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Adjudication in Practice

Introduction

1. We often concentrate on the legal aspects of adjudication but once you decide to adjudicate, or are adjudicated against, there are a number of practical points that parties should bear in mind. In the time available it is not possible to cover everything in this paper, and this paper concentrates on some of the key practical points that parties should consider when adjudicating.

2. This paper is split into three parts:

   (i) practical points pre-adjudication;

   (ii) during the adjudication; and

   (iii) post-adjudication.

Practical points pre-adjudication

3. In my opinion, the most important stage of the adjudication is pre-adjudication; this is especially so for the Referring Party.

4. Adjudication was introduced as a short-form dispute resolution procedure to assist cash flow. It was meant to have two attractive characteristics: it was quick and it would not cost very much. Over the past 10 years, however, whilst in general the timescale of adjudication is still 35 days from issue of the Notice of Adjudication to issue of the adjudicator's decision, the cost has gone up, possibly because as adjudication has evolved, so has the way in which the parties approach it.

5. The key to starting a successful adjudication, and to keeping costs to a minimum, is preparation. Most clients who want to adjudicate want to do so quickly and, if they are not being paid, they cannot be blamed for that sentiment. However, if a claim is badly prepared because of speed, then issuing adjudication proceedings quickly may well be a false economy. Basic principles such as properly evidencing the claim can be prejudiced and this will, of course, have an effect on the final outcome.

6. In addition, there are a number of other practical considerations to take into account prior to commencing an adjudication.

7. Key points pre-adjudication are, therefore:

   (i) First, ask yourself, can you adjudicate? Before starting anything, check the contract. There are exclusions to the general provisions of the Housing Grants, Construction and Regeneration Act 1996, the most common of which relates to residential occupiers, but it may also be the case that there is no contract or the contract is not evidenced in writing.

   (ii) If you can adjudicate, then ask yourself – on what terms? Does the Scheme for Construction Contracts apply? Do specific adjudication rules apply? Have the parties agreed a particular timetable for the adjudication? Have the parties agreed a particular adjudicator? Check the contract provisions and then ask yourself, can I use any of this to my advantage? For example, I came across an adjudication clause in an amended JCT contract which gave the Responding Party

21 days from service of the Referral to respond. In those circumstances, as Referring Party, you can time the adjudication so that the 21 days run over a period of time when it would be difficult for you to do any substantive work, for example if a key person is going on holiday.

One tactical point to consider is the timing of the issue of the Notice of Adjudication. Despite the fact that extensions of time are nearly always given in these circumstances, commencing an adjudication on Christmas Eve is still not uncommon practice. Other difficult times of the year are around Easter and during August, as these are the most common holiday periods. If you do decide that tactically you want to adjudicate at one of these times then be aware that the adjudicator may not think too kindly of you for doing so (particularly at Christmas) and that the timetable is almost always adjusted so that the Responding Party is given a decent amount of time to make its Response regardless of the holiday season.[1] You may well therefore achieve very little by starting an adjudication at one of these times, except the prolongation of the adjudication process (and therefore the cost of that process).

(iii) The third question to ask yourself when you have a money claim, particularly given the current national and global financial situation, is whether the adjudication will obtain the result that you wish to achieve. In other words, does the Responding Party have the money to pay you if you are successful? If you think the Responding Party may not be able to pay you, is it worthwhile in any event to obtain an adjudicator's decision and then a court judgment (by way of enforcement) against them? A judgment will not rank you any higher when you are an unsecured creditor so you need to think about what assets the other party has and what share you might get as an unsecured creditor. Alternatively, if the other party is a developer then they might own land over which you can take a charge due to obtaining a judgment. If this is your strategy then you need to find out whether there are any existing mortgages over that land. You also need to consider the timescales of such a strategy. By the time you have adjudicated, gone to court and then obtained the charge, will the Responding Party still exist or will it have already been wound up?

(iv) Once you have decided that you can and should adjudicate and you understand the contractual requirements for adjudication, the next key question to ask yourself is whether a dispute exists on the subject that you want to adjudicate. Has a claim been made that has been rejected (either overtly or by silence)? This is particularly important with complex disputes – have all the issues been put on the table? You should also ask yourself whether there is one dispute or multiple disputes and, if the latter, ascertain whether your contract allows you to refer multiple disputes to the adjudicator or whether you are required to adjudicate each dispute separately. The default position is that only one dispute can be referred to an adjudicator at any one time.[2]

If a dispute does not exist then you need to plan how you will create the dispute and the timescale for doing this.

(v) The next practical (and tactical) point to consider is the appointment of the adjudicator. If the contract does not name the adjudicator, then the likelihood is that it will provide for the parties

1. It is rare for a Referring Party to refuse a request from an Adjudicator that the timescale for the adjudication is extended.

2. A dispute can be multi-faceted: see Fastrack Contractors Limited v Morrison Construction Limited [2000] BLR 198, which was cited with approval in David McLean Housing Limited v Swansea Housing Association Limited [2002] BLR 125 and Michael John Construction v Golledge [2006] EWCA Civ 71 (TCC).

to agree an adjudicator or, in the absence of agreement, for an adjudicator to be appointed by a nominating body, i.e. the President of the RICS or RIBA.

Two issues emerge from this. First, who do you want your adjudicator to be? If you have a valuation dispute, then it is likely that it will be better for you to have a QS adjudicator than a lawyer adjudicator. If you have a dispute on a point of law then the opposite may be true. Secondly, if you have had experience of a particular adjudicator in the past and have found them to be a good adjudicator then there is no reason why you should not propose that person to the Responding Party for agreement. This provides the parties with some control over the identity and, sometimes where it might be relevant, the location of the adjudicator.

If you are going to try to agree an adjudicator in advance of the adjudication then there are two further practical points to note. First, ascertain his or her availability before proposing him or her to the other side for agreement. Much time can be lost if the parties take a few days to agree the identity of a potential adjudicator and then find that they cannot act. Secondly, if the proposal is being made at the time that you issue the Notice of Adjudication (which is the normal time to make such a proposal) be prepared to make a parallel application to the nominating body within a day or two of the proposal. The RICS, for example, needs at least five days to appoint the adjudicator and if you do not give them enough time then you run the risk of not having an adjudicator appointed within the requisite seven days after issue of the Notice.

(vi) The next key point is to ensure that all the necessary preparation and groundwork has been done prior to issuing the Notice of Adjudication. This is particularly the case with valuation, defects and extension of time claims.

Nothing can beat a properly prepared adjudication notice and Referral. In a typical valuation or extension of time claim you should be aiming to provide the adjudicator with the following:

- An overall summary document of the amounts in dispute between the parties. This can be done in a Scott Schedule-type document in Excel format. It would be my recommendation that if there has been a set structure to the applications or valuations throughout the course of the contract then this is the structure that is adopted in the adjudication. Both parties will know what they are dealing with and it will be easier for the adjudicator to follow because his starting point will be the original application and/or valuation that has been issued. I recently acted for the Responding Party in an adjudication concerning the valuation of an interim application where the Contractor provided the adjudicator with a copy of his application and the QS's valuation and then made his claim based on an entirely separate spreadsheet which did not follow the structure of either the application or the valuation. Quite apart from opening himself up to the criticism that *"repackaging"* the claim in this way was an obvious attempt to hide the weaknesses in his claim, ultimately what the adjudicator wanted to see was the differences between the parties in relation to the particular application which was in dispute. A lot of work was then required by the Referring Party during

the adjudication to transpose the figures of the original application to the claim document that he had been using. We, as Responding Party, then had to check that what had been done was accurate. In my opinion, the whole exercise was a waste of time and cost and could have been avoided from the outset by the use of the structure of the original application. It certainly did not assist the contractor in that case to adopt the approach he did.

- Behind your summary sheet of the amounts in dispute, you should create a bundle of documentation which, for each and every item in dispute, has a summary sheet stating why the item is in dispute and why you are owed the money or time claimed and then behind that all supporting documentation to substantiate your claim. The only caveat to this is that if you have numerous small value items (say £100 to £500), you may wish to take a view on the benefit of this exercise for those items bearing in mind the resources that will be used to create each set of substantiating documents. In that case, you may wish to give more general details of the amounts claimed and why they should be awarded.

Creating the supporting documentation for the claim is also helpful in that it flushes out any weaknesses in your case, gives you an idea of what you can realistically hope to achieve and gives you an opportunity to review whether you wish to obtain further documentation to give to an adjudicator. If this would constitute *"new"* information for the other party then you will have to ensure that the other party has been given this information in advance of the adjudication. If the item in question is a high value item then you are better facing up to the fact that you need to enhance your case and the evidence for it rather than simply trying to use the same documents, say, that were given to the QS in the application that you are disputing, as this may lead to the adjudicator coming to the same conclusion as the QS. On the other hand, it may well be that all you need to rely on in addition to documents used in the last application are historic documents that the QS already has. In that case, it is just a matter of ensuring that copies are included in the supporting documentation to the Referral.

I should also note that, despite the more liberal approach of the courts in determining that all issues brought into adjudication should be considered by the adjudicator, the basic principle still holds that brand new information issued by the Referring Party as part of its Referral cannot form part of an existing dispute. If you are re-packaging what the parties already know, for example, through witness statements and commentaries, then you should be fine, but if you are producing an expert's report from an expert whom the other party is unaware of then you may run into difficulties.

(vii) In all disputes, whether valuation or extension of time disputes or any other type of dispute, you should also consider preparation of the following documents to give to the adjudicator as part of the Referral:

- a full copy of the contract conditions together with any Contract Documents and drawings that are relevant;
- witness statements relating to matters of fact that may be in

dispute between the parties;

copies of relevant correspondence between the parties;

- copies of certificates where relevant, for example previous interim certificates, the practical completion certificate (if it has been issued) and certificates showing that an extension of time has been granted;
- copies of any relevant case law or extracts from legal texts that you may wish to rely upon.

(viii) This leads to the next key point. In order to start an adjudication, you will need to issue a Notice of Adjudication and, within seven days of service of that document, you will need to issue a Referral. Seven days can pass extremely quickly and it is recommended that before you issue the Notice of Adjudication, you should have drafted the Referral and put together the bulk of the supporting documentation. The reason for this is twofold. First, as I have said, seven days can pass very quickly and you may find yourself running out of time to get everything finalised in time for service. This will put you on the back foot from the start and can lead to mistakes in drafting and the omission of key documents because you are rushing things. Secondly, the Referral sets out your detailed submissions on the case. The Notice sets out the summary of your case. The relief that you ask for in your Notice and in your Referral should mirror each other. If you have not drafted your Referral when you draft your Notice you run the risk of omitting to state something in your Notice which you realise through drafting the Referral that you need to state.

I would, however, note the following in relation to this point. Up until about a year ago, it was generally perceived to be correct that the Notice of Adjudication defines the jurisdiction of the adjudicator and this is something that is said in Mr Justice Coulson's excellent book on adjudication. However, following *Cantillon v Urvasco*,[3] and other more recent caselaw, it could be argued that you can widen the scope of the adjudicator's jurisdiction from Notice to Referral. Notwithstanding, as a matter of good practice, it is still recommended to draft the Referral prior to issuing the Notice of Adjudication.

The other point to consider when commencing the drafting of the Notice and the Referral is how much time you might need in order to draft these documents. If there is a complex dispute then you need to allow yourself sufficient time to draft the pleading documents as well as any witness statements to be given in support.

Finally, when drafting the Notice and Referral, always make sure that you ask for prompt payment. When it comes to enforcement this is important. Another item not to forget is interest, if it is applicable.

(ix) The final key point relates to resources. Before starting an adjudication ensure that you have adequate resources in place to deal with the adjudication. Key personnel to the issues in dispute should be available to answer questions, read through the draft Notice and Referral and provide a witness statement if necessary. You should also ensure that those key personnel are available throughout the duration or likely duration of the adjudication. Whilst you may think that you can direct an adjudication whilst on

3. [2008] EWHC 282 (TCC), 27 February 2008

holiday, the reality is a far different thing. Other resourcing issues you will wish to consider are

(i) whether you need external assistance with the claim, for example a QS or a delay analyst; and

(ii) who/how you are going to manage the task of putting together the supporting documentation for the claim. Keeping the bulk of this in-house rather than asking your lawyer to do it is likely to be the less expensive and more efficient option.

So far, this paper has concentrated on matters from the Referring Party's point of view. From a potential Responding Party's point of view, pre-adjudication can also be an important stage.

Adjudications rarely appear out of the blue. The parties are likely to have discussed the matters in issue and views are likely to have been aired. It is therefore often clear to a Responding Party that an adjudication is brewing. If this is the case, then it is generally worthwhile to start some preventative preparation to avoid having to do everything to respond in the adjudication in a very concentrated timetable. Such steps can include:

- ensuring that explanations and supporting documentation are in place to support the position being taken by the Responding Party on the issue in dispute;
- ensuring that resources (whether in-house or external) are in place should the adjudication be started;
- considering whether there is any middle ground between the parties upon which an agreement can be reached, thus avoiding adjudication altogether.

Practical points during the adjudication

8. Once the adjudication has commenced then there are a number of practical points to take into account.

(i) The first point to consider is challenging jurisdiction. It is rare for there not to be a reservation as to jurisdiction made in an adjudication. If there is a valid jurisdictional point to be made then it should be made and the courts have made it clear that if a jurisdictional issue is not raised in the adjudication when it could have been, then the party raising the jurisdictional issue will not be able to raise it at enforcement.[4]

The most common jurisdictional objections are:

- No dispute has crystallised.
- There is no contract in writing or the contract is not a construction contract for the purposes of the Housing Grants, Construction and Regeneration Act 1996.
- There are multiple disputes and only one dispute can be referred to adjudication at one time.

In theory, these are all perfectly valid objections to make. However, what appears to be becoming more increasingly common is for jurisdictional objections to be made with the arguments to support the contention that, for example, there is no dispute, being

4. See Dalkia Energy and Technical Services Limited v Bell Group UK Limited [2009] EWHC 73 (TCC), 21 January 2009 referred to in Barry Hembling's paper and OSC Building Services Limited v Interior Dimensions Contracts Limited [2009] EWHC 248, 8 January 2009.

entirely unmeritorious.

Some parties believe that there is a tactical advantage in raising a jurisdictional objection even if it has little merit. Reasons for this are that it might put the Referring Party on the back foot and show the adjudicator that the relevant party means business. However, technical and unmeritorious jurisdictional objections are largely counter-productive. You will not win any points with the adjudicator by making unmeritorious jurisdictional challenges and you will just increase the cost of the adjudication as the parties make submissions to the adjudicator on the issue. The Referring Party is unlikely to be wrong-footed by the challenge if it is one that is likely to fail.

Further, as part of the more general, broader approach referred to by Barry Hembling in his adjudication update paper, the courts have also made it clear that they do not endorse this approach. In *Balfour Beatty v Modus Corovest*[5], Mr Justice Coulson again reiterated that the overriding principle is that the court will always endeavour to enforce adjudicators' decisions.[6] There has to be a clear error of jurisdiction or natural justice for enforcement not to take place. Judgments such as *Cantillon v Urvasco*, *Dalkia v Bell*, *OSC v Interior Dimensions* and the other cases mentioned in the natural justice section of Barry Hembling's paper show that technical jurisdictional arguments simply will not succeed.

(ii) The second key point once an adjudication is up and running is that the parties should consider how best to use the time available to them. In most cases the adjudication will run for 28 days from the service of the Referral. You should consider how much time will be needed for the Response and whether a Reply or a Rejoinder will be necessary. You should also consider whether you will require the adjudicator to make a site visit (this is often important in valuation and defects disputes), whether the adjudicator might require a technical or legal assessor to assist him or her and the impact that this might have on the timetable.

(iii) The next practical point to consider is what will be happening whilst the adjudication is ongoing. If the project has not yet reached practical completion, then the works will be ongoing and if the dispute relates to valuation then it may well be that a further interim application and valuation will take place during the adjudication. Something that does arise in this situation is that a Responding Party may seek to address some of the issues that have arisen in the adjudication through the next valuation in order to avoid an award being made against them. For example, in a recent adjudication that I was involved in, we acted for the Referring Party in relation to a dispute on an interim certificate. For the purposes of this paper, I will call it interim certificate no.10. During the course of the adjudication the Responding Party's Architect issued interim certificate no.11 in which he had certified some of the sums that we were claiming. Immediately thereafter the Employer Responding Party served a withholding notice against interim certificate no.11 and then argued in the adjudication that although the sums claimed were certified, they were not due because of the withholding notice. This is not the first time that I have seen this argument raised. We argued, successfully, that the adjudication related to the valuation of interim certificate no.10 and not interim certificate no.11 and therefore the withholding notice was

5. [2008] EWHC 3029 (TCC), 4 December 2008
6. Paragraph 34

irrelevant although the certification by the Architect meant that it was difficult for the Employer to argue that the sums we were claiming were not due.

The recent case of *YCMS v Mr and Mrs Grabiner*[7] also touches on this issue. In that case, the dispute referred by the Contractor, *YCMS*, related to Interim Certificate no.13. During the course of the adjudication Interim Certificate no.14 was issued for a lesser sum than Interim Certificate no.13. The Employer, *Mr and Mrs Grabiner*, paid Interim Certificate no.14 and argued that it superseded Interim Certificate no.13 (which they also argued was a *"draft"* certificate) and that no further monies were due to *YCMS*. The adjudicator issued his decision in respect of monies due *"up to and including Interim Certificate no.14"*, although it appears from the judgment that he did actually reject the defence of *Mr and Mrs Grabiner*. At enforcement stage, *Mr and Mrs Grabiner* argued, amongst other things, that the adjudicator had erred jurisdictionally by considering sums due up to and including Interim Certificate no.14 when the dispute referred related to Interim Certificate no.13. The court held that the adjudicator had not exceeded his jurisdiction on this issue. Because Interim Certificate no.14 had been part of the defence, then the adjudicator was correct to consider it. Crucially, the Judge made the distinction between the adjudicator taking into account the defence that was made by *Mr and Mrs Grabiner* and the adjudicator actually deciding the amount due pursuant to Interim Certificate no.14, meaning that the valuation of the Interim Certificate issued during the adjudication did not become part of the dispute itself.

Given the timescales of adjudication, there is no way in which to avoid a further interim valuation being made if the contract provides for monthly payment (which is the case with the majority of construction contracts). However, the timing of when this valuation is due to occur is another matter that might go to the tactical timing of the commencement of an adjudication.

(iv) The next point is related to one mentioned above in the pre-adjudication stage: it is important to have the right resources available throughout the adjudication. In particular, it is likely that the Referring Party will wish to make a formal Reply to the Responding Party. A Responding Party can raise whatever it wishes in its Response,[8] and therefore new arguments that the Referring Party has not considered may be raised. The timescale for the Reply is likely to be short so the people who are key to the dispute should be ready to consider any new arguments and provide any further documentation that may be necessary to counter those arguments. On a practical level, clearing the diary as best you can for the two days following receipt of the Response is a good idea.

(v) Finally, with regard to submissions themselves, try to marshall all your arguments together in one document. Adjudicators do not appreciate numerous submissions and counter-submissions that carry on for days on end. Some adjudicators will impose a deadline for all written submissions. Ultimately, as much as it may rankle, only one party can have the final word. It is worth bearing in mind, if that party is not you, that by the time you get to submissions post-Reply stage often a lot of what is being said is simply a reiteration of what has gone before.

7. [2009] EWHC 127 (TCC), 31 January 2009
8. See Cantillon v Urvasco

Practical points post-adjudication

9. There are a number of practical points post-adjudication to consider.

(i) The first practical step to take when the adjudicator's decision is published is to check for any obvious arithmetical mistakes which might need to be amended. There is established caselaw to the effect that in the absence of provisions to the contrary, there is an implied term in an agreement to adjudicate that the adjudicator can correct slips.[9] The recent case of *YCMS v Mr and Mrs Grabiner* contains a useful summary of the law in relation to the operation of the slip rule in adjudication. To summarise Mr Justice Akenhead:

- An adjudicator can only revise a decision if it is an implied term of the contract by which adjudication is permitted to take place that permits it. Such implication does not arise statutorily.
- If there is such an implied term, it can and will only relate to *"patent errors"*, i.e. the wrong transposition of names or the failing to give credit for sums found to have been paid or simple arithmetical errors.
- The slip rule cannot be used to enable an adjudicator who has had second thoughts and intentions to correct an award, i.e. changing his mind as to whether there is an equitable right of set-off having read some more cases.
- The time for revising a decision by way of the slip rule will be what is reasonable in all the circumstances. However, it will be an exceptional and rare case in which the revision can be made more than a few days after the decision.

Accordingly, a slip must be a genuine *"slip"* rather than an attempt to get the adjudicator to change his or her mind on the decision that they have given and if there is a slip that requires correcting then this needs to be notified to the adjudicator as soon as possible.

(ii) The next practical step is to ascertain whether there have been any obvious jurisdictional errors in the decision. I would repeat my observations with regard to non-meritorious jurisdictional arguments which are made above, but there may well be meritorious grounds on which to challenge the decision that has been issued. For example, if the adjudicator has obviously not taken into account an argument made in defence, this may well be a ground to challenge the decision on the basis of a breach of natural justice. In the recent but yet to be reported case of *Rupert Cordle (Town and Country) Limited v Vanessa Nicholson*,[10] the adjudicator failed to take into account an argument raised by the Responding Party in its defence. The Judge decided that this was a breach of natural justice and the decision was not enforced.[11]

(iii) Once you have had the opportunity to consider the adjudicator's decision, the next practical issue will involve payment. If the dispute is a payment dispute then it may well be that the Responding Party has to make a payment to the Referring Party. In addition, the adjudicator will have made a decision about who is to pay his fees and reasonable expenses of the adjudication.

9. See Bloor Construction (UK) Ltd v Bowmer and Kirkland (London) Ltd [2000] BLR 314 per HHJ Toulmin CMG QC and CIB Properties Ltd v Birse Construction [2005] BLR 173, also per HHJ Toulmin CMG QC.

10. TCC, 6 April 2009

11. It is noted that the Judge also found that there was no contract in writing for the purposes of the Housing Grants, Construction and Regeneration Act 1996 and therefore if the Responding Party had failed on the argument in relation to natural justice, the decision still would not have been enforced.

If the decision states that the Responding Party is to make a payment, then it must decide what it plans to do. There are two main options. The Responding Party can pay the amount awarded and draw a line under the matter. Alternatively, the Responding Party can make a decision on whether it has a meritorious case to challenge the adjudicator's decision and not pay but instead wait for the matter to be argued out at enforcement proceedings. If you go for the latter approach then you should note that a court will penalise a party if it makes an obviously unmeritorious or superficial challenge to an adjudicator's decision. There is case law to the effect that a court will give judgment in favour of the Referring Party and order that the Responding Party pay the Referring Party's legal costs of the enforcement application on an enhanced, or indemnity, basis.

With regard to the adjudicator's fees, it is also important to note that generally the parties will be jointly and severally liable for the fees of the adjudicator. Therefore although the adjudicator may decide that one party should pay his fees, if that party does not pay his fees then he can pursue both parties for his fees.

(iv) If the matter proceeds to enforcement then the question of the solvency of the parties becomes a relevant issue again if the paying party believes that it has a claim against the receiving party but that before that claim will be litigated or arbitrated, the receiving party is likely to become insolvent. Barry Hembling's update paper on adjudication touches on this but to recap the current situation:[12]

- The probable inability of the claimant to repay the judgment sum at the end of the substantive trial or arbitration hearing may render it appropriate to grant a stay of execution of the judgment.[13]
- If there is no dispute on the evidence that the claimant is insolvent then a stay of execution will usually be granted.[14]
- Even if the evidence of the claimant's present financial position suggests that it is probable that it would be unable to repay the judgment sum when it falls due, that would not usually justify the grant of a stay if:

  (i) the claimant's financial position is the same or similar to its financial position at the time that the relevant contract was made;[15] or

  (ii) the claimant's financial position is due, either wholly, or in significant part, to the defendant's failure to pay those sums which were awarded by the adjudicator.[16]

As noted in Barry Hembling's adjudication update paper, Mr Justice Coulson has now given guidance on the position where the receiving party is subject to a CVA, and similar principles apply.

Concluding remarks

10. The key practical factor in a successful adjudication is preparation. By preparing early and using the provisions of the contract to your best advantage you should be able to get the most out of the adjudication process.

11. Whilst the temptation is to commence an adjudication as quickly as

12. See Wimbledon Construction Co. 2000 Ltd. v Derek Vago [2005] BLR 374 per Mr Justice Coulson

13. See Herschel v Breen [2000] EWHC (TCC) 178, 14 April 2000

14. See Bouygues v Dahl-Jensen [2000] EWCA Civ 507, 31 July 2000 and Rainford House v Cadogan [2001] BLR 416

15. See Herschel v. Breen

16. See Absolute Rentals v Glencor Enterprises CILL July/August 2000

possible, if it is possible it is worth pausing and considering the best and most cost-efficient way to obtain the result you want, whether this is by marshalling together all the documents that you need, engaging the right QS and delay resources or simply ensuring that all the pieces of paper are in place so that the dispute is crystallised and ready to go.

12. During the adjudication, the good planning should pay off; the adjudication process is short and if as much as possible is done at the beginning or prior to the adjudication then you are left free to concentrate on any new and/or important issues that arise during the adjudication. Whilst this is normally to the advantage of the Referring Party, those in the position of the Responding Party can also undertake pre-emptive work when it becomes clear that an adjudication is likely to occur.

13. Whilst it is also tempting to take as many technical jurisdictional points as possible throughout the adjudication, it is worthwhile again pausing and considering whether the time and expense of doing so is justified against other work that you might be doing instead. Obviously, good jurisdictional points must be raised, but it is worth bearing in mind that it is becoming increasingly difficult, unless there are the clearest of circumstances, to challenge the enforcement of an adjudicator's decision.

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