



RECENT CONSTRUCTION SECTOR INSOLVENCIES AND THEIR LEARNINGS

A discussion of recent high profile construction company insolvencies and their outcomes, and put into context in regard to BDO 2019 construction survey report.

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BDO - BUSINESS RECOVERY & INSOLVENCY PARTNERS

BACKGROUND

- Appointed to Mainzeal in February 2013 plus 13 other companies
- At the time it had 40ish active projects
- Established good working relationship with PwC, Receivers
- Sudden ceasing of projects, causing carnage amongst principals and subcontractors involved
- Very little in way of actions by Director to mitigate losses prior to appointment



- 1,500 creditors, \$160m of claims received
- At least \$105m deficiency to creditors (prior to award)
- 2 years to investigate then issue proceedings
- Litigation funding secured - without which case not possible
- 3 more years to get to Court
- Millions of documents discovered and reviewed
- 5 law firms, 5 QCs involved (4 against our 1)

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- Many millions in legal and expert costs
 - 1 unsuccessful mediation attempt with 40 people in the room
 - 12 causes of action, very complex analyses on liability and quantum
 - S135 and S136
 - New debt vs total creditor loss vs Mason & Lewis

- Standing back from the detail - it's simple
- Our view - Directors clearly did not live up to standards we should expect and should be made to compensate Mainzeal and creditors.
 - Mainzeal was almost always unprofitable
 - Countless quality issues
 - Serious money advanced to related parties that could not repay
 - Balance sheet insolvent for many years - used creditors money (retentions etc)
 - Money went to China and they relied on money coming back
 - Directors said Mainzeal had shareholder support, but in fact it was subsidiary support of shareholder

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- The High Court awarded \$36m of damage, \$2.5m against a related party and net \$2.0m costs award
 - Appealed by Directors, cross appealed by us
 - So its been a loooong road... still going
 - Changes to the landscape for Directors and insurers. Should it have? Not really, these Directors fell well short
 - Board composition important

ARROW VS EBERT



- Arrow was put into Voluntary Administration in February 2019
- Why a VA was opposed to other insolvency regimes?
- Ebert was placed into Receivership in July 2019 and Liquidation in October 2018
- Compare outcomes - especially construction contract claims and orderly transition back to principals
- Potential outcomes and proceedings, compare Mainzeal
- Retentions regime - Trust Accounts
- Retentions - Agency contracts

BDO 2019 CONSTRUCTION SURVEY REPORT

- Second (now) annual survey undertaken by James MacQueen, BDO Auckland
- Report is available
- In 2018 there were approximately 100 respondents, in 2019 there were 216. The majority were construction companies and sub-contractors. Some material supplies and consultants.
- Key take out is that New Zealand has a two-tier construction industry - the haves and the have-nots
- The haves - strong balance sheets, good ability to provide bonds, good systems and typically a group of consistent and happy sub-contractors
- The have nots are, as expected, the polar opposites. Moreover, they are typically slow to be paid and slow to pay.

- Forward work pipeline is decreasing across the board - in 2019 17% of respondents needed more work, up from 6% in 2018
- The availability of sufficient and suitable staff remains an issue - true of much of New Zealand and not just construction
- Bureaucracy from both local and national government is pushing out timeframes and adding significantly to costs
- Increasing pressure on margins - not really a surprise



RECENT HIGH PROFILE CONSTRUCTION INDUSTRY COLLAPSES

- Respondents are undertaking more rigorous due diligence on both clients and sub-contractors.
- There is more robust contract negotiation, and more open book negotiations with agreed margins.
- Respondents are relying on existing long term relationships, as well as becoming more selective in all areas, clients and sub-contractors.
- This reinforces the haves and have-nots.

RETENTIONS REGIME

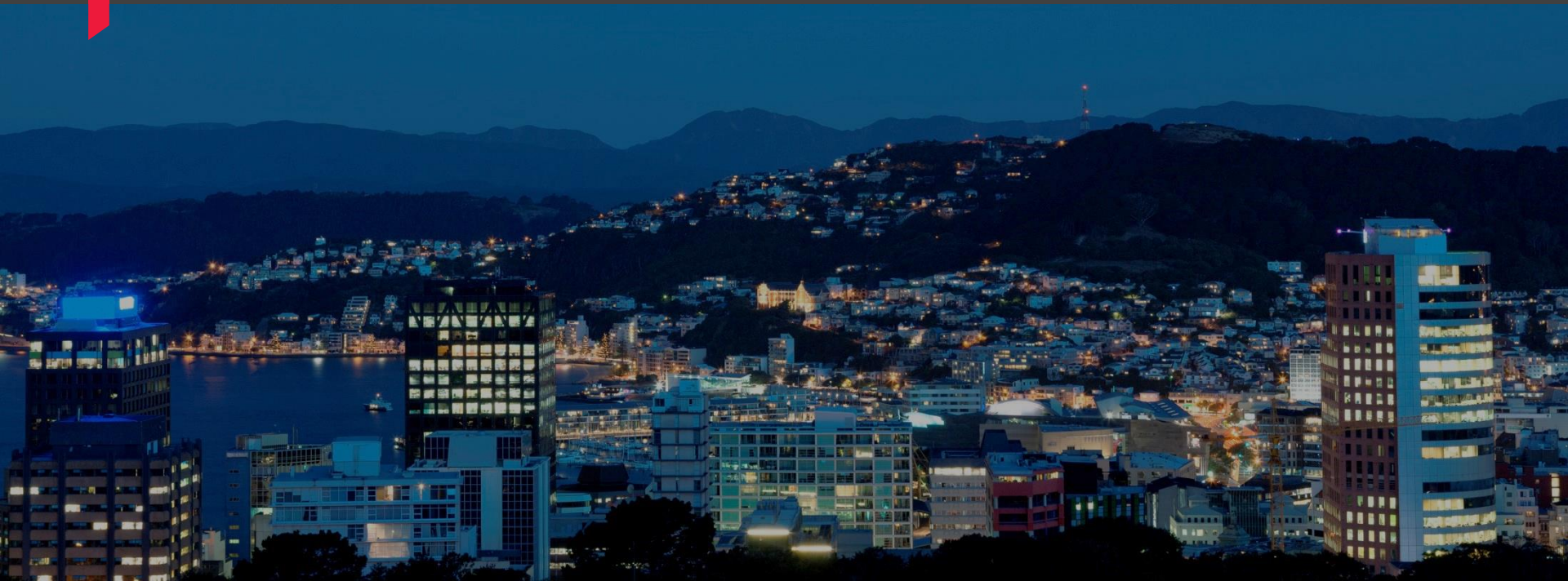
- The majority (70%) of respondents have not asked or inspected whether retentions are being held in trust.
- Of those that did inspect, 47% found at least one head contractor that was not holding retentions in trust.

SUCCESSION PLANNING

- Aging population - 48% of respondents over the age of 50 had not even begun to consider succession or exit planning.

KEY LEARNINGS

1. **Personal liability of Directors is real if they don't meet standards**
2. **Time and cost of taking action significant**
3. **Access to litigation funding has changed the landscape**
4. **Proactive insolvency planning by Directors leads to a better outcome**



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