



UNIVERSITI
TEKNOLOGI
MARA

Built Environment Journal

Faculty of Architecture, Planning and Surveying

Volume 11 No.1

January 2014

ISSN 1675-5022

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BUILT ENVIRONMENT JOURNAL (BEJ)

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Built Environment Journal is jointly published by Faculty of Architecture, Planning and Surveying and UiTM Press, Universiti Teknologi MARA, 40450 Shah Alam, Selangor, Malaysia.

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A Survey of Malaysian Consultants on Construction Claim Problems

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ABSTRACT

The construction industry in Malaysia is very complex as it involves multidisciplinary participants. In this environment, claims appear to cause delays and hold back the completion of a construction project. Construction contracts are rarely perfect, and claims for time extensions and additional costs often have to be made by one party on another. The extensively increasing number of construction claims indicates the need for the implementation of an effective construction claim management. This research is aimed at surveying the most common problems experienced by Malaysian contractors in construction projects. This paper presents the survey results and main findings from the consultants' points of view which indicate that inaccessibility or unavailability of relevant documents, the lack of site staff awareness to proactively detect claims and understanding the contract itself, and conflicts arising during owner/contractor negotiation are all critical problems associated with the process of claim management. The problems observed from this research could be used to improve the contractors' claim management system.

Keywords: *Construction Claims, Claims*

INTRODUCTION

Construction Claim

Construction claims are found in almost every construction project. They have significant effect to project cost and time (Arditi, 1989). Claims management is the process of employing and co-ordinating resources to progress a claim from identification and analysis through preparation, and presentation, to negotiation and settlement (Kululanga, 2011). The aim of the claim management process is to resolve a certain problem in an effective and efficient way. Avoiding litigation and arbitration in claim settlement is a good practice that the successful contractors must keep in mind (Hassanein, 2008).

Generally, there are six stages of claim process. It starts with identification followed by notification, examination, documentation, presentation and negotiation of claims (Zaneldine, 2006). Construction claim identification involves timely and accurate recognition of a change. It is the first and critically important step followed by notification to the other party of a potential problem. Time limit requirements are very crucial and critical (Levin, 1998). Normally, the contract specifies such duties to both parties. Establishing legal and factual ground on which the claim is to be based is done during examination stage. The fourth stage is the documentation. It plays a very important role in the settlement of claims.

All the supporting documents including drawings, specification, written instruction, cost breakdown, measurement records and many more should be compiled together. However, the importance of record management is not realised as much as it should be (Ho, 2004). The entire completed document then will be submitted and presented to client for assessment. According to PWD form, the claim should be submitted not later than 90 days after practical completion of the works. Upon receiving the official claim, client will assess and decide the outcome. They should act fast and avoid procrastination. The final stage is the negotiation. This process concerns the process of negotiation claim to the owner, and mutual resolution of such claim (Ren, 2003). If an agreement cannot be reached and either party believes his position is correct, he should propose an alternative dispute resolution method. If this fails, the remaining choice is to take the matter to court.



Figure 1: Stages in Claim Management

OBJECTIVES & METHODOLOGY

The objectives of this research is to identify the problems associated with the claim process experienced by the contractors from the consultant perspectives and the areas related to claim process that can be effectively improved. To ensure the achievement of the aim and objectives of this research, questionnaire surveys was used to gather all the data followed by face to face interviews.

RESULTS

The Respondents

300 consultants from Selangor were selected to participate in this survey and 49 of them returned the completed questionnaire. 10 of them were willing to be interviewed in order to strengthen the information gathered from the answered questionnaires.

Current Issues in Claim Management

Table 1 shows the most common types of claim experienced by Malaysian contractors. Top of the table is claims due to “changes in the scope of work” followed by “delay of work” and claims due to the “extension of time”.

Table 1: Common Types of Claim in Construction

Rank	Types of claim	Mean
1.	Changes	4.16
2.	Delay	4.16
3.	Extension of time	4.04
4.	Extra works	3.92
5.	Contract ambiguity	3.61
6.	Measurement & payments	3.49
7.	Error & omission	3.08
8.	Acceleration	2.92
9.	Termination of contract	2.92
10.	Site condition	2.88
11.	Damages	2.88
12.	Suspension of work	2.73

Table 2 shows the main reason for construction claims. The most popular reason for construction claims is due to the “design changes being introduced at the post-tender stage”. Second is due to the “project being implemented in unduly short time periods with inadequate site investigation, design work, tender and contract documentation” and the third is due to “changes in client’s requirement during the construction stage”.

Table 2: Common Reasons of Claim in Construction

Rank	Reasons for claim	Mean
1.	Design changes	3.88
2.	Short time period	3.86
3.	Requirements changes	3.78
4.	Incomplete design	3.71
5.	Inadequate specification	3.53
6.	Lack of clarity	3.45
7.	Unclear tender offer	3.29
8.	Rights awareness	3.10
9.	Competitive contract	3.08
10.	Authority changes	2.96
11.	Contract failure	2.88
12.	Claim consultant	2.86
13.	Philosophy changes	2.65
14.	Deterioration of standards	2.61
15.	Economy swing	2.49
16.	Politics factors	2.43

Problems in Claim Process

This section presents the problems associated with the claim management process in Malaysia construction industry. It concentrates on the five stages of claim process; identification, notification, examination, documentation, presentation and negotiation.

Identification Stage

As illustrated in Table 3, in relation to problems associated with claim identification, the top-ranked problems are: “insufficient skilled personnel for detecting a claim”, “lack of awareness of site staff to detect a claim”, and “poor communication between site staff and head office”. It is predictable that matters relating to skills and awareness of staff are raised to be the most severe problem in the claim identification process. Site staffs are expected to understand contract provisions as agreed and signed by the contracting parties. They need to read and value the contract condition before embarking

on a new project. Usually, they will only refer to the relevant contract clauses when there are problems occur during the construction project. The lack of awareness, skills and knowledge of site personnel caused loss of chances of the right to declare a claim. Furthermore, poor communications between staff on site and at the head office worsen these problems and it needs urgent improvement.

Table 3: Problems in Claim Identification

Rank	Problems	Mean
1.	Insufficient skilled personnel for detecting a claim	3.90
2.	Lack of awareness of site staff to notice a claim	3.88
3.	Poor communication between site and head office	3.73
4.	Insufficient contract knowledge by site staff	3.69
5.	Insufficient time due to high workload	3.67
6.	Difficulties in detecting any problems during the work due to high workload	3.59
7.	Ambiguous line of responsibility as to who should detect a claim	3.33
8.	Inaccessibility of documents used for identifying a claim	3.31
9.	Ambiguous procedures in claim identification	3.31

Notification Stage

According to the general contract provision, the other party needs to be notified in case of claims. As shown in Table 4, the order ranks illustrates that the most serious problems during claim notification are “poor communication/instruction to proceed with submitting the notice”, “inaccessibility of documents to be attached along with the notice” and “insufficient time due to high workload”. Time limit is a crucial aspect in notifying a valid claim.

Site staffs need to have good communication skill so that proper instruction can be given, received and the most important thing is understandable by all parties involved. Having accurate site records is also another critical issue facing the Malaysian contractors. It is directly contributed from employing inexperienced, poor knowledge and low skilled staff. Proper record keeping system needs to be learnt and implemented.

Procedures of notice preparation also needs to be established and spelled out clearly.

Table 4: Problems in Claim Notification

Rank	Problems	Mean
1.	Poor communication/instruction to proceed with submitting the notice	3.63
2.	Inaccessibility of documents used for identifying a claim	3.47
3.	Ambiguous procedures in notice preparation	3.47
4.	Insufficient time due to high workload	3.41
5.	Ambiguous lines of responsibility as to who should prepare the notice	3.39
6.	Queries back from the other parties due to notice ambiguity	3.35
7.	No standard form used for preparing the notice	3.24
8.	Prescribed time in the contract is too short	3.22

Examination Stage

The breakdown of the contractors' responses was summarised in Table 5. For problems related with claim examination, the most common problems are "unavailability of record used to analyse and estimate the potential recovery", "poor communication for gathering the required information to analyse a claim" and "lack of legal/contract to establish the base on which the claim stands".

Respondents indicated that record availability is very important in analysing and estimating the expenses of claims. In this process, the contractors needs to be aware of the need to check the required files and to estimate their claim's cost by presenting accurate documents to the owner. Therefore, it is advisable for the contractors to examine claims recovery and support it by providing precise related documents. Poor communication still contributes to the problems in this stage and need proper action to improve. Lack of legal/contract to establish strong reasons on which the claim stands also add to the problems in claim examination stage. Knowledge and awareness in law and contract amongst the contractors needs to be highlighted.

Table 5: Problems in Claim Examination

Rank	Problems	Mean
1.	Unavailability of records used to analyse and estimate the potential recovery	3.84
2.	Poor communication for gathering the required information to analyse a claim	3.57
3.	Lack of legal/contract to establish the base on which the claim stands	3.51
4.	Insufficient time to thoroughly perform examination due to high workload	3.51
5.	Ambiguous lines of responsibility as who should evaluate the amount of recovery	3.35
6.	Ambiguous procedures for claim examination	3.24
7.	Unrealistic formula used for calculating damages	3.24
8.	No standard formula used for evaluating the impacts and calculating damages	3.22
9.	Insufficient computerised machine to facilitate the calculation	2.69

Documentation Stage

The results shown in Table 6 suggest that not all information and instructions given during project execution are kept in writing. Construction industry appears to be famous for commonly not documenting procedures and transactions appropriately. Instructions from the client or representative of the client are sometimes given verbally without any written supporting documents especially on urgent matters. The contractor needs to ensure that the owner gives their instructions in written form as this would provide support and verification if needed by the contractors in case of claim submission. Furthermore ineffective record keeping worsen the documentation process.

Table 6: Problems in Claim Documentation

Rank	Problems	Mean
1.	Some information/instruction is not kept in writing	3.84
2.	Verbal instruction by owner	3.73
3.	Ineffective record-keeping system	3.69
4.	Inaccurate recorded information	3.63
5.	Overdue in retrieving the needed document	3.57
6.	Inaccessibility of documents when needed	3.53
7.	No standard form used to record the data during construction	3.40
8.	No computerised documentation system	3.14
9.	High cost associated with retrieving required information	2.78

In general, the problem of claim documentation starts from the negligence by site staff on the importance of record keeping. This contributes to bad quality of site records which in turn impacts on the contractor's ability to recover the damages when making claims.

Presentation Stage

Table 7 shows that the main problems in preparing a claim submission are: "inaccessibility of relevant documents to submit along with the claim", "insufficient skilled staff for preparing a claim submission", and "insufficient time to thoroughly prepare due to high workload"

Table 7: Problems in Claim Presentation

Rank	Problems	Mean
1.	Inaccessibility of relevant documents to submit along with the claim	3.71
2.	Insufficient staff skilled in preparing a claim submission	3.65
3.	Insufficient time to thoroughly prepare due to high workload	3.61
4.	Poor communication in presenting a claim	3.59
5.	Ambiguous procedures in preparation of claim presentation	3.47
6.	Ambiguous responsible person to prepare full report of claim presentation	3.41
7.	No standard format of a claim submission	3.24

Documentation is still the key problem in claim presentation that needs serious attention and technique to improve. The respondents agreed that some documents are still ineffectively kept because on-site staffs do not realise the importance of recording such documents. Most respondents agreed that it is impossible to submit the relevant document during the claims presentation, especially where the contractors need to support their claims with accurate formal documentation. Presenting a claim requires a knowledgeable, skilled and experienced person to effectively organise the full detailed claim submission. Contractors face difficulties in identifying and hiring experienced staff in preparing a claim submission. This issue affects the claim presentation process, possibly causing the client to reject the claim. Due to heavy workload, they have insufficient time to fully concentrate on the preparation of claim presentation. It is also very important to recruit a specialist in claim management to deal effectively with the relevant issues.

Negotiation Stage

In referring to Table 8, the main problems linked to the claim negotiation are “disagreement arising during negotiation”, “unsatisfactory evidence to convince other parties” and “poor negotiation skills”. It is understood that these three problems are somehow correlated. Poor negotiation skills will affect on the ability of the contractor to persuade the owner, and therefore conflicts will start to occur.

Strong evidence is very much needed during this stage in order to hold up the claim and to persuade the owner. In many situations, the contractors lose their claim as a result of the insufficient of documentation evidence as a result affecting the contractor's position during claim negotiation. In some cases, the negotiation process could jeopardise the relationship between the contractor and the owner as a result of unsatisfactory claims preparation and negotiation. As a result of the conflict, owner may decline the claim with very modest consideration given to the contractor's situation. Having common respect and keeping negotiations in the atmosphere of a good relationship between the two parties should be a main concern during claim negotiation.

Table 8: Problems in Claim Negotiation

Rank	Problems	Mean
1.	Disagreement arising during negotiation	4.02
2.	Unsatisfactory evidence to convince other parties	3.96
3.	Poor negotiation skills	3.55
4.	Adversarial relationship with other parties	3.49
5.	Inadequate time due to high workload	3.35
6.	Difficult to settle without any litigation or Arbitration	3.16

In the construction industry, the problems related with not having good negotiation skills with experienced construction workers are predictable. A lot of contractors do not have a committed unit or individual with the responsibility of managing the claims. Normally, the duty to manage the claim process is assigned to the project manager or site engineer, who may not possess good negotiation skills. Obviously, contractors' negotiation skills needs to be improved to avoid from facing difficulties and possible arguments throughout negotiation with the client.

Claim Resolution

Unsettled claim can lead to dispute. There are four basic settlement methods used to resolve claims in Malaysia. There are negotiation, mediation, arbitration and litigation. As provided by the survey respondents, the majority of the respondents prefer to resolve claim problems by means

of negotiation. It involves communication and exchanged proposals in an attempt to agree about the scope of conflict termination and their future relationship (Zaneldin, 2006). They are trying to keep a good relationship with the client. They are quite reluctant to go for arbitration and litigation because it will consume time and will involve high costs. They prefer to keep the disputes as private affair and the specifics of the dispute, documents, contracts, and other sensitive materials are kept out of the public eye.

Arbitration is becoming nearly as time-consuming as the litigation. In the larger and more complex cases, arbitrators frequently permit the parties to engage in a substantial amount of discovery, large document productions, depositions and the all-too-common discovery disputes. Also, coordinating the availability of multiple parties and arbitrators to schedule blocks of several days, weeks or more for hearings is often very difficult.

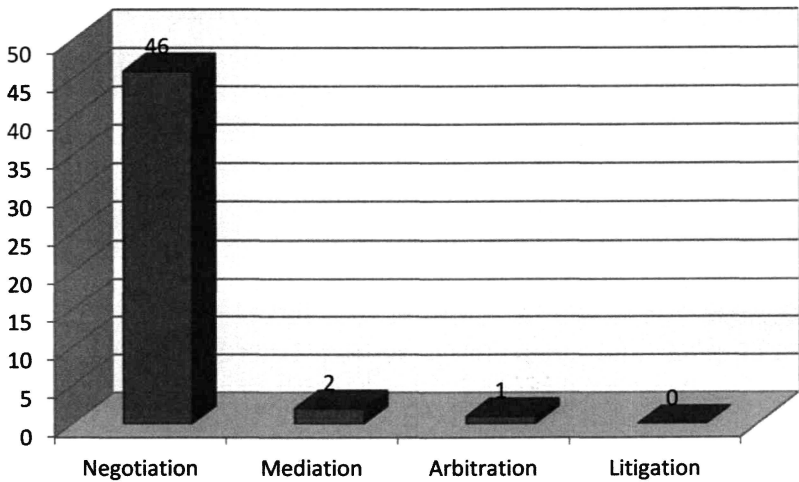


Figure 2: Preferred Claim Resolution Method

CONCLUSION

This research is aimed to explore the problems related to the process of claim from consultants’ point of view by studying common procedure categories, distributed into six stages. There are claim identification, claim

notifications, claim examination, claim documentation, claim presentation and claim negotiation. The findings emphasise on the need for a good documentation system with a competent site staff that can recognise a claim during project execution. These competencies must be joined so that it would allow easy accessibility to project records when needed in order to support the submitted claim. Hence, keeping appropriate project information should be observed as an essential part of project monitoring and reporting. It also appears that a standard and transparent procedure should be put in place whereby contractor's staff would be able to follow to properly prepare the claim. This procedure should highlight the importance of linking the claim to cost recovery so as not to disadvantage the contractor. In addition, it could be argued that staff awareness, training in how to document and submit a well-supported claim, and negotiations with clients are becoming a necessity.

The claim management efficiencies of the contractors can be increased by deliberately scrutinising the contract provisions, enhancing the cooperative atmosphere among all parties, establishing good claim management data collection and documentation, punctually notifying to the client the event that changes the project status, and signing separate contract for the large-amounted variation order. The government can help the contractors by improving the relevant laws, regulations and standards and establishing the claim settlement organisation.

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