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Reasons for the Unsuccessful Extension of Time (EoT) Claim in the Malaysian Construction Industry

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ABSTRACT

Claim in relation to time is among of the contractual claims that are unavoidable in any construction project. This paper aims to identify the reasons for the unsuccessful extension of time (EoT) claims in the Malaysian construction industry. A survey research approach, using questionnaire was used and findings revealed that it is common for the EoT claim to be rejected during its first submission and requires further submission with some amendment and modification to facilitate the assessment process by the contract administrator. Insufficiency of the claim document, poor presentation of claims and lack of evidences to support the claim has been found to be among of the reasons for their rejection. The findings suggest that competencies in handling claims, effective record keeping, and strict adherence to the contract are among of the recipes towards achieving a successful EoT claim.

Keywords: Claims, construction, contract, delays, extension of time, failure, projects, rejection

INTRODUCTION

Delays in construction projects often results in adversarial relationship between stakeholders, distrust, litigation, arbitration, cash-flow problem and a general feeling of apprehension towards each other (Ahmed, Azhar, Kappagantula, & Gollapudi, 2003). As the delay would lead to the inability to meet on-time project completion, it may also results in extra cost, client dissatisfaction and other related problems (Hwang , Zhao, & Ng, 2013). The most common results of project delays are the need for an application of extension of time (EoT). Since delays

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are regarded as norm in the construction industry, the EoT claim emanating from such delays found to be among of the major source of claim in the construction industry. In fact, Yates and Epstein (2006) viewed that the claim originating from delays in a construction project is integral to modern construction. On the other hand, Harris and Scott (2001) asserted that, contract claim will continue to occur despite a number of recent innovations in in the way which contracts are procured and administered. This appears to be consistent with Kululanga, Kuotcha, McCaffer, and Edum-Fotwe (2001) who postulated that the construction projects are becoming increasingly susceptible to a variety of factors that give rise to time extension and cost recovery, which then resulted to the number of contractual difficulties continue to rise. An effective claim management process is therefore essential to ensure that any contractual claims arising are dealt with fairly.

EXTENSION OF TIME CLAIM

Claims are very simple to generate, but are not always easy to substantiate (Chappell, 2011). As most construction claims are difficult and complex, rejection of claim is regarded as common in the construction industry. For Iyer, Chaphalkar and Joshi (2008) a claim could neither be completely neither accepted nor rejected; there is partial acceptance of the claim. 86% of respondents of a survey at a Zambian construction industry indicated it is common for the client to either reduce or completely reject the contractor's claim (Sibanyama, Muya, & Kaliba, 2012). According to Yogeswaran, Kumaraswamy and Miller (1997) "a dispute can be said to exist when a claim or assertion is made by one party is rejected by the other party and that rejection is not accepted". Recent study by Ramachandra, Rotimi & Gunaratne (2014) in the Sri Lankan construction industry discovered that on average 60% of contractors submitted EoT claims with only 40% of success rate.

Provision for dealing with time extension is normally established in most standard form of contracts e.g. under Clause 23 in the Pertubuhan Arkitek Malaysia (PAM) 2006 contract, Clause 43 in the Public Works Department (PWD) 203A form (revision 2010) and Clause 31 in the Construction Industry Development Board (CIDB) form of contract. Unfortunately, most contract forms contain only the general procedures and entitlement for an extension of time with some under-defined areas that are open to different interpretation that would sometimes lead to disputes and disagreement amongst the parties involves (Palaneswaran & Kumaraswamy, 2008). This is in line with Farrow (2007) that EoT clauses in construction contracts are not prescriptive and drafted in a general way which then failed to assist the contracting parties in handling time-related claim and issues. The extension of time clause is meant to protect both parties i.e. the employer and the contractor. For the employer, it would prevent time from being rendered "at large", while for the contractor they will have more time to complete the project as a successful

EoT claim will extend the duration of completion and which would also absolve them from paying liquidated damages (Birkby et al., 2008; Chong & Leong, 2012).

Any construction claim should be well-demonstrated, substantiated and justified to achieve the desired result (Hewitt, 2011). Early studies identified the following as the reasons for the rejection of EoT claims:

a) Failure to establish cause-effect relationship
b) Inadequate supporting documents
c) Late submission
d) Non-entitlement in principle/non-valid ground/s
e) Non-compliance with contractual requirements
f) Insufficient breakdown of claim amount/global claim

Failure to Establish Cause-Effect Relationship

The most important and indeed difficult task in preparing EoT claims relates to establishing the link between cause and effect, as the effect of the event is usually difficult to link directly to the cause, which often needs to be both demonstrated and substantiated (Haidar & Barnes, 2011; Hewitt, 2011). The link between cause and effect should show the extent to which the parties have been affected. The claiming party needs to establish that work. have been delayed; that the delay has been caused by one of the relevant events listed in the contract; and, that the delaying event will lead to the completion of the works being delayed (Carnell, 2005). In addition, the demonstration of the cause and effect should include details of the affected activities in reference to their planned sequence, duration and methodology, the status of the works in relation to the planned schedule at the time of the event, and a description of the changes to that plan as a consequence of the event (Dodangoda, 2010).

Inadequate Supporting Documents

Many EoT claims by contractors fail due to poor documentation and inadequate supporting documents (Malconlaw, 2011). In the event of a poor claim submission, the contract administrator has three options: 1) he can reject the claim on the grounds that the claimant failed to prove his case; 2) he can respond with a request for the claimant to provide additional information in order to permit a proper assessment to be carried out on the submitted claim; or 3) he can produce a determination that is based not only upon the claim submitted but also on the assessor's own knowledge and the records available (Hewitt, 2011).

Late Submission

The prompt submission of an EoT claim is recognised as a good practice for speedy and harmonious settlement of a claim (Birkby, Ponte & Alderson, 2008; Kumaraswamy & Yogeswaran, 2003; Pickavance, 2005; SCL, 2002). As it is impractical for the contract administrator to assess the contractor's claim that has surpassed the time limit

(Ramachandra et al., 2014), failure by the contractor to submit it within the time frame may entitle the employer to reject the claim, which will then cause the contractor to lose his right to claim (Liulihong, 2010).

Non-Entitlement in Principle/Non-Valid Ground/s

It is common for EoT claims to be rejected due to non-entitlement/non-valid grounds. This actually refers to a situation where: such delay events are not within those listed in the contract clause empowering the construction to be extended; when the contractor is in culpable delay, i.e. the delay is due to the contractor's own doing; and when the causes of delay are not due to the client and his representatives but due to neutral events, where such risks are expressly to be borne by the contractor, e.g. heavy rain (except for exceptionally inclement weather) (Zaini, 2011). Typically, most standard forms of contracts contain a provision dealing with time-related issues, particularly on delays and extension of time in a construction project. For the contractor to claim for an extension of time, it is important to precisely identify on what contractual basis the claim is being made.

Non-compliance with Contractual Requirements

A thorough review and understanding of the contract is crucial, not only in assisting the project management and contract administration, but also in ensuring the success of a claim request. Generally, most construction contracts contain clauses stipulating the contractor's obligation on the need for notice of delay and detailed particulars of a claim (Tan, 2010). Such notice requirements are imposed to provide the owner with an opportunity to assess the circumstances to determine whether there is an alternative to rectify the situation and to mitigate its costs (Ansley et al., 2001; Baduge & Jayasena, 2012). For instance, Clause 23.1(a) of PAM 2006 requires the contractor to "*give written notice to the Architect of his intention to claim for such an extension of time, together with an initial estimate of the extension of time he may require, supported by all the particulars of the cause of delay. Such notice must be given within twenty-eight (28) days from the date of AI, CAI or the commencement of the Relevant Event, whichever is earlier. The giving of such written notice shall be a condition precedent to an entitlement to extension of tim*e". Failure by the contractors to comply with the contractual provision will result in the forfeiture of their right, including their entitlement for an extension of time (Dodangoda, 2010; Tan, 2010).

Insufficient Breakdown of Claim Amount/Global Claims

The inability of claimants to break down the claim amount can contribute to rejection of claim submissions. Such a situation is often referred to as a 'global' or 'rolled up' claim; an event where the contractor combines all the different causes of delay and shows a single effect in which a large number of delay days are claimed without an analysis

of the impact that each delay event had on the completion date (Braimah, 2008; Zaini, 2011).

METHODS

A quantitative approach using a questionnaire survey method was employed to collect data with the intent of identifying reasons for unsuccessful EoT claims. Two target populations comprising professional architects and Grade G7 contractors were identified as the respondents for the survey.

Respondents were randomly selected from a list obtained from the Construction Industry Development Board (CIDB) Contractor Directory and the Board of Architect Malaysia (LAM) database. The survey was conducted simultaneously on 1500 respondents consisting 500 professional architects and 1000 Grade G7 contractors in the country. Of this number 253 responses were received, of which eleven were incomplete and five were returned because the company was no longer in operation or had changed their addresses. According to Sekaran & Bougie's (2010) rule of thumb; if twenty five per cent (25%) of a questionnaire is left unanswered, it should be excluded from the analysis. Unfortunately, all eleven of incomplete questionnaires were found to exceed the rules; therefore, it has been discarded for further analysis. This left only 237 questionnaires considered satisfactorily completed, giving a response rate of sixteen per cent (16%). Table 1 illustrated the response rate for this research.

Table 1
Response rate

Types of Respondents	Number of Questionnaires		Response rate (%)
	Distributed	Returned (satisfactorily completed)	
Professional Architects	500	108	21.6
Grade G7 Contractors	1000	129	12.9
Total	1500	237	15.8

RESULTS AND DISCUSSION

A questionnaire was designed based on a comprehensive review of previous related researches, specifically in the area of construction delays, construction claim management, and construction disputes. To support the findings of the literature review, informal discussions were held with industry practitioners to identify current construction practices in the Malaysian construction industry, and a set of questionnaires containing four sections were prepared. However, this paper only presents the results for Section D of the questionnaire; that is to identify the reasons for unsuccessful EoT claims.

The first question requires respondents to rate the frequency of the claim status

for their EoT claim as shown in Table 2. The collective assessment of the overall responses from the professional architects and the contractors reveals that, resubmission of EoT claim consider norm in the Malaysian construction industry.

Table 2
Reasons for the unsuccessful Extension of Time (EoT) claim

Success Rate	Architect		Contractor		Overall	
	Mean	Rank	Mean	Rank	Mean	Rank
First application rejected; resubmit the application and successful	3.59	1	3.11	1	3.33	1
100% successful at the first submission	2.01	3	2.40	2	2.22	2
Rejected	2.30	2	2.13	3	2.21	3

The second question required respondents to rate how frequent each of the reason being the reasons of failure of EoT claim. A total of six (6) reasons have been identified to be the most common for rejections. Based on the collective assessment of the overall responses '*failure by the contractor to establish the cause-effect relationship*' ranks first, followed by '*inadequate supporting documents*', '*contractual provisions not properly identified to support claim*', '*late submission*' and '*failure by the contractor to comply with the contractual requirement*' with the mean score of 3.79, 3.71, 3.36, 3.24 and 3.22 in a descending order. '*Insufficient breakdown of claim amount*' comes at the bottom with the overall mean score of 3.15.

The results shown in Table 3 demonstrates that both groups have reached almost a perfect agreement in their ranking for reasons of failure of EoT claim. The ranking of the five most frequent reasons of failure was expected as those five elements were amongst of the essential elements in

Table 3
Reasons for the unsuccessful Extension of Time (EoT) claim

Reasons		Architect		Contractor		Overall	
		Mean	Rank	Mean	Rank	Mean	Rank
1.	Failure by the contractor to establish the cause-effect relationship	3.99	1	3.62	1	3.79	1
2.	Inadequate supporting documents	3.92	2	3.53	2	3.71	2
3.	Contractual provisions not properly identified to support claim	3.32	4	3.40	3	3.36	3
4.	Late Submission	3.33	3	3.16	5	3.24	4
5.	Failure by the contractor to comply with the contractual requirement	3.27	5	3.19	4	3.22	5
6.	Insufficient breakdown of claim amount (Global claim)	3.21	6	3.09	6	3.15	6

presenting claims, in which failure by the claimant to ensure their claim meet those criteria may lead to the rejection of claim by the contract administrator.

'Failure by the contractor to establish the cause-effect relationship' received the highest rank from both group. This seems to indicate that, this issue requires attention. Basically, for a claim to be successful the contractor must be able to produce facts and evidences that damages were incurred as a result of other parties' actions or inactions (Carnell, 2005; Hewitt, 2011).

Ranking second came 'inadequate supporting documents'. The construction industry has long suffered from the issue of maintaining adequate records and documentation of project activities. Thus, leading to poorly substantiated claims that could open the door for unsatisfactory claim resolution. Yates and Epstein (2006) advocates that, a proper construction delay claim management requires extensive documentation and the ideal time to start documenting, or maintaining detailed records regarding construction delays is not when it is first realized but much earlier. Thus, leading to poorly substantiated claims that could open the door for unsatisfactory claim resolution.

The third reason was 'contractual provisions not properly identified to support claim'. Among the provision which demands great attention pertains to time extension. Reference has to be made to the contract document or other available project documents, failure to do so can lead to the rejection of claims.

'Late Submission of claim' ranked fourth as the reason why EoT claims are rejected. Previous study conducted by Kumaraswamy and Yogeswaran (2003) and Yusuwan and Adnan (2013) in Hong Kong and Malaysia discovered that, 'late submission of claim' was ranked second as the reason contributed to the late assessment of EoT claim by the Architect.

As the contract document is the first point of reference when there is a dispute contracting parties must therefore adhere strictly to the terms and conditions contained therein. Thus '*Failure by the contractor to comply with the contractual requirement*' was ranked fifth as the reasons of failure of EoT claims.

CONCLUSION

The survey results indicate that, it is common for EoT claims to be rejected, requiring re-submission because of insufficient claim documents and poor presentation. With a total response rate of 16%, this study shows failure by the contractor to establish the cause-effect relationship, inadequate supporting documents, contractual provisions not properly identified to support claim, late submission of claim and failure by the contractor to comply with the contractual requirement as five (5) most frequent reasons for the unsuccessful EoT claim. The findings suggest that competencies in handling claims, effective record keeping, and strict adherence to the contract are among of the secret recipes towards realising a successful EoT claim. A proper record keeping and management system is essential. Although

there is no guarantee to get everything, at least proper factual evidence and adequate supporting documents will facilitate the claim management process, thus helping to diminish conflict and disputes resulting from unsatisfactory claim resolution. Competency will help the professional in determining what constitute to a good claim, what need to be complied and further put it all together into a perfect and quality claim. Other than having so called 'claim conscious' attitude, a pro-active and early non-adversarial discussion would be the best way to achieve amicable settlement for a claim, and clearly this would not only requires one sided commitment but demands everyone's attention, commitment and cooperation in realizing it.

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