

Contract Dispute Resolution



Strategies to successfully resolve claims and
disputes.

Basic Concepts



- ❧ Get it in Writing
- ❧ Communication is Essential
- ❧ DO NOT delay the job!
- ❧ Don't retaliate
- ❧ Pay what you owe
- ❧ Find the root cause of the problem
- ❧ Giving days as a bargaining chip
- ❧ Don't be intimidated by threat of claim or lawsuit
- ❧ What would a jury in Cole County rule
- ❧ Don't hide behind specifications

Get it in Writing



- ❧ Verbal agreements are mostly unenforceable.
- ❧ Document everything. You will not remember years in the future.
- ❧ Change Orders are the sure way to solidify an agreement.
- ❧ This clarifies to both parties what is being agreed to.
- ❧ Helps avoid the “pay me now pay me later”.
- ❧ Use the “Koenig Clause”. This prevents the pay me now pay me later scenario.

Communication is Essential



- ❧ Constant communication is essential in resolving disputes.
- ❧ Initiate the conversation.
- ❧ Document your conversations.
- ❧ Utilize your weekly meetings with contractors to discuss updates on the resolution process.
- ❧ Ignoring a confrontation will only make it worse.
- ❧ If there is work being performed that is not agreed to, saying nothing implies consent.

Delays are Deadly



- ❧ Do not let small problems become big problems, address them.
- ❧ Delay costs are very costly, especially on large projects.
- ❧ Timely decisions and resolutions will pay huge dividends.
- ❧ If there is a delay make sure a change order adjusting the completion date is processed as soon as the delay is determined. Acceleration costs can be claimed.
- ❧ Get a schedule and get updated schedules from the contractor.

Utility Delays



- ⌘ They are excusable but not compensable.
- ⌘ Make sure to issue a time extension change order once the delay is determined.

Who is responsible for the risk?



- ❧ You cannot assign risk to someone who is not responsible for that risk.
- ❧ No excuses clauses are dangerous.
- ❧ You will pay for risk at bid time and you will lose that claim.
- ❧ Define the limits of risk such as establishing a river elevation at which days are added to the contract.

Retaliation Trap



- ❧ Do not retaliate!
- ❧ Often someone will retaliate for a wrong or perceived wrong. But it is on a portion of the project that had nothing to do with the original issue. When the issue gets escalated it will be stand alone. This will portray the person as unfair to contractors.
- ❧ Even if it was the contractor's action if we okay it or watch it being performed without objection it is implied consent. You own it.

Find the root cause of the problem!



- ⌘ Often what is being disputed is not the real source of the issue. Address the root cause.
- ⌘ Do not bring old baggage into an issue. Short memory!

Pay What You Owe!



- ❧ If you cannot agree on a total amount but know you owe a portion of that, pay that amount.
- ❧ Withholding payment reflects poorly to a jury. It appears you are holding the owed amount hostage until the contractor agrees to your full demand.
- ❧ Interest on prompt pay is 1.5% per month. This interest can approach the amount of difference in dispute quickly.

Bartering with Time



⌘ If there is a significant savings consider sacrificing time for money.

Respond to the Contractor



- ❧ If you agree or disagree give a timely response.
- ❧ No response can be viewed as concurrence.
- ❧ If you don't follow the specifications consistently you will lose the ability to enforce them.
- ❧ All disputes with a subcontractor have to go through the prime contractor.

Bluff/Posture



- ❧ Be assertive.
- ❧ Clearly spell out your position.
- ❧ Don't be wishy/washy. Be definitive.
- ❧ Don't compromise your defense.

How would a jury in Cole County rule?



- ❧ Don't believe that the specifications can solely be used as defense. You may technically be correct but how will a jury perceive it.
- ❧ Don't be intimidated by a threat of a claim or lawsuit. It is often a bluff to get a concession.
- ❧ We have lawyers on staff!
- ❧ All contractor lawsuits are filed and heard in Cole County. Your jurors will likely not be engineers.
- ❧ Watch any comments on emails they will be used against you.

Claims and Lawsuits



- ❧ What is the claims process?
- ❧ What happens if it goes to a lawsuit? Lawsuits typically take several years to resolve. Documentation is essential. Most humans cannot remember fine details 3 years down the road.
- ❧ Spearin Doctrine: A legal principle that holds that when a contractor follows the plans and specifications furnished by the owner, and those plans and specifications turn out to be defective or insufficient, the contractor is not liable to the owner for any loss or damage resulting from the defective plans and specifications