

## Examples of Work Undertaken

- **Construction and Engineering**
- **Defective Buildings and Products**
- **Professional Liability**
- **Insolvency**
- **Property Use and Development**
- **Commercial and Contractual Disputes**

### Construction, Energy and Engineering

Andrew has expertise and experience of disputes involving many facets of domestic and international substantial building and civil engineering main contracts, including M&E works, as well as subcontracts (and other contracts for example insurance, professional engagements and construction bonds) that arise out of them. His work has involved many types of construction and engineering projects including bridges, highways, pipelines, harbour facilities, tunnels, and infrastructure projects, commercial buildings (e.g. offices, shopping centres, galleries, sports stadia), apartment and housing developments / dwellings. Recent cases include:

- Acting for (Advising and drafting proceedings) scores of new dwelling owners in multi-party litigation whose properties' foundations were defectively designed and constructed (v Builder, the NHBC and NHBC Building Control);
- Defending local authority in spurious claim by administrator's agent (a firm of Quantity Surveyors) upon the insolvency of a major Road refurbishment contractor;
- Advising international JV contractors on very substantial international "live" construction and energy projects worldwide, concerning FIDIC (red and yellow) book contracts (as appropriate);
- Advising on time (delay & disruption), liquidated damages and compensation claims on tallest building in the world costing US\$1.0+Billions (Burj Khalifa, Dubai);
- Ditto multi-million US\$ university project, Cairo;
- Ditto Cogen power plant Singapore;
- Ditto infrastructure and tunnelling project Abu Dhabi;
- Ditto Nuclear power plants Abu Dhabi;
- Acting (Advising, Drafting and Representation) as counsel in 8 day trial involving construction industry delay and disruption and direct loss and / or expense claims involving the construction of hotel between a main contractor and bathroom pod supplier;
- Advising local authority concerning the interpretation of various provisions of the ICE contract;
- Acting (advising, drafting and representing) as counsel in 9 day construction defects litigation;

- Acting as mediator in multi-party dispute involving variations and breach of contract claims for EOT /Delay Damages and additional monies;
- Part 24 CPR Applications: Applying to enforce Part II 1996 HGCRA Adjudicators' decisions.
- Acting for Owner in a final account/defects dispute in a National Park development;
- Advising house building contractors concerning their rights under NHBC contracts and guarantees entered into.

## **Common law claims and claims under construction contracts / sub-contracts**

- Advising in relation to appropriate forum for disputes and drafting submissions in urgent adjudication references (for Employers, main and sub contractors), including representation in enforcement proceedings against parties who still refuse to pay, pursuant to adjudicators' decisions (one included a forty point unsuccessful defence).
- Advising and representing a subcontractor (including on appeal) in relation to the claimed incorporation of an arbitration clause (contained in the main contract) into the subcontract
- Acting as an adjudicator and as a mediator in construction and engineering disputes (including international disputes) mainly involving main contractors and subcontractors, and involving defective works cross claims, final accounts, (including variations), damages for delay and disruption and time claims.
- Advising in relation to the preparation of direct loss and / or expense and damages claims for delay and disruption and extensions of time claims for main contractors and subcontractors both domestically and internationally.
- Drafting / Amending standard terms of business in the construction industry including standard forms of building contracts, and subcontracts.
- Advising Architects and Engineers in relation to collateral warranties and novation agreements.
- Advising in relation to the meaning of "best endeavours" under JCT 98 clause 25.4.
- Advising in relation to an arbitration involving steelwork carried out by a subcontractor on the Sage building in Newcastle upon Tyne and in relation to a new airport in Barbados.
- Advising a utilities contractor concerning entering into substantial nationwide contracts as a result of alleged misrepresentations.
- Advising sub-contractors, suppliers, employers and main contractors in relation to the interpretation of ad hoc and standard forms of construction contracts and subcontracts including developers agreements.
- Advising, drafting and representing tile installer in an arbitration, in relation to a pre statutory adjudication final account dispute.
- Advising and representing specialist car park M&E air extraction contractor in final account dispute with main contractor and resisting claims from an electrical subcontractor including claims for direct loss and / or expense and extensions of time (Arsenal on the Move project).

## **Further Work in the field of Defective Buildings and Products**

- Advising drafting and representing building owner in defective floor, wall and roof works under 1998 Design and Build contract.
- Advising and representing a main contractor concerning defects in a surface water outfall in the North Sea.
- Advising and representing European Industrial / Transportation business in substantial r.c. floor slab and sub floor geotechnical dispute in Greater Manchester.
- Advising and representing clients in Defective works claims involving breach of the Building Regulations and Approved Documents.
- Representing many property owners in relation to subsidence caused by tunneling by a utilities company and a case involving damages for breach of an insurance contract brought by apartment owners whose properties were sinking. Advised in many cases concerning construction Insurance claims including the interpretation of the Insurance provisions of standard forms of construction contracts and subcontracts.
- Claims involving NHBC insurance schemes and claims against those Insurers.
- Advising, drafting proceedings, and representing many householders in claims against national house builders concerning the quality of their dwellings including e.g. sound proofing and subsidence.
- Advising, drafting proceedings and representing clients in air handling equipment dispute.
- Advising a local authority in relation to defective works at a leading shopping centre in Newcastle upon Tyne.
- Advising and drafting proceedings and representing Employers concerning properties built to the wrong size and at the wrong datum and in relation to defects.
- Assisting leading counsel advise in relation to a substantial tramways infrastructure contract in Hong Kong.
- Advising a contractor in a contractual claim and potential adjudication, where the Proper law of the contract was English law and the works were in the Republic of Ireland.
- Advising in "due diligence" concerning the sale of a substantial Dutch construction and civil engineering contractor owned by a UK Plc, concerning substantial civil engineering projects and their viability in The Netherlands and in Hong Kong.

## **Andrew's recent cases involving Professional Liability**

- Advising upon and drafting claim against Architects and QS on a design and build commercial development project involving alleged negligent certification;
- Advising, drafting proceedings and representing householders in mediation (And in court) in professional liability claims against architects (involving

certification of houses for the purposes of the Council of Mortgage lenders PCC and JCT certificates);

- Advising on a potential claim against chartered surveyor who carried out the highest level of survey and inspection of a substantial property;
- Advising and drafting claims against Chartered surveyors who carried out the middle level of inspection of a modest properties (normally involving overvaluations due to failing to observe, or report on defects);
- Acting in a case involving camouflaged defects missed by a chartered surveyor involving a substantial property;
- Advising in claims against chartered surveyor, main contractor, subcontractor and architects concerning barn conversion projects with latent defects.
- Defending Engineering consultancy from claim by property owner for negligent design;

## **Further Work in the Field of Professional Liability**

Advising, drafting proceedings and representing parties in professional negligence claims and fee disputes against construction professionals including:

- chartered quantity surveyors (e.g. negligent cost advice)
- chartered architects (e.g. negligent design, contract administration, certification and inspections)
- chartered building surveyors and g.p. surveyors (negligent surveys and valuations including failing to follow the trail on suspicion.)
- chartered civil and structural engineers (e.g. negligent geotechnical advice)
- design and build contractors (e.g. negligent design)
- subcontractors (negligent design)
- project managers (negligent cost advice and administration)

## **Andrew's recent work involving Insolvency**

- Acting on behalf of officeholders of insolvent company (in Administrative Receivership) for reparation against demolition contractor who carried out their work so badly that the site was contaminated with asbestos and needed substantial remediation;
- Advising contractors on restructuring proposals offered by the Emirate's Developer/Employer in Dubai (Nahkeel) including Sukuuk Bonds;
- Advising international contractor in relation to responsibilities under various commercial JV agreements and advising in relation to the contents of future JV, and subcontract agreements;
- Acting for (Advising) an insolvent contractor (In administration) against subcontractor for defectively carried out works;
- Advising JV contractor of the meaning of international performance bond entered into with client in UAE;
- Ditto with Egyptian subcontractor (New University Cairo);

- Defending and prosecuting commercial claims involving insolvency on construction projects including the timing of insolvency issues and in connection with construction adjudication;
- Advising suppliers concerning Retention of Title clauses in contracts for the supply of goods when recipient has become insolvent;
- A further recent insolvency claim Andrew Advised on and appeared in the High Court in Manchester involved acting on behalf of a construction employer, who alleged bad faith against an administrator appointed by a debenture holder.
- Presented and defended Bankruptcy petitions and winding up petitions including annulment/setting aside applications;

### **Further work in the field of Insolvency**

- Advising and drafting proceedings having been instructed by an Insolvency practitioner against a main contractor who refused to make further payments to a company, upon insolvency, despite substantial unpaid work having been done. (This case was done on a Conditional Fee Arrangement with an appropriate uplift commensurate with the degree of difficulty involved).
- Advising and representing liquidators and other Insolvency Practitioners in connection with sums due under standard forms of main and sub-contracts including JCT, ICE, DOM1, etc to insolvent businesses including claims against sureties.
- Advising banks and businesses in claims involving debentures.
- Advising in insolvency claims in adjudication and enforcement proceedings.

### **Andrew's recent Property Use and Development Cases.**

- Advising and representing parties concerning boundary and RoW disputes involving registered and unregistered land including complex land registry appeal from HM Land Registry Adjudicator's decision, a case involving riparian owners and fishing rights (as well as rights of way and rights e.g. under s.62 of the LPA) and a public right of way claim in a Public Inquiry;
- Acting (Advising, Drafting and Representation) as counsel in 10 day 1996 Act (dilapidation/commercial) Arbitration (including subsequently successfully resisting QC's Applications to set aside the Arbitrator's award, on the (wrongly) alleged basis it was procured by fraud);
- Successfully applied to strike out on the first day of the trial a substantial part of Claimant's claim in a bitter dispute between the buyer and seller of a development property on the basis of prospects given the evidence available and the previous Court Orders. No appeal;
- Advising landowners and developer's concerning development land and "Overage" provisions and drafting the same;
- Advising Home owners concerning conveyancing dispute/misrepresentation involving historical flooding incidents;
- Acting for commercial warehousing landlord in a substantial rent review dispute involving two connecting properties with two leases;

- Advising, drafting and representing a Claimant who was met with a claim for damages that the Claimant had abandoned a house which resulted - prior to the limitation period expiring - in its demolition by the next door neighbour. (The judge exactly agreed with the claimant's (wopsa2c) damages figure suggested in order to settle the dispute, with significant adverse cost consequences for the defendant.
- Following a five day boundary dispute trial, successfully applying to court to commit to prison a pensioner who was persistently in breach of the High Court's Order concerning the location of the boundary including advising and drafting all the court based documents (a case that attracted the attention of national newspapers due to the pensioner breaking her neighbours wrist with a spade);
- Acting (advising, drafting and representing) as counsel in a contested right to light claim before the VC;
- Applying (advising, drafting and representing) to set aside an Arbitrator's Rent review Award (concerning a well known nightclub property) under the Arbitration Act 1996 ;
- Presiding and drafting a binding Award as sole Arbitrator in chartered surveyor's fee dispute arising out of a contract for sale and compulsory purchase of commercial premises;
- Advising and drafting particulars of claim in a claim against a Lloyd's underwriter and against an insurance broker;
- Acting (Advising and drafting POC) in dilapidations claims against outgoing commercial tenants;
- Advising householders concerning their rights under NHBC insurance policies.
- Advising parties concerning nuisance and trespass arising out of non-use of the Party Wall Act.

## **Some further work in the field of Property Use and Development**

- Advising and representing a Development Agency in relation to "overage" arrangement in a binding expert determination against a European contractor for a major superstore.
- Advising drafting and representing British Railways Board in a land "theft" attempt by adjoining owners and advising a developer concerning a claim based upon the commercial value of land "stolen" and built on by it.
- Injunctive relief to prevent constructing on land and under the adjoining building owner's building.
- Advising, drafting proceedings, and representing a substantial Tenant in a 5 day 1996 Act dilapidations' arbitration including successfully represented Tenant in challenge by Sub Tenant under s. 68 of the AA96 against both leading and junior counsel who (unsuccessfully) claimed the Arbitrator's Award was procured by fraud. Successful indemnity costs application in the arbitration.

- Advising, drafting proceedings and representing developers and others in development issues including, sitting tenants, easements (right to light and right of way), and party wall disputes.
- Advising Landlord in a breach of covenant claim by a tenant in a 1954 Act regulated tenancy agreement.
- Advising and drafting proceedings against a householder who undermined a bridge structure and caused significant damage thereto (as well as causing significant delay and disruption to motorists and surrounding businesses).
- Several Party Wall Act disputes including one substantial dispute involving a hotelier and developer.

## **Andrew's recent Commercial and Contractual Cases**

- Acting for Claimants in a substantial partnership dispute involving a substantial derelict property in the North West and Middle Eastern family members.
- Acting as counsel in 5 day trial commercial dispute between directors / shareholders involving quasi-partnerships and s. 459 Companies Act 1985 (as it then was!);
- Advising and representing Defendant in misrepresentation claim involving commercial land.
- Presiding and drafting a binding Award as sole Arbitrator in Lloyds' names commercial insurance arbitration;
- Drafting all types of applications used in court and/or commercial arbitrations (eg strike out, interim injunctions, freezing and search and seizure injunctions, security for costs and seeking interim payments).

## **Further work in the field of Commercial & Contractual Disputes**

- Advising and representing contractors in claims under a construction bonds and guarantees.
- Many insurance cases for which see above.
- Advising in a dispute involving web sites and the internet.
- Obtaining injunctive relief in relation to the disconnection of internet services to a wholesaler who supplied to retailers.
- Many breach of contract disputes involving plant, machinery and vehicles (including finance agreements) including defects allegations and allegations of delay and disruption and reduced performance, e.g. that the plant and machinery fails to perform as represented. One substantial claim in Pakistan involved many millions of US\$.
- Disputes involving many aspects of commercial and contract law including:
  - The phenomena of agreement i.e. is there a contract and if so what are its terms (including the incorporation of arbitration clauses).
  - Restitutionary claims including subrogation.

- Allegations of vitiating factors including all aspects of Misrepresentation, undue influence and duress.
  - Disputes involving allegations of illegality and non est factum.
  - Disputes involving difficult aspects of the measure and quantum of damages.
- Sale and carriage of Goods disputes.
- Franchise and other ad hoc contract disputes