

Amanda Laurel Gayer Shares 'Clean Energy Checklist' in Renewable Energy World

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Construction disputes often involve multiple parties, including developers, suppliers, contractors, subcontractors, and insurers, making contract harmony crucial for efficient dispute resolution.

Haynes Boone [Litigation](#) Associate [Amanda Laurel Gayer](#) authored an article in *Renewable Energy World* that acts as a checklist for counsel advising on clean energy projects.

Read an excerpt below:

Counsel should therefore ensure that the following provisions are harmonized across all supply and construction contracts for a given project so that multi-party disputes can be litigated or arbitrated together in a single action:

- **Litigation or arbitration:** Each contract should consistently select either litigation or arbitration.
- **Forum:** Each contract should designate the same forum state for disputes.
- **Venue:**
 - o If arbitration, ensure all contracts select the same arbitral body (for example, JAMS, AAA, CPR, or ICC).
 - o If litigation, ensure all contracts consistently select the same federal or state courts within the forum.
- **Governing law & rules:** Each contract should select the same state's governing law. If arbitrating, also ensure all contracts consistently designate the governing arbitral procedural rules.
- **Dispute resolution procedures:** If pre-litigation dispute resolution procedures (such as informal and formal negotiations, mediation, and/or submission of the dispute to an independent technical expert) are included in a contract, seek to include consistent procedures and timeframes in every other construction contract for the project.
- **Cooperation with investigations:** The parties should include contractual obligations to cooperate with investigations of any issue, incident, or defect — including investigations by the developer, its insurer, or any third party engaged by one or both parties (such as an industry expert). Cooperation with an investigation can benefit all parties — it may clarify the nature and scope of the dispute for settlement purposes, can help an owner or developer determine who to sue, and may help the owner or developer obtain an insurance payout which would obviate the need to seek recovery from the at-fault parties.
- **Joinder/Consolidation:** Each contract should include a third-party joinder provision, so that if a dispute arises between the parties to the contract (Party A and Party B), and a related dispute arises between Party A and a third party, then Party A is entitled to demand that (i) Party B be joined

as a party to the third-party action, or (ii) the third-party be joined as a party to the action between Party A and Party B.

o Critically, this type of provision may be difficult or impossible to enforce unless (a) all project contracts are consistent with respect to arbitration/litigation, forum, and venue.

To read the full article, [click here](#).