

## ● Construction Law Advisory

Date April 24, 2013

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Subject **Avoiding Protracted Disputes on Construction Projects**

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In the construction industry, disputes are unfortunately commonplace. When parties are unable to resolve disputes lawyers ultimately become involved. The first thing one can expect from their lawyer is a request for documents.

Here are some of the things worthy of recording in a diary/journal to avoid disputes, or if avoidance is not possible, to succeed at proving a claim for extra payment:

- Persons on site (owners, consultants, inspectors, contractors, sub- contractors and others) and their activities.
- Statements by owners, consultants, inspectors, etc. (e.g. “Good job under these conditions” “Sorry for the delay in getting these drawings to you”).
- Inspection and test results, rejected material or workmanship, follow up required and timing of same.
- Equipment on site, including hours worked, breakdowns, standby hours, load counts (this isn’t necessarily something to be recorded in a journal but is essential).
- Weather and temperature (a.m. and p.m.).
- Change orders, directives and site instructions received, whether oral or written.
  - Record of any oral direction is a must.
- Drawings received and any problems noted.
- Timing of supply of materials by others.
- Delays – cause and duration.
  - Problems with drawings, waiting for direction from owner/consultant, missing manpower, stop work orders, picketing, etc.
  - Steps taken to mitigate the delay.
- Damaged work.
- Accidents or other unusual incidents/events.
- Problems with employees or sub-contractors.
- Claim tracking – separate record of work which is to be pursued as an extra/change.
- If you are maintaining a more formal daily record, provide copies to the owner/consultant at the end of that day or first thing the next morning.
  - Where possible, obtain the owner’s/consultant’s signature on the daily record provided.

Generally, anything out of the ordinary should be recorded. Journal entries do not have to be neat and tidy – think like a doctor; no one else has to be able to read the notes except the writer. The key is to get things down on paper. Notes and diary/journal entries are essential to prove a claim and prompt memories sometimes years after events occur.

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- The time it takes to jot down a few point form notes can be the difference between proving a claim and not.

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