



SA Construction Industry - Avoiding Crisis after Crisis - There is no time for “us” v “them” Post COVID-19

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Those in the construction industry know all too well what is meant by the “us” versus “them” culture. Employers, professional teams, principal agents, construction experts are often seen as being on one side of the board, while contractors, subcontractors, suppliers, etc. fill the other side. This is not something that developed overnight. It is a pernicious concept that has taken decades to develop.

We know that by the simple nature of the two “classes” of industry participants, that the employer/professional contingent, being in control of the project management and cost certification, has a disproportionate advantage over the contractor block.

There are many questions that need to be addressed, even during the lockdown period, to ensure that COVID-19 affected projects can re-start without encountering immediate problems and confronting the inevitable disputes all too common to the industry.

If the norm of “us” versus “them” plays out as usual when addressing the problems facing projects and project participants; it will be devastating to the industry and it has the potential to affect millions of jobs. Questions that need to be addressed include:

- Can costs, losses and expenses, incurred on construction projects due to the pandemic and related issues such as lockdown, be recovered?
- Who is liable for such costs where they are recoverable?
- How is the contractual time to complete affected by the lockdown, or other coronavirus relate delays?
- Do contractors and subcontractors need to submit extension of time and other loss and expense type claims?
- Do contractual time bars apply?
- Is coronavirus a force majeure event?
- Can losses be recovered from insurers; if so what losses?
- How do we address cash flow, material and other shortages when projects resume?
- Can employers terminate contracts due to the pandemic; if so, can contractors recover loss and expense?

There has to be fairness, reasonableness and understanding between all construction industry participants when addressing these types of issues. Simply resetting the dial to “us” versus “them” is no longer an option. Parties should not wait; wherever possible these issues should be addressed now.