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# BIM & Dispute Resolution

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# Overview

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- Preliminary Remark
- Effect of BIM on construction disputes
  - (Traditional) construction disputes
  - BIM-specific disputes
  - Reduction of disputes through BIM
- BIM & Advocacy

# (Traditional) Construction Disputes

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- Scope changes / Change orders
- Delay / Disruption / Acceleration
- Payment / Quantification
- Performance failure / Property damage
- Termination
- (IP related disputes)

# BIM can increase conflict potential

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The use of BIM requires a clear contractual allocation of risks and responsibilities.

- it adds several additional actors
- requires additional management and coordination
- leads to an additional product (i.e. the BIM model)
- timing of design input is key

# Examples of BIM-specific disputes

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- Failure to coordinate construction contractor and MEP contractor (MEP system could not be installed)
- BIM co-ordinator withholding access due to unpaid invoices
- Further examples in the scenarios.

# BIM can reduce conflict potential

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- Disputes resulting from lack of coordination of suppliers  
(Early clash detection and fewer errors caused by inaccurate and uncoordinated information)
- Disputes regarding additional time/effort caused by change orders  
(Improved ability to visualise the project and assess the impact of changes, ability to test mitigation measures)
- Disputes regarding cost claims in open book contracts  
(accurate and rapid generation of cost and quantity data)
- Delay disputes  
(more clarity on time constraints between various suppliers)

# BIM and Advocacy - Effects on case

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- Establishing facts
  - + Quicker review of CAD drawings / Change orders
  - Rolling planning may lead to a shifting target
  - Too much reliance on data, instead of people / site visit
  - Ensure access / “download” of data
- Presentation of the case
  - + BIM can permit greater visualisation (demonstrative exhibits)
  - + Allow better quantification & analysis by experts
  - Need to educate Tribunal as to what they are seeing

# BIM and Advocacy – Challenges for us

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- Need to understand what the limitations of the system that is being used are
- Focus on the signal-to-noise ratio, i.e. focus on the key points despite the overwhelming amount of data
- Engage early with client and experts in order to evaluate data and also visualize results
- Remember the target audience – generally lawyers and not engineers



# Michael Cartier

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Michael Cartier is a partner at Walder Wyss. He represents parties in international arbitrations under all major institutional rules and in ad-hoc proceedings, before state courts and in enforcement and legal assistance matters. The focus of his work is on construction disputes and international commercial law.

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