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A study of construction claim management problems in Malaysia

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Abstract

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 realisation 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 are 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.

Keywords: construction claims, claims, management, Malaysia

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1. Introduction and Background

The construction industry is an important part of the Malaysian economy. According to Construction Industry Development Board (CIDB), this industry achieved RM110 billion worth of projects in 2013. The projects include those in the infrastructure, transportation and oil and gas sectors. Completing a project on schedule is a difficult task to achieve in the uncertain, complex, multiparty, and dynamic environment of construction projects (Kartam, 1999). Because of this, the industry is always open to disputes. It is common for the claimant pursuing claim for work or services for defective work, delayed completion, changes of scope, etc. The number of construction claims and disputes has been increasing and has become a burden to construction industry (Levin, 1998). Even with the most expert understanding of construction contract and the most reasonable risk-allocation system, claims will continue to present problems if they are poorly managed in practice (Zineldine, 2006). It is very important for contractors to submit claims according to the steps specified in the contract conditions, provide a detail of the additional costs and time, and present satisfactory evidence. On top of that, project owners must follow a comprehensive procedure for tracking and managing the claims submitted by contractors.

Claims management is the process of employing and co-ordinating resources to progress a claim from identification and analysis through preparation, and presentation, before it proceeds to negotiation and settlement (Kululanga, Kuotcha, McCaffer & Edum-Fotwe, 2011). The key objective of the claim management process is to resolve certain problems in an effective and efficient manner. Avoiding litigation and arbitration in claim settlement is one good practice that successful contractors must keep in mind (Pogorilich, 1992).

Generally, there are 6 stages in a claim process. It starts with identification and 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, and it will be followed by a notification to the other party of a potential problem. Evidently, time limit requirements are also very crucial and critical (Levin, 1998). In general, 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 needed including drawings, specification, written instruction, cost breakdown, measurement records and many more should be compiled together. However, in reality, the importance of record management is not realized as much as it should be (Ho, 2004). The entire completed document will then be submitted and presented to client for assessment. Upon receiving the official claim, client will assess and decide on the outcome. They should act fast and avoid procrastination. The final stage is negotiation. This stage concerns the process of negotiation claim to the owner, and mutual resolution of such claim (Ren, Anumba & Ugwu, 2003). If an agreement cannot be reached and both parties believe that they are in the right position, they should propose an alternative dispute resolution method. If this fails, the remaining choice is to take the matter to court.

2. Objectives & Methodology

Objectives of this research are to identify the problems associated with claim process experienced by contractors and the areas related to claim process that can be effectively improved. To ensure the objectives of this research are achieved, questionnaire surveys were used to gather all the data. There are four sections in the questionnaire:

The first section of this questionnaire contains the questions related to the respondents' data such as their position, their working experiences, types of projects that they are involved in and the types of contract that they have used.

ii. The second section contains questions related to the issues in construction claim process such as the common types of claim experienced by the contractors and the main reasons of claim.

iii. The third section contains questions specially constructed to gather feedback from the respondents on the problems that arise in every stages of the claim process from the first stage of identification of claim to the final stage of negotiation.

iv. The fourth section includes open-ended questions asking the respondents to share their ideas, comments and suggestions on how to improve the claim management process in Malaysia.

Data of questionnaire survey were collected from 155 contractors and 49 consultants. They were asked to provide information related to the current issues in claim management, the problems encountered, preferred dispute resolution methods and the suggestion on how to improve the system. They were also asked to provide information related to types of claims, causes of claims, and the frequency of occurrence.

3. Results

3.1. The Respondents

Table 1 shows the profile of respondents in terms of their experience in the construction industry and their years of experience dealing with claims. As can be seen, the majority of respondents from both groups had served the industry for more than 10 years. In regards to respondents' experience in dealing with claims, majority of them have more than 10 years of experience. This suggest that majority of the respondents have been in the industry for a considerable number of years. Thus, information gathered is considered reliable enough to meet the needs of this research. They are also ideally suited to provide comments and answers on any issues dealt within this survey and their opinions are expected to reflect the real industry's situation

Table 1. The respondent's profile.

Characteristic	Contractors		Consultant (QS)	
	Number	Percentage	Number	Percentage
Years of experience in construction industry				
0 to 5 years	24	16%	1	2%
6 to 10 years	23	15%	2	4%
Over 10 years	108	69%	46	94%
Total	155	100%	49	100%
Years of experience in claim management				
0 to 5 years	38	25%	10	20%
6 to 10 years	35	22%	4	8%
Over 10 years	82	53%	35	72%
Total	155	100%	49	100%

3.2. Reason for Claims

Claims in construction projects have increased to such a degree that they have become almost routine and can be caused by a number of factors. Understanding what causes construction claims is the first step in avoiding them. Table 2 shows the main reason for construction claims. According to the contractors, "design changes being introduced at the post-tender stage" is the main reason for claims. 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 "inadequate definition and/or specification of the precise scope of contract works". The feedbacks from the consultants are almost the same with

the "changes in employer's/user's requirements arising during the post-tender award stage" become the third most common reason for claim. Owners should ensure that a project is well planned from the beginning to minimize the need for change orders or change directives. Changes to the contract work increase the risk of construction claims and decrease productivity of work. Both owners and contractors should do what they can to ensure proper management and administration of the project, including proper and adequate staffing and co-ordination of the project and trades. It is very important for each party to understand their duties and obligations under the contract and that they have the ability to perform these duties and obligations as required by the contract.

Table 2. Reason for claims in construction.

Reasons for claims	Contractors		Consultants	
	Mean score	Ranking	Mean score	Ranking
Design changes being introduced at the post-tender award stage.	3.61	1	3.88	1
Project being implemented in short time period with inadequate site investigation, design works, tender and contract documents.	3.52	2	3.86	2
Inadequate definition and/or specification of the precise scope of contract works.	3.43	3	3.53	5
Incomplete and/or uncoordinated design.	3.42	4	3.71	4
Changes in employer's/user's requirements arising during the post-tender award stage.	3.41	5	3.78	3
Lack of clarity in the employer's requirements and/or inadequacy of the design brief.	3.32	6	3.45	6
Acceptance of unclear/imprecise tender offers without proper clarifications, negotiations, recording of changes.	3.17	7	3.29	7
Contracting environment relatively more competitive with a larger number of players and narrow profit margins.	3.15	8	3.08	9
Parties generally more aware of their rights and relatively more litigious/claim conscious.	3.03	9	3.10	8
Changes arising out of statutory, local authority sources.	3.02	10	2.96	10
Employer's/contract administrator's failure and/or neglect to meet the relevant contract obligations.	2.91	11	2.88	11
Deterioration in the general standard of professionalism of designers, contract administrators and contractors.	2.77	12	2.61	14
More use of claims' consultants.	2.70	13	2.86	12
Sudden swings in economic and market conditions.	2.65	14	2.49	15
A shift in the philosophy of project implementation towards an adversarial/confrontational direction.	2.61	15	2.65	13
Negative effects of political factors.	2.21	16	2.43	16

3.3. Problems in Claim Process

This section presents the problems associated with the claim management process in Malaysian construction industry. It concentrates on the 5 stages of claim process; identification, notification, examination, documentation, presentation and negotiation.

3.4. Identification

According to the contractors, the main problem in identification of claims is "lack of awareness of site staff to detect claim", "insufficient contract knowledge by site staff" and "insufficient time due to high workload. From the consultants' point of view, "insufficient skilled personnel for detecting a claim" and "poor communication between site and head office" are also considered as the main problems in this stage. Of all the problems listed, both the contractors and consultants agree that "ambiguous procedures in claim identification" posed the least problem in identification of claims.

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 problems occur during the construction project. They should be alert on the changes of work, claims and variation order instruction. The lack of awareness, skills and knowledge of site personnel may cause loss of chances for the rights to declare a claim. Furthermore, the staffs are burden with high workload and it worsens these problems.

Table 3. Problems in Identification of Claims

Problems in Identification of Claims	Contractors		Consultants	
	Mean score	Ranking	Mean score	Ranking
Lack of awareness of site staff to notice a claim.	3.39	1	3.88	2
Insufficient contract knowledge by site staff.	3.32	2	3.69	4
Insufficient time due to high workload.	3.30	3	3.67	5
Insufficient skilled personnel for detecting a claim.	3.28	4	3.90	1
Difficulties in detecting any problems during the work due to high workload.	3.28	5	3.59	6
Poor communication between site and head office.	3.27	6	3.73	3
Inaccessibility of documents used for identifying a claim.	2.98	7	3.31	8
Ambiguous line of responsibility as to who should detect a claim.	2.91	8	3.33	7
Ambiguous procedures in claim identification.	2.84	9	3.31	9

3.5. Notification

In claim notification, although the ranks shows a slight differing views by both contractors and consultants, it is safe to conclude that both set of respondents agree that "inaccessibility of supporting documents needed for notice", "ambiguous procedures in notice preparation", "poor communication/instruction to proceed with submitting the notice" and "insufficient time to thoroughly prepare the notice due to high workload" as the major problems.

The notification process provides the notified party with the opportunity to review the condition and take action to resolve or mitigate its impact. If either the contractor or the project manager becomes aware of a claim event, the other party must be immediately notified. Claim notifications need to be done in writing and as detail as possible. In the preparation of supporting documents for claim notification, good documentation system and accurate site records are very important. Procedures of notice preparation need to be spelled out clearly and understood by parties involved. In addition, site staffs need to have good communication skills so that proper instruction can be given, received and understood.

Table 4. Problems in Notification of Claims

Problems in Notification of Claims	Contractors		Consultants	
	Mean score	Ranking	Mean score	Ranking
Inaccessibility of supporting documents needed for notice.	3.30	1	3.47	2
Ambiguous procedures in notice preparation.	3.10	2	3.41	4
Poor communication/instruction to proceed with submitting the notice.	3.10	3	3.63	1
Queries returned from the other parties due to notice ambiguity.	3.07	4	3.35	6
Insufficient time to thoroughly prepare the notice due to high workload.	3.07	5	3.47	3
Ambiguous responsibility as to who should prepare the notice.	2.99	6	3.39	5
Prescribed time in the contract is too short.	2.97	7	3.22	8
No standard form used for preparing the notice.	2.83	8	3.24	7

3.6. Examination

The next process is examination of claims, from Table 5, it can be seen that "unavailability of records used to analyze and estimate the potential recovery", "insufficient time to thoroughly examine claim due to high workload" and "poor communication to gather the required information to analyze a claim" are the top three problems experienced by the contractors and these are approved by both parties.

Respondents indicated that record availability is very important in analyzing and estimating the expenses of claims. In this process, the contractors need 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 proper action is needed in order for it to improve. Lack of legal/contract to establish strong reasons on which the claim stands also add to the problems in claim examination process. Knowledge and awareness in law and contract amongst the contractors need to be highlighted.

Table 5. Problems in Examination of Claims

Problems in Examination of Claims	Contractors		Consultants	
	Mean score	Ranking	Mean score	Ranking
Unavailability of records used to analyze and estimate the potential recovery.	3.28	1	3.84	1
Insufficient time to thoroughly examine claim due to high workload.	3.14	2	3.51	3
Poor communication to gather the required information to analyze a claim.	3.04	3	3.57	2
Lack of legal/contract to establish the base on which the claim stands.	2.96	4	3.51	4
Ambiguous procedures for claim examination.	2.92	5	3.24	6
No standard formula used to evaluate the impacts and calculating damages.	2.92	6	3.22	8
Ambiguous responsibility as who should evaluate the amount of recovery.	2.87	7	3.35	5
Unrealistic formula used to calculate damages.	2.72	8	3.24	7
Insufficient computerized machines to facilitate the calculation.	2.41	9	2.69	9

3.7. Documentation

Claim documentation focuses on the contractors' record keeping system. An effective documentation will provide proof for the alleged claim and improve the chances of winning a claim. Based on the outcome of the survey, both parties seem to agree that "verbal instruction by owner", "some information/instruction is not kept in writing" and "ineffective record-keeping system" contributes to the problems in documenting a claim.

Construction industry appears to be famous for consistently not documenting procedures and transactions properly. Verbal instructions given by the client / client representative and the inaccurate recorded information are the main problems in claim documentation process. If the client does not come out with written instruction, the contractor should make an initiative to get the proper written instruction from them. This would provide support and evidence to the contractor's claims. Ineffective record keeping also contributes to this problem and it is recommended for contractors to have a systematic documentation system. Project documentations must be prepared with the intention to build cases and written evidence to support argument. In the event of non-existing notification, project documentation may be the source to prove knowledge of the issue (that both parties are aware of the issues), thus waiving the written notification requirement.

Table 6. Problems in Documentation of Claims

Problems in Documentation of Claims	Contractors		Consultants	
	Mean score	Ranking	Mean score	Ranking
Verbal instruction by owner.	3.98	1	3.72	2
Some information/instruction is not kept in writing.	3.76	2	3.84	1
Ineffective record-keeping system.	3.52	3	3.69	3
Inaccurate recorded information.	3.46	4	3.63	4
Inaccessibility of documents when needed.	3.38	5	3.53	6
Overdue in retrieving the needed document.	3.15	6	3.57	5
No standard form used to record the data during construction.	3.08	7	3.41	7
No computerized documentation system.	2.94	8	3.14	8
High cost associated with retrieving required information.	2.59	9	2.78	9

3.8. Presentation

In this process, the completed claim documents will be submitted and presented to client for assessment. If the documentation stage is not properly managed, it will affect this process and as a result, cause a failure in claim process. "Inaccessibility of relevant documents to submit along with the claim", "insufficient skilled staff in preparing a claim submission" and "poor communication in presenting a claim" are mutually agreed by both contractors and consultants to be the major problems in the presentation of claims.

The respondents agreed that some documents are still ineffectively kept because on-site staffs do not realize the importance of recording such documents. They agreed that it is impossible to submit the relevant document during the claims presentation, especially when the contractors need to support their claims with accurate formal documentation. Presenting a claim requires a knowledgeable, skilled and experienced person to effectively organize the full detailed claim submission. They must be aware of the claim process and know how to present the claim and defend it well. However, it is very difficult for the contractors to identify and hire experienced staff in the preparation of 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 note the need to recruit a specialist in claim management to deal effectively with the relevant issues.

Table 7. Problems in Presentation of Claims

Problems in Presentation of Claims	Contractors		Consultants	
	Mean score	Ranking	Mean score	Ranking
Inaccessibility of relevant documents to submit along with the claim.	3.15	1	3.71	1
Insufficient skilled staff in preparing a claim submission.	3.14	2	3.65	2
Poor communication in presenting a claim.	3.06	3	3.59	4
Insufficient time to thoroughly prepare claims due to high workload.	3.05	4	3.61	3
Ambiguous responsibility to the person that prepare the full report of claim presentation.	2.96	5	3.41	6
No standard format of a claim submission.	2.92	6	3.24	7
Ambiguous procedures in preparation of claim presentation.	2.85	7	3.47	5

3.9. Negotiation

The purpose of negotiation is to achieve an agreement through discussion and compromise. It is very difficult to reach a satisfactory resolution of claim between project participants. Negotiation is the main approach to resolve such conflicts before they finally become disputes. In reality, negotiations go on throughout the whole claims management process from the justification stage to the settlement of a claim. The respondents agree that “disagreement arising during negotiation”, “unsatisfactory evidence to convince other parties” and “poor negotiation skills” are the main problems in negotiation of claim settlement.

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 insufficient amount of documentation evidence and 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 that results from unsatisfactory claims preparation and negotiation.

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. Successful negotiation of claims is an important element for controlling project costs and reducing the potential for litigation resulting from outstanding claims.

Table 8. Problems in Negotiation of Claims

Problems in Negotiation of Claims	Contractors		Consultants	
	Mean score	Ranking	Mean score	Ranking
Disagreement arising during negotiation.	3.72	1	4.02	1
Unsatisfactory evidence to convince other parties.	3.52	2	3.96	2
Poor negotiation skills.	3.29	3	3.55	3
Adversarial relationship with other parties.	3.12	4	3.49	4
Inadequate time due to high workload.	2.99	5	3.35	5
Difficult to settle without any litigation or Arbitration.	2.74	6	3.16	6

4. Conclusion

This research aimed to explore the problems related to the process of claim from contractors' and consultants' point of view by studying common procedure categories, distributed into six stages. The stages are claim identification, claim notifications, claim examination, claim documentation, claim presentation and claim negotiation. The findings highlight on the need for a good documentation and record keeping system with a competent site staff that can recognize a claim during project execution. Keeping appropriate project information is an essential part of project monitoring and reporting. It also appears that a standard and transparent procedure should be put in place whereby contractors would be able to follow in order to properly prepare the claim. In addition, staff awareness, training in how to document and submit a well-supported claim, and negotiations with clients are becoming a necessity.

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