


Andrews v. Australia and New Zealand Banking Group, M48/2012 (High Court of Australia 2012).


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BP Refinery (Westernport) Pty Ltd v. Hastings Shire Council, UKPCHCA 1; 180 CLR 266 (Privy Council 1977).


Cherry Hill Construction, Inc. v. Maryland Transportation Authority, 2179 (Maryland state board of contract appeals 1999).

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Croeser, E. (2009). How effective are standard form construction contracts in dealing with contract variations and contractors' claims. (BSc Dissertation), University of Pretoria, Hatfield.

Reference


Gaymark Investments v. Walter Construction Group, NTSC 143 (Supreme Court of the Northern Territory 1999).


Holmes v. Guppy, 3 M & W 387 (Court of Exchequer 1938).


Koch Hightex Gmbh v. New Millennium Experience Company Ltd and Another, EWCA Civ J1103-11 (Court of Appeal 1999).


Reference


Madigan v. Hobin Lumber Co, 986 F.2d 1401 (United States Court of Appeals 1993).


Mid Essex Hospital Services NHS Trust v. Compass Group UK & Ireland Ltd, pass Group (Court of Appeal 2013).


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Peninsular Balmain Pty Ltd v Abigroup Contractors Corp Pty Ltd, NSWCA 211 (New South Wales Court of Appeal 2002).


Turner Corporation Ltd v. Austotel Pty Ltd, CLD100015 (Supreme Court of NSW 1992).


ANNEXES
SAMPLE QUESTIONNAIRE

DEVELOPMENTS TO BE BROUGHT INTO CONDITION PRECEDENT NOTICE PROVISION OF CONTRACTOR’S CLAIM CLAUSE FOR THE BETTERMENT OF THE CONTRACTOR: CONTRACTOR’S PERSPECTIVE

* Required

1. Email address *

2. Mark only one oval.

☐ Option 1

What is Condition Precedent Notice Provision (Time Bar Notice Provision)?

“A claim notice provision, which typically states that the failure to submit a notification of a claim within a defined time frame would lead to the loss of right to that claim” (Kassem, 2015)

Research Aim

Aim of this research is to find what developments to be brought in to condition precedent notice provision of contractor’s claim clause for the betterment of the contractor in contractor’s perspective.

Objectives of the Research

To identify reasons for inability of contractors to comply with condition precedent notice provision in contractor’s claim clause.

To examine the suitability of condition precedent notice provision in contractor’s claims as per contractor’s perspective.

To examine alternative developments to be brought in to condition precedent notice provision in contractor’s claim clause as per contractor’s perspective.

QUESTIONNAIRE

3. Please mention your name and designation in your organization *
4. Please indicate your working experience in the field of construction industry
Mark only one oval.
- Less than 5 yrs.
- 5-10 years
- 10-15 years
- 15-20 years
- 20 -25 years
- More than 25 years

5. Do you have work experience in construction contractor side? *
Mark only one oval.
- Yes
- No

6. Please indicate your experience as a contractor? *
Mark only one oval.
- Less than 5 yrs.
- 5-10 years
- 10-15 years
- 15-20 years
- 20 -25 years
- More than 25 years

7. Please indicate your educational and/or professional qualification *
Check all that apply.
- Certificate
- Diploma
- Degree
- Post graduate
- Chartered
- Other:

8. Have you potentially involved with contractor’s claim during your past carrier life?
Mark only one oval.
- Yes
- No
9. What is the standard contract documents used in those contracts?
   * Check all that apply.
   - [ ] FIDIC 1999
   - [ ] FIDIC 1987
   - [ ] ICTAD SBD/ 01, 02, 04
   - [ ] NEC
   - [ ] Other:

10. Do you have experience in engaging with contracts where “Notice provision” in Contractor’s claims is condition precedent (Time Bar)?
    * Mark only one oval.
    - [ ] Yes
    - [ ] No

11. Do you think it is important to establish the notice provision in “Contractor’s Claims” clause as a condition precedent /time bar?
    * Mark only one oval.
    - [ ] Yes
    - [ ] No
    - [ ] Maybe

Please state why do you think so

12. Did you receive responses from the Engineer/Employer for your claim notices within a reasonable time?
    * Mark only one oval.
    - [ ] Always
    - [ ] Very Often
    - [ ] Sometimes
    - [ ] Rarely
    - [ ] Never

SECTION 5

13. How many times you have provided claim notices within stipulated time frame established in relevant contracts of your past carrier?
    * Mark only one oval.
    - [ ] Always
    - [ ] Very Often
    - [ ] Sometimes
    - [ ] Rarely
    - [ ] Never
14. Do you have any experience of having rejected your valid claims due to non compliance with notice provision?
*Mark only one oval.*

- [ ] Always
- [ ] Very Often
- [ ] Sometimes
- [ ] Rarely
- [ ] Never

15. If you did not always comply with claim Notice Provision, what were the reasons

- [ ]
- [ ]
- [ ]
- [ ]
- [ ]
- [ ]
- [ ]
- [ ]

16. To what frequency following causes matter for not complying with condition precedent notice provision in Contractor’s claims clause as per your knowledge and experience *
*Check all that apply.*

<table>
<thead>
<tr>
<th>Very Frequently</th>
<th>Frequently</th>
<th>Occasionally</th>
<th>Rarely</th>
<th>Never</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Employer may be deemed to have actual knowledge of events giving rise to claim. Eg. Where unusual or severe weather results in project delays</td>
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<td>[ ]</td>
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<tr>
<td>The Employer may be deemed to have waived its right to enforce a contractual notice provision</td>
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<td>[ ]</td>
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<td>The delay or additional expense is not the Contractor’s fault</td>
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<td>Compliance with notice provision was frustrated or rendered impossible by the other party</td>
<td>[ ]</td>
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<td>The Contractor doesn’t want to turn a good working relationship with the employer into an adversarial one</td>
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<tr>
<td>The Contractor doesn’t believe that the Employer is capable to react to the notice on time, and the late reaction would end up the Contractor in a worst situation</td>
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<tr>
<td>Lack of knowledge and experience to identify the event</td>
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<td>[ ]</td>
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<tr>
<td>Due to limited time</td>
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<td>Negligence</td>
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<td>Communication gap between site technical staff and management staff</td>
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<td>Contractors are always struggling with the time and may be overloaded with work and the time targets.</td>
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17. Add your reasons indicated in question 13 and indicate the frequency of those reasons as per question 14.

18. To what level do you agree that, the contractor is prejudiced (harmed) by enforcing condition precedent notice provisions for Contractor's Claim clause? *
   
   Mark only one oval.
   
   [ ] Strongly agree
   [ ] Agree
   [ ] Undecided
   [ ] Disagree
   [ ] Strongly disagree

19. If the contractor is prejudiced, in what way do you think that the contractor could be prejudiced?

________________________________________________________________________

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________________________________________________________________________
20. To what level do you agree the following negative effects could challenge the suitability of enforcing "condition precedent notice provision" for contractor's claim clause? *
Check all that apply.

| "Loosing good faith obligation"; If an employer was made aware of the contractor's intention to claim in such manner, the employer could be seen as acting in bad faith; if he later argues that the contractor did not meet the condition precedent notice provision. |
| "Unlawful exercise of rights"; The exercise of a right shall be unlawful if it is disproportionate to the harm suffered by the employer. |
| "Unjust enrichment"; An employer may be relying on a time bar provision to avoid payment to the contractor for works performed and for works from which the employer has benefitted particularly if the only reason for withholding payment is the lateness of the contractor's claim. |
| "Defense for claims"; The requirement for having notices is used as defense against claims and not for the intended purpose. |
| "Conflicts with Prevention Principle"; When acts of employer prevent the contractor from achieving the completion date and deduction of LD due to not complying with notice for EOT is not reasonable under common law Prevention Principle |
| "Doctrine of Penalty"; When the contractor's entitlement to an EOT is subject to the complying with notice provision and failure to do so will deprive the contractor of an EOT and allow the employer to claim LD. This LD could be a penalty |

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<tr>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Undecided</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
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<td>Davis</td>
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21. Do you agree that the condition precedent notice provision for contractor's claims clause should be developed? *
Mark only one oval.

- Strongly agree
- Agree
- Undecided
- Disagree
- Strongly disagree

22. If it should be developed, in what way do you think that it should be developed?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
23. To what level following alternative developments are suitable for notice provision in contractor’s claim clause for the betterment of the contractor? *  
Check all that apply.

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<th>Highly suitable</th>
<th>Suitable</th>
<th>Undecided</th>
<th>Unsuitable</th>
<th>Highly Unsuitable</th>
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</table>

However, if the Contractor considers there are circumstances which justify the late submission, he may submit the details to the DAB for a ruling.

However, if the Contractor fails to comply with notice provision, compensate the balance of the claim amount after deducting the damage due to violation of notice provision.

However, if the Contractor fails to comply with notice provision, compensate the Contractor if he proves that the Employer is not prejudiced by his failure to notify.

However, if the Contractor fails to comply with notice provision, release the contractor from liquidated damages if he proves that the delay is due to Employer’s action.

However, if the Contractor fails to comply with notice provision, compensate the Contractor only 50% of his claim due to the violation of notice provision.

Include a provision to the clause for the Employer to react to the notice generated based on notice provision in a time frame with committed decision to increase the faith of the Contractor on provisions.

24. Add your developments mentioned in question 19 and indicate the suitability of those developments as per question 20

Thank You
APPENDIX B

PRELIMINARY INTERVIEW GUIDE LINE

Personnel information

Name: ..................................................................................................................
Name of the Company: ..................................................................................
Designation: ....................................................................................................
Qualification: ..................................................................................................
Experience: ......................................................................................................

Introduction

Research Topic:

Developments to be brought into condition precedent notice provision in contractor’s claim clause for the betterment of the contractor; contractor’s perspective.

Research Objectives:

- To identify condition precedent notice provisions in FIDIC and NEC standard forms of contracts.
- To identify the importance of condition precedent notice provision to notify of contractor’s claim.
- To identify reasons for inability of contractors to comply with condition precedent notice provision in contractor’s claim clause.
- To examine challenges to condition precedent notice provision in contractor’s claim clause as per contractor’s perspective.
- Examine different views to develop condition precedent notice provision in contractor’s claim clause as per contractor’s perspective.
Questions

1. What are the importances of notifying contractor's claim situations to the employer?
2. Do you think that it should be condition precedent?
3. What is your view on condition precedent notice provision?
4. Do you think that contractors are unable to provide timely notices?
5. If so; what are the reasons for lack of notices?
6. Do you think the following challenges affect to condition precedent notice provision?
   - Conflicts with prevention principle
   - Unjust enrichment
   - Defense for claims
   - Doctrine of Penalty
   - Unlawful exercise of rights
   - Loosing good faith obligation
7. Do you think that the contractor's claim clause should be developed?
8. If so; what are the proposed amendments to contractor's claim clause?