

The 10 Biggest Mistakes...

“...that most Commercially Minded Construction People Unwittingly Make, Costing Them A Fortune In Lost Turnover, Expenses and Lost Profits...”

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Of



When you have read through these **10 BIGGEST MISTAKES** – and see the solution to the problems they create, you will immediately be able to take action and **MAKE MORE MONEY**.....

The facts:

The lack of knowledge of these mistakes costs Construction Businesses and Employers a fortune in lost turnover, expense, lost profits and ultimately lost personal cash. Falling foul of these **10 BIGGEST MISTAKES** to varying degrees will lead to, in one word...

DISPUTE!

The Construction Industry is notorious for disputes, it is a way of life and the nature of the industrial beast, but does it have to be? Read through the **10 BIGGEST MISTAKES** given to you for **FREE** and then please ask yourself some serious questions regarding your Commercial Department as to whether you have these issues fully covered.

It is not easy to test and measure your Commercial Department looking at their performance in Construction Contracts, but with an effective business plan and systems in place it will enable you to foresee and avoid problems, plus when they unavoidably arise, you will be in the best position to deal with them, **WIN** and **MAKE MONEY**.

OK now onto those **10 BIGGEST MISTAKES...**

BIGGEST MISTAKE 1

CONTRACT UNCERTAINTY...

The lack of understanding of how you secure your entitlements and obligations will lead to potential disaster and cannot be left to chance. If there is no negotiated and signed contract what are your rights?

If no signed deal, it gets complicated and with no rights you will lose. All areas of this complex matter should be understood including the legal implications of tenders, formation, document conflicts, signing, conduct, LOI's, "Subject to Contract", price caps, waiver, un-agreed terms, onerous terms, contract in writing, essential terms and condition precedents, etc... any many more potentially damaging hazards.

Arbicon ADR can provide certainty of Contract and guidance in this complex area.

BIGGEST MISTAKE 2

POOR EXECUTION OF CONTRACT MECHANISMS...

The failure to comply with contract mechanisms can preclude entitlement and breach obligations. The entitlement to claim may be lost and damages for breach of contract will be sustained.

Systems need to be in place to operate the contract mechanisms for valuations, payments, notices, variations, instructions, repudiation/termination, time claims, etc... It is essential that contemporaneous evidence is collected and legal monitoring and checking is carried out as the project proceeds.

Arbicon ADR can advise or provide legal monitoring and evidence collection as work proceeds.

BIGGEST MISTAKE 3

UNPREPARED FOR ADJUDICATION...

The lack of knowledge and absence of a system in place to deal with adjudication is a major error. Adjudication can be started at any time and the process is very fast, thus the knowledge and systems need to be in place so that if you are defending you are not caught out with costs and a legally binding order to pay out. If you are

claiming it is the most effective cash tool to use, but needs professional management.

Arbicon ADR teach the essentials in adjudication seminars and provide full representation in adjudication proceedings.

BIGGEST MISTAKE 4

USING SOLICITORS TO DO SURVEYORS WORK WHEN A DISPUTE ARISES...

When you get into a scrape or you want contractual advice, why use anyone else but **CHARTERED QUANTITY SURVEYORS** who are **ADJUDICATORS**. Fact: Most Adjudicators are Chartered Quantity Surveyors, the RICS is the leading organisation in the world of adjudication. Why would you go to anyone other than the best person for the job. If, as in the majority of cases, solicitors are not qualified to chartered level in any construction profession, they do not understand construction or do they have that essential experience. Time and again the authors have seen this disastrous mistake.

At Arbicon ADR we pride ourselves on our Chartered Quantity Surveyor status together with our qualifications and extensive experience in matters of contract, law and adjudication.

BIGGEST MISTAKE 5

CONTEMPORANEOUS FAILURE TO DEAL WITH ISSUES OF TIME AND LOSS...

If such issues arise they need to be dealt with contemporaneously and in detail. Failure to do so, depending on who has the evidential burden of proof, will lead to an inability to claim and an exposure to damages.

Failure to deal with record keeping, programmes, completion dates, delays, notices, acceleration, LADs, prolongation, etc... will lead to loss.

Arbicon ADR can advise on the systems required to ensure the right levels of contemporaneous records to protect your position.

BIGGEST MISTAKE 6

DESIGN DELIVERY AND DESIGN SUPERVISION FAILURE...

Someone has design responsibility, that responsibility has a bearing on everyone else's obligations. If it is inadequate and/or late and unsupervised during construction this will cause damage.

This could cover the Architect's failure, Subcontractor's failure or other consultant's responsibility, lack of design supervision and late issue of information essential to the programme.

Arbicon ADR can advise on the methods of recording and acting on design delivery failures and a lack of supervision to this process.

BIGGEST MISTAKE 7

QUALITY CONTROL FAILURE...

Defects in building work are breaches of contract and will have to be corrected or damages will be sustained.

It is common for alleged defects to be disputed in set-offs and this can be a significant problem. There is complex law relating to this aspect that is often misunderstood. For example in the absence of a contract procedure what are the implied terms? What happens if there is a failure to warn about defects? Whose fault is it if the specification or subcontractor is incompetent? What is meant by fit for purpose? What effect do quality exclusion clauses have legally? What are latent defects? How is design related to defects? Do you understand these risks and how to cater for them?

Arbicon ADR can advise on the management of defects and use the law relating to defects to ensure they are effectively dealt with.

BIGGEST MISTAKE 8

POLITICS WITH THE PAYING PARTY...

Everyone is different, fear of upsetting the paying party in the event of a problem or claim, leading to that claim or problem being swept under the carpet, will cause more problems than if it is fronted out contemporaneously. You will lose.

Arbicon ADR can advise on the best approach to dealing with the non paying party and the options available to protect your position.

BIGGEST MISTAKE 9

CONTRACTING WITH INSOLVENT FIRMS...

If there is a risk of insolvency of any kind, you run the risk of incurring losses, disruption and the time consuming costly necessity of dealing with administrators.

Arbicon ADR can advise on the credit checking required to ensure the right levels of monitoring to protect your position.

BIGGEST MISTAKE 10

LACK OF STAFF TRAINING AND FAILURE TO DEAL WITH MISTAKES 1 TO 9...

If you address mistakes 1 to 9 above and invest in commercial staff training the risk of being exposed to disputes, losing entitlements and avoiding breaches of contract and subsequent damages will be seriously reduced. You will then **MAKE MONEY**.

Arbicon ADR teach the essentials in risk management seminars and can provide bespoke seminars for companies.

NOW ASK YOURSELF

Are you interested in reducing risks, reducing costs, increasing turnover and increasing the profits of your construction business?

Am I one of a select group who is always interested in using proven ideas to increase success?

Am I someone who wants to avoid simple mistakes by learning from those who deal with such mistakes on a daily basis?

Then...

If you are serious then contact Ian or Jonathan at Arbicon ADR Limited, who would welcome discussing any issues you may have and how you can generate more money from your contracts by avoiding the **BIG MISTAKES**, allowing you time to address other matters and free up your day.....

Until we speak again

Jonathan Nugent and Ian J Purser