

BOOK REVIEW

The College of Commercial Arbitrators Guide to Best Practices in Commercial Arbitration, Fourth Edition

James M. Gaitis, A. Holt Gwyn, Laura A. Kaster, John J. McCauley, editors

Review by Adrian L. Bastianelli III



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Before his untimely passing, Holt Gwyn, a former chair and Cornerstone recipient of the ABA Forum on Construction Law, called to inform me that the fourth edition of *The College of Commercial Arbitrators Guide to Best Practices in Commercial Arbitration* would be published shortly, and ask if I would be willing to write a book review evaluating it for *The Construction Lawyer*. What he failed to mention was that he was an editor and an author of multiple chapters of the fourth edition of the *Guide*. Everything that Holt did, he did enthusiastically and extremely well. The fourth edition of the *Guide* is no different, and it represents one more contribution and give-back by him to our profession and another lasting tribute to Holt. Holt must have appreciated that the hardback *Guide* is in Carolina Blue. The Tar Heels may have been even closer to his heart than construction law and arbitration.

The *Guide* was first published in 2006. Over the next three editions, the College of Commercial Arbitrators broadened its scope tremendously so that most aspects of arbitration are now covered. In this edition, there are twenty chapters and two appendices, totaling over 670 pages, which represent a growth of 100 pages from the third edition. The new edition includes an updating of many of the principals and recommendations contained in the third edition as construction arbitration continues to evolve rapidly. The *Guide* states that it is not meant to be a treatise on commercial arbitration, and it does not contain a complete discussion of the law of arbitration. Thus, readers are sent to treatises and other publications on arbitration to supplement the *Guide*. However, the *Guide* contains a wealth of up-to-date citations to case law, statutes, and rules. It is an excellent place for the arbitrator, trial lawyer, or transactional lawyer to start and, sometimes, conclude his or her research.

The most powerful and unique part of the *Guide* is

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contained in the one-sentence recommended practices at the beginning of each of the many sections and subsections in the *Guide*. Those practices are comprehensive and represent the collective recommendations of some of the top arbitrators in the country. The remainder of each section and subsection explains the reasons, both legal and practical, for each recommended practice. The recommendations should be mandatory reading for every person who is or wants to become an arbitrator, and will be helpful in guiding those lawyers in how to advocate in arbitration.

The *Guide* covers arbitrator selection and disclosures, jurisdiction and arbitrability, arbitrator financing and expenses, the prehearing phase, motions, discovery, eDiscovery, summoning nonparty witnesses, the hearing, awards, post award, emergency arbitrators, class actions, international arbitration, hybrid processes, and much more. The *Guide* contains cutting-edge information including two new appendices on social media and security of an arbitrator's electronic information.

Construction lawyers should understand that the *Guide* is focused on commercial arbitration, not just construction arbitration. However, construction arbitration is simply a subset of commercial arbitration, with some unique characteristics. Thus, most, if not all, of the *Guide* applies directly to construction arbitration, and the recommended practices will be useful to the construction arbitrator and construction lawyer. To address issues unique to construction arbitration, the *Guide* contains a separate chapter authored by Albee Bates, John Bulman, Patricia Galloway, Neal Eiseman, Hal Gray, Holt Gwyn, John Hinchey, Allen Overcash, and Stan Sklar. Other construction lawyers and construction arbitrators who contributed to additional parts of the *Guide* include John Blankenship, Joe Canterbury, Jim Gaitis, Jim Groton, Larry Harris, Ty Holt, Carl Ingwalson, Larry Leiby, Jim Madison, Allyson Snyder, Christie Underwood, Bob Wachsmuth, Robert Wax, and probably others I missed. Construction lawyers and arbitrators are well represented among the seventy authors of the book.

This is a book that all construction lawyers should have at their fingertips, whether they are arbitrators, litigators, or even transactional lawyers. If you purchase the *Guide*, you will wear it out by the time the fifth edition arrives in print, unless, of course, your book is like mine and disappears from your bookshelf because everyone else in your office is constantly borrowing it. In any event, the money to purchase the fourth edition will be well spent. ■