

How To Prepare Claims

There are a variety of ways to prepare a claim. No format will be best in every instance. Yet, the format discussed below is the one most often used. It is designed to address a variety of different readers, present the claim in a manner similar to how it would be proved in court and permit several people to work on the preparation effort. It is important to utilize project personnel who know what happened during construction. The format uses a “top down” approach. (Contract to Impact) Analysis should also be done from the “bottom up.” (Increased cost caused by?)

The overall goal of the claim presentation should be to provide the owner’s executive and the project level personnel with sufficient facts to support entitlement and the time and additional compensation requested. Recommendations to pay additional compensation and/or grant time extensions by owner executives or project level personnel will be closely scrutinized by others. The detailed presentation is designed to provide the necessary support for those recommendations.

Executive Summary <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____	I. Introduction <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____	II. Contract Representations <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____
III. CONTRACTOR'S PLAN <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____	IV. Actual Conditions <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____	V. Impact of Actual Conditions <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____
VI. ENTITLEMENT <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____	VII. QUANTIFICATION OF CLAIM <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____	VIII. FORMAL STATEMENT OF CLAIM <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____

Executive Summary

Purpose

The purpose of the **Executive Summary** is to tell the owner's executive everything he or she needs to know – **description of the project, what happened, what the contractor wants, and why the contractor is entitled to it.** The reader should have a basic understanding of these points or questions by reading the summary without reading the body of the claim. The **Executive Summary** is the first level of the three levels of a good claim presentation: (1) *Summary*, (2) *Body of the Claim*, and (3) *Supporting Technical Arguments and Data* (Appendix).

The targeted reader is the executive administrator or other decision maker who is probably unfamiliar with the project and may be relying on subordinates for the details of the claim. The summary should leave the reader with the impression that if what the contractor presents is correct, it is the entitled to an adjustment in the contract price.

Format

The format for this section is as follows:

1. **Title**
 - (a) Project
 - (b) Claim/Id
 - (c) Owner
 - (d) Contractor
 - (e) Date

2. **Project Description** (no more than one paragraph)
 - (a) Parties
 - (b) General Description
 - (c) Description of elements of work that are the subjects of this claim. (Pictures)

3. Event (What Happened) (Pictures-Graphics)

4. Proposal (What the Contractor Wants)

- (a) Money
- (b) Time
- (c) Reservation of rights, if any . . .

5. Entitlement

- (a) Change in Contract
 - i. What was specified?
 - ii. How was it changed?
- (b) Differing Condition
 - i. What was represented?
 - ii. What was discovered?
- (c) Delays in the Work
 - i. What was the delay?
 - ii. How did it impact the work?
- (d) Breach of Warranty
 - i. What was warranted?
 - ii. What happened?
- (e) Other

Please note:

A claim is easier to read and more persuasive if visuals such as graphs, charts, etc., are used.

6. Summary

Briefly restate what happened and how it affected the contractor with respect to means and methods, and schedule costs.

Table of Contents

Purpose

The purpose of the **Table of Contents** section is to provide the reader with an index to the general topics included in the claim and show where to find them. All claims should, at the minimum, contain all the topics listed below. Some claims may have subtopic headings. Complex claims may have Sections I through IX for each claim issue.

Format

<u>Section</u>	<u>Topic</u>	<u>Page</u>
I.	Introduction	
II.	Contract Representations	
III.	Contractor's Plan	
IV.	Actual Conditions	
V.	Impact of Actual Conditions	
VI.	Legal Entitlement	
VII.	Quantification Summary	
VIII.	Formal Statement of Claim	
IX.	Appendix	
	a.	
	b.	
	c.	
	d.	

Claim Section I. Introduction

Purpose

The purpose of the **Introduction** section is to provide the reader with a general background sufficient enough to mentally prepare him to understand and accept the presentation that is to follow. Generally, the **Introduction** should be no longer than four pages.

Format

The format for this section is as follows:

1. **Contracting Parties**
2. **The Bid**
 - a. Advertisement date
 - b. Bid date
 - c. Award date
 - d. Contract amount
 - e. Next highest competing bid or bids
3. **The Project**
 - a. Description of project
 - b. Location of project
 - c. Geographic and climatological considerations
 - d. Design and construction management engineers
 - e. List of major elements of work

4. The Claim

- a. Description of element or elements of work pertinent to claim
- b. Brief statement as to what representations in the contract were relied on by the contractor at the time of the bid that are pertinent to the claim

Claim Section II. Contract Representations

Purpose

The **Contract Representations** section is extremely important. Its purpose is to establish the owner's express and implied contract representations relied upon by the contractor in preparing its bid and plan for performing the work. It also establishes the foundation for the baseline from which all differences are measured. If the contractor is unable to establish the basic contract representations upon which it relied, there is no valid claim.

Format

The format for this section is as follows:

1. **Section Heading**
2. **Statement of Section Purpose**
3. **Bullet Points of Contract Representations**
4. **Develop Each Bullet Point with:**
 - (a) Summary interpretation of contract point
 - (b) Contract reference cites
 - (c) Any prebid investigation notes
 - (d) Any prebid meeting notes
 - (e) Any logic or reasoning by contractor personnel in interpreting contract provisions
 - (f) Any supportive data – owner furnished or our own – estimate, schedule or otherwise prepared prebid that would demonstrate our reasonable interpretation of the contract provisions
 - (g) Summary and conclusion (*Notes, supporting data and schedules should be summarized and referenced in Appendix.*)

5. Summarize and Conclude Section

Note: This section should be fact-oriented and not argumentative. The reader should clearly understand and agree on the contract point at issue.

Comments

There are two types of representations or duties in all contracts: (1) **EXPRESS**, and (2) **IMPLIED**.

EXPRESS REPRESENTATIONS are those specifically set forth in the contract plans and specifications. These are usually the easiest to demonstrate but are often subject to varying interpretation.

IMPLIED REPRESENTATIONS are those contract rights implied by law, area or industry practice, or past practice of the owner.

Please note:

The express language of a contract supersedes most implied rights. This section establishes the foundation for the baseline from which all changes to the contract time and price are measured.

Examples of Implied Representations

- Implied warranty of suitability of plans and specifications
- Implied right of performance without delay, hindrance or interference from other contracting parties
- Implied duty to provide access to the worksite
- Implied warranty of adequate time to perform the work
- Implied duty to cooperate with the other contracting parties in the performance of the work.

Examples of Implied Practice

- Recognized industry standards
- Past performance or interpretation of the owner on similar work

Area practice of contractors on similar work

Claim Section III. Contractor's Plan

The purpose of the **Contractor's Plan** section is to demonstrate the reliance on the contract representations and establish the reasonableness of the contractor's anticipated means and methods, schedule and cost estimate.

Purpose

This section explains to the reader how the contractor planned to construct the work within the parameters of the contract documents. If that plan – i.e., means and methods, resource allocation or schedule – changes because of actual conditions differing from the contract representations, and if that variance increases the cost or time of performance, then the contractor may be entitled to an adjustment in the contract time of performance and/or contract price. A poorly conceived original plan, or no plan at all, will seriously jeopardize the contractor's ability to measure and thus obtain time or money for its claim.

While the contract representations establish the basis or foundation for the baseline from which all changes are measured, this section establishes the baseline itself.

The format for this section is as follows:

Format

Please note:

This section is to be fact-oriented and supported, not argumentative. It establishes our baseline. The reader must agree with it, or at least understand it, for it to be a reasonable approach.

- 1. Section Heading**
- 2. Statement of Section Purpose**
- 3. Bullet Points of the Plan**
 - (a) Key elements of the plan (means and methods, resources, sequencing) pertinent to the claim, developed in reliance on the contract representations.
 - (b) Overall effect of plan elements on schedule.
 - (c) Overall effect of plan elements on cost.

4. Develop Each Bullet Point with:

- (a) Summary of each point
- (b) Relation between point and contract representation
- (c) Specific effect of each point on schedule
- (d) Specific effect of each point on cost
- (e) Any prebid notes, logic or supportive data, including data from other similar projects, that further justifies the reasonableness of our plan in light of the contract assertions
- (f) Original schedules and submittals of means and methods, as applicable to each point, should be summarized and referenced here and included in the Appendix
- (g) Summarize and conclude each point

5. Summarize and Conclude Section

Claim Section IV. Actual Conditions

Purpose

The purpose of the **Actual Conditions** section is to clearly demonstrate that the actual conditions encountered in constructing the project differed materially from the owner's express and implied representations. As noted below, for each bullet point in the Contract Representations section, there should be comparative one in the actual events section.

This section of the claim presentation is the narrative of what happened in constructing the work. The material presented, here should be in summary form, supported by credible and detailed evidence set forth in the Appendix. The objective of this section is to create a clear picture in the reader's mind as to what happened and how that differed from what the owner represented.

Format

The format for this section depends a great deal on the type of information to be presented. The following suggested format will work quite well in most instances.

Please note:

This section, more than any other, must be fact-oriented and have fact-supported Appendix arguments. Opinions and posturing deter the reader from obtaining a clear understanding of the facts that are necessary to justify the contractor's position.

1. **Section Heading**
2. **Statement of Section Purpose**
3. **Bullet Points of Actual Conditions, Each Showing Difference with Contract Representations**
4. **Develop Bullet Points**

These are best developed along the lines of each issue. A time related narrative often works well. This narrative should be supplemented with pictures and graphics where possible. Summarize, present and summarize/conclude each bullet point.

5. **Summarize and Conclude Section**

Claim Section V. Impact of Actual Conditions

The purpose of the Effect of **Impact of Actual Conditions** section is to convince the reader that the actual conditions impacted the cost and time it took to construct the project.

Purpose

This section describes how the events encountered affected, impacted, disrupted and/or changed the contractor's plan to construct the project. It describes impacts on the contractor's planned means and methods, schedule and budget resulting from the actual events were imposed upon the contractor. It also discusses changes the contractor implemented to accommodate and/or mitigate the variation and how these changes affected the contractor's time or cost of performance. As described below for every bullet in the contractor's plan there should be a comparative bullet in this section.

Format

The format for this section is as follows:

1. **Section Heading**
2. **Statement of Section Purpose**
3. **Bullet Points of Impacts with Each Based on a Difference from the Plan**
4. **Develop Each Bullet Point with:**
 - (a) Summary of point
 - (b) Description of point
 - (c) Summary of supporting documentation, i.e., diaries, reports and witnesses, etc., in Appendix
 - (d) Pictures and graphics
 - (e) Summarize and conclude point
5. **Summarize and Conclude Section**

Claim Section VI. Legal Entitlement

Purpose

The purpose of the **Legal Entitlement** section is to convince the reader that the contractor has a right under the contract or the law to recover additional compensation and/or receive a time extension as a result of the actual conditions encountered. It is also designed to convince the owner's lawyer that the contractor will prevail if the matter is litigated. This section should summarize and emphasize the differences between the contract representations and the actual conditions encountered on the project. It should then apply those differences to a remedy or remedies provided for under the contractor as a matter of law.

Examples of Contractual Remedies

- Changes clause
- Differing Site Conditions clause
- Suspension of Work clause
- Force Majeure (Act of God) clause

Examples of Legal Remedies

- Breach of Express Contract Provisions
- Breach of Implied Warranty
- Breach of Implied Duty

Most contractual remedies require that procedural criteria be followed in order to preserve those rights (notice, timely presentation of claim, updating of CPM, time impact analysis and others). This section should make it clear to the reader that all such procedural matters have been satisfied.

Purpose

The format for this section is as follows:

- 1. Section Heading**
- 2. Statement of Section Purpose**
- 3. Bullet Points of Main Entitlement Agreements**
- 4. Develop Each Bullet Point with:**
 - (a) Summary of issue
 - (b) Summary of differences between contract and actual conditions
 - (c) Summary of event or events under that issue
 - (d) Identification of remedy or remedies
 - (e) Application of issue-related facts to available remedy (It may be necessary to support with legal briefs in Appendix.)
 - (f) Summary of procedural compliance, notice, etc. (Support with legal briefs in Appendix.)
 - (g) Summarize and Conclude
- 5. Summarize and Conclude Section**

Claim Section VII. Quantification of Claim

Purpose

The purpose of the **Quantification of Claim** section is to specify cost and time requested and demonstrate the proof necessary to show that the claimed events caused the contractor to incur additional costs and/or time.

If the preceding sections of the claim were well presented and showed that the contractor is entitled to claim additional time and/or money for a particular event, it nevertheless must prove it incurred additional costs and/or time as a result of the event in order to recover. The costs or time that the contractor is claiming must be additional costs or time that WOULD NOT HAVE OCCURRED BUT FOR THE OCCURRENCE OF THE EVENT OR ISSUE for which the contract or law provides a remedy.

Format

Cause: Identify the event or events which caused the increased costs. Provide the reader with a "road map" as to why each element of cost was incurred as a result of the event. Why were the increased costs necessary?

In complex claims, the identification of the events and the tying link between those events (the cause) and their effect is more difficult to explain and/or understand, and thus it becomes increasingly important that cause and effect be well presented and documented to be successful in resolution of the claim.

Effect: Set forth the costs of each element of work described above. The precise format is often dictated by the contract documents. Care should be taken as to how certain costs are labeled. Some contracts, particularly state highway contracts, do not allow recovery of certain types of costs. Some costs are considered to be paid for under the allowable markup for overhead and profit.

Claim Section VIII. Formal Statement of Claim

Purpose

The purpose of the **Formal Statement of Claim** section is to formally request to be put in the same position that the contractor would have been in but for the issue at hand.

Format

The claim format represented by this document is to be developed for each issue. When complex claims are involved and multiple issues affect some of the same activities and/or the overall project, a general overview summary should be provided showing the relationship and division between the issues and claims, and segregating or explaining any overlap between them.

Claim Section IX. Appendix

Purpose

The purpose of the **Appendix** section is to present detailed proof, support or evidence to support the statements made in the body of the claim. The matters presented in the **Appendix** should be restated in the body of the claim in summary form.

The **Appendix** is the actual documentation and evidence. It may also include a legal brief where appropriate.

Some of the items that may be included in the **Appendix** are:

- Detailed estimates
- Schedules
- Correspondence
- Submittals
- Field reports
- Diaries
- Expert reports
- Legal briefs

The targeted reader of the **Appendix** is the expert whose job includes technically analyzing the details in a specific area.

Appendix 1

Helpful Forms

The Claim

Executive Summary

Project Description

Claim Statement

What, why entitled?

Visual: Grounds for Entitlement

Figure 1 _____

The Claim

Preview of Issues Involved (Grounds for Entitlement)

Several critical facts support the contractor's claim for an equitable adjustment.

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- -
 -
 -

Issue

#1

Heading

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The Claim

Issue

#2

Heading

Issue

#3

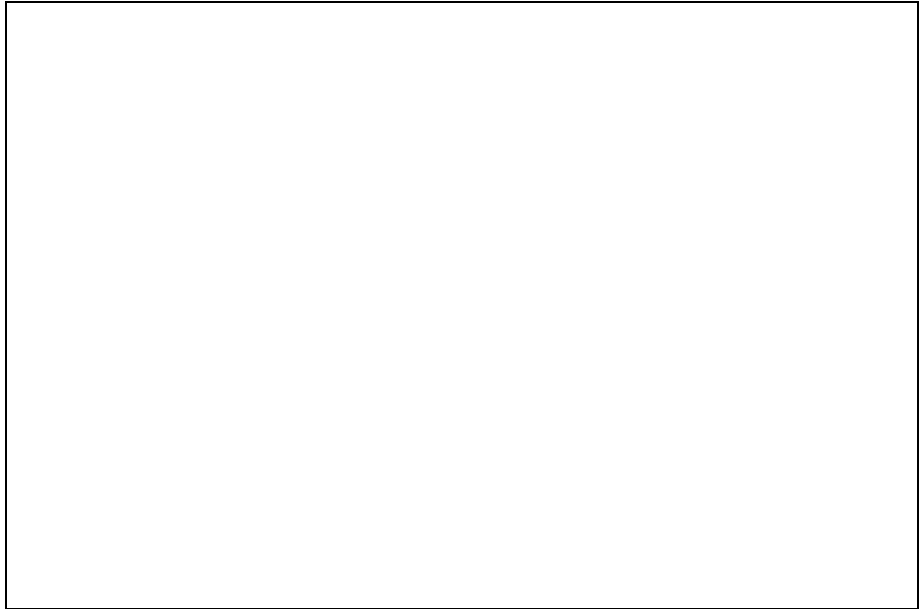
Heading

The Claim

Issue

#4

Heading



Visual: Support of an Issue

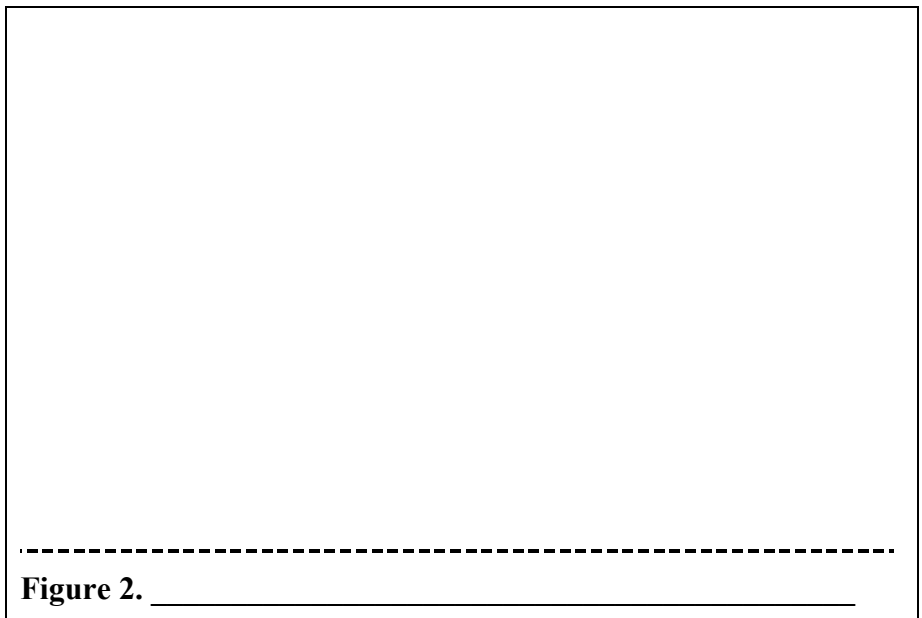


Figure 2. _____

The Claim

Restate Basis of Claim

Action Requested