

# AAACE Certified Forensic Claims Consultant Certification

James G. Zack, Jr.  
CCM, CFCC, FAACE, FIGPC, FRICS, PMP  
Principal  
James Zack Consulting, LLC  
&  
Senior Advisor  
Navigant Construction Forum™

# James G. Zack, Jr.

- Principal, James Zack Consulting, LLC
- Senior Advisor, Navigant Construction Forum™
  - **“The construction industry’s premier resource for thought leadership & best practices on avoidance & resolution of construction project disputes globally”**
- 46 years experience in construction management & dispute analysis & resolution
- Involved in more than 5,000 claims throughout U.S., Bahamas, Brazil, Canada, Chile, China, Dubai, Egypt, Guatemala, Germany, India, Jamaica, Kazakhstan, Mexico, Netherlands, Peru, Saudi Arabia, Slovenia, South Africa, Sri Lanka, Tatarstan (Russian Federation), Trinidad & Tobago, UK & Venezuela
- Fellow of AACE International, Royal Institution of Chartered Surveyors & International Guild of Project Controls
- Former President, AACE International; co-author of RP 25R-03 & 29R-03
- CCM, CFCC & PMP



# Intent of CFCC Certification



- Assist experienced claims professionals in becoming testifying experts
- Assist experienced professionals in maintaining status as testifying experts
- NOT a competency certification –
- A certification of expertise

# Purpose of CFCC Certification

- Very difficult to become a testifying expert
  - ❑ “You cannot get a job without experience but you cannot get experience without a job!”
  - ❑ CFCC Certification will help by demonstrating experience & knowledge of construction claims
  
- CFCC Certification exam based on
  - ❑ Common law
  - ❑ Mixed law that has elements of common law
  - ❑ **NOT** intended for civil law experts unless they have common law education & experience

# CFCC Certification

## Qualifications

- 4 year college / university degree from accredited institution of higher learning
- Degree in
  - Engineering
  - Building construction technology or sciences
  - Business or economics
  - Architecture or construction management
  - Computer science
  - Mathematics
  - Or related field

# CFCC Certification

## Qualifications

### ➤ 12 years verifiable construction claims experience

- ❑ Drafting, submitting & negotiating variations
- ❑ Forensic analysis resulting in delay claims
- ❑ Project assignments not suffice

### ➤ Must document active & consistent participation in claims preparation & submittal process through resolution, mediation, arbitration or litigation

# CFCC Certification Qualifications

- At least 1 professional certification beyond degree

|  |                                   |
|--|-----------------------------------|
| Certified Cost Professional (CCP)        | Professional Engineer (PE)        |
| Planning & Scheduling Professional (PMP) | Registered Architect (RA)         |
| Certified Construction Manager (CCM)     | Chartered Quantity Surveyor (CQS) |
| Certified Professional Constructor (CPC) | Admitted to Practice Law          |

- If not have certification, may substitute additional 12 years of claims experience

# CFCC Certification Qualifications



- **4 letters of reference / recommendation**
  - **Industry professionals – in-house legal counsel, barristers, clients past or present**
  - **Who “can attest to candidate’s years of claims related experience”**



# CFCC Certification Qualifications



- **Written report or professional paper**
  - ❑ Expert report authored by candidate submitted to & accepted into evidence in litigation
  - ❑ Formal claim submittal prepared by candidate
  - ❑ Professional paper on construction claims authored by candidate & published with 24 months prior to application

# CFCC Certification Qualifications



- **Review, accept & agree to abide by**
  - **AACE Cannon of Ethics &**
  - **Geoprofessional Business Association**  
*Recommended Practices for Design  
Professionals Engaged as Experts in the  
Resolution of Construction Industry  
Disputes*

# CFCC Certification Process



- Submit application package for review
- Application to sit for exam accepted
- Take & pass certification exam with minimum score of 70 on both multiple choice questions & essay questions
- Must recertify every 3 years

# CFCC Certification

## Exam Structure



- Five hour computer based exam in two sections
  - ❑ 50 multiple choice questions
  - ❑ 4 essay questions
- Both sections open book
- Why?
  - ❑ Experts always allowed to refresh their memories
  - ❑ Candidates allowed to bring in & use reference books, articles, etc.

# CFCC Certification

## Exam Structure

- **All questions based on common law principles**
  - Questions related to specific state or national laws removed
  
- **Question areas –**
  - Legal knowledge & rules of evidence = 35%
  - Cost damages & productivity loss = 20%
  - Planning, scheduling & delay analysis = 15%
  - Project management & documentation = 15%
  - Ethics & professional practice = 15%

# CFCC Certification Exam Questions – Legal Knowledge

- **This section includes questions on –**
  - ❑ **Impact of force majeure clauses**
  - ❑ **Causes of acceleration & deceleration**
  - ❑ **Dispute resolution methods**
  - ❑ **Arbitration differences between arbitral bodies**
  - ❑ **Law of the contract & impact on claim process**
  - ❑ **Rules & practices governing legal privilege**
  - ❑ **Deposition process & procedures**
  - ❑ **Enforceability of exculpatory clauses**
  - ❑ **Enforceability of No Damages for Delay clauses**
  - ❑ **Risk allocation of contract clauses**

# CFCC Certification Exam Questions – Damages

- **This section includes questions on –**
  - ❑ Enforcement of liquidated damages clauses
  - ❑ Adjusting contract values for added / deleted work
  - ❑ Cumulative impact costs
  - ❑ Direct & indirect costs
  - ❑ Total cost & modified total cost methods
  - ❑ Calculating lost productivity
  - ❑ Extended field & head office overhead costs
  - ❑ Delay vs. impact damages
  - ❑ Measured Mile technique
  - ❑ Earned value techniques

# CFCC Certification Exam Questions – Scheduling & Delay Analysis

- This section includes questions on –
  - ❑ Forensic schedule analysis techniques
  - ❑ Types & calculation of delay
  - ❑ Float ownership issues
  - ❑ Concurrent & Pacing delay issues
  - ❑ Prospective & retrospective delay analysis techniques
  - ❑ Independent, serial & sequential delays
  - ❑ As-Planned vs. As-Built delay analysis
  - ❑ Collapsed As-Built analysis
  - ❑ Impacted As-Planned Analysis



# CFCC Certification Exam Questions – Project Management Practices

- **This section includes questions on –**
  - ❑ Escrow Bid Documents
  - ❑ Allocation of risk & risk sharing clauses
  - ❑ Notice provisions
  - ❑ Ambiguous contract language
  - ❑ Operation of Order of Precedence clause
  - ❑ Claims filing process
  - ❑ Management of variations
  - ❑ Cost tracking & trending
  - ❑ Impact of refusing to issue time extensions
  - ❑ Project delivery methods

# CFCC Certification Exam Questions – Ethics & Professional Practice

- **This section includes questions on –**
  - ❑ **Role of experts in arbitration & litigation**
  - ❑ **Problems with contingent fees**
  - ❑ **Preparation & presentation of expert reports**
  - ❑ **Dealing with opinions contrary to your own**
  - ❑ **Necessity of performing conflict checks**
  - ❑ **Dealing with mistakes in expert reports**
  - ❑ **When experts may need to withdraw from a case**
  - ❑ **Preservation of evidence**
  - ❑ **Chain of custody issues**
  - ❑ **Preserving privilege as an expert**

# CFCC Certification Exam – Essays



- Purpose of essays to explore candidate's
  - ❑ Experience
  - ❑ Knowledge
  - ❑ Analytical skills
  - ❑ Communication skills
- Essays answered in narrative form, full sentences (**not** notes or bullet points)
  - ❑ Consider each essay response as initial draft report to legal counsel or barrister

# CFCC Certification Exam

## Essays



- **Read & follow instructions for each essay**
  - ❑ May be working for Court, owner or contractor
  - ❑ Essay must take role outlined in instructions
- **Essays graded on logic & thoroughness**
- **One way to write essay is BIRAC approach**
  - ❑ **Background**
  - ❑ **Issue**
  - ❑ **Rule**
  - ❑ **Analysis**
  - ❑ **Conclusion**

# CFCC Certification Exam – Essays



## ➤ Essay topics include

- ❑ Situations with multiple primes & site access
- ❑ Potential conflict of interest situations
- ❑ Selection & use of document management systems
- ❑ Cumulative impact claims
- ❑ Comparative analysis of arbitration vs. litigation
- ❑ Potential cardinal change situations
- ❑ Weather delays & recovery

# CFCC Certification Exam – Essays



- ❑ Potential termination for default situations
- ❑ Differing site condition situations
- ❑ Pursuing delay claims in face of No Damages for Delay Clauses
- ❑ Analysis of schedule delay situations
- ❑ Confrontational relationship with public agency situations
- ❑ Concurrent delay situations

# Questions or Discussion

*James Zack Consulting, LLC*

**James G. Zack, Jr., Principal**  
**James Zack Consulting, LLC**  
***JamesZackConsulting@outlook.com***  
**970-775-8066 or 949-439-9407**

