



# Consolidation and Joinder In Construction Arbitration: Ignorance Is Not Bliss

December 8, 2016 – 1:00 pm to 2:30 pm ET

## PROGRAM SUMMARY

**Speakers:** John Sherrill and David Waddell

This webinar will examine the new rules for consolidation and joinder, what constitutes appropriate use, and how arbitrators should respond to inappropriate use. In addition, common and nuanced questions about consolidation and joinder in the latest construction arbitration context will be reviewed as well as provisions for industry documents.

## AGENDA

<b>1:00 p.m.</b>	<b>Welcome and Introduction of Speakers</b>	(5 minutes)
<b>1:05 p.m.</b>	<b>Joinder and Consolidation</b> <ul style="list-style-type: none"><li>• Defining consolidation and joinder</li><li>• How consolidation and joinder issues arise (separate agreements, “binding” arbitration provisions, common issues of law or fact, conflicting rulings, the desire for economy and efficiency)</li><li>• Problematic third-party joinder issues</li><li>• Relevant case law</li><li>• Industry standard form documents</li><li>• AAA Rules and arbitrator considerations</li><li>• Practical applications</li></ul>	(75 minutes)
<b>2:20 p.m.</b>	<b>Conclusion and Questions</b>	(10 minutes)
<b>2:30 p.m.</b>	<b>Evaluation</b>	(5 minutes)
<b>2:35 p.m.</b>	<b>Adjourn</b>	



John A. Sherrill, Esq.  
Seyfarth Shaw LLP

<b>Current Employer-Title</b>	Seyfarth Shaw LLP - Retired Partner (Atlanta Office)
<b>Profession</b>	Attorney, Mediator, Arbitrator
<b>Work History</b>	Attorney/Partner, Seyfarth Shaw, 2000-present; Attorney/Partner, McCullough Sherrill, LLP, 1998-00; Attorney/Partner, Glass, McCullough, Sherrill & Harrold, 1979-98; Attorney/Partner, Ervin, McCullough & Sherrill, 1974-79; Attorney/Associate, Powell, Goldstein, Frazer & Murphy, 1972-74; U.S. Naval Aviator, LCDR, U.S. Navy, 1963-69.
<b>Experience</b>	<p>Primarily engaged throughout legal career in civil litigation, arbitration and mediation, involving the following areas: general business, contract and corporate, all types of construction cases involving owners, developers, sureties, public agencies, general and subcontractors, and lenders in all types of public and private (commercial, industrial, institutional and residential) projects; securities, insurance (including liability, interpretation and coverage issues), health care, real estate (foreclosures, condemnations, deficiency judgments, specific performance actions, zoning and land use, etc.), employment and personal injury/negligence/product liability. Extensive experience as trial lawyer at trial and appellate levels in federal and various state court systems. Significant portion of practice over last 25 years has involved acting as a neutral (50% mediation, 50% arbitration) and as an advocate representing clients in all forms of ADR.</p> <p>Professional recognition includes: Listed in Chambers USA, America's Leading Lawyers for Business 2007-2010; Georgia Super Lawyers Top 100 (Atlanta Magazine) 2005-2010; Georgia Trend Who's Who Legal in Georgia (2008-2010); Who's Who Legal in USA (2008-2010); Best Lawyers in America 2007-2010.</p>
<b>Alternative Dispute Resolution Experience</b>	Member of AAA Commercial and Construction Panels of arbitrators and mediators since 1986 and has acted as an arbitrator in over 200 cases and as a mediator in over 500 cases during that period. Member of National AAA Large Complex Case Program Panel since inception of the program in 1993. Member of the AAA/U.S. Olympic Committee Arbitration Panels for the 1996 (Atlanta), 1998 (Nogano), 2000 (Sydney) and 2004 (Athens) Olympics. Also member of Panel of Neutrals of the CPR Institute for Dispute Resolution. Appointed as arbitrator, mediator, administrative law judge, and special master by various courts and agencies (state and federal) since 1980. Served as Administrative Hearing Officer for State Health Planning Review Board and Chief Hearing Officer for the Georgia Real Estate Commission.
<b>Alternative Dispute Resolution Training</b>	AAA/ICDR/Mediation.org Panel Conference, 2016; AAA eDiscovery: Arbitration in a Digital World (ACE12), 2016; AAA/Georgia Arbitrators' Forum (GAF) 2015; Faculty, AAA Principled Deliberations: Decision-Making Skills for Arbitrators

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2014; Faculty, AAA Conducting Research & Investigations: The Arbitrator's Authority 2014; AAA Webinar Faculty, Consolidation and Joinder Issues in Construction Arbitration: What Construction Counsel Need to Know, 2014; AAA, Georgia Arbitrators' Forum (GAF) 2014; Faculty, AAA Maximizing Efficiency & Economy in Arbitration: Challenges at the Preliminary Hearing, 2013; Georgia Arbitrators Forum, Recent Developments in Arbitration Law, 2013; AAA, What We Have Here is a Failure to Communicate, 2012; Faculty, AAA Managing a Successful Arbitration, 2012; AAA/ICDR Neutrals Conference, 2012, 2009; Faculty, AAA Maximizing Efficiency & Economy in Arbitration: Challenges at the Preliminary Hearing, 2011; Faculty, AAA/ICDR Neutrals Conference, 2010; College of Commercial Arbitrators Annual Meeting, 2010, 2008; AAA Arbitration Awards: Safeguarding, Deciding & Writing Awards (ACE001), 2007, 2005, 2004; AAA Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics (ACE005), 2006; Faculty, AAA Dealing with Delay Tactics in Arbitration (ACE004), 2005; AAA Arbitrator Update 2005, 2004, 2001; AAA Neutrals Conference, 2005, 2004; AAA Construction Arbitrator II Training: Advanced Case Management Issues, 2002; AAA Resolution Training Mediation Advocacy Training, 2001; AAA Mediator Conference Workshop, 2000; AAA/USATF Doping Grievance Arbitrator Training, 2000; U.S. Olympic Committee, Olympic Arbitrator Training, 2000, 1997, 1996; AAA Construction Industry Arbitrator Training Workshop, 1998; AAA LCCP Arbitrator Training, 1997; AAA Introductory Arbitrator Training Workshop, 1996; AAA Mediation Training, 1994; AAA Large Complex Case Procedures Training, 1993; AAA Basic Arbitrator Training, 1993; various other ADR training; ACCTM, Various types of mediation training at annual conferences as Fellow of American College of Civil Trial Mediators, 2003, 2004, 2006.

#### **Professional Licenses**

Admitted to the Bar: Georgia, 1972; U.S. District Court, Northern District of Georgia, 1972; U.S. Court of Appeals: Ninth (1994), Fifth (1973), and Eleventh Circuits.

#### **Professional Associations**

American Arbitration Association (Board of Directors); American College of Civil Trial Mediators (Fellow); College of Commercial Arbitrators (Fellow); Georgia Arbitrators Forum; Atlanta Consortium of Arbitrators and Mediators; American Bar Association (Council of Dispute Resolution Section; CLE Committee, Chair); Georgia Bar Association (DR Section, Chair); Atlanta Bar Association (Litigation and ADR Sections); Lawyers Club of Atlanta.

#### **Education**

University of North Carolina (AB-1963); Duke University (JD-1972).

#### **Publications and Speaking Engagements**

"Effectively Conducting the Evidentiary Arbitration Hearing," Florida Bar Construction Law Institute, 2011, and Georgia Bar DR Section Newsletter, October 2010; "Ethics for Georgia Lawyers Representing Clients in Mediations," GEORGIA BAR JOURNAL, October 2009; "Achieving Efficiency and Fairness in Arbitration," American Bar Association Dispute Resolution Section, April 2008; "ADR For Trial Lawyers," Georgia Bar Association Publication for Younger Lawyers, 2007; "Effectively Resolving Business Disputes Through Arbitration," INSIDE THE MINDS, Aspatore Books, Massachusetts 2006; "Using Arbitration and Mediation to Resolve Real Estate Disputes," COMMERCIAL REAL ESTATE

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The AAA provides arbitrators to parties on cases administered by the AAA under its various Rules, which delegate authority to the AAA on various issues, including arbitrator appointment and challenges, general oversight, and billing. Arbitrations that proceed without AAA administration are not considered "AAA arbitrations," even if the parties were to select an arbitrator who is on the AAA's Roster.

INVESTORS MAGAZINE, February 2004; "Specialized ADR to Settle Faculty Employment Disputes," JOURNAL OF COLLEGE AND UNIVERSITY LAW, Fall 2001; "ADR in Your Trial Practice," Institute of Continuing Education in Georgia, February 1999; plus various articles on ADR, litigation, zoning and land use, and premises liability topics for Georgia Bar ICLE and GEORGIA APARTMENT ASSOCIATION LAW BOOK. Also, has presented as a speaker on these topics at ABA, Georgia Bar, Georgia ICLE, and Atlanta Bar Association seminars, as well as various other forums.

**Awards and Honors**

Selected to serve on AAA Panel of Arbitrators for U.S. Olympic Committee athlete disputes for Nagano Winter Games, 1998 and Atlanta, Sydney, Athens Summer Games, 1996, 2000 and 2004.

**Citizenship**

United States of America

**Languages**

English

**Locale**

Atlanta, Georgia, United States of America

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David W. Waddell, Esq.

<b>Profession</b>	Attorney - Legal, Business; Arbitrator
<b>Work History</b>	Private Practice, 2013-present; Partner, Seyfarth Shaw LLP, 2001-13; Partner/Associate, Hoover Bax Slovacek, 1989-01; Associate, Shannon, Ustick, Tyler and Beller, 1988-89; Associate, Plunket Gibson & Allen, 1986-88.
<b>Experience</b>	<p>More than twenty-five (25) years as trial lawyer counseling business clients -first jury trial: November of 1986.</p> <p>Commercial litigation with emphasis in commercial, industrial, and residential construction, the prosecution and defense of claims involving architects, bid awards, bond and lien claims, delay claims, design defects, environmental issues, erection disputes, payment and performance issues, site conditions, surety issues, warranty issues, wrongful termination, Texas Residential Construction Liability Act, EIFS, and mold claims.</p> <p>Significant commercial litigation experience with national financial institutions involving the Fair Credit Reporting Act, Fair Debt Collection Practices Act, lender liability, class action litigation, real estate, and bankruptcy matters.</p> <p>Complex commercial litigation and business counsel in matters including shareholder derivative and minority oppression actions, securities, products liability, real estate, M&amp;A, recapitalizations, health care, ERISA, defamation and bankruptcy.</p> <p>Provides counsel to international, national and family-owned businesses in operational and corporate matters, including strategies for reducing exposure to liability in operations, contract, insurance, investigations, ethics, and employment matters.</p> <p>Member/chairman of the Supreme Court of Texas Grievance Oversight Committee, 1997 - 2002.</p>
<b>Alternative Dispute Resolution Experience</b>	Has served as arbitrator and mediator in approximately 35 cases and participated as counsel in hundreds of meditations and arbitrations involving construction and commercial disputes, including a two week ICDR arbitration in the Haag, the Netherlands.
<b>Alternative Dispute Resolution Training</b>	AAA The Role of Fairness and Justice in Arbitration, 2016; AAA Roundtable Arbitrator Disclosures and Disqualifications, 2016; Faculty, AAA Take the Initiative! Your Obligation to be a Proactive Arbitrator 2015; AAA Construction Conference – Keeping Arbitration Lean, 2015; AAA What We Have Here is a

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Failure to Communicate 2014; AAA Optimize Your Arbitration! Understanding the Role of the Proactive Arbitrator 2014; AAA "Exceeded Powers": Recent Trends in Challenging Arbitrator Authority, 2014; AAA Winning at Arbitration: More than 30 Specific Tips Advocates Can Use to Improve Arbitration Outcomes, 2014; AAA Principled Deliberation 2014; AAA Conducting Research & Investigations, 2014; Construction Conference: ADR Works, 2008; ACE005 - Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics, 12/05; ACE003 - Arbitrator Ethics & Disclosure, 12/04; AAA Construction Arbitrator II Training, San Francisco, 10/03; AAA Arbitrator I Training-Fundamentals of the Arbitration Process, Dallas, 11/02; A.A. White, Advanced Mediation Training, Houston, 1992; A.A. White, Basic Mediation Training, Houston, 1992.

**Professional Licenses**

Admitted to the Bar: Texas, 1986; U.S. District Court: Southern, Western, Northern, and Eastern Districts of Texas; Northern District of Illinois; U.S. Court of Appeals, Fifth Circuit.

**Professional Associations**

State Bar of Texas (Construction Law Section); Associated Builders and Contractors of Greater Houston (PAC Trustee; Industrial Committee; Legislative Committee, Past Director; Co-Chapter Counsel; past member of the year '99); Houston Bar Association (Construction Law Section); Federal Bar Association.

**Education**

Trinity University (BA, Psychology, emphasis in Finance-1982); St. Mary's University (JD-1986).

**Publications and Speaking Engagements**

Various articles for Associated Builders and Contractors of Greater Houston membership publication 1996-present; speaker, "Liability Issues in Construction," American Society of Safety Engineers, Construction Safety Leadership Seminar, October 2003; speaker, Greater Houston Builders Association, Legislative Update and Legal Seminar, August 2001; speaker, Associated Builders and Contractors of Greater Houston A201 Seminar, 1999; speaker, "Texas Construction Lien Laws," various independent continuing education groups, 1995-1996.

**Citizenship Languages Locale**

United States of America  
English  
Houston, Texas, United States of America

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