



CONSTRUCTION **SUPER**CONFERENCE

2025

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Data Centre Disputes – Common Causes of Disputes and Best Approaches to Manage Risk and Resolve Disputes

Session _____

Tuesday, December 9, 2025
4:15pm – 5:30pm

I. Introduction – Panelists

- **Christopher Burke** (Moderator), Senior Partner – *Varela, Lee, Metz & Guarino, LLP*
- **John Colley**, Director – *Berkeley Research Group*
- **Carlos Loayza**, Managing Director – *Yendall Hunter*
- **Tim Whitney**, Vice President / Counsel – *HITT Contracting Inc.*
- **Steven Williams**, Partner – *CMS*

Disclaimer: This presentation is intended for educational purposes only and does not replace independent professional judgment. The information presented here represents the personal opinions of the presenters and should not be interpreted as the views of their employers.

I. Introduction, cont'd – Course Overview

- A. Current Market Trends
- B. Data Center Key Issues
- C. Construction Contracting Risk
- D. Managing Risk and Disputes

II. Current Market Trends

A. Innovation and Changing Market Needs

- AI – Spending Surge
- Private Equity Funding Expansions

B. Scale and Scope of Projects

C. Resulting Construction Challenges

- Lack of Contractor Capacity / Insolvencies (UK)
- Labor Constraints / Electricians (US)
- New Entrants into the Market (UK & US)
- Supply Chain Capacity (UK & US)

II. Current Market Trends (cont'd)

D. Technology Changes

- Cooling Technologies
- Impact on Design-Build Agreements

E. Water and Power Availability to Sites

- “Green” Data Centers
- Expansion into Developing Markets
- Grid Connections

III. Data Center Key Issues

A. Planning

- End User Schedules and Obligations
- Utility Lead Times
- Campus Expansions / Environmental Constraints

B. Intellectual Property

- Proprietary Systems / NDAs
- “One of a Kind” Designs

C. Data Security

- Distribution Controls
- Regulatory / Compliance Issues

IV. Construction Contracting Risk

A. Damages and Risk Assessments

- Liquidated Damages
- Tenant / End-User Business Interruption Damages
- Safety Penalties and Incentives

B. Flow-down Provisions Required from Owners / Nonstandard Terms

III. Construction Contracting Risk (cont'd)

C. Equipment

- Owner Furnished / Contractor Installed vs. Contractor Furnished / Contractor Installed
- Specialized Equipment and Risks
- Insurance Concerns

D. Technology Changes During Construction

E. Commissioning

IV. Managing Risk and Disputes

- A. Standard Forms of Contract
- B. Accelerated Timelines for Disputes
 - Use of DRBs / DABs
 - Interim Binding Decisions
- C. Confidentiality of Dispute Proceedings

QUESTIONS

