



CHARTERED QUANTITY SURVEYORS CHARTERED BUILDING CONSULTANCY

DISPUTE RESOLUTION SPECIALISTS. CONTRACTUAL ADVISORS. EXPERT WITNESS

Newsletter No.13 – Spring 2009

Dispute Resolution Update

By Ray Crabbe

Well who would have thought that since our last Newsletter (Autumn 2008) we would have all experienced a banking crisis followed by the worst recession in recent history.

The construction sector is now suffering severe downward pressure on pricing levels as everyone fights for a slice of an ever shrinking market.

Now is the time when it is more important than ever that the ever heightening risks are identified and managed. A properly formulated strategy for identifying, managing and resolving disputes is essential.

Further advice or details, email
raycrabbe@rjc-consultants.co.uk

Business Development



In terms of our sister company C.A. Chainey & Associates Ltd. Tony Chainey retired at the end of 2008 and Mark Crowley has been appointed as the new Associate Director to manage their Newport Office. Mark has joined Chainey's from DTZ in Cardiff and is a Chartered Surveyor, with a wide range of traditional Building Surveying and Cost Consultancy experience.

Mark works closely with his colleague Roger Jackson who is a Chartered Quantity Surveyor and another new member of staff who joined Chainey's at the start of March, Adam Jones, who is an Assistant Quantity Surveyor, to deliver a wide range of Building and Cost Consultancy services, including but not limited to the following:-

- Quantity Surveying
- CDM Coordination
- Construction Cost Consultancy
- Party Wall & Neighbourly Matters
- Contract Administration
- Space Audits and Planning

- Project Coordination
- Expert Witness
- Building Surveying - including; Pre-Acquisition Surveys, Condition Surveys, Dilapidations, Planned Maintenance Schedules, Reinstatement Cost Assessments etc.

C.A. Chainey are able to offer their services from the RJC offices in Bristol, Slough and throughout Wales and the South West from their Newport Head Office.

For more information please contact
mark.crowley@chainey.co.uk

Have you tried Mediation?

By Ray Crabbe

The JCT 2005 suite of contracts offer the option of mediation as a means of resolving disputes.

RJC have found their clients are becoming more willing to consider mediation as a form of dispute resolution.

Mediation offers the opportunity for both parties to prepare a position statement and to rehearse their respective arguments on a without prejudice basis in front of an experienced Mediator. The Mediator then attempts to facilitate a narrowing of the issue and an eventual settlement. This is often achieved in a one day session (although the final details may not be hammered out in the one day session, the parties often continue their settlement negotiations through the auspices of the independent Mediator and subsequently achieve settlement).

Once the terms of the settlement are agreed, they are drawn up into an enforceable agreement.

The essential element in achieving a settlement by Mediation is for the parties to be prepared to fully engage in the process with a willingness to settle. Without active engagement in the process or if the parties have no willingness to settle, mediation will not bring the desired result.

RJC have recently facilitated mediated settlements for several of their clients which has proved satisfactory. This process can be a cost effective alternative to Arbitration or Litigation in certain circumstances.

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Another Wet Summer last year but was the wet weather Exceptionally Adverse, and is the Measure Changing? By Roger Smith

An important issue, because under the JCT suite of contracts exceptionally adverse weather affecting the completion date gives rise to an entitlement to an extension of time and relief from the levying of LADs; although not a corresponding entitlement to reimbursement of loss and/or expense.

As with the occurrence of any Relevant Event, cause and effect must be demonstrated, and might be attempted by showing for example from site records that it was too wet for bricklayers to produce any brickwork on say 10 days during July 2008. But when does adverse become exceptionally adverse because that is what must be demonstrated. The contractor has taken the risk of adverse weather; just not exceptionally adverse.

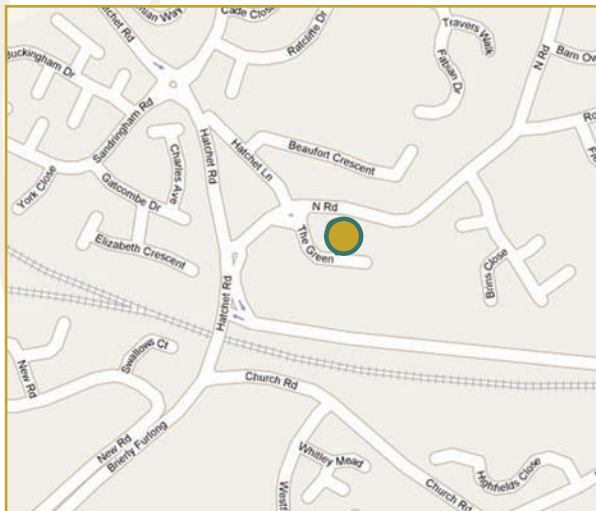
There is no definition of “exceptionally adverse” and it can be just as thorny an issue as defining when a project is “practically complete”. Comparison of actual weather data with previous years averages is often used in an attempt to prove or disprove a case, but nevertheless the subjectivity remains.

Further and serious consideration should be given to whether more risk is now attached to this relevant event than used to be. We have now experienced 2 consecutive very wet summers in the UK together with flooding occurring far more frequently than in previous years. This must give weight to the potential argument that these types of weather condition are no longer exceptionally adverse.

Further advice or details, email rogersmith@rjc-consultants.co.uk

We are located...

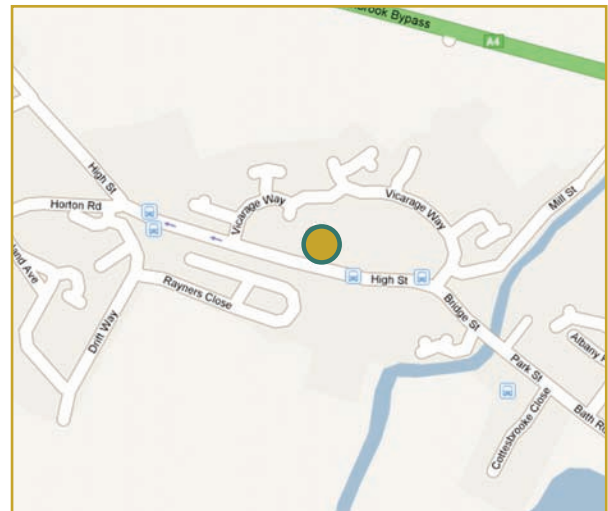
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