

The Number 1 Driver of a Construction Claim

Executive summary. A construction claim is a dispute in the Work as it was contemplated in the original construction documents. However, a large percentage of what drives a claim is not the Contract. It's the people. It's personalities.

The spark. Losing money. That's what drives contractors to spar with an owner. Contractors can lose money for a variety of reasons. When a contractor is losing money due to its own negligence, that frustration tends to be internalized within their Company. However, when an owner, subcontractor, or supplier contributes to that loss is when these other parties start to feel the heat.

Out come the fangs. Specifically, to the age-old Contractor/Owner relationship, more often than not the cause of a claim is the human element. It's definitely always a significant variable. This mistrust is inherent in the relationship. Yes, it's true, there is usually a technical aspect in the claims in perceived error or omission in the drawings or specifications, but the only reason this got to a "Claim" status was because the parties could not get the matter resolved.



Do I want to be right, or do I want resolution? As an owner, or a contractor, this is the major question you need to ask yourself. And you don't need a \$500/hour lawyer to help you with that. I just did for free. Most cases are about a party getting upset, failing to communicate their issue effectively, and then both parties retreating to their safe places. Sometimes you (Contractor or Owner) need to engage mind, before mouth, as my dad would say. Are you even listening and trying to understand the other party?

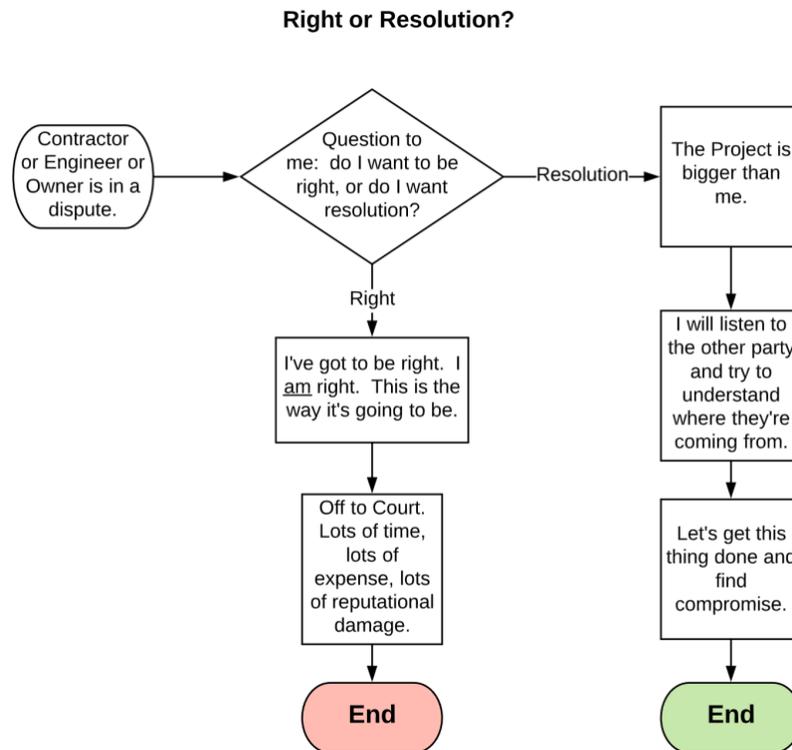
Here's the solution. These matters can usually experience progress with the removal of emotion. Look within your organization. If the true goal is to resolve the problem, and not the need to "win" wholly and be right, put someone from your organization in a room with the other party's designee and have a calm, logical discussion. I'm not saying that it works all the time, I'm saying that removing emotion is most of the battle. If you get the meeting with the other party, you've already started on common ground – you're both there because you want resolution.

My story. In my thirty-year career, I've now legitimately been on both sides of the table – the Contractor side and the Owner side. 90% of my experience has been on the Contractor side, the most recent 10% has seen a lot of Owner representation. What have I learned about claims? Someone's always butthurt. It's an ugly word, yes, but look at its definition [QR] It's spot on.



I know I'm right because I was always pissed off at the Owner for lack of urgency, an Engineer for hubris (look it up, it's your new favorite word whether you're a Contractor

or Owner), or both parties for putting out incomplete Contract Documents. But I didn't always know the whole truth.



There is no engrained mentality, no foundation of teaching, in which a Contractor schools their project management that every single job should have a claim on it*. There is a common schooling that when something veers outside of the Contract Documents, there should be compensation in time and/or cost. However, often times this can be managed through timely addressing of the matter by the parties and fulfilled promises of *making these issues right*.

Just this past year I was representing an Owner and closed a seven-figure claim under an oak tree in a school parking lot with a handshake. What happened next? The Contractor got close to whole financially, and the Owner got an on-time project. Win-win. Was I happy, not completely. Was the Contractor happy, probably not completely. But the Project won and the parties have now furthered a relationship of trust and a method of effective dispute resolution – look out for falling acorns!

Work safe!

*I do know that there is a school of identifying the owner contingency amount and making sure to somehow get it all. I've never seen this acquired fraudulently, but have seen legitimate changes requested and extra work proposed.

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