



Tracing a Construction Claim

<u>Date</u>	<u>Venue</u>
Tuesday 4th December 2018	Asian International Arbitration Centre (AIAC)
<u>Timing</u>	Bangunan Sulaiman
Registration Opens: 4.00pm	Jalan Sultan Hishamuddin
Seminar: 4.30pm – 6.30pm	50000 Kuala Lumpur, Malaysia
<i>Followed by drinks at The Pavilion at AIAC</i>	Seminar Room 1 (Pavilion)

Most seminars on claims and dispute resolution throw many general principles at the audience which often do not make logical sense to someone who has been hard done by and cannot see why he has to face so many issues, hurdles and costs to seek justice.

Tracing a Construction Claim is intended to give insight into the various facets of a claim, as viewed by the key players in the journey from the occurrence of a claim event to the outcome of an arbitration award and its subsequent challenge, with attempts at mediation and adjudication in between.

This is an excellent opportunity for everyone involved in constructions disputes to gain an insight into every aspect of the journey from the inception of a claim through to finality. See the dispute from different eyes and learn what it takes to get a better result.

Contractor, Lawyer, Arbitral Institute, Adjudicator, Mediator, Arbitrator, Judge

For further information, and to book a place, please contact:

lighthouseclubkl@gmail.com

RM50 per person

PLEASE MAKE CHEQUE PAYABLE AND CROSSED TO: THE LIGHTHOUSE CLUB KUALA LUMPUR
HSBC Bank Malaysia Account: 303 421093 001. Alternatively, make a bank transfer and email your bank in details

The Lighthouse Club is the construction industry's charity, working to promote good fellowship in the construction industry and helping to support those who are less well off

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SCENARIO

The year is 2025

Malaysia has achieved Developed Status

KL's urbanisation continues to grow rapidly and infrastructure is now badly needed after the slow down of infrastructure projects in 2018 when the Pakatan Government expectedly won the general elections and cut back on spending in order to stabilise the nation's finances.

But after 7 years, Malaysia's financial position is back on track, not least due to proceeds from the sale of a luxury yacht, a private jet, a pink diamond and 200 Birkin handbags.

MRT 3 which had been put on hold has since been completed and MRT 8 is now in full swing, with concurrent tenders open for MRT 9, 10 and 11. Resources are under pressure as the High Speed Rail from KL – Singapore is also "back on track".

On MRT 8, **OutofPocket Sdn Bhd** a sub-contractor, has been awarded a sub-contract to build the reinforced concrete structure of an elevated station in the roundabout at the old railway station. Brief facts of the sub-contract

- priced on tender drawings issued by the Main Contractor, **PayYouTommorrow Sdn. Bhd.**
- tender time is very tight.
- Sub-Contractor did not take time to inspect and / or was not given the opportunity to inspect the Main Contract
- Sub-Contractor did not qualify any conditions – cannot as otherwise Main Contractor will not consider the tender

3 months into the 18 month sub-contract, the sub-contractor faced various difficulties

- The ground conditions are far worse than expected from the information available in the tender
- A digger accidentally snags some electricity cables and cut electricity off to the surrounding area including AIAC where several high value and high profile international arbitrations were being held

The Main Contract is on the AIAC 2023 Standard Form of Contract, and the Sub-Contract was on a Letter of Award incorporating the Main Contract on a back-to-back basis. And payment was on a pay-when-paid basis.





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The parties have agreed an escalated dispute resolution clause, with an Arbitrator to be appointed by AIAC in the absence of agreement, in accordance with the AIAC Arbitration Rules, 2022. CIPAA 2012 remains on force.

The Sub-Contractor needs claims help urgently...
Claims and delay analysis consultants are engaged
Lawyers are instructed

The AIAC' services are sought

A referral to adjudication is commenced seeking payment of additional costs

A mediator must be selected by the parties or appointed

The matter escalates to Arbitration

And then, for review on points of law and conduct of the proceedings, before the Court...

THE STAKEHOLDERS

Lighthouse Club Representative



Michael McIver is CEO of Plus Three Consultants, a company of professionals, created to advise and assist organisations within the Construction and Infrastructure Industry on complex commercial and contractual matters. Mike has over thirty years of professional experience with emphasis in the contractual and commercial aspects of building and civil engineering projects. A Past President and long serving member and sponsor of the Lighthouse Club, a Fellow of the Chartered Institute of Building, panel adjudicator with the Asian International Arbitration Centre, Mike has been appointed expert on numerous construction cases in court and arbitration and regularly sits as adjudicator.

The Narrator



Chen Han Toh focuses on the resolution of construction, engineering and commercial disputes. He is the Chair of the Society of Construction Law (Singapore), a Fellow of the Singapore Institute of Arbitrators, and is described by *Legal 500* as a *go-to individual for complex delay claims, who is unafraid to dive into details.*



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The Sub-Contractor



Oliver Wee is a Vice President of Master Builders Association Malaysia and the Contract and Practices Committee Chairman. Oliver is a Director / Contract Administrator at Pasukhas Construction Sdn Bhd. Oliver has been a tireless champion of contractor's rights during his many years' involvement with the Master Builders Association Malaysia and has organised many educational events for the benefit of contractor and sub-contractors, as well as have been an active representative voice of contractors in industry initiatives such as the promulgation of CIPAA 2012 and standard form contracts.

The Consultant



Rodney Martin is Chief Executive of the Charlton Martin Group. He is an accredited mediator, panel arbitrator and panel adjudicator with the Asian International Arbitration Centre and is an experienced speaker within the region. He is a Fellow of the Chartered Institute of Arbitrators as well as both the Malaysian and Singapore Institute of Arbitrators. Rodney has been appointed as Expert Witness on matters relating to quantum and has acted as lay advocate in arbitration proceedings. Rodney has also been appointed as an arbitrator, mediator, adjudicator and Dispute Adjudication Board member in Malaysia.

The Lawyer



Rajendra Navaratnam obtained his first degree in Electrical Engineering and started his career as an Engineer in the Power industry. He has worked in wide and various capacities in the then National Electricity Board of Malaysia, ranging from construction and maintenance of high voltage transmission lines and substations, test and instrument functions, culminating in managing international procurement contracts, for about 10 years before he retrained in law and started his legal career with Azman Davidson and Co in 1988. He became a Partner in 1993.

The Adjudicator



Tan Swee Im specialises in the construction, infrastructure and energy sectors. Her extensive experience ranges from the early procurement strategy stage, to contract drafting, advisory during the project life, through to dispute resolution. She is known for her logical and practical approach to matters, with a great ability to keep the big picture in mind without losing focus of the detail. Solution orientated without getting lost in the law, she is a sought after resource by industry stakeholders. She regularly sits as arbitrator and adjudicator, in addition to her many years as counsel in arbitrations and adjudications. Her appointments are institutional as well as party agreed.





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The Arbitral Institute



Tatiana Polevshchikova is a Senior International Case Counsel at the AIAC. She advises and assists in a wide variety of its projects, including administration of international and domestic disputes, legislative initiatives, development and implementation of ADR policies, revision of institutional rules and procedures and cross-institutional cooperation. Her experience includes administration of 400+ matters and AIAC exercising power as the default appointing authority. Before this she practiced in Russia for three years, obtained LLM in Negotiations and Dispute Resolution in Washington University in St. Louis (Fulbright Scholar) and interned at the Secretariat of the ICC International Court of Arbitration and Hong Kong International Arbitration Centre, which gave her a strong understanding of the institutional practices.

The Mediator



Denis Wilson is Adjunct Professor of Law (Administrative Law and ADR) Notre Dame University, Sydney Australia. A Barrister at Law in all jurisdictions in Australia and admitted as a foreign lawyer in the Singapore International Commercial Court. He is on several mediation panels including Dubai Mediation Centre and Florence Mediation Centre and has mediated in South East Asia and Australia. He lectures on mediation theory, skills and practice, is an IMI and CEDR accredited mediator and a FCI Arb. He is the Chairman and Managing Director of the International Alliance of Mediators and Arbitrators Pte Limited (Singapore).

The Arbitrator



The Hon Wayne Martin AC, Chief Justice of Western Australia was appointed on 1 May 2006 and throughout his tenure, among other things has been a strong advocate for the Court and broader judicial system, for access to justice, and for justice reinvestment. In July 2018 he retired from the Supreme Court. The Chief Justice has also vocally supported those most disenfranchised by issues that impinge on access to justice, placing an essential focus on the unacceptable and disproportionate rates of incarceration of indigenous peoples, and speaking against mandatory sentencing.

The Judge



YA Dato' Mary Lim Thiam Suan, Court of Appeal Judge. Her Ladyship was appointed as Judicial Commissioner at the Kuala Lumpur High Court in 2009 and as High Court Judge at the Kuala Lumpur High Court (Commercial) in 2010. Her Ladyship served as Construction High Court Judge at the Kuala Lumpur High Court (Construction) in 2013 and in 2014 delivered the ground breaking judgment on CIPAA of UDA Holdings Bhd v Bisraya Construction Sdn Bhd & Anor which paved the way for CIPAA to be utilised by the many unpaid contractors. Her Ladyship was appointed as Court of Appeal Judge on 21st March 2016 until now.

