



It's a... claim! Now what?

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It's a claim!

A construction claim by definition is:

An unresolved entitlement to time, money, or some other relief under the contract.

It's a claim!

“An unresolved entitlement to time, money, or some other relief under the contract.”

HOWEVER, depending on the contract:
a “claim” does **not** always entail that other mechanisms, like change order procedure, have been attempted and failed.

It's a claim!

1. Initial preservation of the claim

It's a claim!

**Drop everything:
read the contract!**

It's a claim!

Key Construction Contract Principles for Claims

1. Contracts have **the effect of law for the parties** and may be dissolved only through the consent of the parties or on grounds provided by law.

It's a claim!

Key Construction Contract Principles for Claims

2. Know the "documents incorporated by reference" into your contract: extraneous documents may provide claims procedures and timelines

It's a claim!

Key Construction Contract Principles for Claims

3. Honor the contractual notice provisions!

For example:

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AIA A201-2017

General Conditions

Claims Provisions:



§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. ...

It's a claim!

AIA A201-2017

General Conditions

Claims Provisions:

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor... shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 **shall** be initiated within 21 days after occurrence of the event giving rise to such Claim or **within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.**



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General Conditions

Claims Provisions:



§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

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General Conditions

Claims Provisions:



§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

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2. What to do after initial notice is given and the claim is initially preserved?

It's a claim!

Most contracts provide dispute resolution mechanisms

1. IDM/Standing project neutral
2. Negotiation
3. Mediation
4. More formal dispute resolution: arbitration or litigation

It's a claim!

Most contracts provide dispute resolution mechanisms

1. IDM/Standing project neutral
2. Negotiation
3. Mediation
4. More formal dispute resolution: arbitration or litigation

Ascertain which of these applies to your claim

It's a claim!

2. What to do after initial notice is given and the claim is initially preserved (continued)?

1. Gather and preserve all relevant documents
2. Institute a "litigation hold" type procedure

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3. You have preserved your claim and gathered your records – now what?

It's a claim!

It depends on your dispute resolution mechanism that is in play

It's a claim!

It depends on your dispute resolution mechanism that is in play

But first: let's see who the “players” are

It's a claim!

The players:

1. Witnesses – establish the facts

It's a claim!

The players:

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2. Documents – establish the facts

It's a claim!

The players:

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3. Attorneys – know the law, present the case

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The players:

1. Witnesses – establish the facts
2. Documents – establish the facts
3. Attorneys – know the law, present the case
4. Outside experts – provide additional expertise and/or an independent perspective

It's a claim!

It depends on your dispute resolution mechanism that is in play

So: where are you headed first?

It's a claim!

IDM/Standing project neutral

1. Level of case preparation
2. Attorney involvement
3. Hiring outside experts

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Negotiation

1. Level of case preparation
2. Attorney involvement
3. Hiring outside experts

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Mediation

1. Level of case preparation
2. Attorney involvement
3. Hiring outside experts

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Arbitration/Litigation

1. Level of case preparation
2. Attorney involvement
3. Hiring outside experts

It's a claim!

Key ancillary considerations when pursuing a claim:

1. Statutes of limitation/repose
2. Privileged communications
3. Attorney's fees

It's a claim!

When do you settle, and for how much?

It's a claim!

When do you settle, and for how much?

"Mr. Attorney, I cannot afford to lose this case!"

It's a claim!

When do you settle, and for how much?

Judges and arbitrators: gotta love 'em!

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When do you settle, and for how much?

"What do you mean I can't appeal this arbitration award?"

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When do you settle, and for how much?

What does it look like to "go long" in litigation?

It's a claim!

When do you settle, and for how much?

A good settlement looks like...?

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When do you settle, and for how much?

Q: Should we ever arbitrate or litigate just for the sake of principle?

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When do you settle, and for how much?

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A: Only if you have money and time to burn.

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A: Only if you have money and time to burn.

This is why mediation is successful more often than not!

It's a claim!

Fin!

Questions?