

CONSTRUCTION INSIGHT

The Latest News in Construction Contracts

CRUNCH TIME

In this Edition...

KNOWING WHAT YOU WANT

Edward Quigg, Director with Quigg Golden looks at knowing what you want when it comes to financial recovery

See Page 2

MAKING THE SUM DUE "THE SUM DUE"

This article looks at payment problems, remedies and dispute resolution

See Page 3

PREPARING TO FAIL?

This article highlights the negative repercussions for firms who fail to plan, focusing on the key issues of record keeping and contractual awareness

See Page 4

**Quigg
Golden**

CONTRACT CONSULTANTS
The Arbitration & Contract Dispute Specialists

The largest Construction Law Specialist in Ireland, providing representation in arbitration and conciliation, procurement advice and project management services.

We also offer accredited training seminars tailored to suit **YOUR** needs.

For a free initial consultation or for more info visit:

www.QuiggGolden.com

It is hard to believe that Christmas is nearly upon us and another year is drawing to a close. A phrase that will be synonymous with 2009 and that will affect many of us this Christmas is 'the Credit Crunch'. This year we have seen an unprecedented economic downturn. For many of us involved in Construction, and particular house building, the impact has been considerable. With the bottom falling out of the housing market many construction companies and employees have felt the pinch.

In the current climate contractual awareness and proper preparation are more important than ever. This Special Edition focuses on the various steps involved in getting to your money.

The key components to successful financial recovery are preparation, clarity and enforceability in terms of the amounts you are seeking to recover. Pauric Marray looks at the first of these, preparation. He addresses the old adage of failing to prepare is preparing to fail in the context of the construction industry. It is engrained in many of us that good record keeping and contractual awareness are key ingredients to a successful contract. Yet often these issues are ignored until it is too late. Pauric looks at the pitfalls of poor preparation and organisation.

Edward Quigg deals with the second component, clarity, providing useful hints and tips on preparation of payment

applications and contractual claims, ensuring that you will be clear on and confident in what you are claiming. Thirdly, Jarlath Kearney addresses enforceability issues. Often we see a divergence in opinions over what is due. Sometimes this unavoidably necessitates the input of a third party. Many of us are afraid to *'bite the hand that feeds us'* particularly in such tough times. Jarlath explains the merits of adjudication and how it can be a relatively quick and painless process which limits strain on commercial relationships.

The NEC contracts which are new to many and ever increasing in popularity have very different change management procedures from what we are "traditionally" used to. James Golden looks at these changes and their implications.

Hopefully you will find the information in our Special Edition useful and insightful. If you require any advice or have any feedback in relation to the articles please let us know.

On that note I would like to wish you all a Merry Christmas and a Happy New Year!

Until next time...

Caroline Eccles

Editor



QUIGG GOLDEN BACKS WOBBLY WILLIAMS



Bryn Williams and Edward Quigg prepare to start their charity walk at the West Highland Way. Quigg Golden recently supported the "Wobbly Williams" Charity walk across Scottish Highlands. The Charity was set

up by Bryn Williams, who was diagnosed with Parkinson's disease at age of 36. It aims to raise awareness of the condition and support research into possible cures. Bryn's website is a mix of good humour and honesty about this challenging condition, and is well worth the read.

Edward Quigg said:

"Bryn is a friend and we are delighted to help him in any way we can".

Wobbly Williams' website can be accessed at www.WobblyWilliams.com.

KNOWING WHAT YOU WANT



Edward Quigg
Director

We all too often see claimants (so invariably, main contractors or sub contractors) who have problems with payment, because they have not properly thought through their application for payment in the first place. They have perhaps not realised that they are entitled to additional sums either as loss and expense under traditional form of contract or because they fail to realise that a compensation event has arisen and is costing them money under the NEC contract. This is particularly frequent where they are working very hard for demanding clients. They are so focused on getting the work done, they are failing in the primary reason for being in business; getting paid for the work they do.

The overriding principle to ensure cashflow is to make sure that you claim the full payment due to you promptly. Until you start the ball rolling, you have no one to blame but yourself for not being paid. This all starts from making sure you have efficient procedures onsite to know what should be paid and if things change on site what additional claims

you should make. Often a short meeting with the likes of Quigg Golden will ensure that you understand your full entitlement both in terms of normal payments, payments for change through rates and prices or for loss and expense.

Then it is essential that you understand the proper records that you will need to have to prove the additional monies due to you. Proper substantiation and record keeping is always important and should be focused to be properly efficient. Again a review of your procedures could often pay considerable dividends.

You will of course want to work with your client to reduce the loss you suffer and for what he must pay and you will want to record this accurately both in adjustments to your programming and what steps you have taken to ensure that losses are curtailed. This is all part of the record keeping system.

For more information or advice contact Edward at Edward@QuiggGolden.com

Edward Quigg

QUIGG GOLDEN'S CONSTRUCTIVE TRAINING SEMINARS

Quigg Golden Constructive Training completed a successful Autumn 2008 seminar season. However, due to popular demand Constructive Training is running one further **FREE** event in December entitled:

"Getting To Your Money"
Tuesday 2 December 2008
Ulster Reform Club, Belfast

It will address the problems and pitfalls with financial recovery and provide suggested safeguards and solutions. For full details please contact:

Christina@QuiggGolden.com

or visit our website

www.QuiggGolden.com

Quigg
Golden

CONTRACT CONSULTANTS
The Arbitration & Contract Dispute Specialists

Constructive Training offer a wide range of public and in-house training seminars adopted to suit **YOUR** needs.

Quigg Golden Limited's approved Training Programmes and Trainers have been placed on the FAS/EI National Register of Trainers. The Registration Number of Quigg Golden Limited is 901089

Quigg Golden training is also approved by the Construction Industry Training Board (NI) for grant aid purposes.



Quigg
Golden
CONTRACT CONSULTANTS

For full details of up and coming seminars see

www.QuiggGolden.com

or for a tailored in-house seminar telephone (028) 9032 1022

www.QuiggGolden.com

Making The Sum Due *“The Sum Due”*

Before being able to “force” a client to pay you the sum due to you that sum must be “enforceable”. That means cutting through disputes and prevarication and getting to a crystallised sum which either everyone is content with or which is directly enforceable. How do you do this?

“Prevarication is common when cash is tight on the client’s side.”

The first thing is to avoid accusations from your client of failure to provide enough information. This is often a delay tactic, but can be valid. Prevarication is common when cash is tight on the client’s side and there is an incentive on the client’s organisations to avoid taking decisions which ultimately will require their client to pay money. In order to avoid this, contractors must make a substantial and genuine effort to provide all the necessary information to support their applications for additional money when they apply for it. Making sure that applications for payment are properly substantiated and complete first time round is often difficult and can require professional help. Specialist organisations, such as Quigg Golden, have the joined up thinking that allows prompt action to be taken properly. Focused professional help can often dramatically improve cashflow so it is usually extremely beneficial. This is particularly true with the new and often poorly understood systems

such as the NEC. James Golden, Director of Quigg Golden has written an article about this in this newsletter. (Page 4)

Once you have overcome any prevarication hurdles, the next issue is to cut through any disputes. In Northern Ireland, we have the excellent statutory adjudication system which is not available in the Republic of Ireland. Consequently the situation across the border is much more difficult. Adjudication is an extremely powerful tool and is designed to be used in exactly the circumstances that the “credit crunch” has put the industry in. With its rapid 28 day turnaround and readily enforceable decisions, adjudication is and remains relatively inexpensive and a very sure way of obtaining a fixed sum that the client will be required to pay.

“Focused professional help can often dramatically improve cashflow.”

There are certain principles in dealing with adjudication including:

1. having clear claims which are properly substantiated;
2. keeping what is referred to adjudication simple;
3. referring the matter to an adjudicator promptly so that a quick resolution can be reached; and
4. making sure that the Referral itself



Jarlath Kearney
Senior Contracts & Arbitration Manager

is professionally put together in a way that both the Responding Party and the Adjudicator will readily understand and be able to address so that the dispute is properly resolved.

If adjudication is dealt with professionally, it avoids much of the destruction of commercial relationships which characterise others forms of dispute resolution. With a decent adjudicator and a properly established claim, commercial relationship can remain intact while wavering clients are forced to pay the money that you are due.

for advice or further information contact Jarlath at Jarlath@QuiggGolden.com

Jarlath Kearney

www.QuiggGolden.com

PREPARING TO FAIL?

It is somewhat of a cliché but the old adage of 'failing to plan is planning to fail' is extremely relevant to ensuring full recovery under a construction contract.

The primary reasons why claimants find themselves unable to recover losses incurred or unable to refute a claim for liquidated damages is the failure to properly and accurately understand the terms of their contract and the failure to develop and maintain appropriate record keeping procedures. Obtaining proper advice is the key to ensuring neither of these problems significantly affect your business.

Both of the above points are especially key if you are contracting under any of the NEC forms. The NEC places an increased emphasis on the maintenance of records and set out mechanisms for the barring of claims if the contractual provisions are not adhered to.

Understanding the Contract

A useful first step to understanding the contract is to actually read the contract.

If you do not understand some or all of the terms, seek advice as to their meaning. The key question you should be asking is "what does the contract require me to do in order to ensure full payment?" Once this base of knowledge is acquired, it is a matter of tailoring record keeping procedures to meet the demands of the contract.

Record Keeping

Good records are the key to ensuring correct payment. In our experience of pursuing claims in dispute forums, weak cases with good records are as likely to succeed as strong cases with poor records. The key to record keeping is to ensure the process is as simple as possible and to understand the potential usage of records you already maintain. One example of such a record are timesheets which are filled in by or in relation to general operatives. Instead of simply recording the time in/time out, why not record the area(s) the operative was working in, the work carried out and anything that has delayed the operative on that day.



This can be recorded in an agreed shorthand to decrease the administrative burden.

"Good records are the key to ensuring correct payment."

There is not sufficient space in this short piece to go through in detail all the possible records you could and/or should maintain. Critical points to remember are to understand what records the contract requires you to keep and having the discipline to maintain those records throughout a project. Quigg Golden's experience makes it ideally placed to advise in this regard. For further information or advice contact Pauric at Pauric@QuiggGolden.com

Pauric Marray

Making Claims Under The NEC

The compensation event and change management procedures under the NEC are designed to ensure cashflow. However, they are often not properly understood. I frequently see parties incurring difficulties in obtaining the resolution of issues through the compensation event structure, for no good reason. The operation of Core Clause 6 along is very different from the operation of and, indeed, the mindset required of a JCT or other "traditional" standard form of contract. It is important to work closely with the Project Manager and to ensure that the supply chain is properly involved in the determination and crystallisation of payment for change.

Precisely because this is new and poorly understood, it is often better to get good advice in relation to it promptly. As the leading NEC specialists in Northern Ireland we pride ourselves in being able to help both clients and contractors to resolve problems with the change management system and maintain their relationship as far as possible. Clearly partnering does not mean accepting incompetence and the proper operation of the NEC structure is sometimes confused with a desire to maintain relationships whenever it is clear that the intention of the other party is merely to obstruct. This should not and need not happen.

For further advice or information contact James at James@QuiggGolden.com

James Golden



CONSTRUCTION INSIGHT
The Latest News in Construction Contracts

Editorial Team

Editor: Caroline Eccles LLB ACI Arb

Consultants: James Golden BEng LLB CEng FICE MCI Arb FInstCES
MRICS and Edward Quigg BEng LLB MIEI MCI Arb FInstCES

Content Design: Christina Kerr

Feedback

Letters and comments to:

The Editor • Construction Insight
Quigg Golden Limited
1 - 3 Brunswick Street • Belfast • BT2 7GE

If you wish to advertise please contact
advertisements@Constructivetraining.com
or belfast@QuiggGolden.com