driver THE DIGEST

Issue 11 | March 2016

Commercial mediation:

$100m disputes resolved in minutes...?

THE DIGEST

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Welcome to the Driver Group Digest

Welcome to the latest edition of the Digest; 2016 promises to be an interesting year in the global construction market, with continued growth and the related challenges.

Since the last Digest, we have seen two new offices open in Calgary and Vancouver, Canada and we hope to have a new office in Riyadh, Saudi Arabia by the end of the year.

This edition of the Digest, as always, brings you a variety of articles from around the world and we are delighted to continue our trend of inviting external contributions. In the BYTES section we welcome an interesting piece regarding the legal perspectives on the use of BIM from Paul Wong - Rodyk and Davidson LLP, Singapore. To read this, please visit the articles page on our website.

From the UK we have a contribution from Tim Claremont, a Partner at Browne Jacobson LLP, on matters of payment, whilst delay expert David Wileman delivers a 'Stark Warning'.

From our UAE offices and exploring the use of alternative dispute resolution in the Middle East, Maria Deus considers the use of commercial mediation in Dubai, a market ideally suited to the concept or so one may think; while Colm O'Suilleabhain discusses the potential for the use of adjudication.

John Mullen, Mark Wheeler and David Bordoli allow us an insight into their creative influences with contributions entitled 'The Potato Case', 'A change is gonna come' and 'A night at the museum', which leaves me eager to find out more.

Finally, Ron Fernandez explains matters affecting a particularly well named suspension bridge in Canada.

I hope you enjoy this issue and invite any potential external contributors, or any readers wishing to suggest future topics of interest, to get in touch.

Graeme Macdonald
Technical Editor

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Commercial mediation in Dubai

MARIA DEUS – DIRECTOR, DRIVER TRETT DUBAI EXPLORES THE GROWING ADOPTION AND ACCEPTANCE OF MEDIATION AS A DISPUTE RESOLUTION METHOD ACROSS THE UNITED ARAB EMIRATES (UAE).

"CASD resolved a commercial dispute worth AED 614 million in less than 30 minutes"

Gulf News

The concept of mediation within the Arab world is not a new one. The first generations of Muslim scholars used the concept of 'ijma', an Arabic term referring to the consensus or agreement of members of the Muslim community on religious issues.

Going further back, the use of mediation (wasata) for commercial or tribal disputes can be traced to pre-Islamic Arabia. In the absence of a formalised judicial process, reliance on a neutral and objective tribal leader, to facilitate an outcome acceptable to all, maintained commercial relationships and the integrity of the region as a trading route between East and West.

The similarities between the ethos of mediation and Middle Eastern culture, where discussion and mutual agreement are highly prized over confrontation and adversarial legal disputes, is an excellent basis for the promotion of mediation in Dubai.

Indeed, the notion of mediation as an alternative form of dispute resolution has seen an upsurge in popularity in the Middle East in recent years. Within Dubai this has been reflected by changes initiated to support the use of mediation by commercial parties.

In 2009, the Ruler of Dubai, His Highness Sheikh Mohammed bin Rashid Al Maktoum, passed UAE Law No. 16 of 2009 (Law 16) establishing the Centre for Amicable Settlement of Disputes (CASD) which encourages the use of mediation in Dubai.

CASD has jurisdiction in non-urgent matters, arising after its establishment, which involve the division of property, debts up to AED 50,000, disputes with banks, or disputes which the parties have agreed to submit to CASD. However, CASD has no jurisdiction whatsoever over labour or family disputes, or where government parties are involved.

CASD offers reconciliation services to assist parties to reach amicable settlement of disputes within a month. CASD[1] states that it offers: *"settlement based on the regulations and legal systems in order to achieve justice and ensure the rights of the parties by mutual consent"*.

If a settlement is reached, it will be recorded and signed by both parties and will be directly enforceable in the Dubai Courts as a writ of execution. Therefore, it is unnecessary for a party to the settlement agreement to bring proceedings for breach of contract against a non-performing party.

If an amicable settlement becomes impossible, CASD will transfer the dispute to a competent court to try the case and issue an enforceable judgment.

In 2012, Gulf News reported that CASD resolved a commercial dispute worth AED 614 million in less than 30 minutes[2], which demonstrates the potential saving of costs and time resulting from a successful mediation.

The Court of the Dubai International Financial Centre (DIFC Court), which has offshore jurisdiction within Dubai, has its own set of court rules (RDC) which refer to alternative dispute resolution[3]. Part 27.1 of the RDC states that the DIFC Court encourages parties to consider the use of alternative dispute resolution (such as, but not confined to, mediation and conciliation) as an alternative means of resolving disputes or particular issues.

Furthermore, under Part 27.8 of the RDC the DIFC judge may make an order that the parties refer the matter to alternative dispute resolution, if deemed appropriate. Part 27.10 of the RDC also confers upon the judiciary the power to award costs in the alternative dispute resolution. That can include an adverse costs order under Part 38.23(1) of the RDC which gives the court discretion, when assessing costs, to consider efforts made in trying to resolve the dispute during the proceedings.

The DIFC-LCIA Arbitration Centre, established in February 2008 as a partnership between the DIFC and the London Court of International Arbitration (LCIA), offers a fully administered mediation service under the DIFC-LCIA rules, which are closely modelled on the LCIA mediation rules.

A further option in the region, for mediation of disputes relating to construction, infrastructure, or property is to appoint a mediator from the Royal Institution of Chartered Surveyors (RICS).

RICS maintains a RICS MENA President's Panel of Accredited Dispute Resolvers. As RICS is a not for profit organisation which operates in the public interest, its accredited mediators are completely independent and impartial.

Furthermore, RICS accredited mediators are specialised in the fields of construction, infrastructure, and property. They undergo rigorous training and panel interviews before being admitted to the RICS President's Panel and RICS maintains ongoing assessment of its panel mediators.

RICS provides the introduction to its Middle East and North Africa (MENA) Panel mediators free of charge and MENA panel mediators are all based within the region, ensuring knowledge of the local business culture and minimising travel expenses.

Issues facing mediation in Dubai and potential solutions

An issue facing the use of mediation globally is the resistance of some legal professionals to recommend it to their clients. Such resistance may result from a lack of understanding of mediation by lawyers who are not used to the process and unaware of the benefits it can provide to both their clients and to the lawyers themselves.

Mediation provides lawyers with an excellent opportunity to evidence to their clients their comprehensive knowledge of the matters in hand, by undertaking the preparation of position statements. During the mediation, the presence of lawyers can assist the respective parties greatly in terms of discussing reality testing and generating potential options in private, as well as being on hand to draft any settlement agreement, if required. Furthermore, whilst early settlement of a dispute may produce less revenue to the lawyer on that particular matter, a satisfied client is more likely to initiate referrals

of new work and make recommendations to others.

Another issue is a lack of understanding of the process of mediation by parties in dispute, who may consider that mediation will not provide a satisfactory result or that proposing it to the other side indicates a sign of weakness.

This issue is best addressed by continuing to publicise to commercial parties the many advantages of mediation and how the process works, as misunderstanding of the fundamental qualities of mediation may act as a barrier.

Once parties fully understand the fundamental qualities of mediation e.g.: that the process is entirely confidential, that they do not even have to communicate with the other party, that they can walk away at any time and proceed to litigation, and the extent of cost and time savings that can be made if a settlement is reached; these factors will enable clients to see that they can attempt mediation without loss of face and do not have to accept a settlement that is unsatisfactory.

Even if mediation does not lead to settlement, parties should be made aware that much of the preparatory work, and the rehearsal of issues and reality testing during the mediation, can be used effectively if the matter is referred to arbitration or litigation, and therefore, mediation has intrinsic value even if settlement is not achieved.

A further issue facing mediation in Dubai (save for in DIFC) is that the UAE laws do not provide the mediating parties with the protection of privilege, in respect of representations made within the mediation. However, it is open to the parties in dispute to agree that the mediation should be held on an entirely confidential basis, in which case such agreement should be confirmed in writing and executed by the parties before commencement of the mediation, to ensure its validity in the event that the dispute proceeds to arbitration or litigation.

However, in respect of disputes to be determined under the laws of the DIFC, given the common law background of many of the judges of the DIFC Courts, and that the courts' establishment is based on principles of the Civil Procedure Rules of England and Wales, in the absence of any more appropriate legal basis, the DIFC Court may be expected to fall back on English legal principles of privilege such as "without prejudice" negotiations in respect of the representations made in a prior mediation.

The future

The recent increase in the use of mediation clauses within contracts entered into within the MENA region, proposing an agreement between the parties to mediate, is indicative of mediation becoming more accepted within the Middle East.

It is hoped that the provision of regionally based accredited mediators by RICS, or similar bodies, and the continuing influx into Dubai of legal practitioners who have encountered mediation in other jurisdictions, will continue to further advance the use of mediation for the benefit of commercial parties and their ongoing relationships, within the Emirate. ■

[1] Amicable Dispute Settlement Center, Dubai Courts publication 8-B, 2014 http://www.dubaicourts.gov.ae/jimage/Info_services/Eng/A8%20eng.pdf

[2] Gulf News, 9 October 2012 http://gulfnews.com/news/gulf/uae/crime/centre-of-amicable-settlements-of-disputes-resolve-dh614m-worth-of-commercial-dispute-1.1087252

[3] Part 27 of the Rules of the DIFC Court

What to pay ...and when?

TIM CLAREMONT – PARTNER, BROWNE JACOBSON LLP UK

PROVIDES AN OVERVIEW OF THE EFFECT OF FAILING TO SERVE PAYMENT OR PAY LESS NOTICES, THE FORM PAYMENT APPLICATIONS MUST TAKE, AND PROVIDES SOME PRACTICAL TIPS FOR DEALING WITH SUCH MATTERS.

These issues arise in relation to contracts governed by the Construction Act in England and Wales (the "Act").

ISG v Seevic and Galliford Try v Estura

The recent focus on this area arguably began with *ISG Construction Ltd v Seevic College*[1], decided in December 2014. The decision attracted interest since it was one of the first times a court had commented in such detail on the payment regime following the changes made to the Act in 2011.

The court held that:

(1) If an employer fails to serve a notice in time it must be taken to be agreeing the value stated in the application, right or wrong.

and

(2) If an adjudicator decides the value of works for an interim application by reference to a lack of payment or pay less notices (a "smash and grab" adjudication), a party cannot later refer the question of the proper value of those works to adjudication, since this question has already been decided by the earlier adjudication.

The second part of the decision was not entirely new, but rather confirmed that the new payment regime would operate in the same way as the old[2]. In any event, the case challenged the viability of a previously widely used method of countering smash and grab adjudications. As a result, the decision was always likely to be reviewed, which happened this year in *Galliford Try Building Ltd v Estura Ltd*[3]. The court confirmed that (absent fraud), the lack of a pay less notice meant the employer had agreed the value of the works claimed in an interim certificate, and the adjudicator had decided the question of the value of those works, irrespective of the true value of the work. However, this did not mean there was agreement as to the value of the

work at some other date. Further, whilst it meant that an employer was prevented from starting a second adjudication to determine the value of the works at the date of the interim application, it did not prevent an employer from challenging the value of work in the next (or a later) application.

These decisions had a tangible impact. We saw a significant number of parties submitting interim applications at every possible opportunity, particularly after practical completion, in the hope a payer would miss the application and fail to serve the required notice(s). Further, some of these applications were "hidden", in that they were not clearly set out or presented, raising real concerns for payers and employer's agents. Thankfully, the courts have subsequently addressed this practice.

Caledonian Modular Ltd v Mar City Developments Ltd

In *Caledonian Modular Ltd v Mar City Developments Ltd*[4] the court had to decide if Caledonian had submitted a valid interim application. This was important, because the date of submission would determine if Mar City's pay less notice was valid.

The court found that there had not been a valid interim application. It said that where there is a contractual and statutory payment process, parties cannot make interim applications early or outside of the process, or circumvent the process by submitting applications outside of a payment cycle. It did not want to encourage contractors to make fresh claims for payment every few days, in the hope that the employer would "take his eye off the ball and fail to serve a valid pay less notice", which would have "draconian consequences" and the effect of entitling the contractor to a "wholly undeserved windfall". This would "make a mockery" of the notice provisions under the Act and the scheme.

"If you can't challenge the validity of the application, you are likely to need to consider if you can correct the value in the next payment application"

The court was influenced by the fact that Caledonian had not stated that the documents it had sent were a new payment application or that the invoice was a default payment notice. Further, when Mar City queried what the documents were, Caledonian had not said that they were a new payment application, which the Technology and Construction Court (TCC) thought was "significant" and suggested that Caledonian's case was "something of an afterthought".

Conclusions

These issues are of real practical concern for most parties in the industry, from employers, through contract administrators, to contractors, and subcontractors – and need to be addressed.

It's important to distinguish between what you might consider doing now for existing projects, and what you might put in place for future projects. For existing projects (and in any event), whilst glib, the cases highlight the importance of serving payment and pay less notices as required by their contract and/or the Act. When checking your dates, it's important to look at the actual payment due dates in the body of the contract rather than those set out in an appended summary schedule (we've seen several inaccurate schedules...). If you're not certain if you have an interim application, ask for clarification (see Caledonian).

If you have missed the date for your notice(s), then before making payment, consider whether under the contract there is a valid interim application made in accordance with the contract (with regard to form and timing). For example, does the application set out the, *"sum that the payee considers to be or to have been due"* (s110A(3) of the Act)? S111(2) of the Act sets out the payee's entitlement to be paid the "notified sum" (to the extent not already paid) on or before the final date for payment, subject to any pay less notice, where the "notified sum" means "the amount specified in that notice". So arguably, in order for any interim application to be valid, it is not enough to state a gross sum - the application must set out the sum due. This position is supported by analogous case law, providing that a withholding notice is invalid if it does not state the precise amount to be withheld[5] - although this was decided before the 2011 amendments.

"Given the limits of the cure, you need to think about prevention"

If you can't challenge the validity of the application, you are likely to need to consider if you can correct the value in the next payment application. Unfortunately, this might not be straightforward. For example, unamended JCT standard forms of contract do not entitle parties to recover any overpayment until the final payment – which could be some time away. So if your contract does not allow that, you might need to contact a friendly lawyer (hello!) to consider your options.

In *Galliford*, the court suggested three ways in which a party who had failed to give the correct notices could challenge an adjudication decision regarding an interim application:

(1) By way of Part 8 proceedings.

(2) Otherwise by litigation.

(3) By challenging the final account.

However, the usefulness or availability of the three options is likely to be limited. Whilst Part 8 proceedings might have worked in *Galliford*, they are typically used to determine claims where there is no substantial dispute of fact - which is unlikely to be the position for a disputed interim payment application. Further, few parties will want to bring full proceedings to resolve an interim payment application. This leaves a final account dispute. For the reasons set out above, the simple fact is that missing the date for your payment notices may place a payer in a difficult position in terms of cash flow. There may of course be exceptions - a lack of relevant notices may not be an issue if the payee is insolvent[6] and you may also be able to obtain a stay of enforcement of an adjudicator's decision, either on grounds of natural justice or the (limited) grounds considered in *Galliford*.

Given the limits of the cure, you need to think about prevention. Most importantly, you should consider amending, where necessary, your standard form contracts to give yourself the contractual right to seek repayment of any overpaid interim sums before the final certificate. This might involve a provision permitting a negative payment, or pay less notice, whereby the overpayment is repaid (under the Act the payer can issue payment notices as well as the payee). Other potential solutions include prescribing in detail the form of the payment application. For example, requiring interim applications to be sent by recorded delivery; or obliging applicants, where a payment notice has not been issued, to write to the contract administrator, copied to the employer, reminding them that a pay less notice date is looming.

In any event, it is likely that the law will continue to develop in this regard. Another of the recent cases which considered this matter, Harding (t/a MJ Harding Contractors) v Paice & Anor [2014] EWHC 3824, is to be tested in the Court of Appeal later this year. Whilst this is not the best platform for the Court of Appeal to consider the issues (in Galliford, the court distinguished Harding from ISG on the basis that Harding was not concerned with interim payments, but with the final payment following termination of the contract, with different contractual provisions applying), it may be that it will provide some much needed further guidance on an already complicated payment regime. ■

[1] [2014] EWHC 4007 (TCC)

[2] The Court referred to the 2002 TCC case of Watkin Jones & Son Ltd v Lidl UK GmbH [2002] EWHC 183 (TCC).

[3] [2015] EWHC 412 (TCC)

[4] [2015] EWHC 1855 (TCC)

[5] Windglass Windows Ltd v Capital Skyline Construction Ltd and another [2009] EWHC 2022 (TCC)

[6] Wilson and Sharp Investments Ltd v Harbour View Developments Ltd [2015] EWCA Civ 1030

Adjudication in the Emirates

COLM O'SUILLEABHAIN - ASSOCIATE DIRECTOR, DRIVER TRETT ABU DHABI COMPLETED HIS LLM IN CONSTRUCTION LAW AND ARBITRATION WITH A DISSERTATION ON THE APPLICABILITY AND SUITABILITY OF ADJUDICATION FOR USE IN THE UNITED ARAB EMIRATES (UAE).

Although the ultimate conclusion of the dissertation was that those interviewed believed that adjudication was not suitable for use in the UAE, a differing view is presented here to stimulate discussion and debate on the subject. This article will present a number of reasons why adjudication need not be dismissed as a potential method of resolving disputes and how, given the correct application, it can yield beneficial results in the UAE. We also look at the situations in which adjudication may be a feasible solution to the resolution of certain types of disputes in the UAE.

Adjudication will be very familiar to those involved in the United Kingdom (UK) construction industry. It came to the forefront as a dispute resolution method with the implementation of the Housing Grants, Construction and Regeneration Act (1996) (HGCRA). Although adjudication had existed prior to that, it was the implementation of this Act that provided the parties to a qualifying contract with the statutory right to submit a dispute to adjudication.

The HGCRA was not without its flaws, and despite a small number of high profile judicial rulings which threatened to derail its effectiveness, adjudication managed to establish itself as a quick and (relatively) simple method of resolving disputes which parties could undertake without incurring significant costs. The 1996 Act was amended in 2011 to close a number of the loopholes which had become evident through its use and were being exploited by unscrupulous parties. At this point, it is too early to judge whether or not these amendments have been successful.

The general consensus would appear to be that statutory adjudication in the UK has been a success, although it remains to be seen if this will still be considered to be the case following the 2011 amendments. Adjudication, like all other methods of dispute resolution, has its strengths and weaknesses. These are well known and extensively published; as such this article will not focus on the merits or demerits of adjudication as a dispute resolution method, or seek to compare it to the other methods available.

It is generally accepted that the main factors which made adjudication so successful in the UK were its statutory nature, which was binding upon the parties until appealed to arbitration or the courts; the fact that it provided a fast-track method of resolving disputes; and the fact that it was a low cost option for the resolution of disputes, which provided a reasoned judgement.

Similarly, it is generally accepted that adjudication's main disadvantages were that it offered what was viewed by many as 'rough justice' and that, because of the compressed timeframes involved, the decisions reached were not always fully correct or extensively reasoned. Some users felt the fact that it was not finally binding on the parties, and could be appealed, was a disadvantage; while others felt that the statutory timeframes, which had to be adhered to, made its use as an 'ambush tactic' or 'fishing expedition' a common occurrence.

When considered in the UAE context there were a number of barriers identified to the use of adjudication. The main barrier being the lack of a statutory framework and recognised enforcement mechanism, comparable to the enforcement mechanisms currently in place for arbitration. Other barriers to acceptance of adjudication as a dispute resolution method in the UAE include:

- The lack of familiarity with adjudication as a dispute resolution method.
- The associated reluctance to use such an unfamiliar method.
- The fact that adjudication is not, in most cases, finally binding.

By the time a dispute has escalated to the stage where a formal dispute resolution mechanism is required, relations between the parties have frequently deteriorated. In such cases both parties have become so deeply entrenched in their positions that they are unwilling, and sometimes unable, to consider a resolution method they are unfamiliar with or one that is not finally binding. Parties can also be reluctant to submit to a process which does not present both sides with adequate scope to present their respective cases and to issue whatever rebuttals they believe are necessary.

Based on these findings, it may seem like there is very little hope of adjudication being implemented or used successfully in the UAE. However, its low cost nature will no doubt be attractive to a sub-set of parties, particularly those who have been through arbitration or litigation previously. Such parties will have first-hand experience of the substantial costs and deterioration of working relationships, as well as the time commitment in relation to resources that can be an unwanted by-product of both processes. There will also be an as yet unquantified number of parties who, although in dispute with one another, have maintained reasonably good relations, or who at least have not become so entrenched in their positions that they will not consider all possible resolution options.

For parties who genuinely desire a determined judgment without the formalities or costs associated with arbitration or legal proceedings, and who may be prepared to compromise on the relative quality of the award, adjudication may offer an attractive and reasonably priced method of resolving their disputes quickly. These are the type of parties who, in a UAE context, would be best placed to consider adjudication as a resolution option. These parties would also have the greatest chance of obtaining an outcome of their dispute which, if not the desired outcome, is at least acceptable from a procedural and commercial point of view, or when considered holistically.

It is extremely unlikely that statutory adjudication will be introduced in the UAE in the foreseeable future. Therefore, parties to a construction contract looking to utilise adjudication as a dispute resolution method will have to rely on ad-hoc agreements, or the provisions already included with the conditions of contract being used. The FIDIC suite of contracts is the most widely used suite in the region

"Given the correct application, it can yield beneficial results in the UAE"

"Ready for your first lesson in conflict resolution?"

and while the use of FIDIC '87 Red Book has been historically prevalent, based on anecdotal evidence, recent years have seen a marked increase in the use of other contracts from the FIDIC suite, most notably the FIDIC '99 Conditions of Contract.

FIDIC's most recent contracts contain provisions for the appointment of a dispute adjudication board (DAB). However, such provisions are frequently removed in the particular conditions and employers seem reluctant to implement or make use of them.

Although adjudication may not be considered particularly well suited to use in the region for a variety of reasons, there may still be situations where it is a viable option for the resolution of disputes. Employers, engineers, and contractors would be encouraged to retain the adjudication provisions (if already there) of the contract chosen, or to introduce them if not already included. The inclusion of such provisions will, at the very least, provide additional options to the parties when resolving disputes with very few detrimental consequences in terms of time and cost. Should the parties be prepared to expand their views on adjudication, and at least experiment with its use, they may find the results surprisingly positive.

Suffice to say that the successful adjudication will be contingent on the approach of both parties to the process. No matter that the party responding to the adjudication may not be a willing participant; both parties to the dispute will need to approach the matter with a genuine desire to reach a resolution relatively quickly, with a view to continuing the working relationship. Without this approach, the benefits of electing to use adjudication will be negated and possibly lost altogether. In this respect the approach to adjudication is very similar to that adopted in mediation, wherein a mutually beneficial outcome is preferable to a determinative outcome achieved in an adversarial manner.

When considering the result of an adjudication both parties will also need to be aware of not only the potential time and cost issues, but also any likely deterioration in working relationships that can and do arise from escalating a dispute; and whether or not the likely outcome justifies that course of action.

On the other hand, parties will also need to look at the scale and nature of the dispute and accept that there will, without question, be disputes which cannot be adequately dealt with by adjudication and will need to be referred to arbitration or litigation.

In conclusion, although it is very easy to look at the reasons why adjudication may not be applicable to, or suitable for, wide scale implementation and use in the UAE, there will undoubtedly be instances where it may be at least a viable option offering a reasonable chance of success. Driver would advise its clients not to discount any method of dispute resolution and to consider all options available when deciding on a suitable method. The parties must bear in mind not only the factors which make the use of adjudication less attractive, but also those which make adjudication particularly suited for the resolution of certain types of dispute given certain circumstances. ■

"The main factors which made adjudication so successful in the UK were its statutory nature, that it provided a fast-track method of resolving disputes and it was a low cost option which provided a reasoned judgement"

A night at the museum

MARK WHEELER – CHIEF OPERATING OFFICER, DRIVER GROUP EUROPE AND AMERICAS COMPARES THE VARIED EFFORTS AND APPROACHES MADE TO RECOVER ADJUDICATION COSTS AND PREDICTS SOME FUTURE HURDLES.

In adjudication, it has long been the case that each side pays their own experts and lawyers, regardless of the outcome. The adjudicator is then free to apportion his costs and expenses as he sees fit, usually based upon an abstract notion of who is perceived to be the winner. This has some benefits in terms of access to justice (fear of costs risk should not put a party off pursuing its rights) but it also creates an imbalance of power over smaller sums in dispute. The cost of defending an adjudication with less than £100k in dispute will always bring costs into sharp commercial focus.

A few years ago, there was a brief dalliance with 'Tolent' clauses. These required one party (usually the payee under a contract) to pick up the costs of the other party, whatever the result in the adjudication. This patently unfair practice was halted by the courts in *Yuanda v Gear*[1]. The concept was then buried for good by the revised section 108 of the Housing

Grants, Construction and Regeneration Act (HGCRA). The revised act provides that agreements made regarding the payment of one party's costs by another are void, unless made in writing after issue of the notice. Such cordial behaviour is somewhat rare between parties who have fallen out to the extent of sending one another notices of adjudication. So that's the end of cost recovery in adjudication. Or is it?

Back at the turn of the millennia, *Northern v Nichol*[2] was a case that demonstrated what can happen when both parties start asking for awards as to costs. While accepting that the adjudicator did not have the power to award costs, the judge found that the parties could confer that power onto the adjudicator. Both sides requested he make a costs award and so the power was effectively conferred. There is no reason why Northern and Nichol should not still be regarded as good law. The circumstances bear none of the fundamental unfairness of a 'Tolent' clause, and the parties are making this agreement after issuance of the notice. Perhaps worth bearing in mind when each side is puffing out their chests, demanding a costs award to demonstrate the unshakeable faith they have in their case.

"There is no reason why Northern and Nichol should not still be regarded as good law"

Now for a 'Night at the Museum'. *The National Museums v AEW Architects*[3] case was noteworthy for a number of reasons, not least some salutary examples regarding expert evidence. Of particular note, was that the museum wanted to recover the costs of an adjudication from the architects. Said adjudication was between the museum and its contractor, who was compelled to determine the extent of its design responsibility and any failings therein. The museum lost this adjudication, which related directly to the very design issues that were the subject of its case against AEW, a case in which it was successful. The museum argued that the cost of the adjudication, which was effectively wasted, would not have been incurred but for the breaches of contract by AEW as architects. The court agreed and the adjudication costs head of claim was recovered. This is perhaps a narrow option, but where a third party has, in effect, caused an adjudication between two parties as a result of their breach of contract, the costs of the adjudication in question are now an arguable head of claim. Subcontractors who have caused issues between a main contractor and an employer may wish to consider this risk, as should employers where a subcontractor is likely to ultimately claim. Designers are of course the category that are most likely to be on notice of the effects of this decision.

Speculation has been rife for some time now as to the extent that the costs of adjudication might be recoverable under the revised Late Payment of Commercial Debts Act (LPCDA). These provisions allow the claimant to, *"...reasonable costs in recovering the debt"*. It has already been argued by some, that going through the process of adjudication to recover a debt will make the cost of the adjudication recoverable. Indeed, some small organisations have been offering to run adjudications on this basis. The point has not yet been tested, and has at least the hint of clash with s108A of HGCRA as its first hurdle. There are a number of other hurdles that will be argued, but a case covering this point is perhaps inevitable in the next couple of years.

Party costs in adjudication remain a big challenge for those who seek to recover them; although this may now be possible against culpable third parties, and at least arguable under the LPCDA, it still remains untested. Balancing costs and benefit with risk and opportunity remains as critical today as it has been since adjudication was introduced in 1996. ■

"where a third party has caused an adjudication the costs of the adjudication in question are now an arguable head of claim"

[1] Yuanda (UK) Co Ltd v WW Gear Construction Limited [2010] EWHC 720 (TCC)

[2] Northern Developments (Cumbria) v J&J Nichol [2000] EWHC Tech 176

[3] National Museums and Galleries on Merseyside (Trustees of) v AEW Architects and Designers Ltd [2013] EWHC 2403 (TCC)

Introducing our latest DIALES expert – Stuart Holdsworth

DIALES ARE DELIGHTED TO WELCOME HIGHLY REGARDED AND EXPERIENCED TECHNICAL EXPERT, STUART HOLDSWORTH.

I am delighted to be joining DIALES as a technical expert. I am a Chartered Structural Engineer with 35 years' experience in private practice and main contracting, across a wide range of building sectors and am experienced in civil and structural engineering, construction and contractual disputes, including the investigation of causes of building and structural defects and the evaluation of related claims.

As an engineer, I have experience of all types of concrete construction and have become a specialist in providing advice on the design, and design review, of more unusual structures such as moveable structures, telecommunication network infrastructure, bridges, sports stadia and tented membrane structures. I am also interested in vibration attenuation and played a major role in the design of the raised, removable equestrian arenas for the 2012 Olympics in Greenwich Park and the raised athletic track for the 2014 Commonwealth Games.

Delay experts – a stark warning

DAVID WILEMAN – DELAY EXPERT, DIALES ADDRESSES THE RISK TO REPUTATION FACED BY INEXPERIENCED DELAY EXPERTS AND THE WORRYING WORDING OF ONE RECENT DECISION THAT DEEMED THE ABSENCE OF DELAY EXPERTS AS A BENEFIT TO THE CASE.

I have three questions for you:

1. Do you take expert instructions?

2. Are you a programming or delay expert?

The third question will come soon enough. If you answer yes to questions one and two, then sit in a darkened room, take a deep breath, and turn to paragraph 77 of Mr Justice Coulson's decision in 2015 EWHC 3074 (TCC) - Van Oord UK Ltd Anor v Allseas UK Ltd.

Equally, you should also read the paragraph very carefully if you instruct programming or delay experts [hereafter referred to as delay experts], as it is key to ensuring that you do not unwisely spend significant sums on said experts.

The merits of the case are unimportant for the purpose of this article, save for the fact that the issues to be determined were related to "disruption" and "prolongation" claims between a principal contractor and its employer; issues which have been the staple diet of delay experts across the world for many years.

I do not profess to have a detailed understanding of the specific issues at play, nor the level of data available for analysis, or even the merits of the dispute; although I understand that no extension of time claim was raised.

Firstly, I note that the parties did not instruct delay experts. For the purposes of this article the reason for this is irrelevant, and consequently it is clear that there were no programming or delay experts for Mr Justice Coulson to critique or make complaint of. Secondly, which should ring loud and clear in the ears of delay experts, even though there were none involved in the proceedings, are the words of Mr Justice Coulson at paragraph 77.

To quote the paragraph in its entirety, for the benefit of those who do not have a copy of the decision:

"There was no programming evidence on either side. In my view this was a welcome and entirely sensible decision. All too often in cases like this, each side relies on a programming expert, but the reports that these experts produce are simply vehicles by which the parties reargue the facts, rather than reports focussed on programming differences. In this case, given that there was no extension of time claim as such, a programming expert on either side would have simply added to the costs and would have been of little or no assistance."

It may be that the issues at play were that limited, and the facts generally agreed, therefore programming evidence would have been wasteful. However, when I read and re-read paragraph 77 over and over again, I can't help feeling a little paranoid for the delay experts as a body of professionals.

> It's plain and simple; just act in the manner expected of an expert

Therefore, my third question, the one you have been waiting for, is:

Do you think delay experts as a group, team, or brothers and sisters in arms, have left Mr Justice Coulson with an overriding impression that the delay expert profession is doing a good job?

I would suggest, from paragraph 77 of this decision, that my overriding sneaking suspicion is that the answer is no, no, and thrice no!

Forgive me if I am wrong but such an impression, if that impression is held, is unfortunate for both delay experts, as a body of professionals, and for the clients of delay experts.

What can be done to ensure that Mr Justice Coulson and his peers hold our profession in high esteem? It's plain and simple; just act in the manner expected of an expert and remember why you are there and who you are providing evidence for the benefit of.

The Civil Procedure Rules (CPR) Part 35 for "Experts and Assessors" states, at CPR35.3, that the overriding duty of the expert is to the court and that:

"(1) It is the duty of experts to help the court on matters within their expertise.

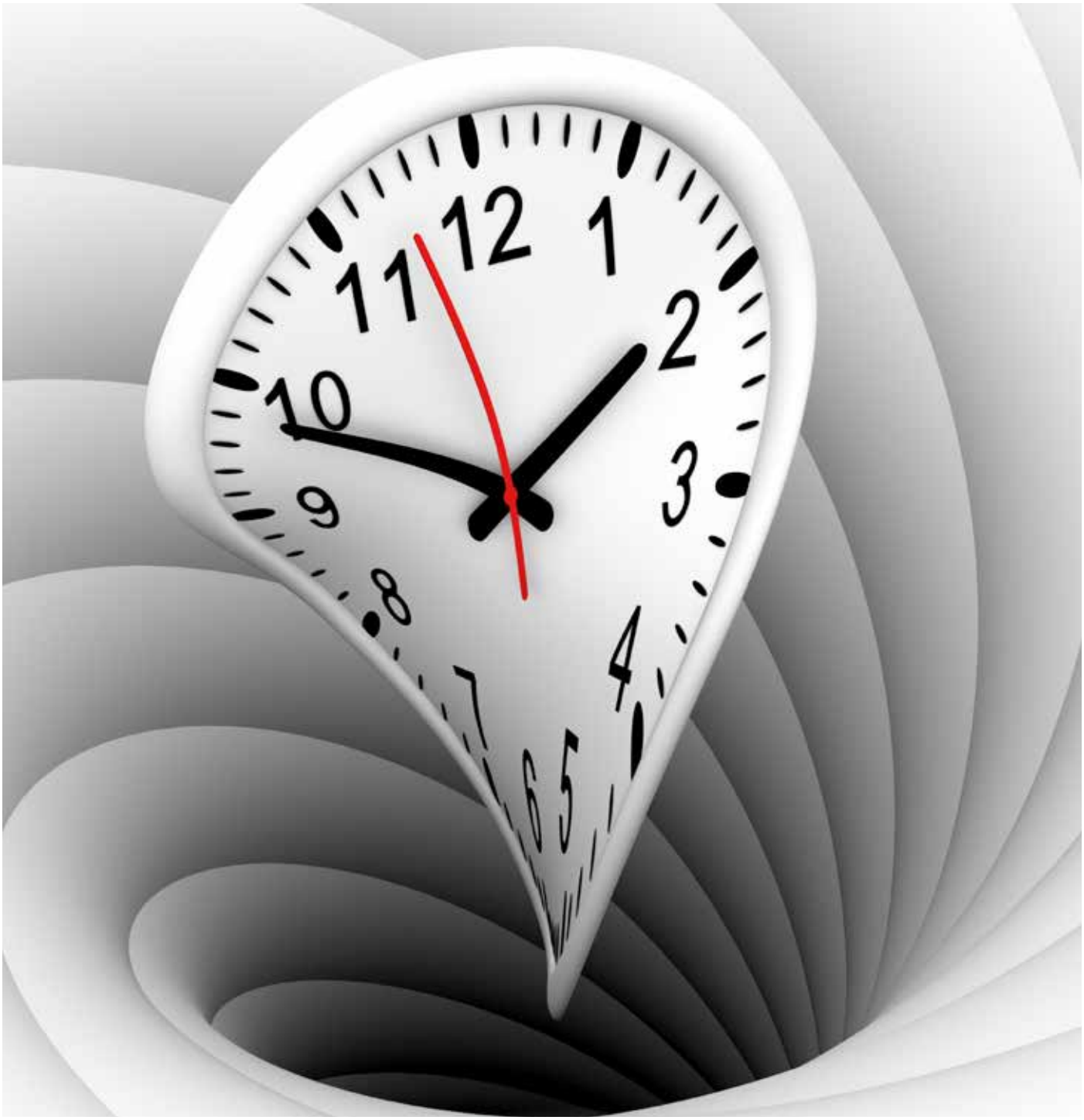
(2) This duty overrides any obligation to the person from whom experts have received instructions or by whom they are paid."

The overriding duty of an expert could not be clearer. As a body of people, delay experts must not strive to, but MUST achieve this goal and provide evidence which helps the courts in the decision making process.

The key words being, "...to help the court..." with, "...matters within their expertise..."

Clients, who ultimately foot the bill, need to take note. Failure to appoint an expert who will act in the manner expected by CPR 35, and decision makers (judges, arbitrators and adjudicators) in general, may undermine claims which have merit simply because the expert is not showing that they are acting in accordance with CPR 35.

It may seem like a good idea to employ an expert who will toe the line and prepare a report which wholeheartedly supports your case. It may also seem like a good idea to employ an expert who will not pick holes in their client's case, and



provide that client with a warm sense of confidence right up to the point at which the expert' s report gets tested, be that in expert meetings, responsive documents, or at the time of the hearing itself.

Unfortunately, it is at this very moment, when there is little time to address or recover from such blows, that the holes start appearing and the expert's 'supportive' report built on foundations of moving sand starts to crumble away.

Who does this benefit?

The client whose claims fall away in front of them at a time too late in the process to provide meaningful responses?

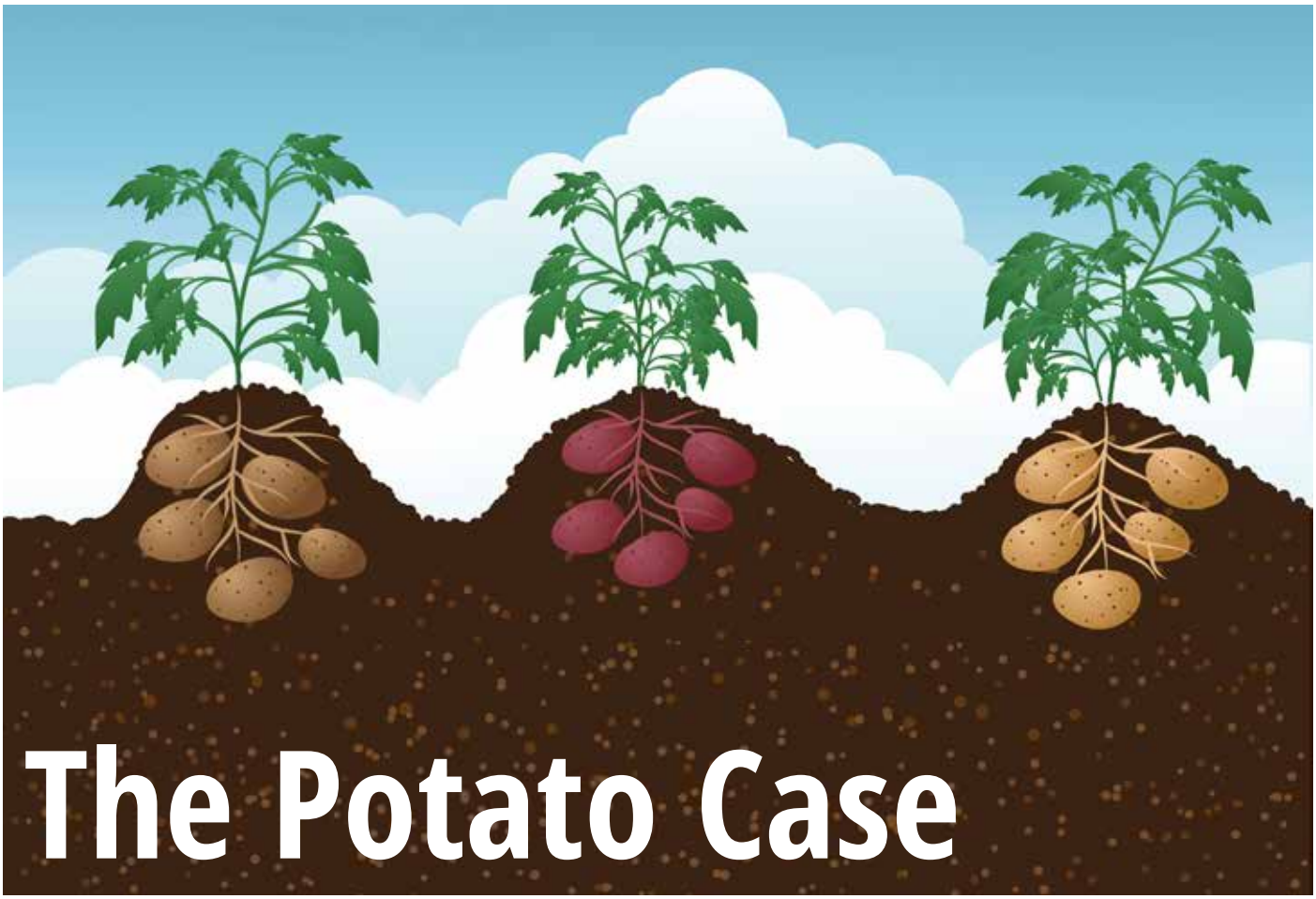
The delay expert whose reputation gets torn to shreds?

The judge who the expert, in accordance with CPR 35, owes the duty to?

The collective body of delay experts, whose years of toil and graft is potentially undermined?

There is the further issue of appointing an appropriate expert. Whilst this is not specifically stated within paragraph 77 (as provided above), difficulties arise when an expert without the relevant experience is instructed. Such experts may not always see the problems and difficulties which a more experienced expert would be able to deal with.

For the sake of delay experts as a body of professionals and for any claims going forward, all instructing clients should ensure that any expert instructed is firstly proven and respected in their field. Also, clients should ensure that the experts being appointed are appropriately experienced with a reputation for integrity. ■



The Potato Case

JOHN MULLEN – PRINCIPAL, DIALES DISCUSSES THE RISK TO AN EXPERT'S REPUTATION AND SOME EXAMPLES OF EXPERTS WHO WERE TRULY NOTHING OF THE SORT!

In a previous Digest (issue 5, p.6), I talked about the importance of experts properly understanding their role and duties and correctly fulfilling them. I gave some examples of judgments from the England and Wales courts, where judges had made very pointed and public criticisms of certain experts. Some of those judgments are not for the squeamish; there is concern among some practitioners that the criticisms made have been unreasonable and unnecessarily direct and say little, if anything, of the role of those instructing the experts who got it so wrong.

In contrast it can be of some frustration, to those of us whose main market is international arbitration, that arbitral awards are private and that some experts do not receive the censure that they deserve. It appears that, in any event, many international arbitrators are reluctant to comment on the expert evidence provided to them, with awards just focussing on which evidence they prefer and adopt. Perhaps it is considered that, in the privacy of an arbitration, there is no wider purpose to recording such criticisms. Alternatively, perhaps the tribunals are concerned that criticisms of a party's expert may be construed, in some jurisdictions, as evidencing bias against that party.

The frustration this causes is exacerbated by the poor quality and 'hired gun' nature of much of the expert evidence presented in international arbitrations. Contrary to the impression one might gain from reading certain Technology and Construction Court (TCC) judgments, the UK can be proud of the quality of much of the expert evidence that its practitioners provide around the world. When reading some of the TCC judge's more damning comments on the experts appearing before them, it is often tempting to recall examples of similar, or worse, testimony in international arbitrations that passed without published critical comment.

Under English law, the role and duties of experts were set out 20 years ago by Justice Cresswell in the Court of Appeal in the *Ikarian Reefer*[1]. In the courts of England and Wales, and in Scotland, their Civil Procedure Rules (CPR) set out the procedural requirements of expert evidence. Those CPRs followed Lord Woolf's reports of the mid-1990s[2], which criticised the unnecessary costs and lack of neutrality of much expert evidence. Thus, in the domestic markets the requirements of experts are well developed and the courts' criticisms are made against that background.

Internationally, few jurisdictions have developed, through their legislature or precedents, such a detailed framework for experts to work in. However, this is not to say that experts will not be suitably chastised where appropriate. As with the England and Wales judgments, some overseas judgments can be similarly informative as to the potential pitfalls for experts and those instructing them. They also might offer some light relief for those suffering published criticism in the UK, or frustrated at the lack of it in international arbitration.

The world took an understandable interest in last year's South African proceedings in the Oscar Pistorius trial. Whilst there is disappointment in some

"Slapdash, disappointing and had a negative effect on her credibility as a witness"

quarters at his sentence, he appears to have achieved that outcome notwithstanding the quality of the expert evidence adduced by his team.

Pistorius' chief witness was a former police officer, Mr Roger Dixon[3], who gave expert evidence on ballistics, gunshot wounds, pathology, and blood splatter. He was also involved in both audio and visual tests. However, he admitted to not being an expert in any of these fields, but was actually a forensic geologist. On the detail of his investigations, he admitted to the following failings:

- He had not done his testing with any light meters or equipment other than his own vision.
- He testified on a recording of gun shots and a cricket bat striking a door although he was not there when the tests were conducted and knew nothing about the sound equipment used.
- He *"overlooked and omitted"* Pistorius' height when conducting the test, which meant that his assistant, while kneeling, was a good 20cm shorter than Pistorius on his stumps.
- Regarding fibres he claimed to have found in a door that matched Pistorius' socks, he admitted that he had only seen photographs of the socks but had never examined them or looked at the fibres concerned under a microscope.

Furthermore, he never drafted a formal report on his evidence, but made notes on his computer, which he had given to the defence.

A second expert relied upon by Pistorius, Mr Tom Wolmarans, gave evidence on the noises made by gunshots and cricket bats, but admitted that:

- He was not an expert in any of these fields.
- In particular, he was not a 'sound expert'.
- He had a hearing defect.
- His gun jammed on first test.
- He was unable to record rapid gun fire.
- The quality of his recordings were affected by frog sounds in the background.
- He could not repeat the recordings, as the door he had used had been broken.

A third expert appeared for Pistorius in relation to sentencing. Miss Annette Vergeer was a social worker and registered probation officer at the Department of Correctional Services. She gave testimony on the suitability of South African jails, warning that Pistorius would be at risk from: slippery floors; toilets and showers with no hand rails; and having his prosthetic leg taken away. However, she admitted that her evidence was based on statistics published nine years previously. Her evidence was contrasted with the evidence provided in the Shrien Dewani[4] case. There the UK courts were so convinced that South African prisons adhered to international standards that they extradited Dewani to South Africa for trial. The Pistorius judge described Miss Vergeer's evidence as: "Slapdash, disappointing and had a negative effect on her credibility as a witness".

Whilst the high profile nature of the Pistorius case drew international media attention to the poor nature of some of its expert testimony, a judgment of rather more significance locally is that of the Supreme Court of Appeal of South Africa in the recent Potato case[5]. This involved a claim against PricewaterhouseCoopers (PwC) for alleged negligent audit services, in which the first respondent relied for its '*entire case*' on the expert testimony of a Mr David Collett.

Before assessing the expert's evidence, the court set out the standards to be expected of expert testimony. The judge started by quoting from Justice Cresswell in the *Ikarian Reefer* and noting how the principles therein echoed those set out in a South African case Stock v Stock[6].The Canadian judgment of Justice Marie St-Pierre in *Widdrington*[7], was then quoted from as "*helpful*" to the judge. The South African court found that Mr Collett's evidence did not measure up to those standards.

Mr Collett's only practical audit experience was when he was training, 22 years earlier. The detailed criticisms of his performance are lengthy, but include describing some of his opinions as "*risible*" and his approach as, "*pedantic, rigid and dogmatic*". The criticisms cover most of the potential errors that an expert witness might make, but included:

- Contradicting himself.
- Seeking to avoid answering hypothetical questions.
- Only reluctantly making concessions.
- Mostly basing opinions on hearsay evidence.
- Acting as an advocate advancing his client's case.
- Not giving evidence objectively, but to justify the conclusions he had formed.
- Disregarding or discounting facts inconsistent with his own theories or conclusions.
- Lacking independence from his client in that he:
  - ➔ Undertook the original investigation leading to the claim.
  - ➔ Was involved in the gathering of evidence and pleaded formulation of the claim.
- Giving evidence in areas where he lacked expertise.

> ...evidence, "did not satisfy the tests for admissibility as expert evidence" and was, "of little or no value in this case"

The judge concluded that, when tested against the standards enunciated by Justice Cresswell and Justice St-Pierre, Mr Collett's evidence, "*did not satisfy the tests for admissibility as expert evidence*" and was, *"of little or no value in this case*".

In conclusion, while experts practicing in the UK courts may feel aggrieved at their vulnerability to public reproach for their efforts, particularly where they also observe what happens in other jurisdictions, they might take some comfort from those criticisms that are published in other jurisdictions. Those judgments provide a useful resource for those acting as experts to understand the pitfalls of the role. Similarly, those instructing experts might consider how it came to be that Messrs Dixon and Collett were instructed in the first place to roles for which they were wholly unsuited. In the end, the real victim of expert evidence that is held to be 'of little or no value' is the party whose case suffers as a result. ■

[1] National Justice Compania Naviera SA v Prudential Assurance Company [Ikarian Reefer] [1995] 1 Lloyds Rep.455

[2] Access to Justice, Interim Report, June 1995; Access to Justice, Final Report, July 1996

[3] Who unfortunately did not gain his early training in London's Dock Green area

[4] The British businessman acquitted last year of murdering his wife on their honeymoon in South Africa

[5] PriceWaterhouseCoopers Inc & others v National Potato Co-operative Ltd & another (451/12) [2015] ZASCA 2 (4 March 2015)

[6] Stock v Stock 1981 (3) SA 1280 (A)

[7] Wightman v Widdrington (Succession de) 2013 QCCA 1187 (CanLII)

A change is gonna come

DAVID BORDOLI – DIRECTOR, DRIVER TRETT AFRICA REVIEWS AMENDMENTS TO THE SCL DELAY AND DISRUPTION PROTOCOL AND IDENTIFIES ISSUES TO ADDRESS IN ANY SUBSEQUENT EDITIONS.

In October 2002 the Society of Construction Law (SCL) in the UK published its Delay and Disruption Protocol. The object of the Protocol was: 'to provide useful guidance on some of the common issues that arise on construction contracts, where one party wishes to recover from the other an extension of time and/or compensation for the additional time spent and the resources used to complete the project. The purpose of the Protocol is to provide a means by which the parties can resolve these matters and avoid unnecessary disputes'.

Initially the Protocol was generally well received, although there were some criticisms from some commentators (presumably those that did not agree with its guidance). Although much of the Protocol related to avoiding disputes by adopting good practice, the majority of the focus from most commentators of the Protocol was on the final section of guidance, the subject of retrospective delay analysis. Over the years since its publication, the authority once attached to the Protocol appears to have waned and there does not appear to be tremendous judicial recognition of it. It seems somewhat scant in its content, and its overt support of Time Impact Analysis as the best and preferred technique is now viewed, by some, as injudicious.

Against this background of:

- Developments in the law and construction industry practices since 2002;

Gone is the preference for Time Impact Analysis

- Feedback on the uptake of the Protocol;
- Developments in technology since 2002;
- The scale of large projects having increased and;
- Anecdotal evidence that the Protocol was being used for international projects as well as domestic UK projects;

a decision was taken in 2013 to review limited aspects of the Protocol. Eight issues formed the terms of reference for the review, which will ultimately result in the second edition of the Protocol. The first two of those issues are addressed in 'Rider 1' published in July 2015, they are:

(a) Whether the expressed preference should remain for Time Impact Analysis as a programming methodology where the effects of delay events are known.

(b) The menu and descriptions of delay methodologies for after the event analysis - including to incorporate additional commonly used methodologies.

the conclusions of the delay analysis must be sound from a common sense perspective in light of the facts that actually transpired on the project.

Section 4 of the Protocol, previously titled 'Guidelines on dealing with disputed extension of time issues after completion of the project – retrospective delay analysis', has been rewritten in its entirety and is now called 'Guidelines on delay analyses time distant from the delay event'. Gone is the preference for Time Impact Analysis, instead the prominence is given to identification of the factors that ought to be taken into account in selecting the most appropriate methodology.

A significant change is that the guidance suggests that, when preparing a delay analysis considerably after the delaying event has occurred, a prospective analysis of delay may no longer be relevant or appropriate. This contrasts with the former position where the Protocol recommended that, in deciding entitlement to extension of time the adjudicator, judge, or arbitrator should as far as is practicable put him/herself in the position of the contract administrator at the time the delaying event occurred. There is now an emphasis that, irrespective of the methodology adopted, the conclusions of the delay analysis must be sound from a common sense perspective in light of the facts that actually transpired on the project.

There are many methods of delay analysis – the original Protocol lists four whereas the more substantially US orientated 'AACEI recommended practice no. 29R-03 – Forensic schedule analysis', from 2007 onwards, has at least 17. Windows Analysis did not feature in that initial list. It did feature in the draft consultation copy (2001) but was dropped in the final publication. Perhaps the reason for the omission is that 'windows' and 'watersheds', according to Pickavance in his 2005 edition of 'Delay and Disruption in Construction Contracts', are not methods of analysis in themselves but are merely aspects of conducting a given method of analysis. However, in Mirant v Ove Arup [2007] at paragraph 131 and 132, it says that nevertheless Windows Analysis is the most accepted method of critical path analysis. Whatever the pros and cons, the new expanded list of analysis methods contains two types of Windows Analysis.

According to the Rider 1 there are six commonly used methods of delay analysis, these being:

- Impacted As-Planned Analysis.
- Time Impact Analysis.
- Time Slice Windows Analysis.
- As-Planned versus As-Built Windows Analysis.
- Longest Path Analysis.
- Collapsed As-Built Analysis.

As-Planned versus As-Built Windows Analysis replaces As-Planned versus As-Built Analysis and the newcomers are Time Slice Windows Analysis and Longest Path Analysis. Whether or not these are the six most commonly used methods is debateable. Fig.1 provides a summary of the methods.

Most of the methods described are well known to delay analysts. However, of the six methods the most enigmatic is Longest Path Analysis; Google produces no discernible results for Longest Path Analysis or Longest Path Delay Analysis. Rather confusingly, the description of the method says:

'The longest path analysis method involves the determination of the retrospective as-built critical path (which should not be confused with the contemporaneous or actual critical path identified in the windows methods above)'.

Whereas previously the emphasis was on 'facts that actually transpired on the project' – should that not also include the actual critical path? Unhelpfully, the definitions and glossary to Rider 1 have yet to be updated so the confusion between longest path, retrospective critical path, contemporaneous critical path, and actual critical path remains.

The remaining six issues to be reviewed and forming part of the second edition of the Protocol are:

(c) Whether the Protocol should identify case law (UK and international) that has referenced the Protocol.
(d) Record keeping.
(e) Global claims and concurrent delay.
(f) Approach to consideration of claims (prolongation / disruption – time and money) during currency of project.
(g) Model clauses.
(h) Disruption.

The changes made to the Protocol as a result of Rider 1 are far reaching and in some cases represent an about-face relative to the first edition. The review of the additional issues is likely to be equally significant. ■

The Society of Construction Law Delay and Disruption Protocol, Rider 1 and Judicial References can be downloaded from http://www.scl.org.uk/resources.

FIGURE 1 SUMMARY OF COMMON DELAY ANALYSIS METHODS

Method of Analysis	Analysis Type	Critical Path Determined	Delay Impact Determined	Requires
Impacted As-Planned Analysis	Cause and Effect	Prospectively	Prospectively	Logic linked baseline programme. A selection of delay events to be modelled.
Time Impact Analysis	Cause and Effect	Contemporaneously	Prospectively	Logic linked baseline programme. Update programmes or progress information with which to update the baseline programme. A selection of delay events to be modelled.
Time Slice Windows Analysis	Effect and Cause	Contemporaneously	Retrospectively	Logic linked baseline programme. Update programmes or progress information with which to update the baseline programme.
As-Planned versus As-Built Windows Analysis	Effect and Cause	Contemporaneously	Retrospectively	Baseline programme. As-built data.
Longest Path Analysis	Effect and Cause	Retrospectively	Retrospectively	Baseline programme. As-built programme.
Collapsed As-Built Analysis	Cause and Effect	Retrospectively	Retrospectively	Logic linked as-built programme. A selection of delay events to be modelled.

Q&A: THE BIG LIFT

RON FERNANDEZ – VICE PRESIDENT, DRIVER TRETT CANADA SPEAKS TO THE DIGEST ABOUT A SIGNIFICANT CANADIAN PROJECT CALLED THE BIG LIFT.

What is the big lift?

In June 2015, Halifax Harbour Bridges (HHB) embarked on a significant and necessary project, the replacement of the suspended spans of Macdonald Bridge, in Halifax, Canada.

Why replace the bridge spans?

After 60 years in service the deck is wearing out and needs to be replaced. The project, also known as the big lift, aims to extend the life of the bridge and reduce maintenance.

The big l ift includes:

- Replacing the road deck.
- Replacing the floor beams.
- Stiffening trusses and suspender ropes.

The work also involves raising the new deck, by 2.1 meters, to allow larger shipping vessels to traverse the waterway between Dartmouth and Halifax.

The bridge will be open to vehicular traffic during the day with the work mostly carried out overnight and during several weekend bridge closures.

Has this been done before?

In Canada, this is only the second time that the suspended spans of a suspension bridge have been replaced while keeping the bridge open to traffic. The first time was on the Lions Gate Bridge over a decade ago.

The Lions Gate Bridge is the Macdonald's sister bridge, also designed by P.L. Pratley. HHB is working with the same bridge engineering firm, Buckland and Taylor, as was used on the Lions Gate re-decking project.

How are Driver Trett involved?

HHB awarded the $200 million contract to American Bridge Company, and subsequently hired Driver Trett Canada. Our scope covers the 30-month contract duration and includes reviewing the contractor's baseline schedule and both preparing and the monthly monitoring of, a new baseline schedule. Driver have recently presented a one day claims management course to the project managers and engineers involved on this project and will also prepare delay impact claim defence reports on behalf of HHB, when required.

Driver Trett Canada is pleased to be involved in this high profile Canadian project, and look forward to providing scheduling and dispute resolution services to the HHB over the next two years.

BYTES

BYTE 1:
BUILDING INFORMATION MODELLING (BIM) IN SINGAPORE

Paul Wong, Partner at Rodyk & Davidson LLP outlines some legal perspectives in the use of BIM in Singapore.

To read this, please visit the articles page on our website.

IN THE NEXT ISSUE

The next issue of the Digest, as always, will be covering all industry sectors and include news and articles from around the globe. Please keep an eye on the website www.driver-group.com to keep up to date with ad hoc articles, Digest previews, seminars, and training events. The Digest will always aim to be topical, and respond to requests and questions from our readers through the articles we publish. If you would like to submit a question or an article request to the Digest team please email marketing@driver-group.com with DIGEST in the email subject line. We are always pleased to receive feedback from our readers and welcome the opportunity to develop the Driver Digest into a valuable read for those involved in the global engineering and construction industry.

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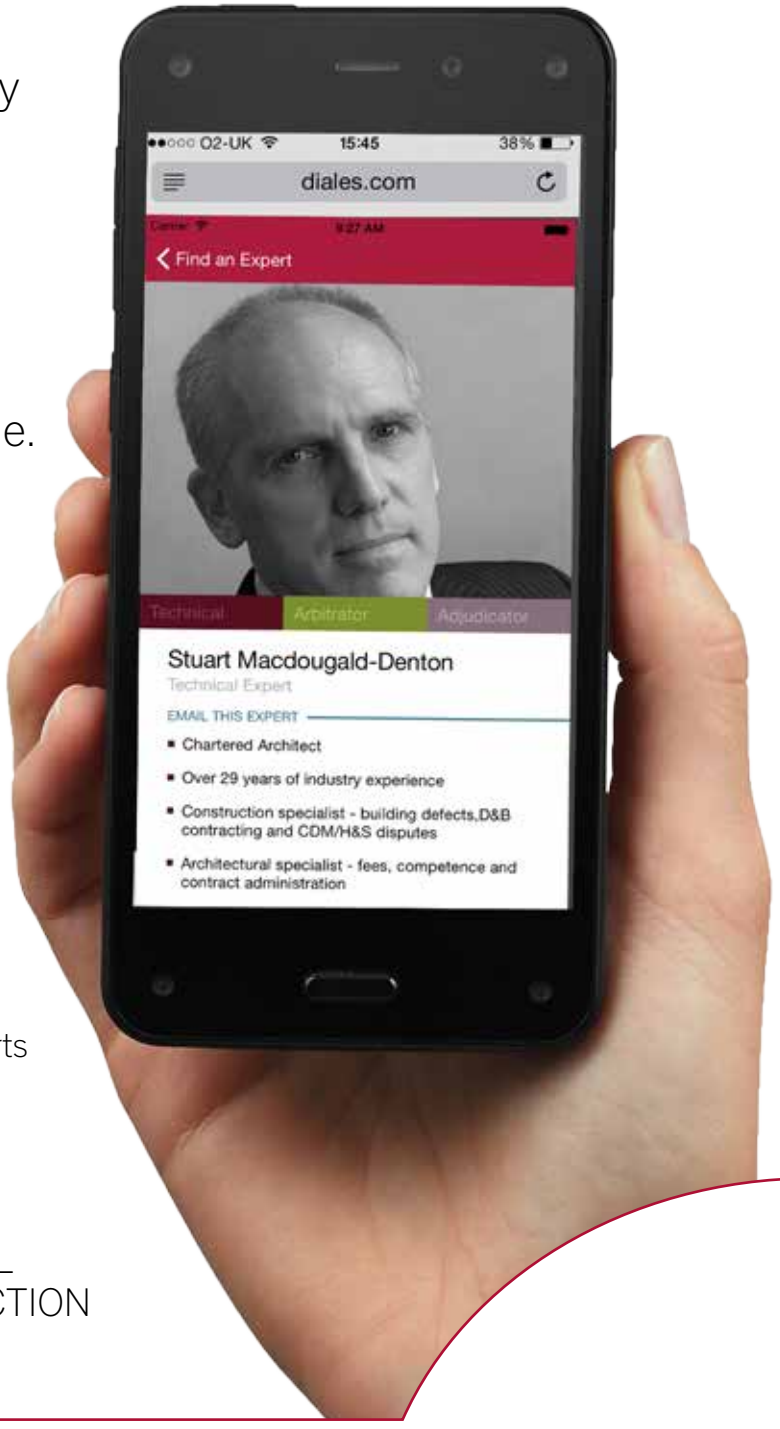

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