

Factors Affecting Contract Claim Management in Construction

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1. INTRODUCTION

The construction industry is a complex and competitive environment in which participants with different views, talents and levels of knowledge of the construction process work together. In this complex environment, participants from various professions, each has its own goals and each expects to make the most of its own benefits. In the construction industry, since differences in perceptions among the participants of the projects, conflicts are inevitable. If conflicts are not well managed, they quickly turn into disputes. Disputes are one of the main factors which prevent the successful completion of the construction project. Thus, it is important to be aware of the causes of disputes in order to complete the construction project in the desired time, budget and quality. Construction claims are also found in almost every construction project. It is the seeking of consideration or change by one of the parties involved in the construction process. Nowadays, the substantially increasing volume of claims are the result of the rising complexity of the projects, the price structure of the construction industry and the legal approach taken by a lot of owners and contractors. There are several researches that show the order of magnitude of the effects from construction claims on cost and time of the projects. During the past two decades, serious disputes concerning construction contracts have become increasingly common in construction projects. It is common practice for designers, contractors and owners to negotiate small and uncomplicated disputes, but larger and more complex ones frequently hinder the project through involvement with lengthy legal issues. Typically, if the parties cannot reach a resolution themselves, expensive, time-consuming legal procedures begin, which severely affects all the participants. Disputes are a reality in every construction project. Without the means to address them, minor issues can fester and grow, with crippling consequences for project participants. The rising cost, delay and risk of litigation in construction disputes has prompted the construction industry to look for new and more efficient ways to resolve these disputes outside the courts. It has been found that when resolution occurs sooner rather than later and when this resolution is relatively confrontational, there is a much better chance that litigation can be avoided. Waiting until the end of a project to address a dispute inevitably makes it harder and more expensive to resolve. Parties involved in a construction dispute, or indeed any commercial dispute, generally prefer to retain control over the outcome and maintain a working business relationship.

2. LITERATURE REVIEW

This chapter focuses on the review of the related literature in line with the study variables. The researcher mainly obtained the theoretical available written data by different authors about the variables under the study and the reviewed information is arranged as follows;

2.1 Chaitanya Khekale, Nityanand Futane (2015)

Construction projects are increasingly complex, resulting in complex contract documents. Complex construction can likewise result in complex claims and disputes. This paper provides an introduction to the claim management and dispute resolution techniques that are frequently encountered in the construction industry. Claim is a legitimate request for achievement of a contractual milestone or additional compensation on account of a change to the contract, if these claims made by contractor are not managed clearly; it gives rise to a disagreement or argument over the validity or quantum of a claim known as disputes. Because of the substantially increasing number of construction claims nowadays, the implementation of the effective construction claim and dispute management is needed. Disputes between the parties to construction projects are of great concern to the industry. Both the study of construction industry disputes, and the causes of those disputes, is essential. It can be concluded that construction disputes are a cause of concern in every construction project and the solution to this problem is to avoid and cautiously manage them for smooth running of construction process.

2.2 Kongkoon Tochaiwat (2004)

Construction claims have such high impacts on the projects' cost and time that the contractors should establish the effective claim management in their organizations. This research aimed at presenting the key concepts of construction claims, and construction claim management, focusing on the contractors' point of view. In addition, a questionnaire survey was done to assess the efficiency of the contractors in managing their claims. Three hundred claim management staffs from contractors' organizations were then selected by using stratified sampling technique, taking into account their company locations. It was found that the active tasks that the contractors can perform efficiently consist of

- Recognition and identification of the change
- Systematic and accurate documentation of the change
- Analysis of time and cost impacts of the change. As to the defensive tasks, they are systematic and accurate documentation of change and analysis of time and cost impacts of the change.

On the other hand, the activities that the contractor cannot perform well and should be improved are:

- Active notification of the change
- Active negotiation of the claim
- Defensive recognition and identification of the change.

The result from this research can help the contractors improve their weaknesses and maintain their strengths of their claim management process.

2.3 Joseph C. Lavigne (1993)

In recent years, construction contract claims have 3 grown at an alarming rate. It has become increasingly more difficult for contracting parties to achieve bilateral agreements in an equitable, effective and timely manner. Litigating disputes is being abused as a cure-all means within the construction industry, generating a disproportionate growth in court cases. Relying on the legal system to judge and resolve a contractual problem is counterproductive to getting the job done. It is also an extremely time consuming and expensive undertaking for all parties. Therefore, it behooves every contracting party to strive for timely completion of the work. Resolving differences "in-house" when possible and avoiding litigation at all cost is a worthwhile endeavor. This can be accomplished through cooperation, meaningful, open-minded negotiations and a team approach to managing the contract execution.

The purpose of this research is to investigate the reasons behind the increasing trend toward adversarial contract relationships and claims. It also looks at possible disputes resolution techniques that can be used to short circuit the costly and exhaustive path to litigation.

2.4 Birkir Kúld Pétursson (2015)

The construction industry suffers from frequent disputes and conflicts between all parties of construction contracts. No public data is in place to estimate the general cost of disputes within the sector. A new regulation has recently taken effect and among the updated amendments is the requirement for contractors to obtain a quality management system. Disputes and conflicts are to be recorded in these quality management systems. In this thesis, structured interviews were conducted with participants from construction contractor firms in Iceland. The main goal of the study was to determine the degree of compliance towards the mandatory quality management system outlined in clause 112 of the building code from 2012, determine the type and frequency of conflicts origin and acceptance in the project lifecycle and determine the room for improvements in terms of reducing cost divided from disputes and conflicts.

2.5 Nor Azmi Bakhary, Hamimah Adnan , Azmi Ibrahim (2014)

The frequency of claims is unavoidable given the nature of the contracts, their complexity, the number of parties involved, the risk and the pressure of time constraint in the preparation of the contract documents and the realization of the work. The significantly increasing number of construction claims indicates the need for the implementation of an effective construction claim management. This paper will look into claim problems experienced by Malaysian contractors in construction projects. To achieve this, questionnaires survey were conducted involving the contractors and consultants. The findings indicate that the lack of site staff awareness to proactively detect claims, inaccessibility or unavailability of relevant documents, and conflicts which arises during owner/contractor negotiation is all critical problems associated with the process of claim management. The problems observed from this research could be used to solve or improve the contractors' claim management system.

2.6 Parisa Aghamohammadi (2014)

Almost every project during its lifecycle encounters with evitable or inevitable changes that makes some deviations to the defined scope of work. This consequently makes relevant increase or decrease in cost and time of the project. In fact changes happen due to the uniqueness of each project and limited resources of time and money available for planning. Contractual provision is required to define the conduct of employer, consultant and contractor to participate in and manage changes. Disputes over change orders and claims are inevitable and the change clauses are often the source of project disputes (Arain and Pheng, 2005; Al-Hams, 2010). If these disputes are not settled peacefully through direct negotiations and arbitration they end up in court and legal procedures may suspend the whole project. The honest negotiation of changes and claims helps mitigate disputes before they damage the relationship and become major problems (Zack, 1995). Successful management of change orders and claims begins even before the start of construction (Ibbs et al., 2001). The employer must accept that no construction method is

guaranteed free of changes and claims. Accordingly, the employer must look to a construction method most advantageous to its own goals and limitations rather than theoretical goals or limitations. Decision making is a significant characteristic that occurs in each phase of a project (Arain, 2005). Often, these decisions will, or can affect the other tasks that will take place. To achieve an effective decision making process, project managers and the other personnel of one project need to have a general understanding of change management systems (CII, 1994b). The contents of the initial contract and bargaining power distribution in the renegotiation affects the efficiency of the contract, it was shown that traditional principal-agent model assumed when only one party has the bargaining power at the renegotiation, the optimal contract is socially realizable (when it occupies all surpluses). In this research, contracting parties formulize the incomplete contract model which performs renegotiation involving contract cost and necessary time due to design conditions changes. Moreover, as ADR theory suggested, it will be proved that efficient contract can be designed when employer controls the contract changes by setting initial design conditions and necessary time. As far as the author knows, cases which analyzed the structure of the contract using incomplete contract theory are not found. This research in contrast to ADR theory shows that it is possible to realize socially optimal contract regardless of the bargaining power distribution; socially optimal contract can be realized if initial contract is ii designed appropriately when one of the contracting parties takes maximizing behavior for social welfare, this study also leads to incomplete contract theory.

2.7PMI 2013

The life-time of a project generally begins from the projects initiation to its closure, and this process has been described as the project life cycle. During the project life cycle, a project passes through a series of phases until its closure. These phases are usually consecutive and carry names and numbers decided by managing and controlling requirements of the organization(s) connected to the project, the kind of the project, or its area of application (PMI, 2013). The phases in the project life cycle can be broken down by:

- Function or partial objective
- Results or deliverables
- Milestones within the scope of the work
- Financial factors

The phases are usually linked to time and have both a start and an ending point. The shape of the project life cycle can vary from project to project or from organization, industry, or technology. Most projects have a clear start and a defined end; the deliverables and the activities that will be performed in between can be of many kinds, depending on the project. The project life cycle provides the essential framework for controlling the project without any concern of details about the tasks or type of work to be performed. Project life cycles range from being what is called predictive or plan-driven approaches at one end, to, at the other end, being adaptive or change driven approaches (PMI, 2013). The approaches are further described in the following list:

- Predictive life cycle: The product and the deliverables are described thoroughly prior to the initiation of the project. Any changes made to quality, scope, or delivery time are carefully managed.
- Adaptive life cycle: The product is being developed in an on-going process during the life cycle of the project. Details and scope for each project phase are defined along the way as each phase begins.

It is a fact that not all projects are the same and that they may vary both in size and complexity.

According to the literature, the following life cycle structure can be applied to all projects:

- Beginning the project
- Preparing and organizing
- Performing the actual work
- Finishing the project

This structure is known as a generic life cycle and is often referred to in communication by the management team with personnel less familiar with the details of a certain project. In Figure 1 - Typical cost and staffing levels across a generic project life cycle structure, the generic life cycle is presented.

3. METHODOLOGY

Success Factors are identified based on Literature study and various information collected by case studies.

Five main factors along with sub factors are tabulated as below:

RATING FORM

Name of Project:

Name of Student: Prasad Patil - M.E. (CT&M)

No.	CONSTRUCTION CLAIM RELATED FACTORS	1	2	3	4	5	RATING
A	Owner related Claim						
1	Owners Behaviour	1	2	3	4	5	
2	Frequent Variations by owner	1	2	3	4	5	
3	Pymment Delays	1	2	3	4	5	
4	Delay in Decision	1	2	3	4	5	
B	Contractor and Sub Contractor Claims						
1	Delay caused by Contractor	1	2	3	4	5	
2	Finance of Contractor	1	2	3	4	5	
3	Subcontractor issues	1	2	3	4	5	
4	Bad Work Quality by Contractor	1	2	3	4	5	
C	Contrat Claim factors						
1	Bad Understanding By participants	1	2	3	4	5	
2	Unexpected Outomes	1	2	3	4	5	
3	Termination by One of the party	1	2	3	4	5	
4	Suspension of work	1	2	3	4	5	
5	Lowest Bid hamperd quality	1	2	3	4	5	
6	Taxation Changes	1	2	3	4	5	
D	Project Related Claims						
1	Change in location	1	2	3	4	5	
2	Difficult work Excecuton Conditions	1	2	3	4	5	
3	Scope of project Changes	1	2	3	4	5	
4	Poor Soil Conditions	1	2	3	4	5	
E	Miscellaneous Claim Factors						
1	Political issues	1	2	3	4	5	
2	Sudden High Price Excalation	1	2	3	4	5	
3	Woking in Shifts	1	2	3	4	5	
4	Approval Delays	1	2	3	4	5	
5	Insurance Claims	1	2	3	4	5	
6	Natural Clamities	1	2	3	4	5	
7	Donation Issues/ Stake holders	1	2	3	4	5	

GENERAL INFORMATION:

1. Type of Organisation/Company: (Client Based/ Contractor based)
2. Position In Company
3. Specialisation of Company (building/Roads)
4. Qualification
5. Experience with that Current Company & Total Experience:
6. Name of Company Currently Working
7. Cost of project
8. Address of Company
9. Methods and Advices to be considered for avoiding and mitigation of claims

Instruction to Fill Form:

1. Form shall be filled with Patience and concentration so that final results shall be valuable for future research.
2. Fill the rating from 1 to 5 in yellow Box

Where,

- 1 Very low contributing
- 2 Low contributing
- 3 Medium contributing
- 4 High contributing
- 5 Very High contributing

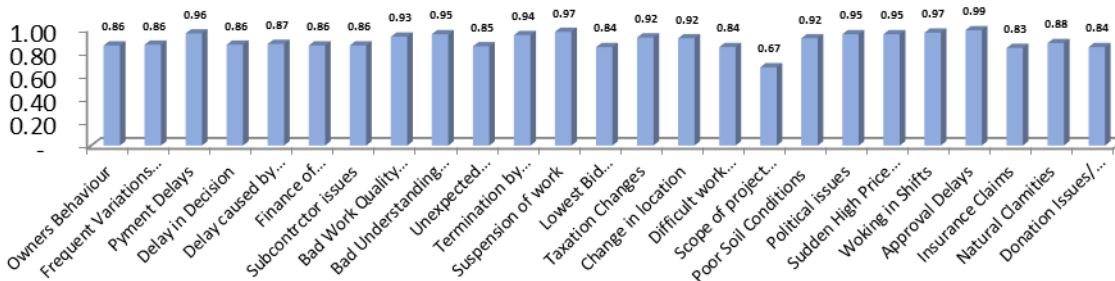
3. Rating shall be given as your knowledge and experience, indicating most influencing factor in construction claims with higher value.
4. Synopsis is provided about the project which will be helpful to understand the scope of Project.
5. Information provided will be for educational purpose only.

Respondents are asked to fill data as in response sheet and it is designed as per the Likert Scale indicating “1= Very low contributing 2= Low contributing 3= Medium contributing 4= High contributing 5= Very High contributing”. Likert scale being one of the most popular and convenient scale to rate for factors hence it is chosen as survey scale.

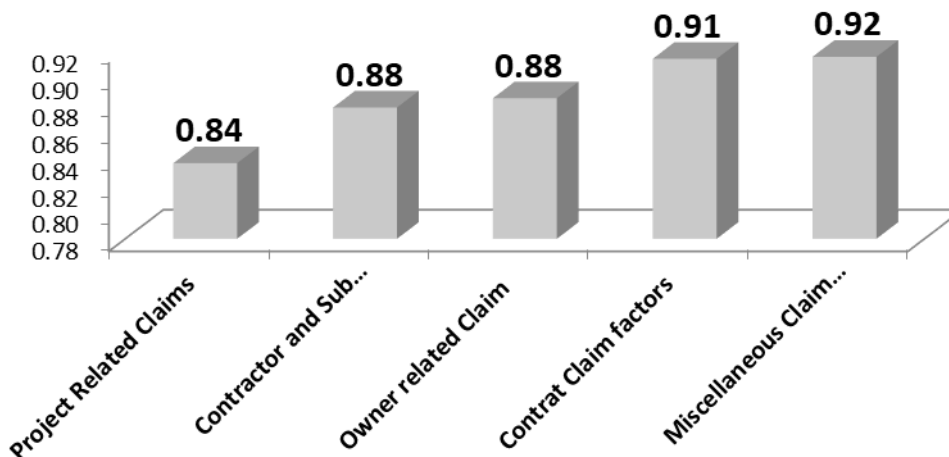
The questionnaires will be self-administered. A survey of this nature suffers from the possibility that the respondents would not think seriously through the questions before answering them and the possibility of bias.

4. RESULT & DISCUSSION

R II : SUB FACTORS



R II : MAIN FACTORS



5. Conclusions

1. Disputes between the parties to construction projects are of great concern to the industry.
2. An effective claim management process is essential to ensure that any contractual claims arising are dealt with in a way that is fair to each involved party.
3. Better training in the area of contract management to the professionals can be said to be of a great help for better understanding of the contract.
4. The requirement of contractor involvement during the design process can improve constructability and reduce the probability of design changes.
5. The evolution of dispute resolution processes has led to the development of a range of alternative dispute resolution opportunities.

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