

# Delay Claims Management in Construction— A Step-By-Step Approach

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## ABSTRACT:

*Delay claims management in construction is the predominant key to the success of any project in today's litigious world. A successful delay claims management program includes organization expertise that covers the three basic claims scenarios: claims prevention, claims preparation, and claims defense. Each of these scenarios requires a skilled staff who are trained in the proper claims analysis and preparation techniques. In this article, the author discusses the three claims scenarios and presents a step-by-step approach to properly analyze a construction claim.*

**Key Words:** claims, construction, contract documents, project management

In today's litigious world, when construction claims occur (and they will), claims analysis and preparation are the keys to the success of any project. A successful claims management program requires a skilled staff who are trained in the proper claims analysis techniques.

A claim is usually initiated only after a contractor perceives that he/she has been wronged in some way, either by losing money or productive time. For favorable settlements of construction disputes and/or claims, it is important for contractors and their surety and liability carriers to work together as a team in developing a comprehensive claims management program that covers the three basic claims scenarios:

- claims prevention;
- claims preparation; and
- claims defense.

A claims prevention program begins with the careful preparation of contract documents. Incomplete drawings and ambiguous technical specifications are the most common causes of construction claims. Complete, clear, detailed, and specific contract documents, along with a comprehensive work plan that contains defined deliverables and milestones, are

the basis of a claims prevention program. It is important to define alternatives up front, including any additional time or money that may be required if a milestone is not met. Avoiding claims through a properly established prevention program is less costly than the preparation and defense of claims.

To avoid construction delay claims, the work plan (developed during the planning phase) needs to be distributed to all concerned parties for their review and input. The assigned project manager should make the development of the construction schedule a team effort, and should include everyone from top management through supervisory and trade groups. An organization breakdown structure (OBS) should be used to define responsibilities. Offsite activities such as the production of design documents, review of shop drawings, and material procurement should be incorporated into the project schedule to show the relationships between construction and nonconstruction activities that will affect project performance. The construction schedule should be resource and cost loaded to determine cash flow and resource allocation problems in advance. The project superintendent also must be totally familiar and in agreement with all of the details of the project schedule. The more input the per-

son responsible for carrying out the plan has in the development of the plan, the more likely it is to be followed. A work plan, no matter how comprehensive and well thought-out, is only as good as the people who implement it.

It is essential that a proper progress monitoring program is in place to track the success of the work plan and that a single person, such as the project manager, be held accountable for the plan's success. Documenting and tracking the schedule is a day-to-day activity and should be completed by the superintendent or project site representative who has first-hand knowledge of the job's status. All parties who are a part of the project plan must report their status to the responsible scheduling representative periodically. The scheduling representative then updates the schedule and performs a computer analysis of the project's status to identify if there is any delay. At the present time, courts and other administrative boards of appeal have accepted the critical path method (CPM) as a valid means of proving liability and damages for construction delay claims; CPM is a wonderful analytical device available for claims recognition, preparation, defense, and proof of entitlement. By using this tool, a better assessment of the situation can be made, items causing the delay identified, and responsibility diagnosed. Proper use of delay analysis techniques by the contractor's scheduling representative helps to resolve construction delay claims before they progress to litigation.

With regard to the preparation of a claim or defense, the leader of the claims management team (claims manager) should get an introductory briefing about the disputed items (claims issues) from major project participants, including the project manager, project engineer, and project superintendent. The claims manager should then establish a comprehensive work plan, with the other team members, before outlining how he or she intends to prepare and present the claim or defense.

From my experience in analyzing many construction claims, I suggest the following step-by-step approach. I believe it is very helpful when preparing a successful claim or defense.

## PHASE I—IDENTIFY AND DEVELOP CLAIMS ISSUES

- Review project documents as listed below.
- Examine pertinent contract clauses.
- Copy base file as-is.
- Examine data and establish issue folders using material from the file.
- Establish issue files that contain all of the pertinent documents.
- Organize the documents chronologically.
- Examine the data and determine what the broad issues are.
- Examine project photographs related to each issue.
- Prepare a physical description of the project and each issue (photos/drawings).
- Determine the liability for each problem.
- Prepare a preliminary estimate of time and cost effects for each issue.
- Research established entitlement theories.
- Visit the project site and inspect the materials and workmanship.
- Interview the major project participants.

The documents that should be reviewed for claims analysis are listed below.

- Project contract with addendum.
- Project correspondence (both incoming and outgoing).
- Fax transmittals (both incoming and outgoing).
- Project plans/drawings, including addenda (supplemental drawings).
- Project specifications, including addenda.
- Telephone logs and memos.
- Daily progress reports.
- Inspection reports.
- Meeting minutes and notes.
- Submittal logs and approval notes.
- Requests for information (RFIs) and related correspondence.
- Soil/material test reports and related proposals and invoices.
- Change order requests, proposals, and approvals.
- Pay application requests and payments.
- Subcontractor agreements.
- As-planned and as-built schedules with electronic files.

- As-revised and as-updated schedules with electronic files.
- Bid estimate and schedule of values.
- Project cost reports (detailed and summarized).
- Daily equipment use and workforce logs.
- Overtime workforce usage logs.
- As-built drawings.
- Punch list.
- Project close-out documents.
- Certificate of occupancy/substantial completion.
- Special study report on the project, if any.

## PHASE II—FACTUAL AND DETAILED SCHEDULE ANALYSIS

- Obtain or create as-planned and as-built schedules.
- Obtain and analyze all schedule changes, revisions, and updates.
- Determine whether as-planned schedule were realistic or not.
- Create a realistic as-planned CPM schedule.
- Compare the as-planned and as-built schedules.
- Compare the as-revised, as-updated, and as-built schedules.
- Create impacted schedule that shows all of the affected changes.
- Prepare schedule fragments that show the results of each claim issue.
- Identify time periods with delays and acceleration.
- Identify direct delay time and loss of productivity time.
- Calculate the number of days delayed due to the owner/contractor/designer.
- Identify compensable, noncompensable, excusable, nonexcusable, and concurrent delays.

## PHASE III—WORKHOUR AND COST ANALYSIS

- Organize project workhours and cost records.
- Compare as-planned and actual work-hour usage.
- Identify overtime hours.
- Determine direct costs.
- Determine equipment costs.
- Determine overhead costs.
- Examine the official estimate or bid.

- Compare the estimate with the actual cost.
- Determine the cause of extra costs.
- Determine liability for extra costs.

## PHASE IV—DAMAGE CALCULATIONS AND ASSESSMENT

- Determine damages for all changes.
- Determine delay damages and/or acceleration costs.
- Determine damages due to loss of productivity.
- Determine extended overhead and/or liquidated damages.
- Determine claims preparation costs.
- Calculate the loss of interest on capital used, if any.
- Check calculations of damages with established methods and/or practices.
- Summarize the damages.
- Establish the probability of loss or recovery on each issue for negotiation.

## PHASE V—PREPARATION OF A CLAIMS REPORT

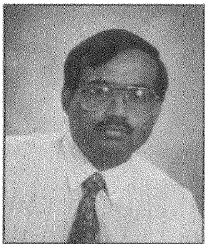
- Write about the background of the project and claim.
- Prepare a contractual organizational chart.
- Discuss causation and liability on each issue.
- Prepare graphs, charts, figures, visual aides, financial analysis, etc.
- Include a section on scheduling effects.
- Write a summary of damages.
- Write an executive summary.
- Develop exhibits.
- Edit, revise, and fine-tune your document.
- Finalize the report.

**T**he best offense in claims management is a good defense. This results from good project management practices, including open communication and proper documentation during construction. When a problematic situation arises, the project manager must be open and informative, letting all parties know in writing who has the responsibility to act to resolve the problem. To survive today's complex busi-

ness relationships and the litigious mentality of some project participants, it is very important that a designated claims management representative works closely with the project management team to eliminate gaps in communication and documentation during construction. Proper use of modern management practices through the development and administration of a well thought-out project work plan, along with a properly established progress monitoring program, will force the designated claims representative to quickly respond to any claims scenarios. A well-presented claim that includes all of the facts and a detailed analyses of the issues has a higher probability of being resolved in the arbitration or mediation stage.

**RECOMMENDED READING**

1. Baki, M.A. *CPM Scheduling and Its Use in Today's Construction Industry*. Project Management Journal (March 1998).
2. Wickwire, J.M., T.J. Driscoll, and S.B. Hurlbut. *Construction Scheduling, Preparation, Liability, and Claims*. New York: Wiley Law Publications, 1991.



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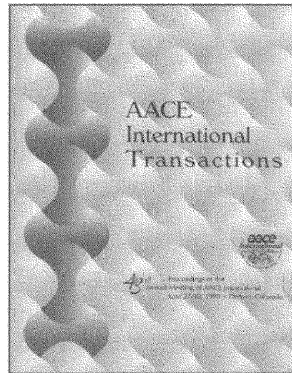
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