



# Do you need a co-pilot with night vision goggles?!

**Toby Hunt**, Chief Business Development Officer, HKA

Consider a scenario where you are being asked to drive a vehicle at night without the use of the vehicle's headlights. You know that the route you are going to take is likely to have a number of obstacles and hazards, yet you also want to complete the journey with the vehicle intact and without damage. Before you set off you are given an opportunity to hire a co-pilot who has driven down this road or similar many times, knows the likely obstacles and hazards to expect along the route and to cap it all has a pair of night vision goggles, so any challenges can be seen before they occur. The co-pilot can help you navigate the journey from the moment you set off, and whilst not every obstacle or hazard may be avoidable, it can certainly be approached and tackled in a way so as not to damage the vehicle. Would you hire the co-pilot?

In my role as Chief Business Development Officer for HKA, the world's leading provider of claims consulting, expert and advisory services for the construction, manufacturing, process

and technology industries, it often occurs to me when speaking to clients who are retaining our services in the context of claims and/or disputes that perhaps much of the angst felt (probably by all parties involved) could have been avoided, or at least lessened, by some pro-active advice at the very early stages of the project. Our teams are often asked to assist in resolving identified "problems", retrospectively.

Interestingly, in these times of uncertainty in parts of the world and in certain capital project sectors, HKA works extensively with clients from the inception of capital projects, selected on the basis of our knowledge of claims and disputes. We are being asked to give clients our feedback based on our experience as claims consultants, experts and dispute resolvers, whether as mediators, adjudicators, or arbitrators. They are choosing a co-pilot with night vision goggles. An example of this is where we are providing some of our clients with 'Challenge Sessions'

designed to provide a "cold eye" robustness check on draft contracts, processes and procedures in order to ensure that the client is not exposed to additional risks or behaviours, intended or unintended, from other contracting parties.

For example, issues may arise from placing a contract form and pricing mechanism in a market that it was not intended for, or because the contracting environment has changed or is generally volatile. Whilst those who draft construction and engineering contracts may well intend that the contract should define the allocation of risk between the contracting parties, the potential inter-related effects of those recognised risks, should they materialise, will frequently be far greater and more complex than the contract draftsman, or even perhaps the contract signatories, would ever envisage from the comfort of their pre-construction viewpoint.



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**Our teams possess the rare expertise to develop and apply best practice methodologies, deploying the commercial capabilities required to deliver desired outcomes.**

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Legal risk is not necessarily the predominant risk in engineering and construction projects as the complexity of the process, both in the nature of the product and in the number of players in the chain of delivery, puts great demands on the management of the delivery process. Risks are very likely to arise from the decisions and actions of managers and from activities in the engineering and construction process itself. To safeguard the performance of a project, the parties must ensure that they put in place procedures and actions to anticipate or pre-empt risks or to minimise their effects if they occur.

The drafting of contract sections often requires fine tuning to the project requirements or adjustments for known lessons learnt, where not already captured.

HKA's 'Challenge Sessions' generally comprise the following:

- grounding of contract scope, contracting principle and incentive structures;
- framing of known risks and opportunities;
- development and 'wargaming' of claims scenarios and situations;
- challenging pricing and incentive schemes;
- listing of improvements and developing an action plan; and
- recording of risks and opportunities.

The outcomes are:

- identification of early contracting risks and opportunities that can be managed in the contract drafting or transferred to the contract management plan for mitigation action or development;
- an improved contract management team understanding of the contract, a listing of contract risks, opportunities and an action plan for further contract development as required;

- a better understanding of the contract within the key project teams members (e.g. Project Director, Project Managers, Project Controls, Contract / Legal Managers, Finance Manager etc.);
- fit for purpose instructions and reporting without a large organisational burden at the cost of the project;
- clarity of scope requirements and challenges that rely on information limited to minimum requirements from a future liability/ claims stance.

The benefits of these outcomes should be clear to all. Some further advantages from early recognition and adequate management of issues will include the avoidance of project employees having to re-live the issues at the dispute resolution stage thus allowing them to concentrate on what they are employed to do, a tangible reduction in employee costs incurred when resolving contentious issues along with a reduction in legal expenses.

At HKA, we anticipate, investigate and resolve project challenges. Our work is based on a philosophy of driving out poor value for money at every stage of the project lifecycle through 'Respectful Professional Challenge'.

We have an international reputation for understanding the pressures associated with delivering successful projects, whatever their size and complexity, wherever in the world. As trusted independent consultants, experts and advisers, HKA finds solutions amid uncertainty, dispute and overrun, and provides the insight that make the best possible outcomes a reality for public and private sector clients worldwide.

## About the author

**Toby Hunt** is Chief Business Development Officer at HKA with responsibility for new business development and management of key client and stakeholder relationships. He has more than 20 years of management, operations and business development experience in the engineering and construction industries worldwide.

Toby holds a BA (Hons) in Economics and Geography and an MBA from Warwick Business School. He is an active member of the World Petroleum Council and currently sits on the UK National Committee and served on the Congress Programme Committee. Toby has also previously served as a non-Executive Board Director for the Energy Industries Council (EIC).