



CONSTRUCTION
SUPERCONFERENCE
2021

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Multiple Experts in Complex Construction Disputes

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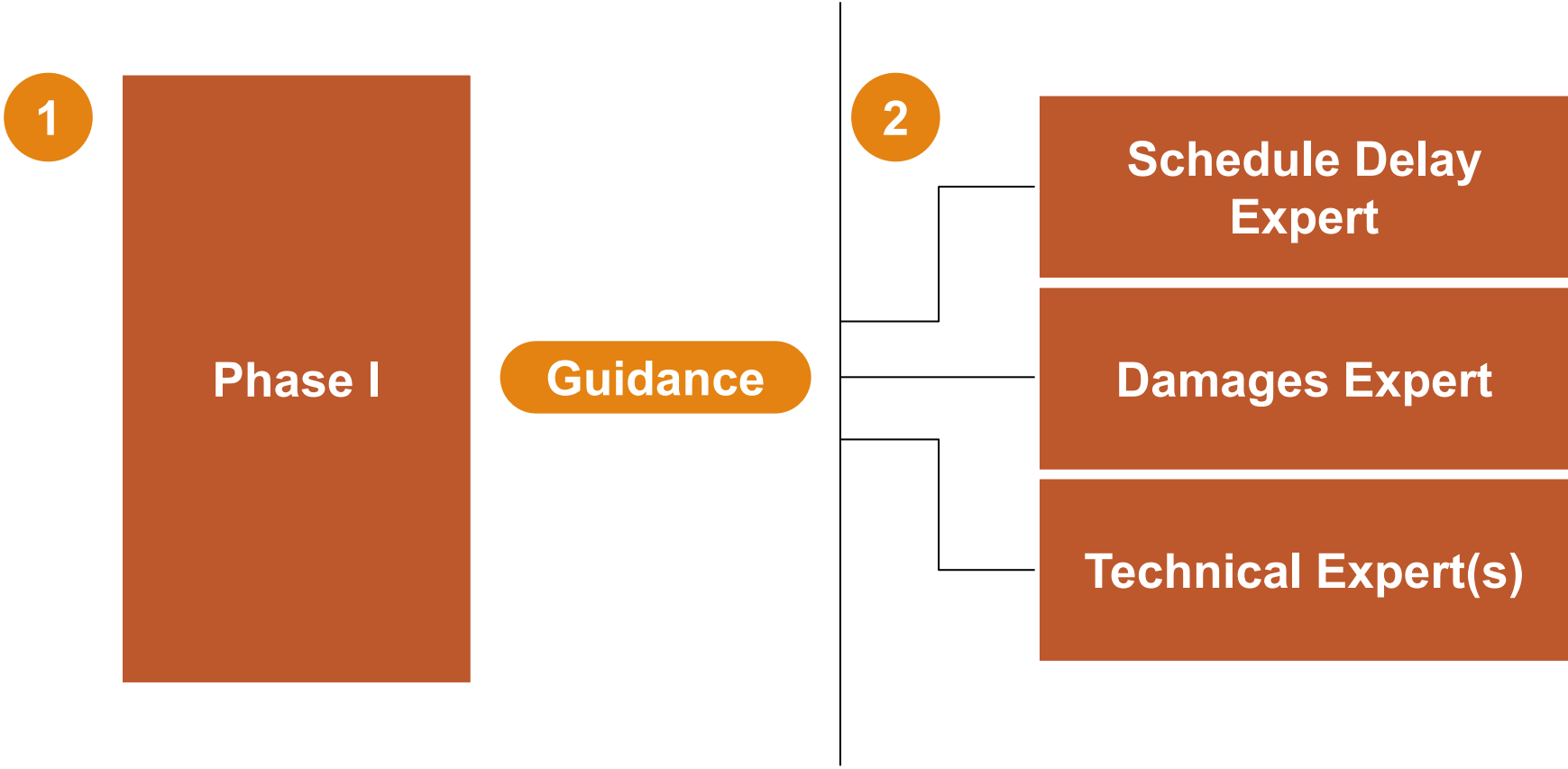
Neal Sweeney Partner, Jones Walker

Defining the Requirements of the Dispute

What elements need to be proven in order to cover all the necessary bases for success of the case argument?

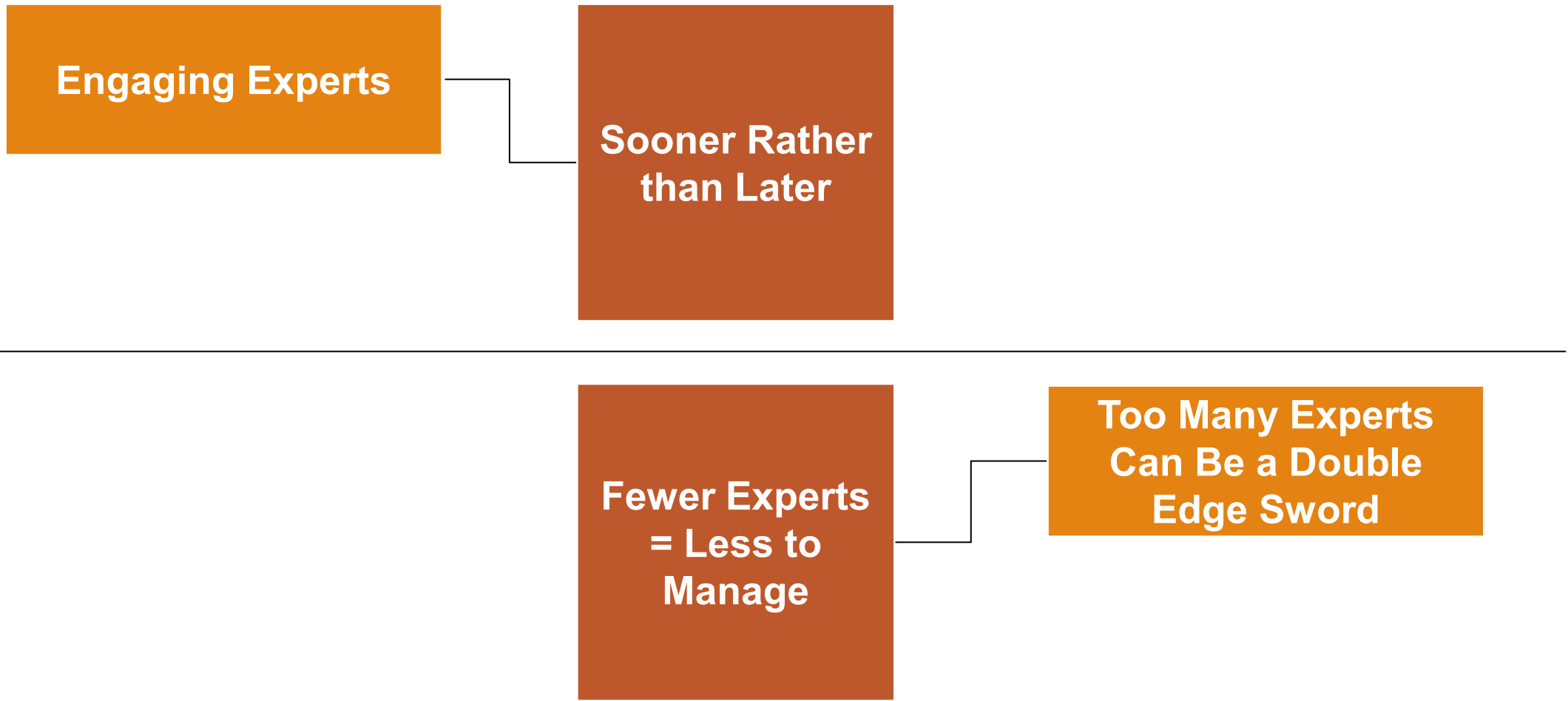
- Attorneys' initial determination of primary issues to be covered
- Engage expert early to provide preliminary guidance and entitlement review
 - Value of the Phase 1 Assessment
 - Opportunity to provide potential order of magnitude quantifications of delay and damages
 - Arms the client, whether it be Owner or Contractor, with early data to inform business decisions
 - Then, build out the expert roster or bench as the case requires

Determine Your Expert Needs



Early Expert Engagement

Testifying v. Non-Testifying Experts



What Project Themes will Require Expert Testimony?

Time & Money Experts

- Schedule Delay
- Quantification of Delay or Time-Related Damages
- Quantification of Loss of Productivity and Disruption-Related Damages

Technical Experts

- Standard of Care
- Estimating
- Deep Industry Expertise:
Contractor/Owner
 - Pipeline
 - Wastewater
 - Power, etc.
- Forensic Investigators

What Drives the Determination of the Most Beneficial Expert Group

Scale and complexity of mega-projects is becoming too large for one expert to handle

Multi-Billion Dollar Projects

Joint Ventures

**Document Productions are
Considerable**

Benefits and Drawbacks of Experts Within One Firm?

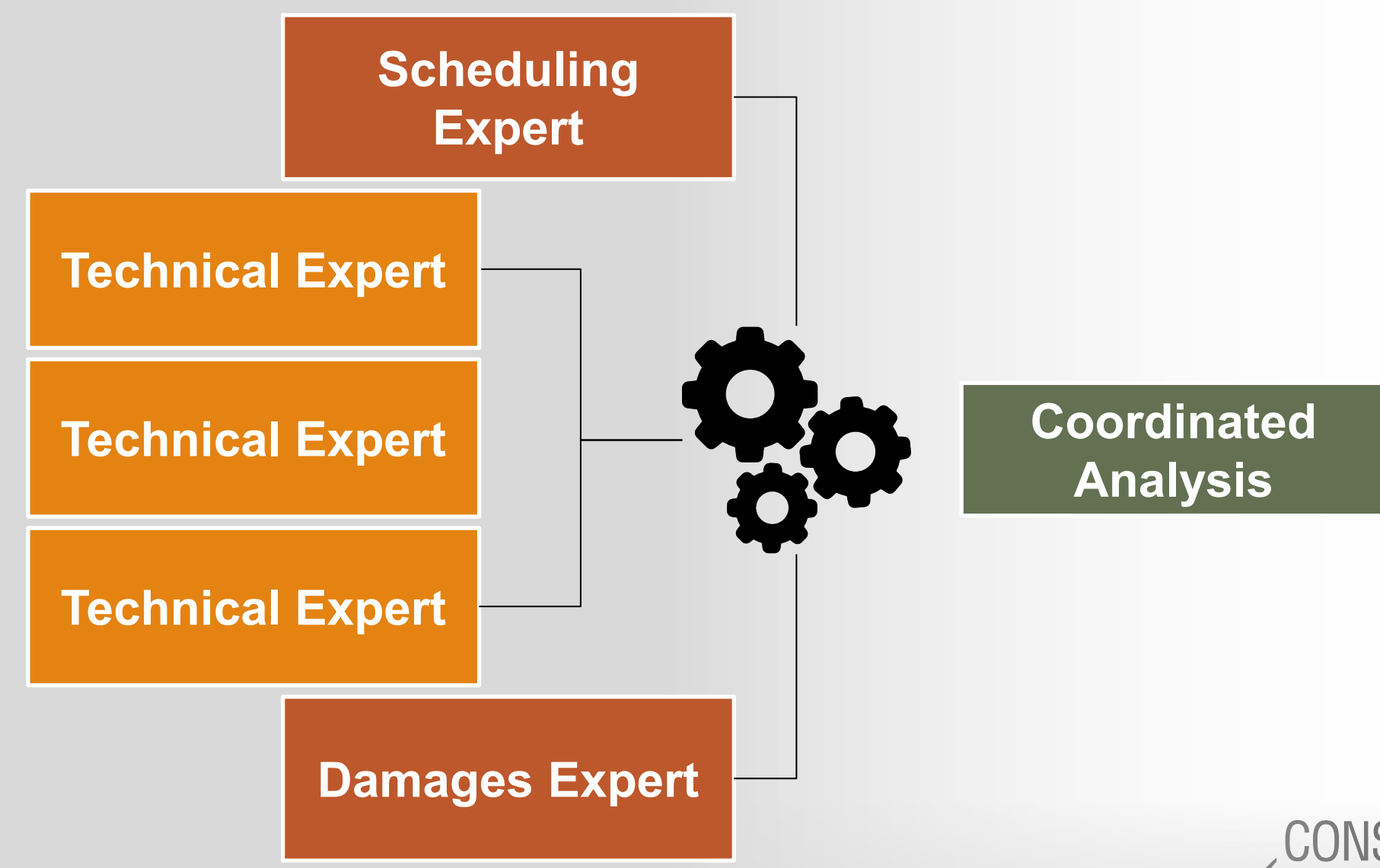
Benefits of Experts Within One Firm

- Assumed efficiencies if kept in one camp for schedule and cost
 - Not likely for deep technical subject matter expertise in house
 - Consistency of message and easier to coordinate opinions, avoid conflicting findings

Drawbacks of Experts Within One Firm?

- Perception of Independence
- Weighing the value of a "convenient" expert as opposed to the "best" expert

Pitfalls and Potential Benefits of Utilizing Multiple Firms

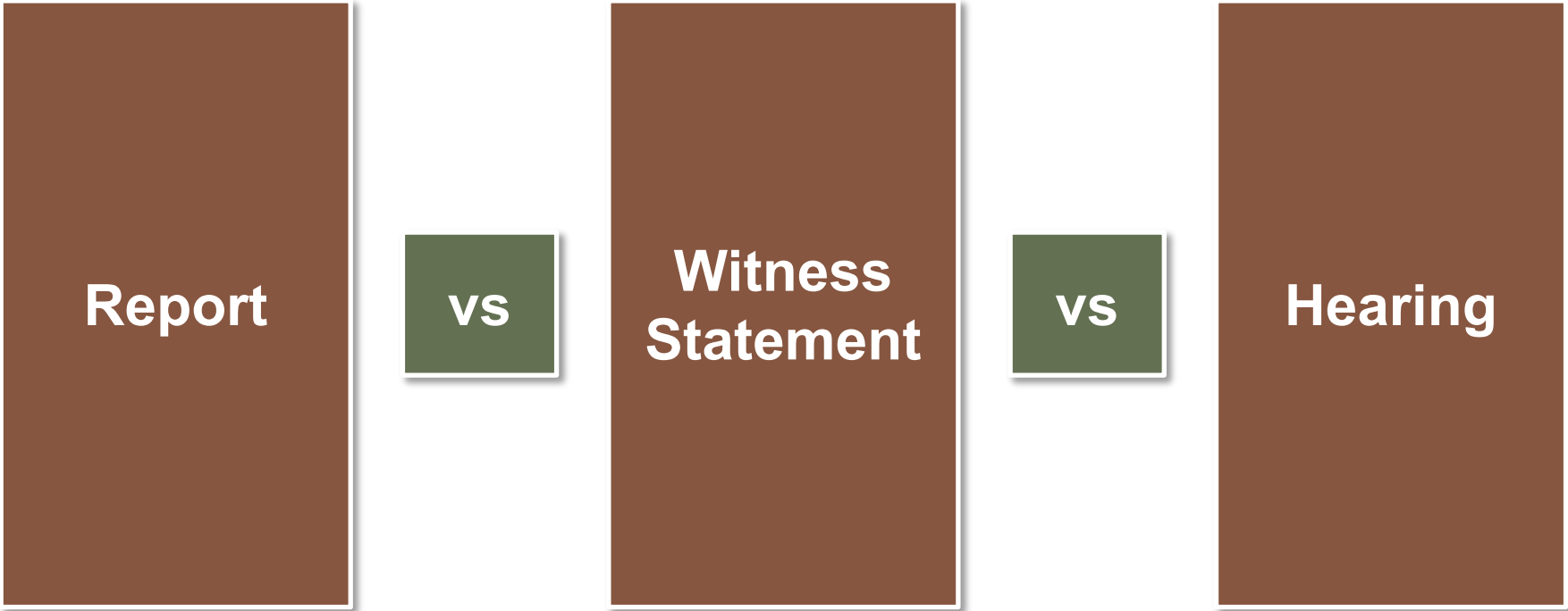


Define the Parameters of Each Expert's Scope

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- How much communication between experts is helpful versus duplicative, or potentially problematic from an independence standpoint?
- Identification of what opinions each expert will rely upon from any other expert
- Finder of Fact considerations

Finder of Fact Considerations



Define the Parameters of Each Expert's Scope

- How much communication between experts is helpful versus duplicative, or potentially problematic from an independence standpoint?
- Identification of what opinions each expert will rely upon from any other expert
- Finder of Fact considerations
- Expert testimony issues when the need arises to rely upon another member of the expert team or a key fact witness

Managing the Analysis

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Regular Check-ins

- Maintaining control of experts
- Building the argument
- Opportunity to test facts and hypotheses

Coordinating Findings between Experts

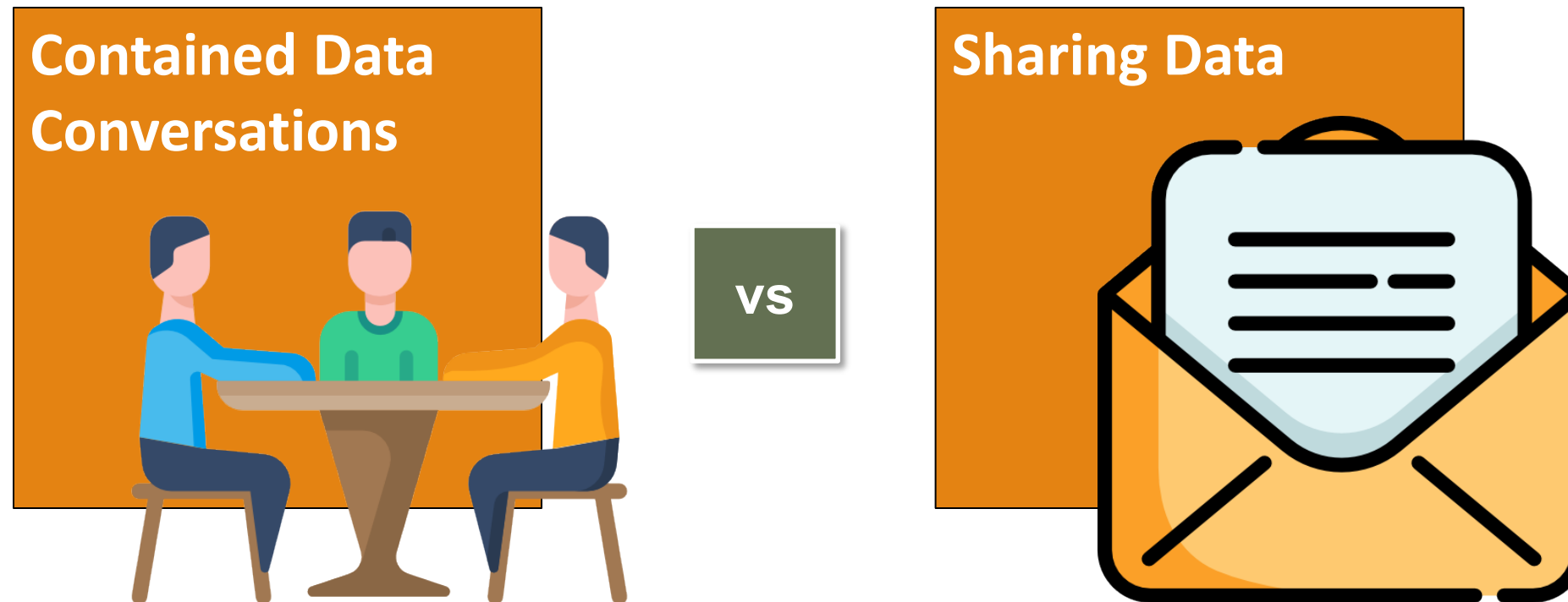
- Trading draft reports and resultant discoverability issues
 - Use technology to allow for communications, but also to limit transmissions
- How much detail is too much?
- Conferences with consultant teams
 - Experts directed to assume certain conditions until the required opinion is developed by a coordinating expert
- Managing disagreements between opinions

Joint Defense or Common Interest Agreements

- Consideration of jurisdiction and/or local laws

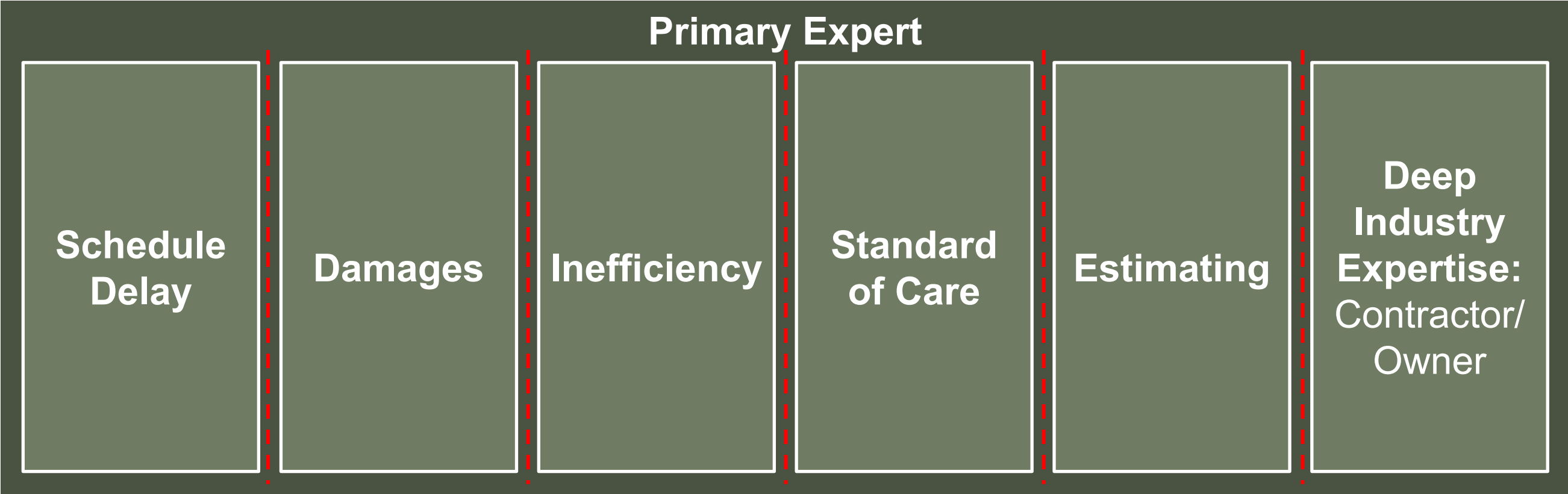
Communicating Draft Expert Opinions without Sharing Information

- Use technology to allow for communications, but also to limit transmissions
- Limit risks surrounding discoverability



Stay in Your Lane

Clear Demarcation Between Assignments



Scope
Who Sees What

Decisions Regarding Combining Dissimilar Presentations



Benefits or Problems Caused by Overlapping Testimony



Panelists



Laura Miller, CPA, CFE, CCA

Managing Director, FTI Consulting

Laura Miller is an expert in the calculation of construction delay and disruption related damages. Ms. Miller has over 25 years of construction and damages related experience. Ms. Miller has performed contemporaneous construction cost reviews and has analyzed the financial impact of various construction cost, schedule, and contract issues, both in private and public contracts.



Andrew Rhodes, CCP, PSP

Senior Managing Director, FTI Consulting

Andrew Rhodes has more than 25 years of experience in the construction industry. He specializes in schedule delay and disruption analysis and damages calculations. Mr. Rhodes consults on complex domestic and international projects, assisting contractors and owners throughout the project lifecycle in their efforts to effectively manage the recovery of time and additional costs, defend against claims, and avoid formal disputes.



Neal Sweeney

Partner, Jones Walker

Neal counsels clients on major infrastructure and P3 projects such as transit, airports, highways, wastewater treatment, and tunnels. He is also involved in energy and industrial projects linked to clean technology and renewable sources, including hydro, solar, wind, geothermal, integrated gasification combined cycle, and landfill gas.



John Dingess

Partner, DFL Legal

Mr. Dingess' practice is concentrated in the areas of construction and engineering, general commercial and international law. For more than 30 years, he has been involved with dispute resolution and contract negotiation and drafting.



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