

Peter Aeberli

Year of Call: 1990

Email Address: peter.aeberli@3pb.co.uk

Secure Email: pda@aeberli.com

Telephone: 0207 3843505



Overview

Peter Aeberli is a Canadian citizen, resident in the United Kingdom. He is dually qualified as Architect and Barrister and is an experienced arbitrator, mediator and adjudicator. Apart from his work as counsel, the focus of his work is dispute resolution principally, but not solely, in the construction industry. He has handled two party and multi-party disputes with values up to £8 million.

He is available for and has received appointments as arbitrator, adjudicator and/or mediator by party agreement and from bodies such as the CIArb (including NHBC), the CIOB, the Construction Confederation, AICA, the RIBA, the ICE, the ICC and the Law Society. He is listed as an adjudicator on high value and prestigious projects including the London 2012 Adjudication Panel and BAA Terminal 5. He is listed on numerous panels including the FIDIC President's list of dispute adjudicators, the ICC Canadian National Committee Panel of International Commercial Arbitrators, the ICDR (American Arbitration Association) panel of international arbitrators, the International Institute for Conflict Prevention & Resolution (USA) Roster of arbitrators and mediators and Engineers' Ireland panel of arbitrators.

Prior to reading law as a scholar at Hertford College, Oxford, Peter was a project architect with the Building Design Partnership, a large multi-disciplinary consultancy, and gained experience and understanding of the different skills, both professional and contracting, needed to realise complex construction projects, including hospitals, retail development and military installations. He has a good understanding of building technology being, for a number of years, a visiting lecturer in building construction at what is now Oxford Brooks University. He remains involved in the construction industry, having served on a number of client bodies, and has engaged builders on projects of his own from time to time. He was, for a number of years in the mid 1990s a Joint Secretary of the Joint Contracts Tribunal (JCT).

Recommendations

"Thank you very much indeed for your assistance yesterday. ... we could not have got there without your skill and persistence." – **London city solicitors – Mediation instruction**

"The adjudicator decided, in what both parties accepted was a thorough and well reasoned decision, that the defendant had to pay the claimant the sums for which I have given summary judgment." *Knight v. Urvasco* [2008] EWHC 3956. "I would like to express my appreciation of the proficient approach and treatment by the one member DAB ..." – **Eastern European State entity**

"We would also like to convey our thanks to the Arbitrator ... We look forward to working again with the Arbitrator soon." – **London city solicitors**

Academic qualifications

- MA (Edin)
- BA (Oxon)
- Dip Arch
- RIBA
- ARIAS
- FCI Arb

Professional qualifications & appointments

- Accredited Adjudicator
- Accredited Mediation Advocate
- Accredited CEDR Mediator
- Chartered Arbitrator
- Chartered Architect
- Diploma in International Commercial Arbitration

Professional bodies

- Arbitrator member of the Society of Construction Arbitrators
- Major Projects Adjudication Group
- Swiss Arbitration Association
- ICC Commission on Arbitration
- Crossrail Panel of Adjudicators

Expertise

Construction and engineering

As counsel, Peter has been instructed to advise on and appear principally on construction and arbitration related matters in the Technology and Court Court (TCC) and the County Courts. He has appeared in the Court of Appeal (TWF Printers Ltd v. Interserve Project Services [2006] BLR 299). He has been instructed to draft contractual documentation including amendments to JCT contracts. He also advises and represents parties in arbitration, adjudication and mediation proceedings.

Overseas work has included advising parties in Latvia and in South Africa on contractual (FIDIC) and arbitration matters.

An experienced arbitrator, adjudicator and mediator, Peter receives appointments by party agreement and from bodies such as the ICC (sole arbitrator and president), LCIA (sole, presiding and wing arbitrator), FIDIC, Engineer's Ireland, the CI Arb, RICS and RIBA. Peter was invited by ICDR (American Arbitration Association) to chair a tribunal, but had to decline, for personal reasons.

Projects on which Peter Aeberli has been appointed as tribunal or instructed as counsel have included port facilities in Ghana and in England; roads, sewers, including in Bulgaria; remediation of nuclear contamination; hotels and office complexes, railway rolling stock, housing; the value of projects ranging in value up to about £100 million and disputes up to about £10 million.

Articles

Peter's web site, www.aeberli.com, includes a number of papers on construction law, arbitration and adjudication. Published articles, many of which can be found re-printed on the site, include:

- 2007: What material can an adjudicator consider; Construction Law Journal
- 2005: Jurisdictional Disputes under the Arbitration Act 1996: A Procedural Route Map; Arbitration International
- 1993: Wharf Properties and Rolled-Up Claims; Construction Law Journal
- 1993: Abatements, Set-Offs and Counterclaims in Arbitration Proceedings; ADR Law Journal

Mediation

Appointment as arbitrator, adjudicator or mediator:

Peter has been appointed by party agreement and from numerous appointing bodies including the Chartered Institute of Arbitrators, the RIBA, the Law Society, the RICS, FIDIC and the ICC. Peter has been a mediator on in excess of 60 construction and other disputes involving both two and multi parties, some involving public bodies, and claims up to about £5 million.

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Disputes on which Peter has been appointed as arbitrator or adjudicator have involved:

- Legal issues and contract interpretation
- Development agreements
- PFI Projects
- Technical and scientific issues, such as paint, roofing, cladding, glazing, corrosion, mechanical and electrical and structural defects, fire resistance and compartmentation.
- Infrastructure and civil and structural engineering disputes including concrete structures, piles, roads, bridges, power

stations, bio-mass facilities, airport runways, sewers, defence establishments, liquefied gas facilities, water treatment works, process engineering (biodiesel feed stock)

- Environmental (including nuclear) issues
- Marine equipment, jetty and harbour work (dredging and blasting); Railways (infrastructure, computer equipment and rolling stock)
- Professional negligence
- Delay and programming issues and disruption and delay costs
- Quantity surveying issues including interim and final account valuation
- High value/specification (up to £40 million at 2000 prices) residential properties
- Commercial agency agreements
- International commercial disputes including as arbitrator under ICC rules, LCIA rules and UNCITRAL Rules and as FIDIC dispute board.

Peter has mediated numerous construction and professional negligence disputes as well as disputes outside the construction sector, including in regard to wills, landlord and tenant, sale of goods, and passing off and is identified in the Bar Council list of mediators under the most experienced category.

Committee work

Peter has served on committees concerned with arbitration, mediation and adjudication. He was one of the drafters of the Construction Industry Model Arbitration Rules and was involved in consultations with the Government on the Scheme for Construction Contracts. He is a member of the ICC Commission Task Force on Reducing Time/Costs in complex arbitrations. He speaks on arbitration, international arbitration, and adjudication for organisations such as BPP Professional Education and the Chartered Institute of Arbitrators. He is a visiting senior lecturer at Kings College, London and course director for the dispute resolution module of the MSc in Construction Law and arbitration.

Neutrals - Arbitrators

Peter has acted as an arbitrator on in excess of 70 construction disputes in both two party and multi-party matters, a few involving public bodies, conducting hearings from a few days to four weeks or so, disputes of up to about £10 million and projects up to about £100 million.

"We would also like to convey our thanks to the Arbitrator ... We look forward to working again with the Arbitrator soon." - London city solicitors.

A selection of Arbitrations on which Peter Aeberli has been appointed within the last few years include:

- LCIA appointment (sole arbitrator UNCITRAL rules): English Consultant; Civil law country local authority, about €200k
- LCIA appointment (wing arbitrator LCIA rules): Caribbean developers and contractors, multi-party dispute: Principally declaratory
- LCIA appointment (presiding arbitrator LCIA rules): Chinese supplier/developer, English distributor
- LCIA appointment (sole arbitrator UNCITRAL rules); Gibraltar and UK commercial parties
- ICC appointment (party nominated arbitrator). Construction of Hospitals in Africa, about £25 million in dispute
- ICC appointment (sole arbitrator): English motor dealer, Italian organiser of sporting activities, about €120k
- ICC appointment (chair): US ship-owner; Eastern European ship yard. About €300k. Withdrawn due to failure to pay advances shortly after provision of Terms of Reference and First Procedural Order
- ICC appointment (President): Israeli Power Company, US manufacturer, about US\$ 28 million. Appointment did not proceed as before confirmed parties resolved their difficulties

- Agreed appointment: English local authority and contractor: About £300k
- Agreed appointment: English internationally renowned food emporium and contractor: About £200k
- Agreed appointment: English local authority and various tenants of facility subject to local authority closure orders, about £1.5million
- Agreed appointment: Joint Venture contractor and English local authority, PFI Schools project, about £800,000
- Engineer's Ireland Appointment. Civil law country train manufacturer and State Entity. Dispute about alleged defective trains and rolling stock: about €10 million
- RIBA appointment: Scottish Contractor and English Sub-contractor: Construction Dispute, about £3.5million
- RIBA appointment: English Developer and Contractor: about £100k claim, £400k counterclaim
- Engineer's Ireland Appointment. Spanish train manufacturer and Irish State Entity. Dispute about defective supply: about €10 million
- Law Society Appointment: English vendor and English purchaser of property in Soho
- RICS appointment: English developer and contractor: About £8 million.

In 2018 Peter devised and ran for the BPP law school a five day course on international arbitration for a group of visiting Chinese lawyers.

Neutrals - Adjudicators

Peter has acted as an adjudicator on in the region of 300 construction disputes involving claims up to about £15 million and projects up to about £100 million.

"The adjudicator decided, in what both parties accepted was a thorough and well reasoned decision, that the defendant had to pay the claimant the sums for which I have given summary judgment." Knight v. Urvasco [2008] EWHC 3956. *"I would like to express my appreciation of the proficient approach and treatment by the one member DAB ..."* (Eastern European State entity).

Peter has been named or listed as an adjudicator in respect of a number of high value and prestigious contracts, including a major development by a top premier league football club, a PFI waste management project in Wakefield, a biomass facility in the north of England, a Project Agreement, PFI Construction Contract, Interface Agreement and Facilities Management Contract for social housing on a number of sites in the North of England, London Crossrail, the London 2012 Adjudication Panel and T5 (Heathrow Terminal 5).

A selection of Adjudications on which Peter Aeberli has been appointed within the last few years include:

- CIC nomination: Transnational gas pipeline: NEC 3 amended; about £8 million claimed
- LCIA nomination: Station tunnelling: NEC3 amended; Account, about £12 million claimed
- RIBA nomination: Professional services. Bespoke terms: About £200k claimed for services
- CI Arb nomination: Northern Ireland infrastructure: Bespoke design build and operate contract; Declaratory as to long term obligations
- RICS nomination: Scottish School: Alleged subsidence, about £4 million claimed; Reported at *Transform Schools (North Lanarkshire) Limited v Balfour Beatty Construction Limited* [2020] CSOH 19
- RICS nomination: Liquefied Natural Gas plant: Bespoke terms: Termination and account About £6.5 million claimed
- RICS nomination: Office project: JCT as amended: Alleged glazing defects, about £650k claimed
- RICS nomination: Residential accommodation; Bespoke vesting agreements: About £400k claimed as damages
- RICS nomination: Central London offices: JCT terms; Post termination account; about £6 million claimed

- ICE nomination: Off-shore harbour works: FIDIC Dredging and Reclamation works: €16 million claimed
- ICE nomination: Ground and landscaping works: NEC3 amended: Final account, about £4 million claimed; *John Doyle Construction Limited v. Erith Contractors Limited* [2020] EWHC 2451 [35]
- ICE nomination: Airport runway: NEC3 amended: Declaratory as to time
- ICE nomination: Tram facility: JCT terms: Declaratory as to alleged defects
- ICE nomination: Process plant: Bespoke EPC contract: About £1.8 million claimed for alleged defects
- Agreed nomination: Residential and commercial M&E services: Bespoke terms: £6 million claimed
- Agreed nomination: £50 million Materials Jetty associated with construction of a nuclear facility: NEC 3 amended. Declaratory
- Agreed nomination: £50 million Marine Jetty: NEC3 amended entitlement to levy liquidated damages; about £1.5 million in dispute
- Agreed nomination: Higher education facility: Engineering services; Bespoke agreement. About £3 million claimed for delays
- Agreed nomination: Nuclear facility: NEC3 amended. Alleged compensation events, about £800k claimed
- TecSA nomination: £50 million Data Centre: JCT DB (2011) as amended: £6.5 million claimed
- TecSA nomination: Term contract for services: Bespoke terms: Account, about £350k claimed.

Peter also devised and ran a training course for representatives in Construction Adjudication, on behalf of various professional bodies in Ireland including the RIAI, Engineers' Ireland and the Bar Council, the Adjudication Conversion Course in preparation for the introduction of statutory adjudication of construction disputes in Ireland and, for the Irish Law Society.