surely look for his future in Europe, but it needs a knowledge of another European language and that long awaited IQS/RICS amalgamation. Last but not least the QS needs to conform with the other land's laws, rules, regulations, standards and way of life.

Yours faithfully,

Antweiler, West Germany — M. J. Baker, AIQS

INSTITUTE DIARY

Institute Annual Dinner

Members are again reminded that the form of the Institute's major social function in London has this year been changed. Instead of the dinner dances of previous years a Dinner will be held at the Plaisterers Hall, 1 London Wall, London EC2 5UJ, on Friday, 2nd November 1979. Members will be permitted to bring guests, including ladies. The dress will be dinner jackets.

Tickets for the dinner will be £20 per person. However as these will include pre-dinner drinks, wine, brandy or port and post dinner drinks, the price compares favourably with those for the 1978 Dinner Dance which, at £13.75, did not include drinks at all.

The Plaisterers' Hall is, of course, the hall of the Worshipful Company of Plaisterers incorporated in 1501. The Worshipful Company's first known hall was built in 1556 but their present magnificent hall was built in 1972.

In view of the attractive nature of this new venue for the Institute's major social function and the fact that seating is limited to 270, members are advised to make early application for tickets which may be ordered from the Secretary at any time. A formal booking form will be enclosed with the August issue of the journal.

The Branches

REPORT FROM THE BRANCHES—SOUTH OF ENGLAND BRANCH

Officers

CHAIRMAN	J. Brace, AIQS
SECRETARY	M. D. Hobby, AIQS
TREASURER	M. J. H. Hathaway, AIQS

CLAIMS - PREVENTION AND CURE

By J. M. Lenton

Text of a talk by Jeremy M. Lenton given at a meeting arranged jointly by the South of England Branch and the local members of the IOB.

I thought I would start by reading you a short article that appeared in the building press several years ago, courtesy of Sir Geoffrey Howe and Mr. Edward du Cann.

"And the Lord said unto Noah, 'where is the ark which I have commanded thee to build?"
And Noah said unto the Lord, 'Verily, I have three carpenters off sick. The supplier hath let me down – yea, even though the girder wood hath been on order for nigh on twelve months.'
And God said unto Noah, 'I want that ark finished even after seven days and seven nights.'
And Noah said, 'Lord, it will be so.'
And it was not so.
And the Lord saith, 'What seemeth to be the trouble this time?'
Noah saith unto the Lord, 'My sub-contractors hath gone bankrupt; the pitch which thou needest me to put on the outside and on the inside of the ark has not arrived, and Shem, my son who helpeth me on the ark side of the business hath formed a pop group with his two brothers.'
And the Lord grew angry and saith, 'And what about the unicorns and the fowls of the air?'
And Noah rubbed his eyes and wept, saying, 'Lord, unicorns are a discontinued line; thou canst not get them for love nor money and it has just been said unto me that the fowls of the air are sold only in half-dozens. Lord, Thou knowst how it is.'
And the Lord, in His wisdom, said, 'Noah, my son, why else dost thou think I have caused a flood to descend upon the earth?"

In a light-hearted way this story does illustrate one aspect of the building industry that bedevils my subject for tonight. It also helps to explain some of the prejudice and emotion, on both sides of the fence, that can surround the word claim in building. For what is seen on the one hand as a fully justified right to a calculated loss, is often seen on the other as simply a calculated liberty.

It's my belief that both these attitudes, when dogmatically applied, are equally responsible for creating division in the industry and preventing the one thing that both consultant and contractor should really be seeking in a claims situation, that is an equitable settlement within the terms of the contract. It does not help to consider whether those terms are themselves fair to both sides. Duncan Wallace argues strongly in Hudsons and elsewhere that the standard forms of Contract prepared by the Joint Contracts Tribunal are biased in favour of the contractor – I quite agree, but I feel such a bias is justified since it is the Contractor who inherently places capital and resources at risk and, to a degree, at the mercy of the Employer and his consultants.

For Mr. Wallace, however, to go further and say that an Architect must soon be at risk of an action for negligence for recommending these forms to his Client, and to publish such an opinion in a textbook of the authority of Hudson's is dangerous nonsense.

Firstly, Mr. Wallace and most others connected with the administration of building contracts (– and I'm restricting my comments generally to the JCT main contract firms for tonight –) must surely realise that the present contract form has been determined since 1963, by a Joint Tribunal consisting of six, and more recently seven organisations representing employers, if one includes the RICS in this context, as against two contracting organisations and one for subcontractors. Mr. Wallace seems to credit contractors with a power of persuasion out of all proportion to their representation on the Tribunal.

Secondly, and I believe more importantly, the beliefs of Mr. Wallace, and any who agree with him, amount virtually to "incitement to violence" in contractual, and therefore claims terms.

Some of the strongest opposition I have experienced when presenting claims for contractors, and some of the hardest to resolve, has been based not on what the contract does say, but on one side's interpretation of what it should say.

In one case recently a contractor, after being in dispute with the Architect for several months over what he saw as persistent undercertification, withdrew from a prestige housing conversion, and then approached us at the Building Advisory Service because, to his surprise, the Employer determined his contract. I had to advise him that, although he might be able to succeed in an action for damages for the undercertification, he had no defence to the Employer's determination, since matters were nowhere near the stage when he could have been entitled to withdraw from site. However, so convinced was he of the moral justification for his case, that against my advice and that of his solicitors, he tried to obtain funds to fight the case by charging his personal property as security. Fortunately, his financial position forced him to concede before too much damage was done.

In another instance an architect, who was convinced, with some justification, that a contractor had not completed a housing contract as soon as he could, issued a clause 22 certificate, stating when the Works ought to have been completed, and the Local Authority Employer then deducted liquidated damages. But this was despite their initial failure to give full possession of the site, which was never disputed, which caused considerable delay, contractually put time for completion "at large", and made any deduction of liquidated damages wrongful. Whilst this case was probably also an example of the unfortunate interference of lay committees with the work of technical and professional Council officers, I was still told in as many words that the deduction was made because the local authority thought the contractor ought to be liable. I advised him to seek a High Court Summons for summary judgement which he obtained, finally recovering all the liquidated damages, together with costs and interest.

These are fairly extreme examples, but they do show why consultants and contractors alike should approach any potential dispute analytically and try to divorce themselves from a personal sense of the rights or wrongs of a particular argument. You may trust the lawyers to find more than enough shades of grey just in the questions "what does it say", and "what does it mean", without adding to our problems by asking "what did we mean it to say"?

In recent years there has grown up a wealth of commentators on the forms of building contract who are only too willing, like myself to try and provide the answers to these questions. Evidently this growth must reflect the drastic changes in the economic climate on both sides of the industry. Indeed the organisation I represent the Building Advisory Service, although founded almost 25 years ago as the consultancy division of the NFBTE – and started interestingly enough on funds from American Marshall Aid – has only had a specific claims and disputes section since 1973. Yet despite this obviously intense demand it seems to me that the "prevention" of claims I referred to at the beginning of this talk has been neglected by comparison with their "cure".

I was talking to a contractor from Cumbria recently about the need he felt to spend considerable time and money in training his staff and himself, to become much more contractually aware through having to treat claims and disputes as major diseases of the contracting body, rather than the occasional discomforting side effects they once were. As a single company, a single unit in the building process, no doubt his attitude was that of a prudent man facing up to the economic facts of life. But as an industry, I suggest we have our priorities wrong. Consider how much of your own trade and professional reading concerns contract clauses, interpretations and so on, and by comparison, how much, if any, you can remember on, for instance, programming, planning and ordering methods, proposed communications patterns between the whole building team or even examination of the scope of clause II (4) in valuing variations, so as to avoid entirely the need for many claims under clause II (6).

Perhaps there is no incentive to avoid claims, but I don't believe that is really the case. A short time ago I was concerned with an arbitration on a large housing development in Yorkshire. Three years after the dispute started it reached the hearing, which was set down for three weeks. The claim was worth about £90,000 at the outset. The case was settled at the end of the first day, when Counsel for the contractor had not even finished the opening address, for £70,000 plus interest and costs – the costs worked out to about £22,000 for each side.

For the contractor, who after taxing could expect to recover about three quarters of his actual costs, this meant he would have been better off, allowing for inflation, to accept £50,000 – that is about half his original claim – if it had been offered at the outset. On the other hand the Employer, actually a Housing Association funded by the DoE, spent the equivalent of £135,000 on the case, and even allowing for inflation would have been marginally better off to have paid the full claim of £90,000 at the outset.

This nonsensical situation, which is common on all but the largest claims, is why I feel much greater attention should be paid to this "anti-claims" work than is presently the case and it must inevitably be spearheaded by us, as advisors to the Contractors' Federation, and by you as the professional bodies in the industry.

A common example of the "avoidable claim" that I'm referring to, and one I repeatedly encounter, is generated by late variations. Contractors and consultants ought to hammer home to the building Employer the effect of variations late in a contract, particularly when they are, as often, numerous minor changes and extras to finishings. It is increasingly difficult for a contractor approaching completion to absorb variations, even relatively minor ones, without a disproportionate effect on progress and therefore on costs. Often the contractor would rather not have the extra work at all, because of the disruption that goes with it, whilst the Employer would

usually get a cheaper, quicker completion overall by having the alterations made "en bloc" after Practical Completion.

Another situation where co-operation can stop claims at source is in the application of clause II (4) in its widest and, I believe, proper scope, to the valuation of variations. Take the example of a high density housing development, with brick garden walls 1.2 metres high. The houses are built in clusters with pathways and paved areas between so that the Architect decides on site to raise certain walls to 2 metres for greater privacy. Some of the factors which ought to be taken into account, but very often are not, when the QS values the variation are the obvious need for staging for brickies to lay at the higher level, and the reduction in their output which commonly follows from working off boards. Now you may say the SMM does not differentiate heights of brickwork and nor does it – but even if the Bill rate is therefore taken as some kind of average, it can only be an average of the quantities originally measured. The variation I have taken as an example would affect the "mix" of rates for different lifts of brickwork used to calculate that average; thus the Bill rate still is not directly applicable.

Clause II (4) (b) requires the Quantity Surveyor, and I emphasise requires rather than permits, requires the QS to use Bill rates simply as a basis for valuation when the character of the work or the conditions it is done in, alters. Therefore, on a fixed price contract with a priced item in the prelims for the deletion of fluctuations, variations must be priced at current cost and not at bill rate. Finally, on this clause, consideration should be given to the question of general preliminaries. It may be difficult when faced with a number of minor instructions to assess cost effect, but I suggest that a running analysis of approximate net labour content, that is after adds and omits, would be a valid way, at least initially, to value a proportion of prelims to each extra variation. At the very least this should reduce the scope of a later dispute and it is clearly the case that two parties are far more likely to settle rather than fight a dispute, the narrower it becomes.

But probably the greatest scope to avoid claims situations lies in the contractors hands in constructive and informative pre-planning and programming. Detailed programmes are vital to smooth running contracts – the Architect should know when instructions and nominations are required and notes should be made of particular problems likely to arise, perhaps in materials known to be on long delivery or in a window sub-contractor who will commonly require ten weeks from order to fabrication so that he can produce and have approved working drawings. As some of you may know, there have been discussions at Contracts Committee level on a proposal to introduce the programme into the JCT form as a binding contract document – personally I cannot stress too heavily the value I place on efficient programming. If fully used by both sides it promotes efficiency in the contract running itself, which must be to everyone's advantage, and it is the first key we turn to, in comparing actual and anticipated progress if problems do arise. But now I've got to concede that arise they do; though much to my bank manager's relief, claims prevention is easier to preach than to practise. So for the rest of the time I have left to me I should like to look at the other side of the coin, at "cure", as it were, and I propose to do so in three stages – firstly when can claims be made, secondly how they should be made and finally what they can be made for.

To illustrate when they can be made I should like to run briefly through the most relevant contract clauses, but I shall only pick out those parts which I've found to cause the commonest problems. However, I would emphasise that contract terms lie in a wider framework of common law and should not be considered in isolation in practice.

Clause 3 (4) puts the onus squarely on the Architect to provide details to the Contractor to enable him to carry out the Works as and when from time to time may be necessary – if the contractor has requested the details in writing he can of course obtain an extension of time under clause 23 and loss and expense under clause 24 if appropriate. However, even if he hasn't made a request, this clause still leaves the liability with the Employer and indeed if the information is not provided as required, and delay is caused, damages could be claimed by the Contractor for breach of contract and time could be put "at large" so that the employer loses all future right to liquidated damages.

Clause 4 (1) in turn puts the onus on the Contractor to ensure that the Works comply with all applicable statutory obligations such as Town and Country Planning Acts, Building Regulation, Public Health Acts and so on. Contractors beware this one – although you can get payment through this clause for any variation necessary to make the designed works comply, it is doubtful if this can include for opening up or rebuilding work already completed wrongly.

Clause II (6) is, with clause 24 (I) the principal monetary claims in the contract. It also introduces the idea of notices. A written notice made by the Contractor within a reasonable time of the loss and expense being incurred is a condition precedent to the operation of this clause. Without it no loss or expense can theoretically be recovered. It is interesting to notice that it must be made in writing by the Contractor – a contractor's statement recorded in Site Minutes prepared by the Architect has been held not to comply. In fact this condition is robbed of most of its bite by the word "reasonable". Arbitrator's interpretation of the word is generally unknown because of course arbitrations are private hearings and are not reported. The courts however, construe the word widely on the rare occasions it comes before them and I know of no case where a claim has been defeated in litigation solely on those grounds, providing the notice was given before the final certificate. I should like to leave aside what loss and expense actually is for the moment and return to it when considering what claims can be made for.

If the Architect has received notice, and in his opinion loss and expense has been caused, then he must ascertain it, or instruct the QS to do so. This is a mandatory duty and the contractor has no obligation to quantify the loss at any stage, although naturally it is prudent for him to help the consultants to do so. The amount ascertained shall be added to the amount due under the next interim certificate; in other words, like fluctuations under clause 31 retention should not be deducted from loss and expense.

Under clause 12 (I), save for setting out the quality and quantity of the Works, nothing in the Bills can override or modify the Conditions of contract.

Therefore a prelims clause such as "wherever possible dimensioned drawings are to be checked on site before work is put in hand and no claim for loss and expense occasioned thereby will be admitted" are of no effect whatsoever.

Perhaps in passing I could just mention clauses 15 and 16. The Employers' rights during the Defects Liability Period are simply to have defects put right which were caused by work or materials not being in accordance with the contract. It is not a maintenance period and such items as plaster, cracking on stud partition junctions on a conversion contract where the floors can be expected to move under new loads, are not the

Contractor's liability. Also there is no inherent right for the Architect to issue variations after Practical Completion and the Contractor is not obliged to carry them out, either at Bill rates or at all.

Under clause 21 (I) the Contractor is entitled to possession of the site on the Date for Possession. Except when working in occupied premises or when partial possession is made a contract term by separate written amendment, possession can be taken to mean full, free and unrestricted possession. If the Contractor does not get it, and actual delay results, damages can be claimed from the Employer and time can become "at large", thus again losing the Employer all future right to deduct liquidated damages.

The contractor "shall" complete the Works by the date for completion but he can if he wishes complete them much earlier. However, contractors should bear in mind that building owners may have a strict programme for capital expenditure or that consultants' work loads may prevent them giving adequate attention to a job running considerably ahead of programme, though once again realistic programming, communicated early, should iron that one out. Even so, if a contractor trying to finish early is delayed by lack of information from the consultants, he has no recourse either for time or money, since clauses 23 and 24 both refer to reasonably timed applications for instructions having regard to the Date for Completion.

Under sub-clause (2) of clause 21, the Architect can postpone any work – however, he cannot postpone possession, nor can he recover the employers rights when possession is not given, by postponing the works affected.

Little need be said about clause 22 except that an Architect's certificate stating when the Works ought to have been completed, is clearly a condition precedent to the Employer deducting any liquidated damages. Also it is interesting that to my knowledge, no-one has succeeded in overturning a liquidated damages deduction under the '63 edition on the grounds that it was a penalty.

In regard to clause 23, I have already spoken about notices and all those comments are equally applicable here. I would just stress that the Contractor in giving notice is only required to notify the Architect of the cause of delay to progress of the Works. The ball is then in the Architect's court to estimate the effect upon completion and make a written extension accordingly. The contractor need not quantify the effect of delay nor refer to the clause it is claimed under, though again, it is prudent to do so. A contractor must give the Architect notice of all causes of delay to progress, even if some do not warrant an extension of time. Clearly for an Architect to assess the effect of delays to completion he needs to know about all delays, including the Contractor's own default. Going on to one or two particular points, exceptionally inclement weather means just that – exceptional, compared with the average for that site and time of year, not exceptional compared with the Contracts Director's last holiday in Bermuda. The contractor is not entitled to an extension for every day lost due to bad weather.

The contractor is also not entitled to an extension of time for delay caused by a nominated sub-contractor who completes his work but then finds it defective and remedial work delays the main contract. The courts have held that the words "delay on the part of" in the JCT form, can only apply during the currency of the sub-contract works.

However, the same problem of strict wording does not arise with artists and tradesmen, since if their particular delay does not fall within this clause they are in any event agents of the Employer causing delay and so would in turn cause a breach of contract, again putting time at large.

For those of you who have stuck with me, on sub-clause (i), delay due to opening up and testing, John Sims wrote in Building, four years ago, that an extension must be granted "if and only if the work or materials tested prove to be in accordance with the contract". With respect this interpretation puts the burden of proof entirely the wrong way round. The architect must grant an extension unless testing proves the work is not in accordance with the contract – a much more daunting task.

Before leaving clause 23 it is well worth noting that what it does not say is almost as important as what it does. As you probably know, the Government form GC/Works/1 allowed extensions of time for any default on the part of the Authority but the JCT form has no comparable provision for the Employer. Common defaults, as I have mentioned already, can be failure to give full possession, delay by tradesmen working as agents of the Employer, or perhaps delay by a Local Authority in providing materials such as school equipment, under direct supply. It is a long established point of law going back to 1838, that if an Employer causes delay but there is no appropriate extension of time clause, as in the cases I mentioned, then time becomes "at large", that is the contractor is bound only by the overriding Common Law requirement, to complete within a "reasonable" time. Any liquidated damages clause is automatically invalid and the Employer can only claim the damages he can prove from the reasonable completion date.

Thus an architect or quantity surveyor who mistakenly values loss arising from such a delay under clauses II (6) or 24 (I) in fact has no right to do so and might even be open to a claim of negligence from the Employer, since the loss would be damages for breach of the contract, not loss and expense payable within it. More arguably an Architect issuing a clause 22 certificate stating when the works ought to have been completed, or even continuing to make extensions of time after such a delay, could be in the same position.

Clause 24, although fundamentally important to monetary claims, has mostly been covered by my combined comments on clauses 11 and 23. Even so, it is still worth noting that sub-clause (2) expressly retains the contractor's rights to litigation, together with all his other rights and remedies. Also that clauses 11, 23, and 24 all read quite independently – loss and expense is no way relys on extensions of time.

On specific clauses, I'm left to comment only on clause 30 concerning certificates and the Bill of Variations – consultant quantity surveyors probably find more obligations on them under this clause than in the whole of the rest of the contract. I suggest that the next time you have reason to look at this clause, you read most carefully the distinctions between the discretionary "may" and the mandatory "shall".

Indirectly the growth of local authority auditors has a lot to answer for in this area of contract administration. If you are concerned with local authority contracts do please note that it is a breach to hold any so-called special retention pending audit, and it is a breach for the Bill of Variations or the Final Certificate to be delayed because of audit – or indeed for any other reason except the Contractor's failure to provide necessary documents.

Well, so much for the bones of when claims can be made – now to look briefly at how to make them.

There must be as many ways of presenting claims as there are people preparing them, though perhaps with a slight bias to the style set out in Reginald Wood's book, Building and Civil Engineering Claims – which I strongly recommend if you

have not read it. My own view is that a claim should be closely and carefully reasoned and easily readable, with a strong "story" line. It is usually necessary to examine a case in considerable detail to be able to fine it down in this way, but I think that the verbose approach of trying to include every possible factor on the job, whether directly relevant or not, is self-defeating – the consultant will be understandably reluctant to sort the wheat from so much chaff.

I would always try to include a programme showing the actual and anticipated progress of the job. As I've already said, this is often the cornerstone to a sound understanding of what happens on a contract, from both points of view.

A common problem this highlights is concurrency of several delays and there is no easy answer when trying to established who is liable for what. A sort of critical path analysis in reverse is the only sure way of establishing where the costs should lie, but the approach must really depend on the circumstances. If faced with two concurrent delays, say one caused by a sub-contractor and one by the Employer, it is perfectly fair game for a contractor who genuinely cannot decide which was critical to run claims for the whole of his loss against both – needless to say he can only recover the money once. However, the two recipients, if they realise what is happening, tend to play a game of "he who hesitates is probably better off in the end".

Finally, on presentation I am sure all consultants would plead for clear, typed and preferably bound claims that stay flat when you open them. A small point maybe but a claim that jumps off the table and snaps at the Architect's fingers every time he reaches out for a file to corroborate it, starts off on the wrong foot.

Enough then on what a claim should look like and why it has been presented, what about the crunch question – loss and expense, what is it and how should it be calculated.

First there is no easy definition for loss and expense though the courts do seem to treat it as just another way of describing damages. The accepted definition of those is found in the case of Hadley and Baxendale, dating from 1854. That case established that damages fell into two categories, firstly the loss suffered by the injured party in the normal nature of events from the breach and secondly loss peculiar to the particular circumstances and outside the normal course of things, provided that such a special loss was in the contemplation of the parties at the time of the contract, as the likely result of a breach of it. If that all sounds rather a mouthful it can be summed up by saying that the measure of loss and expense is the costs you would naturally expect to flow from the act or breach in question, plus those you would not normally expect, but which you had special fore-knowledge of when making the contract. The object at the end of the day should be to leave the injured party in the same financial position he would have been in if the act or breach had not occurred. I think examples provide the clearest explanation so I will run briefly through the commonest heads of claim.

Prolongation of Preliminaries

Actually, there is no such thing. Preliminaries are estimated figures and can include or exclude items of plant and indeed many other items depending on the tendering policy of the contractor. They are therefore no measure of a claim for actual loss which is the thing we should always be trying to identify. This claim is really for on-site establishment costs, or on-site overheads, as they may be called and should be the easiest of actual costs to obtain from the Contractor's prime cost records, although non-recurrent costs must be excluded. However it should be borne in mind that the costs to be claimed are those injected at the time of delay, not simply those incurred in the overrun after the original completion date.

So far as the treatment of individual site costs is concerned, such things as site staff, hired plant, temporary services and rates are straightforward enough. The treatment of contractors own plant and hutting really depends on the way these are allocated in the contractor's accounts. If depreciation and maintenance are charged as head office overheads, or to the profit and loss account, they will be recovered elsewhere in the claim and should not figure in the site establishment. However, if they are charged by allocation to the jobs where they are placed they should be included here. Charging at a discounted hire rate, maybe 10 or 15 per cent below outside hire may be a convenient method of agreement between both sides, but depreciation and maintenance must be reverted to if a claim is subject to strict proof in arbitration or litigation.

Overheads and Profit

Firstly I do not believe a claim can normally be made for prolongation or additional overheads because of delay. A contractor's head office establishment is pretty inflexible and is likely to be maintained whether or not a particular contract is delayed. However, I do believe a claim can properly be made for a loss of contribution. A contractor, like any other business, operates with generally fixed resources – he tries to keep the highest proportion of those resources employed and earning a return. If a contract is delayed then the resources are still retained but the return is diluted. It is this dilution or loss of contribution that is being claimed and a contractor, except in clear cut and long-term delays, is usually unable to redeploy the resources and invariably unable to cut the establishment to match the reduced turnover.

The argument on loss of profit is identical except that the resources are capital rather than men and materials.

I therefore use the Wallace formula from Hudson in the majority of cases, that is a *pro-rata* calculation, based on the gross profit in the tender, extended for the period of delay. I have developed an alternative approach to profit based on the relationship between capital invested and turnover and requiring calculation of the capital actually retained on the delayed contract. However, what it gains in accuracy it loses in complexity and I think it best generally to stick to the Wallace formula.

Another common approach, that of adding the tender gross mark-up to the net costs of the delay is in my view quite inadequate and can be shown not to represent the full actual loss in most cases.

Interest on the Retention Fund

The word interest seems immediately to draw an iron curtain in the minds of many concerned with settling claims. What is claimed here is in fact an expense, and a direct one at that, clearly falling into the first category laid down by the Hadley and Baxendale definition. If the contractor operates on an overdraft, and evidence should be sought to confirm this, then delay in completion clearly results in interest on a higher overdraft for longer than if completion had been achieved earlier and retention released. The extra cost to the contractor is only suffered on builders work and not on the whole retention fund.

It is usual for contractors accounts to take Bank Interest directly to the Profit and Loss account and not treat it as an overhead, so there should rarely be risk of double claiming this item through the overhead contribution.

Loss of Productivity

This is one of the hardest heads of claim to prove, except in clearly identified circumstances, since detailed records of time spent on individual trade operations are needed to show the degree of loss suffered, though the fact that some loss has been suffered may be easily seen in principle. However, recovery of an admitted head of claim should not be barred just because degree cannot be precisely established, so that reasonable assessments are likely to prove the order of the day. The courts don't like this one except in crystal clear cases, but arbitrators, who do not have to explain how they have arrived at their awards, do tend to give a degree of credit in their figurework when they can see a case in principle even though, as I say, it may not be proven in degree.

Another possible head of claims is for the Extra Costs of Bonds and Insurances

I often see contractors including claims for extra insurance premiums due to delay, I suppose as a hang-over from the prolongation of preliminaries approach I referred to earlier. In fact, nineteen times out of twenty, whether all risks, public liability or employer's liability, insurance premiums are calculated on turnover or wage roll and are unaffected by delay. However, the wage roll element of lost productivity could well generate an increased premium. As for Bonds, these again have to be serviced, commonly at 1 per cent per annum of the Bond value if they are obtained through a Bank and prolongation certainly give rise to extra costs. Incidentally a contractor should, I feel, be able to expect release of the Bond on Practical Completion but I find it is often held well beyond that – perhaps here is scope for a mini-claim all of its own.

Finally, in dealing with the rather dry mechanics of evaluation, I would like to mention increased costs. I am still surprised to find a commonly held belief that on a fixed price contract, the contractor has to absorb all increases within the so called fixed price period. In fact his obligation is merely to absorb those increases incurred on the original value of work when executed in the sequence and at the time programmed. Any appropriate delay or disturbance which causes a greater workload to be carried out after a particular increase and therefore to be affected by it is claimable, whether it falls within or without the original contract period.

"We have one last resort when aggrieved parties refuse to compromise"

BRANCH NEWS

LANCASHIRE AND CUMBRIA BRANCH

Annual Dinner Dance

The Annual Dinner Dance was held at the Barton Grange Hotel, Preston on Friday, 20th April 1979.

The Branch Chairman, Mr. M. Davies, AIQS welcomed the official guests who included: P. H. Birtwistle, President Fylde Association NFBTE; E. Clement-Evans, FIQS, Vice Chairman Merseyside Branch IQS; J. Cuff, MIOB, Chairman Mid Lancashire Centre IOB; J. A. Gravell, Dip Arch RIBA, President North Lancashire Society of Architects; R. Hindle, FRICS, Chairman Lancashire Branch RICS; D. J. Price, FIQS, Chairman Manchester Branch IQS; J. H. Scroxton, FIQS, President IQS and B. R. Peck, IQS. The toast to the Institute was proposed by Mr. J. H. Cuff and Mr. J. H. Scroxton responded. Mr. M. Davies proposed the toast to the guests.

Left to right (back row) Mr. E. Clement-Evans, Mr. R. Hindle, Mr. J. Cuff, Mrs. Hindle, The President, Mr. M. Davies, Mrs. Gravell, Mr. J. Gravell, Mr. P. Birtwistle, Mr. B. Peck. (front row) Mrs. Davies, Mrs. Cuff, Mrs. Scroxton, Mrs. Birtwistle and Mrs. Clement-Evans.

Annual General Meeting

The Annual General Meeting of the Lancashire and Cumbria Branch was held on 27th January 1979 at the Crest Hotel, Preston.

The Chairman, Mr. D. B. Ashworth, welcomed members to the meeting and presented a prize to Mr. D. Kenyon for his recent success in the HND examinations at Preston Polytechnic.

In the Chairman's Report Mr. Ashworth stated that the branch had enjoyed a good year and noted memorable highlights from the year's programme. The whole committee were thanked for their support in implementing this programme.

Mr. G. Cooper took the chair and thanked Mr. D. B. Ashworth, the retiring chairman, for all his hard work throughout the year. He then presented the chain of office to Mr. M. Davies with his best wishes and congratulations.

In his first speech Mr. Davies commented upon the rapid growth of the Institute and the profession, particularly over the last forty years and how the IQS had become a highly recognised institution. The main function of the Institute was