



Engineering Disputes - How to Manage them and how to Succeed

28 February 2005

One Birdcage Walk, London

Programme and Registration Brochure

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Engineering contracts can relate to supply, installation and testing of equipment whose value is for many millions of pounds. There may be time constraints, provisions for liquidated and ascertained damages (LAD's) and stringent performance criteria. Issues of design and workmanship as well as the performance of the sub-contractors must also be considered. Thus it is not surprising that from time to time, issues arise which can on occasion give rise to disputes. These disputes, unless effectively managed and controlled, can prove costly, necessitating the involvement of experts and lawyers as well as extensive in-house resource.

This seminar will address the manner in which conflicts can arise and those methods that do exist which allow for the management and speedy resolution of them at minimum cost. In looking at the problems, reference will be made to the terms of the Model Form 'A' of general conditions of contract as well as MF/1(rev 4), as recommended by the Institution of Mechanical Engineers (IMechE), the Institution of Electrical Engineers (IEE) and the Association of Consulting Engineers (ACE). Reference will furthermore be made, where appropriate, to the relevant provisions of the FIDIC contracts and those of the ECC (the Engineering and Construction Contracts).

ABOUT THE SPEAKERS

Niall Lawless is an experienced international Chartered Arbitrator, Mechanical Engineer, Building Services Engineer, Information Systems Practitioner and Chartered Builder. Through Arbitrari Limited, he provides arbitration, mediation, and adjudication services, and his commercial and technical expertise is particularly appropriate in both domestic and international technology, engineering, and construction disputes. Niall sits on the Chartered Institution of Mechanical Engineers panels of Arbitrators and Adjudicators. He is also a member of ADR Associates at 1 Chancery Lane, London.

Jeffrey Brown is a partner in the Construction, Engineering & Projects department of international law firm Hammonds in Birmingham. He has over 20 years experience in dealing with engineering and construction disputes and is familiar with industry practices, including the standard forms of mechanical engineering contracts such as MF/1 and its predecessor, the model form "A" Conditions of Contract. During his career he has advised on many domestic and international disputes, developing significant expertise in this field.

Both **Tracey Wood** and **Stuart Long** are solicitors who are also experienced in dealing with engineering disputes as well as in the conduct of non-contentious matters. They too are based in the Birmingham office. Tracey lectures on a wide variety of construction law issues and is a frequent contributor to construction journals. Stuart has had the conduct of many adjudications and may be regarded as being an expert in this field.

ABOUT HAMMONDS

Hammonds operates a network of integrated European offices as well as an office in Hong Kong, and has capability across Asia and Latin America. The firm offers a full service to clients, including practices from litigation to corporate, tax, property and pensions. It is at the forefront of developments in mediation and alternative dispute resolution, and has won the Centre for Dispute Resolution Award for excellence in alternative dispute resolution for an unprecedented three times in succession.

ORGANISING COMMITTEE

Niall Lawless CEng, FIMechE, FCIBSE, FBCS, FCI0B, FCI Arb, FRSA
Jeffrey Brown LLB, FCI Arb, ACII, Chartered Insurance Practitioner

PROGRAMME

28 February 2005

09:30 Registration and coffee

10.00 Opening Address

Niall Lawless CEng, FIMechE, FCIBSE, FBCS, FCI0B, FCI Arb, FRSA

10.10 Commercial Disputes and Their Resolution

Niall Lawless CEng, FIMechE, FCIBSE, FBCS, FCI0B, FCI Arb, FRSA

This session explores the concept of conflict in business relationships and asks whether it is inevitable or desirable. It looks at the basic causes and the advantages and disadvantages of conflict, examining what the manager's role is in dealing with it. The session concludes by looking at compromise through principle-based negotiation.

10.40 Conciliation and Mediation Part I

Niall Lawless CEng, FIMechE, FCIBSE, FBCS, FCI0B, FCI Arb, FRSA

How does it work and what does the process involve? What is the role of the mediator and what are the realistic objectives that may be secured? Is there a right and a wrong time to embark upon this process?

11.10 Question and Answer Session

11.25 Coffee

11.40 Conciliation and Mediation Part II -
the View of the Lawyers

Jeffrey Brown LLB, FCI Arb, ACII, Chartered Insurance Practitioner
Tracey Wood LLB

Is there a place in standard forms of contract for enforced mediation? Is this to be construed as being a pre-requisite to a 'dispute' for determination by either adjudication or arbitration? Can the Court order mediation? What are the consequences of a refusal to mediate?

See:

- Halsey v Milton Keynes NHS Trust
- Steel v Joy & Halliday
- Shirayama Shokusan Co Ltd v Danovo Ltd
- Cable & Wireless Plc v IBM United Kingdom Ltd
- Costelloe v Monmouthshire County Council
- Gosport Marina v Mackley.

12.10 Adjudication - Benefits and Disadvantages

Niall Lawless CEng, FIMechE, FCIBSE, FBCS, FCI0B, FCI Arb, FRSA

Stuart Long LLB, ACI Arb

Jeffrey Brown LLB, FCI Arb, ACII, Chartered Insurance Practitioner

As an experienced adjudicator Niall has been nominated by the Institution of Mechanical Engineers in that role. Similarly, both Jeffrey Brown and Stuart Long have been involved in adjudications. Together, they will be able to provide details of their experiences and describe the benefits as well as the limitations of the adjudication process.

12.55 Question and Answer Session

13.10 Lunch

14.00 Arbitration

Niall Lawless CEng, FIMechE, FCIBSE, FBICS, FCIQB, FCIARB, FRSA

Jeffrey Brown LLB, FCIARB, ACII, Chartered Insurance Practitioner

It has been said that arbitration is no more or no less than litigation in the private sector. However, arbitration is as old as commerce; beginning with merchants submitting disputes to be resolved by a peer, someone, who understood their custom, practices and trade. Modern arbitration is entrenched in party autonomy and is consensual. Parties chose the arbitration or the body which will chose the arbitrator, the procedural law for the arbitration, the substantive law governing the contract, the place of the arbitration, the country and the language.

This session examines what this means in the context both of domestic arbitration and that involving an international element. It also examines the requirements of the Arbitration Act 1996 and looks at the comparative rules such as Uncitral, ICC and LCIA and the nature and enforcement of international arbitration awards.

15.00 Costs

Tracey Wood LLB

Costs are one of the most important aspects of the resolution of any dispute and Tracey will outline the various devices that can be used in order to obtain protection on costs and to maximise recovery of costs from the unsuccessful party. There have also been some high profile comments by judges in recently reported cases which merit consideration.

15.20 Question and Answer Session

15.35 Coffee

15.50 Summary of the advantages and disadvantage each of mediation, adjudication, litigation and arbitration. What are the golden rules of management of any dispute?

Niall Lawless CEng, FIMechE, FCIBSE, FBICS, FCIQB, FCIARB, FRSA

Stuart Long LLB, A.CIARB

Jeffrey Brown LLB, FCIARB, ACII, Chartered Insurance Practitioner

Tracey Wood LLB

A wide range of tools and tactics can be used to 'win' a dispute and these are routinely deployed by experienced practitioners. This session will reveal some of the tools and tactics that can be used at the different stages of a dispute and describe how they can change the outcome for you.

16.15 Case studies - How dispute procedures operate in practice

Niall Lawless CEng, FIMechE, FCIBSE, FBICS, FCIQB, FCIARB, FRSA

Stuart Long LLB, A.CIARB

Jeffrey Brown LLB, FCIARB, ACII, Chartered Insurance Practitioner

Tracey Wood LLB

Much will have been learned of the various dispute resolution procedures. This knowledge has to be applied, however, and it is important that the delegates see the application of the rules in a practical light. The cases chosen will illustrate this. The speakers will present the facts of decided authorities and will lead the discussion. The delegates will be able to consider whether any alternative procedure would have given rise to a settlement.

17.00 Question and Answer Session

17.15 Close

The programme is subject to amendment.

Views expressed are those of the individual speakers and not a corporate position of the IMechE.

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Engineering Disputes - How to Manage them and how to Succeed. 28 February 2005

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REGISTRATION FEES (Includes attendance to the sessions, lunch, refreshments and copy of the seminar volume).

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