



“Claims”

what's it all about?

The scenario

Have you ever incurred additional costs because someone else is at fault? Furthermore have you ever lost money on a project due to someone else's mistakes or have they simply not done what they are supposed to do?

If the above is the case then you may be able to submit and negotiate a claim for “loss and/or expense”

What is a claim?

A claim is essentially reimbursement for costs incurred which would not have occurred had one party not been in default or breach of contract (not fulfilled their part of the bargain).

The claim will aim to put the injured party in the same position as they would have been had the contract been performed as tendered.

What is “loss and expense”?

It is effectively additional expenses (costs incurred) and loss of overhead recovery and profit.

What type of claims are there in the Construction Industry?

Money claims

- ▶ Delay Claims – (sometimes called “Prolongation Claims”) – namely the lengthening of time of a programme or period on site (linked to time claims below)
- ▶ Disruption Claims – namely a disturbance, hindrance or interruption to normal working methods resulting in lower efficiency
- ▶ Acceleration Claims – namely to work to bring about an earlier point in time or alternatively to provide more resources to bring about the same original completion date after suffering delays and/or disruption

Time claims

- ▶ Time claims – seeking an extension of time (to avoid paying liquidated damages or receiving contra charges)

How will a claim event affect my business?

A claim event can affect your business in many ways, here are some typical examples:

- ▶ Extended plant hire and additional on/off hire costs
- ▶ Extended site overhead costs (preliminaries including security and Site Supervision)
- ▶ Additional material wastage
- ▶ Loss of profit on the project undertaken or caused by lack of re deployment of resources
- ▶ Overtime / additional overtime/Non Productive Overtime costs
- ▶ Additional labour resource costs due to an increase in resource
- ▶ Inflationary price rises
- ▶ Finance charges due to overdraft funding work or delays to cashflow
- ▶ Additional Head Office costs (central functions such as HR,IT,Finance, HSEQ)
- ▶ Additional Insurance costs
- ▶ Additional lodging for migrant labour
- ▶ Productivity/incentive bonuses or losses as they have not been achieved
- ▶ Claims or additional costs from Sub-sub contractors
- ▶ Claims from suppliers for cost increases, storage, part loads etc
- ▶ Additional plant and equipment hired
- ▶ Additional Head Office or fixed overheads

How do I go about preparing a claim?

- ▶ Give prompt written notice of all potential claims and events or problems which could give rise to a claim
- ▶ Keep full records of all material facts, issues and instructions etc
- ▶ Be contractually aware:
 - *When and how was the contract formed?*
 - *What terms apply?*
 - *Have you met your obligations?*
 - *What rights does the contract contain regarding claims?*
 - *Have you met the contract requirements for written notice of claims etc?*
 - *Take all reasonable steps to mitigate loss and be able to demonstrate with factual evidence and your actions that you have tried*

To be valid a claim ought to have the following attributes:

- ▶ Established clear grounds for the claim (a breach of contract has materially occurred) relative to the liabilities or responsibilities established in the original Subcontract

What should a well presented claim look like?

- ▶ Introduction (executive summary/overview)
 - *Identifying the project*
 - *Outlining the key narrative facts*
 - *Indicating the basis and scope of claim*
 - *An executive summary*
 - *Statement of grounds of claim (“heads” of claim)*
 - *What breach*
 - *What clause(s) relied upon*
- ▶ Established a link between the “cause” (the breach) and the “effect” resulting from the cause occurring
- ▶ Quantify and explain in reasonable detail with reference to the facts the amount of claim (damages/loss/expense) incurred as a result of the breach occurring and be directly flowing from it
- ▶ Be proven at every stage
- ▶ Statement of amount of claim
- ▶ Actual loss/expense incurred
- ▶ How calculated
- ▶ Specific link between cause (of breach) and effect (loss/expense)
- ▶ Confirmation of mitigation measures undertaken and continuing to be undertaken
- ▶ Reservation of right to revise/update claim, if it becomes appropriate
- ▶ Appendix of detailed, relevant supporting material signposted to the narrative and heads of claim

Finally

Redfern Contract Consultants Limited are experts in Claims preparation and defence and as part of our partnership agreement with ARCA can:

- ▶ Manage the claims process on your behalf including preparation , negotiation and settlement
- ▶ Provide advice (we have an initial 20 minute advice line where advice is free)

Claims can be perceived as a “dark art” in the industry but we are here to help.

This article is written by Andrew Redfern and Bryn Tomlin of Redfern Contract Consultants Limited who can be contacted either on 07971 189648 (Andrew) or 07891 818903 (Bryn) or 01283 512 535 or via email at info@www.rcclimited.com

Redfern Contract Consultants Limited offers a full range of Commercial and Project Management, Quantity Surveying and Planning Services.