration, and several parties aren't subject to the arbitration clause? Parties covered by arbitration clauses will most assuredly push for that venue; those without arbitration clauses might seek redress in court.

With no privity of contract between some of the players on a construction site, multi-track disputes appear to be an unfortunate but necessary evil of the construction world. But there may be another way to spin the web. A careful reading of the law and the parties' relationships could provide an alternative approach that leads to smooth, uniform, and uncomplicated resolution of multiple disputes.

Existing law

Existing California law offers a possible avenue to begin addressing these issues. Code of Civil Procedure Section 1281.2 was enacted by the legislature as a means to prevent conflicting rulings and avoid duplicating efforts in cases involving related parties and issues.

Under the law, a court may stay arbitration proceedings "if a party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions."

In its discretion, when there is "a possibility of conflicting rulings on a common issue of law or fact," the court may allow pending litigation and mediation to proceed while the arbitration is stayed. The court

may even refuse to enforce the arbitration agreement or may order intervention or joinder of all parties in a single action.

Recent legal trends

In California, there appears to be a movement towards limiting the scope of arbitration agreements to claims directly arising from the contract containing the arbitration clause. Changes in the law and recent case law have demonstrated a trend to prevent non-signatories from compelling arbitration or being compelled to attend an arbitration. Effective Jan. 1, 2026, arbitration in construction contracts that are deemed "consumer goods and services" will be subject to new Civil Code Section 1670.15(a): "For a contract for the sale or lease of consumer goods or services entered into on or after January 1, 2026, an agreement to arbitrate shall be limited to a claim arising out of the contract containing the agreement to arbitrate."

This change is meant to address "infinite arbitration clauses," which automatically renew or have no endpoint. Courts must now consider, when ruling on motions to compel arbitration based upon consumer goods and services contracts, if the dispute is related to the contract at issue. This arguably affects broad arbitration clauses that apply to original home buyers and seek to bind future owners and will limit attorneys' ability to bring additional parties into the arbitration.

In *Ford Motor Warranty Cases* (2025) 17 Cal. 5th 1122, the California Supreme Court recently found that Ford could not invoke an arbitration clause in a dispute arising from obligations imposed by statute or conventional fraud duties, rather than the contract where the arbitration clause appears. The court held in the absence of a contractual relationship between the parties, a third-party nonsignatory could not compel arbitration.

The courts

Courts have highlighted that CCP Section 1281.2 is intended to address situations where claims by or against third parties not bound by the arbitration agreement are involved. The law is designed to ensure that courts can manage proceedings in a way that prevents inconsistent outcomes and promotes judicial economy. However, not every case involving multiple parties should be subject to a stay of arbitration.

In *Henry v. Alcove Investment Inc.* (1991) 233 Cal. App. 3d 94, the Court of Appeal found that "[t]he existence of this possibility of conflicting rulings on a common issue of fact is sufficient grounds for a stay under section 1281.2." (*Citing C. V. Starr & Co. v. Boston Reinsurance Corp.* (1987) 190 Cal. App. 3d 1637, 1642; *Green v. Mt. Diablo Hospital Dist.* (1989) 207 Cal. App. 3d 63, 75-76.) The court noted, however, that the legislature purposely made stay orders in cases involving third parties discretionary so that a party could not engage in gamesmanship by "merely naming third party defendants not subject to the arbitration agreement" for the purpose of evading arbitration.

Judges have the authority to remedy parallel arbitration and litigation when there is a risk of inconsistent decisions. Still, parties are often unable to agree upon an alternative approach and courts are understandably motivated to keep the ball moving forward. They may, therefore, deny parties relief through a stay of arbitration, even when there is a high risk of conflict or confusion. In such instances, what can the attorney do to mitigate a client's expenditures and loss of time, to provide some degree of control over the claims process?

Mediation-arbitration

One possible approach to the multitrack predicament is to seek agreement from all or most parties to non-binding global mediation before moving forward with other forms of dispute resolution. This method is sometimes referred to as a mediation-arbitration model.

Even when some parties are subject to an arbitration clause, mediation can always be a first way to approach the various issues. Mediating the entire matter with all parties, irrespective of the contractual dispute resolution track, can offer many benefits. Mediation allows all parties to be involved in the dispute and to be heard by a mediator, even though some parties may ultimately proceed to arbitration.

Typically, even when arbitration is required, mediation should not be prohibited under the contract. The parties may be required to agree in writing to mediate, and mediation should be consistent with the law of the applicable construction contracts. Any agreed-upon mediation will be non-binding and will be subject to mediation confidentiality.

In the mediation phase, parties who agree to the procedure will work with a neutral third party, the mediator, who can help them negotiate a settlement through the normal mediation process. The mediator will explore different options and, if appropriate, help the parties find a mutually acceptable solution to be finalized in a settlement agreement. Given the more flexible nature of the mediation process and the general desire of parties to find mutually acceptable solutions, some or all of the issues in a construction dispute should be good candidates for resolution in this fashion.

Arbitration

The mediation-arbitration model might be just the first effort by parties to resolve their conflict through mediation. This model is likely to succeed because, unlike arbitration, the mediation process is private, the parties can speak freely, and they are motivated to settle before going through a lengthy arbitration. If the parties reach a deadlock during mediation or cannot fully resolve all issues at mediation, they can then move on to arbitration for the remaining claims.

Conclusion

When confronted by the scary web of construction dispute provisions, attorneys would do well to consider a mediation-arbitration model to resolve disputes seriously. Beginning with a global mediation and then using arbitration as needed to address remaining matters, this hybrid model has a proven ability to resolve construction disputes relatively quickly and amicably. Mediation-arbitration provides both flexibility and confidentiality. It can significantly reduce costs and evidentiary conflicts while resolving many claims.

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