

# ASSESSMENT OF CLAIMS MANAGEMENT ON BUILDING PROJECTS IN NIGERIA

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## ABSTRACT

Claims appear to hinder the completion of construction projects and cause delays in delivering such projects. The study examined the types, causes, and ways of managing claims in south-western Nigeria. Primary data were obtained through questionnaires administered to professionals in Contracting and Consultancy Firms in South-western Nigeria. Secondary data were collected through review of relevant literatures. Forty-four questionnaires were retrieved out of Sixty administered through random Sampling. Data obtained from the survey were analysed using the Frequency Table, Weighted Average and Importance Index Percentage (II %). The result indicated Extra-work claims as the most frequent construction claims on building project, while the major causes were Change or Variation order, Variation in Quantities, and Changes in Material and Labour. Negotiation was ranked as the best way of managing claims. The study concluded that the risk of construction claims can be reduced or avoided if; (a) reasonable time were allowed for design and pre-contract documentation; (b) if there were proper mechanism for processing and evaluating change or variation order.

**Keywords:** Assessment, Claims, Management, Building, Projects.

## INTRODUCTION

Construction Sector is considered as one of the largest fragmented industry with an estimate of annual global output of \$4.5 trillion (Khan, 2008). In Nigeria, the Construction Sector registered strong growth, standing at 12.09% in 2010 as against 11.97% in 2009 reflecting greater investments in both residential and non-residential buildings and other construction activities. The sector contribution to overall GDP dropped down repeatedly to 2.86% in 2010 and 3.16% in 2009 from 3.76% achieved in 2008. This was attributed to the low implementation of capital budget by the Federal Government (NPC, 2011; Waziri & Bala, 2014; Isa, Jimoh & Achuene, 2013).

In developing countries like Nigeria, the construction sector provides a substantial source of employment to poor citizens of those countries. The sector is known to offer a sound basis for

revenue collections, thereby providing government with direct and indirect taxes (Donkor, Hananu & Aniniyie, 2014). Direct taxes are paid to the Local and Federal Government by construction firms through taxable incomes and mandatory taxes before participating in public procurement and indirectly, firms pay taxes through the materials they purchase for construction works (Basheka, 2010). The contributions of Nigerian Construction industry to the economic development of the nation has been hindered (directly or indirectly) by the resultant effect of claims, in most cases extension of construction period, increased cost of construction, dispute and abandonment. Therefore, there is the need to examine the management of Claim in Nigerian construction industry.

Construction claims are considered by many project participants to be one of the most disruptive and unpleasant events of a project (Ho and Liu, 2004). Today, construction projects are the subjects of more claims than in any other time in history. The high competition has forced contractor to bid projects with minimum cost in order to stay in business. In addition to their multiparty nature, projects are becoming more complex and risky. This has placed and added burden on contractors to construct increasingly sophisticated and risky projects with less resources and profit. Under these circumstances, it is not surprising that the number of claims within the construction industry continues to increase (Ho and Liu 2004).

In most cases when assessing a claim, the Quantity surveyors will require the master program often in form of a bar chart, a method statement showing in general terms how the contractor intends to carry out the work, and a detailed breakdown of the cost of preliminaries (Trickey, 1979)

It is the responsibility of the contractor to formulate his claim in detail and to furnish the evidence on which the claim is based. A properly supported claim will be carefully examined to establish whether the facts are properly founded, whether the matters submitted equate the circumstances provided for in the relevant contract clauses and whether the amount claimed can be justified (Davies, Hay, and Sneden, 1980). This study therefore identified the types and causes of construction claim on building projects in Nigeria and evaluated ways of managing claims submitted by the contractor.

## LITERATURE REVIEW

### Construction Claims

Construction claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of contract terms, payment of money, extension of time or other relief with respect to the terms of the contract (Levin, 1998).

In very simple terms, a claim can be defined as a request for compensation for damages incurred by any party to a contract (Semple et al. 1994). In the construction industry, claims are common and can happen as a result of several reasons that can contribute to delaying a project and/or increasing its costs (Gulezian and Samelian 2003 and Kartam 1999). Claims for additional costs or for time extensions occur during the course of construction. To enhance the chances of success, contractors must understand the main causes of claims and, when submitting a claim, provide enough information and present sufficient documentation. Project owners need also to follow an overall comprehensive step-by-step procedure for tracking and managing the claims submitted by contractors (Abdul-Malak et al. 2002, Singh and Sakamoto 2001 and Scott 1997).

Once a claim has been presented, the owner and contractor can come to an agreement concerning the claim and thereby create a change order or a modification, or they may disagree and create a construction contract dispute. Resolving and settling claims can take place through negotiation, mediation, arbitration or litigation. (Ren, Anumba, and Ugwu 2003).

Generally, litigation required a long period of time and significantly higher legal costs, as compared to other ways mentioned above. Even though construction disputes are frequent and their resolution is difficult, many legal advices are not sought because it is not available or because it is expensive. Project participants are becoming more aware of the delays and high costs and risk associated with claims (Zaneldin, 2005). Some types of claims are;

a) Common Law Claims: These are claims that arise outside the context of a contract. They are related to a default by the Employer or his representative in context of the contract. For instance, The Employer disturbed or hindered the progress of the work or the Architect neglect his duties thereby resulting to loss to the contractor.

b) Ex – Gratia Claims: These are claims that have no legal basis but are considerable. The Employer is under no obligation to meet such ‘hardship claims’ but may be prepared to do so on the ground of natural justice or to help the contractor where otherwise he might be forced into liquidation.

c) Contractual Claims: These are claims that are founded on specific clauses within the terms of the contract. It may be classed as either negative or positive in character although these classifications do not have universal recognition. Negative Claims are claims where the contractor seeks to avoid a payment, such as liquidated and ascertained damages. A claim for liquidated damages is made by the employer against the contractor for alleged breach of contract, in that the contractor has not completed the works within the agreed contract period. In order to mitigate this claim by the employer, a negative claim may be submitted by the contractor. Positive Claims are claims that attract most attention, such a claim, if successful can only result in an addition to the contract sum and consequently more money being paid to the contractor.

According to Bu-Bshait and Manzanera (1990), there are various ways to classify construction claims into categories. However, they can be grouped into 3 groups. The first group classifies claims into two basic types by the objectives of claims. They consist of (1) claim for extra time to complete the contract, and (2) claim for extra money arising out of the contract (Chappell, 1984) . Chappell (1984), Alkass and Harris (1991) and Hughes and Barber (1992) classified claims into three major types:

1) Contractual claims: Contractual claims are the claims that fall within the specific clauses of the contract, typically ground conditions, valuation, variations, late issue of information, and delay in inspecting finished work.

2) Extra-contractual claims: This type of claim has no specific grounds within contract but is a result of breach of contract, which may be expressed or implied. An example of extra-contractual claim is the extra work incurred as a result of defective material supplied by the employer.

3) Ex-gratia claims: Ex-gratia claims are the claims that there is no ground existing in the contract or the law, but the contractor believes that he has moral grounds, e.g. additional costs incurred as result of rapidly increased prices.

The last group, as proposed by Adrian (1988), classified claims into four major types: (1) Delay claim, (2) Scope-of-work claim, (3) Acceleration claim, and (4) Changing-site-condition claim, in order to facilitate the calculation of damages of claims

### **Construction Claim Management**

The word “Management” means the process of dealing with or controlling people or things (Homby, 1995). When combined with the meaning of the word “Claim” defined by Arditi and Patel (1989), the word “Construction claim management” can be construed as the process of dealing with or controlling the seeking of consideration or change by one of the parties involved in the construction process. Cox (1997) considered variation and claim management as the management of risks and should begin even before the start of constructions by both employers and contractors.

There are many sub-processes related to construction claim management. Levin (1998) indicated seven basic procedures for claims and change order administration. They are: recognition and identification of change; notification of change; systematic and accurate documentation of change; analysis of time and cost impacts of change; pricing of change; negotiation of claim, and dispute resolution and settlement.

### **Resolving Construction Claims**

Depending upon the dispute resolution terms of the contract, you should be ready to do one or several of the following; Negotiation, Mediation, Arbitration and Litigation.

**Negotiation:** This is a method of meetings between disputing parties (normally the owner’s representative and the contractor) can help achieve an early resolution of a dispute. Owners tend to spend a lot of time in studying claims and any corrective action is normally postponed. If resolution is not achieved, the case passes out the hands of those negotiating parties and goes to mediation or arbitration.

**Mediation:** When negotiation fails, parties may solve their claim by having a mediator. The role of the mediator is to bring parties together. Efforts are made to reach an agreement in order to

settle the dispute. The mediator may clarify or outline the disagreements. This helps each side understand the position of the other side. Also a mediator may make suggestions and he/she may even propose a final decision. Disputing parties are therefore, not required to accept the mediator's decision.

**Arbitration:** If they do not succeed to resolve the claim using negotiation or mediation, disputing parties may use arbitration. Although, they are loath to use arbitration as solution to resolve disputes, it might be an unavoidable resort. After an arbitrator is appointed, each party tries to convince the arbitrator of the correctness of his position and the hearing is not closed until each had a full opportunity to present his/her case. After the hearing, the arbitrator makes a final binding decision.

**Litigation:** If the disputing parties have not agreed on the arbitrators or if one or more arbitrators agreed upon abstaining from the job or if there was a hindrance to proceed with it and there was no agreement between the parties in this regard, the parties may go for litigation. Although, disputing parties hate to go to court to resolve disputes, it might be their only remaining and final resort. A judgment rendered in this matter is final and binding and may in no way be challenged.

## **METHODOLOGY**

A survey of professional in constructing and consultancy forms i.e. Architects, structural and services, Engineers, Quantity Surveyors etc. Opinion of claim management of building project in Nigerian built environment was conducted using a well structural questionnaire. The questionnaire was designed and administered to a randomly selected contracting and consultancy professionals in Lagos and Ogun State, South – West Nigeria.

A total of forty four (44) questionnaires representing 73.3% were properly completed and returned out of sixty (60) questionnaires distributed. The survey addressed the professional view of respondents on the frequency of some factors identified as causes of construction claims, types and management of construction claims. Relevant secondary data were obtained from in depth study of literature.

The statistical tool used for the questionnaire analysis was the weighted average and ranked based on importance index percentage. The data were analyzed using the framework 0 – 4 Likert

ordinal scale to measure a range of opinions of the respondents from never (0), Rare (1), Average (2), Frequent (3) and very frequent (4). The analysis therefore employed the following statistical steps:

- a. Computation of the mean using weighted average formula

$$\text{Weighted average} = \frac{\sum W_i \times X_i}{N}$$

Where:

i is the number of option (from 0 for 'Never' to 4 for 'Very Frequent')

W<sub>i</sub> is the weight assigned to the i<sup>th</sup> option

X<sub>i</sub> is the number of respondents who selected the i<sup>th</sup> option

N is the total number of the respondent

- b. Computation of importance index percentage (II %) for each item of interest, using the formula.

$$\text{Importance Index \%} = \frac{\sum w_i x_i}{N} \cdot \frac{100}{k}$$

Where k = Maximum point on the Likert's Scale (in this case, k = 4)

- c. Ranking of the items under consideration based on their Importance Index Percentage (II %) values. The item with the highest II% is ranked first (1) the next (2) and so on

### **Data Presentation and Analysis**

Table 1 i- iii represent the demographic information of the professionals (respondent), Table 2 represent frequency of construction claims occurrence. Table 3 presents the professional opinion on the frequency of some factors identified as causes of construction claims and types while Table 4 represent the professional opinion of the on the management of construction claims.

**Table 1 : Demographic Information of Respondent**

Category	Frequency	Percentage.
i Experience of the Respondent		
1 – 5 years	12	27.27
6 – 10 years	26	59.09
11 – 15 years	4	9.09
16 – 20 years	2	4.54
21 years and above	0	0
<b>Total</b>	<b>44</b>	<b>100</b>
ii Organizational Structure of Respondent		
Construction Firm	34	77.27
Consultancy Firm	8	18.18
Maintenance, Ministry etc	2	4.54
<b>Total</b>	<b>44</b>	<b>100</b>
iii Highest Academic Qualification of Respondent		
PhD	0	0
Msc	4	9.09
BSc	16	36.36
HND	20	45.45
Cert.	4	9.09
<b>Total</b>	<b>44</b>	<b>100</b>

*Source: Field Survey (March 2014)*

**Table 2: Frequency of Each Types of Construction Claim**

Types of Construction Claim	Weighting					N	x*	RII	Rank
	0	1	2	3	4				
Acceleration Claims	4	22	10	8	0	40	1.65	41.25	7th
Changes Claims	4	8	14	14	6	42	2.429	60.714	2nd
Contract Ambiguities Claims	2	18	14	8	2	42	1.857	46.429	6th
Damage Claims	2	12	16	12	2	42	2.095	52.381	4th
Delay claims	0	12	8	18	6	44	2.409	60.227	3rd
Different site condition claims	4	8	20	8	4	44	2	50	5th
Extra Work Claims	0	0	14	16	14	44	3	75	1st
Non - performance claims	4	22	10	6	2	44	1.545	38.636	8th

*Source: Field Survey (March 2014)*

0=Never, 1 = Rare, 2 = Average, 3 = Frequent, 4 = very Frequent



Table 3: Causes of Claim

Causes of Claim	Weighting					N	WA	II%	Rank
	0	1	2	3	4				
Accidents	4	18	14	8	0	44	1.591	39.773	24
Bad communication between parties	4	16	14	8	2	44	1.727	43.182	18
Bad quality of Contractor's work	2	10	12	16	4	44	2.227	55.682	7
Change or Variation orders	0	6	6	12	20	44	3.045	76.136	1
Change in materials and labour cost	2	8	10	14	10	44	2.5	62.5	3
Contractor is not well organised	6	16	12	6	4	44	1.682	42.045	19
Contractor financial problems	8	4	16	14	6	48	2.125	53.125	10
Delay caused by client	2	6	16	14	6	44	2.364	59.091	4
Delay in payment by client	4	6	16	10	8	44	2.273	56.818	6
Delay caused by contractor	0	8	18	12	6	44	2.364	59.091	4
Design errors or omissions	2	12	18	6	6	44	2.045	51.136	11
Estimating error	4	18	12	8	2	44	1.682	42.045	19
Execution error	4	12	18	8	2	44	1.818	45.455	16
Government regulation	2	20	14	8	0	44	1.636	40.909	21
Low price of contract due to high	6	8	16	12	2	44	1.909	47.727	15
Oral change orders by client	10	6	16	8	4	44	1.773	44.318	17
Owner personality	6	4	16	12	6	44	2.182	54.545	8
Planning errors	6	16	12	8	2	44	1.636	40.909	21
Poorly written contracts	6	18	8	12	0	44	1.591	39.773	24
Scheduling errors	4	16	16	8	0	44	1.636	40.909	21
Specification and drawings inconsistency	2	18	8	12	4	44	1.955	48.864	13
Subcontracting problem	2	18	8	12	4	44	1.955	48.864	13
subsurface problems	2	20	14	6	2	44	1.682	42.045	19
Suspension of work	2	10	12	18	2	44	2.182	54.545	8
Termination of work	6	10	12	14	4	46	2	50	12
Variations in quantities	0	6	8	20	10	44	2.773	69.318	2

*Source: Field Survey (March 2014)*

0=Never, 1 = Rare, 2 = Average, 3 = Frequent, 4 = very Frequent

Table 4: Managing Construction Claims.

Ways of Managing claims	Weighting					N	WA	II%	Rank
	0	1	2	3	4				
Negotiation	0	4	0	12	28	44	3.455	86.364	
Mediation	2	8	20	14	0	44	2.045	51.136	
Arbitration	2	14	18	2	8	44	2	50	
Litigation	6	14	12	10	2	44	1.727	43.182	

*Source: Field Survey (March 2014)*

0=Never, 1 = Rare, 2 = Average, 3 = Frequent, 4 = very Frequent

## **Discussion of Results**

The result (Table 1 i – iii) of the survey show that majority of the professional that responded to the questionnaire had between 6 – 10 years' on-the-job experience (59.09%) and between 1 – 5 years' experience (27.27%), mostly of them work with contracting firms (77.7%) and possessed either BSc (36.36%) or HND (45.45%) degrees respectively.

Table 2 revealed Extra Work Claims (75%) which ranked 1<sup>st</sup> and Changes in Material and Labour (60.71%) which ranked 2<sup>nd</sup> as the most frequent type of claims. Non-performance claims were ranked 8<sup>th</sup> with Importance Index Percentage of 38.63%.

Twenty-Six factor were identified as Causes of Construction Claims. Table 3 revealed Change or Variation order with 76.13% Importance Index, Variation in Quantities with 69.31% II, Changes in Material and Labour with 62.5% II, Delay caused by Client 59.09% II and Delay caused by the Contractor with 59.09% II as the most frequent factors causing construction Claims while Bad Communication between Parties (39.77% II), Poorly written Contracts (39,77% ii) and Government Regulations (40.09% II) among others are the least causes of construction claims. There are four basic ways of resolving Construction Claims which includes Negotiation, Mediation, Arbitration and Litigation. Table 4 revealed Negotiation (86.36% II) and Mediation (51.13% II) as most frequent methods used in resolving Construction Claims in Nigeria.

## **CONCLUSION**

The study assessed types, cause and management of construction claims on building projects in Nigeria. It was concluded that extra-work claims were the most frequent type of construction claims and often caused by change or variation order, variation in quantities and changes in materials and labour which can be avoided or reduced by allowing reasonable line for design and pre-contract documentation of building project, also by proper analysis and evaluation of change or variation order. Negotiation was the mostly used dispute resolution method to resolve claims.

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