

ONE DAY SEMINAR

50

CONTRACTUAL PROBLEMS AND THEIR SOLUTIONS

About the seminar:

ROGER KNOWLES returns to co-present, with **JOHN DONNELLY**, his world renowned 50 Contractual Problems seminar. This seminar has been developed to assist those involved in the management and administration of construction and engineering contracts by addressing 50 typical everyday contractual problems and their solutions.

Key Topics covered in this seminar include:

- **Tenders, Pre-Contract and Design**
- **Latent Conditions**
- **Programme**
- **Payment**
- **Delays & Extension of Time**
- **Delay / Prolongation Costs / Damages**
- **Design & Construct Contracts**
- **Variations & Additional Costs**
- **Liquidated Damages & Penalties**
- **Practical Completion & Defects**
- **Adjudication**

Perth

31 January 2008

Melbourne

04 February 2008

Sydney

05 February 2008

Brisbane

07 February 2008

registration / benefits include...

- practical solutions to real problems
- experienced speakers
- comprehensive reference material
- reference to industry –wide contracts
- morning and afternoon tea / coffee
- buffet lunch
- personal CPD certificate of attendance
- opportunity to network

fee

\$500 (+ GST) per person

who should attend...

Contractors, Principals, Sub-Contractors, Contract Administrators, Superintendents, Lawyers, Engineers, Quantity Surveyors, Architects, Project Managers, Consultants & Government bodies.

TENDERS, PRECONTRACT AND DESIGN

1. Where a tender is submitted based on the principal's / main contractor's tender enquiry documents, and the letter of award contains more onerous terms, which terms apply?
2. Where a principal includes with the tender enquiry documents a site survey which proves misleading, can this be the basis of a claim?
3. Does a principal have any liability for not sending a sub-soil survey which is in his possession to tendering contractors, the absence of which leads to a successful contractor significantly underpricing the risk of bad ground?
4. Where a tender enquiry requires tenders to remain open for a period of time, can a contractor or subcontractor who has submitted a tender as required withdraw the tender before the period expires without incurring a financial liability?
5. Does a letter of intent between principal and contractor or contractor and sub-contractor represent a legally binding contractual arrangement?
6. Must a contractor or sub-contractor draw attention to an error in the architect's drawings?

PROGRAMME ISSUES

7. If a contractor is working to an early completion or target programme will they still be entitled to an EOT if the principal causes delay to progress but the contractor can still complete by the contract date for completion?
8. If a contractor submits a programme which is shorter than the contract period is the superintendent obliged to issue drawings to suit the shortened programme?
9. How must a contractor or sub-contractor comply with a term in the contract requiring him to "constantly use his best endeavours to prevent delay" and / or to mitigate the effects of delay?
10. Is a contractor / sub-contractor entitled to be paid acceleration costs as part of a monetary claim?
11. What is the effect of making the programme a contract document?

PAYMENT ISSUES

12. If a superintendent fails to issue a payment certificate to a contractor, or issues it late, will the principal be required to pay the whole amount claimed by the contractor in the progress claim?
13. Can a contractor when making payment to a sub-contractor reduce the payment to reflect claims the contractor has against the subcontractor on other contracts?
14. Where a contractor / sub-contractor is granted an extension of time, is there an automatic right to the recovery of delay costs / damages?
15. Will a contractor or sub-contractor substantially prejudice its case for additional payment if it fails to keep adequate accurate records?
16. Once the value of a contractor or sub-contractor's work has been certified & paid can it be devalued in a later certificate?
17. What is meant by the legal term 'consequential loss'?

DELAYS AND EXTENSION OF TIME

18. What is meant by the term the 'prevention principle' and how does it affect principals and contractors?
19. Where delay occurs due to events and causes which are the responsibility of the contractor and principal equally, is the contractor entitled to recover the cost of delay / prolongation?
20. Where the superintendent is exercising a duty to deal with requests for an extension of time can they reduce the period of time to which the contractor is already entitled to reflect omissions which have reduced the work content on the critical path?
21. When a variation is issued after the date for completion has passed due to a default by the contractor, must the extension of time take into account the date the variation was issued to give a gross period of delay or must a net period of delay only be added to the contract completion date?
22. Where a contractor's progress is behind programme, will they be entitled to an extension of time where the progress and completion is affected by inclement weather but would not have been so affected if work had been on programme?
23. Must a superintendent / architect issue drawings to suit the order and timing of work shown on the head contractor's programme where the work shown on the programme takes up the full contract period?
24. Can minutes of a site meeting be classified as adequate notice of delay as required by most conditions of contract?
25. If a delay in the early part of a contract caused by the principal or superintendent pushes work carried out later in the contract into a bad weather period causing further delay, can the contractor or subcontractor claim additional costs resulting from the bad weather delay?

DELAY / PROLONGATION COSTS

26. Once it is established that delay costs are due to the contractor as a consequence of a principal caused delay, should the evaluation relate to the time period when the effect of the delay occurred or should it be by reference to the overrun period at the end of the contract?
27. Will a claim for an extension of time and the recovery of delay costs / damages which does not demonstrate how the period of delay and the amount claimed are attributed to each claim matter causing delay (i.e a failure to link cause and effect) fail?
28. Is it correct to reduce an entitlement to prolongation costs so as to reflect the amounts recovered in the valuation of the variations for overheads?

DESIGN AND CONSTRUCT ISSUES

29. On a Design & Construct Contract what is the distinction between Variations and Design Development?
30. On a Design & Construct Contract what is the difference between a "Fitness for Purpose" responsibility and an obligation to exercise "Reasonable skill and Care"?
31. On a design and construct project where the architect is novated from the principal to the contractor, is there any impediment upon the contractor's ability to recover from the architect loss they suffer due to architect design errors which occurred during their employment by the principal?
32. If an architect or engineer acting as a principal's agent or superintendent in a design & construct contract approves the contractor's drawings and subsequently errors are found, will the architect or engineer have any liability?

VARIATIONS AND ADDITIONAL COSTS

33. Can a contractor be forced to carry out a variation after practical completion?
34. What limits are there on the extent of the principal or superintendent's power to order a contractor to carry out a variation?
35. Where a quotation is submitted for extra work which is accepted can it be deemed that the agreed price includes delay and disruption costs?
36. When do quantum meruit claims arise and how should they be evaluated?
37. Where a contract requires the contractor to give a guaranteed maximum price does the contractor have any grounds for increasing the price above the guaranteed maximum?

LIQUIDATED DAMAGES AND PENALTIES

38. If the superintendent fails to grant an extension of time within the time-frame laid down in the contract, will this prevent the principal from levying liquidated damages?
39. If liquidated damages become unenforceable and hence an entitlement to unliquidated or general damages arises, can the unliquidated or general damages be greater than the liquidated damages?
40. Can a contractor challenge the liquidated damages figure included in a contract as being a penalty and unenforceable after the contract has been signed? If so, will it be a matter for the principal to prove the figure to be a reasonable pre-estimate of anticipated loss?
41. Can a sub-contractor who finishes late have passed down to them liquidated damages fixed under the main contract which are completely out of proportion to the sub-contract value?

42. Can a principal deduct liquidated damages if they suffer little or no actual loss?
43. Where a project is in delay and the principal takes partial possession of a building or engineering facility before all the work has been completed, what will be the effect on the principal's rights to deduct liquidated damages?

PRACTICAL COMPLETION AND DEFECTS

44. How is practical completion or substantial completion defined and what are the implications of achieving practical or substantial completion?
45. Is a contractor absolved from liability in respect of defects where the principal refuses access to the contractor and makes good the defects himself?
46. Where a sub-contract is terminated, can the head contractor legitimately prevent the sub-contractor from subsequently entering upon the site and removing its own plant and equipment?
47. If a sub-contractor is falling behind programme and in danger of completing late due to their own inefficiencies, can the contractor bring other labour onto the site to supplement the subcontractor's efforts to ensure completion on time?
48. Is a contractor liable for defects which come to light after the issue of the final certificate?

ADJUDICATION

49. Under relatively new legislation, parties to construction contracts have a statutory right to have their disputes determined swiftly by an adjudicator. How does this compare with arbitration ?
50. Will a court enforce an adjudicator's award which is clearly wrong?

ABOUT THE SPEAKERS

Roger Knowles

FQSI, FRICS, FCIArb, Barrister



Roger Knowles has lectured at over 1,000 seminars; 99% of delegates have rated him good or excellent. He commenced his career as a quantity surveyor and subsequently qualified as a barrister, arbitrator, mediator and adjudicator. He has been involved for the past 30 years in construction and engineering disputes acting as advisor, advocate, arbitrator, mediator, adjudicator and expert witness. Roger has acted as advisor to trade associations and served on the Joint

Contracts Tribunal. His experience as a lecturer extends to over 1,000 seminars held in most major cities in the UK and Australia and also throughout East Asia, the Middle East, North and South America, Europe and South Africa.

He is the author of 150 Contractual Problems and Their Solutions and the Public Sector Partnering Contract. He has also had published over 300 articles in various trade journals.

John C Donnelly

BSc (Hons), Post Grad Dip Law, MRICS, MIAMA
Director – CKS Solutions (Aust) Pty Ltd



John is a legally qualified Chartered Quantity Surveyor with twenty years pre and post contract experience within the construction and engineering industries both in Australia and internationally. Experience in the commercial and contractual aspects of construction management has been acquired by working on a wide range of construction projects in both the building and civil engineering industries.

Prior to establishing CKS Solutions John was previously the Vice President and National Director for JR Knowles and was responsible for the initial establishment and development of JR Knowles in Australia. During his nine years with this company he prepared and presented in excess of 75 public seminars throughout Australia and also presented numerous in-house seminars and training modules.

about cks solutions...

CKS Solutions (Aust) Pty Ltd was established by John Donnelly to provide contractual knowledge and strategy to clients in the construction and engineering industries. Having founded and developed the Knowles Group in Australia, John has now set up his own practice providing coaching & consulting services. CKS Solutions provides services to the industry on contractual matters and contract administration, training & seminars, claims preparation and defence, adjudication, litigation support and expert witness services.

seminar programme

8:30 – 9:00	Registration	13:30 – 14:15	Session 4
9:00 – 9:05	Introduction	14:15 – 15:00	Session 5
9:05 – 10:00	Session 1	15:00 – 15:15	Tea / Coffee
10:00 – 10:45	Session 2	15:15 – 16:00	Session 6
10:45 – 11:00	Tea / Coffee	16:00 – 16:30	Questions
11:00 – 12:00	Session 3	16:30	Close
12:00 – 12:30	Question Time		
12:30 – 13:30	Lunch		

terms & conditions

1. Reservations may be made by phone or fax but will ONLY BE CONFIRMED upon receipt of the registration form with full payment before commencement of the seminar.
2. A substitute is welcome n the event the registrant is unable to attend. Refunds less 25% administrative charge will be made for all cancellations received in writing no later than 7 working days prior to the seminar.
3. It may be necessary for reasons beyond our control to change the date or venue, cancel the seminar or change speakers or content.

registration form... 50 contractual problems and their solutions

☐ Registration for _____ person(s)

x \$550 (\$500 + \$50 GST) = \$ _____

Registration includes:

- A comprehensive set of notes
- Arrival tea /coffee; morning and afternoon tea
- Buffet lunch
- Personal certificate of completion / attendance
- An opportunity to network and connect with presenters and attendees.

Payment details

Payment can be made either by cheque or direct to bank by EFT to our banking details below:

☐ Please find enclosed a cheque made payable to CKS Solutions (Aust) Pty Ltd.

Or,

☐ Please make payment direct to bank by EFT to:

Commonwealth Bank , Middle Brighton - Vic

BSB 63145

Account No 1024 9676

Account Name CKS Solutions (Aust) Pty Ltd

Please mail payment with booking form to:

**CKS Solutions (Aust) Pty Ltd
PO Box 9138,
Brighton, VIC 3186**

Tel: 03 9591 0055

Fax: 03 9593 3551

Enquiries e-mail:

info@ckssolutions.com.au

www.ckssolutions.com.au

☐ **Perth:** 31 January 2008, 8:30am to 4:30pm
Sheraton Perth Hotel, 207 Adelaide Terrace, Perth

☐ **Melbourne:** 04 February 2008, 8:30am to 4:30pm
Park Hyatt Melbourne; 01 Parliament Square off Parliament Place

☐ **Sydney:** 05 February 2008, 8:30am to 4:30pm
Swissôtel Sydney Hotel , 68 Market Street, Sydney

☐ **Brisbane:** 07 February 2008, 8:30am to 4:30pm
Royal on the Park Hotel , cnr. Alice & Albert Street, Brisbane

Name of Company: _____

Address: _____

Phone: () _____ Fax: () _____

Contact Person: _____

Email: _____

Name and Position of Delegates:

1. _____

2. _____

3. _____

4. _____

5. _____

(For more than 5 delegates please attach additional sheet with names and positions)