



How to avoid or minimize claims on construction projects

AACEI – Montreal Section
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Examine

- ❑ Dispute resolution
- ❑ Preparation and review of Construction Claims
- ❑ Expert Reports
- ❑ Project Reviews/Audits
- ❑ Training



Agenda

- Objective
- Define a claim
- Why claims occur
- Statistics
- Why avoiding/minimizing claims
- How to avoid or minimize claims?
- Conclusion
- Questions



Objective

Acquired the basic principles to avoid or minimize construction claims



What is a claim

Demand or assertion of rights by one party against another for damages sustained under the terms of a legally binding contract. Damages might include money, time, or other compensation to make the claimant whole.

RP No. 10S-90 - COST ENGINEERING TERMINOLOGY

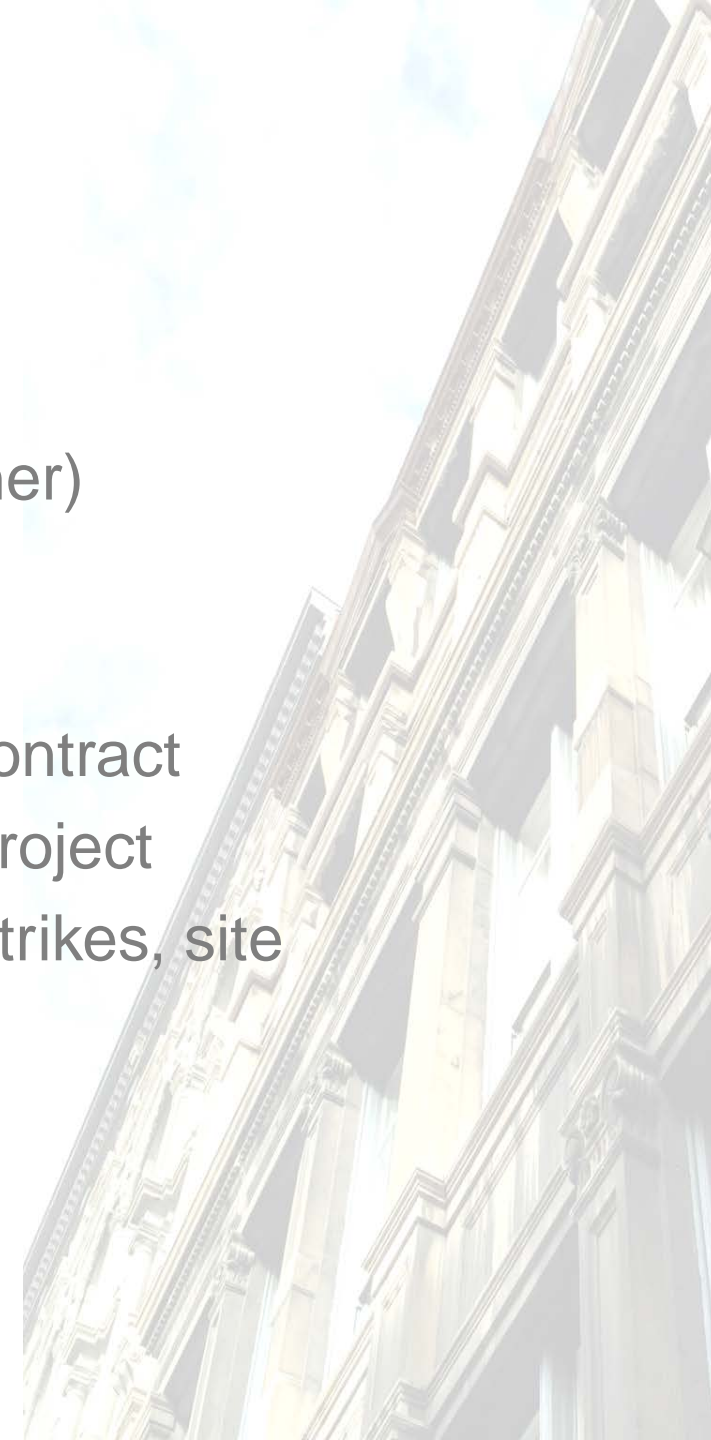


Why claims occur



Why claims occur

- ❑ Parties have different objectives
- ❑ Changes to the project scope (Owner)
- ❑ Errors and Omissions (Engineers)
- ❑ Performance issues (Contractor)
- ❑ Failure to properly administer the contract
- ❑ Failure to properly manage of the project
- ❑ Unforeseen conditions (economy, strikes, site conditions, etc.)
- ❑ Weather



Some stats

Dispute \$ values and resolution time

Region	Dispute values (US\$ millions)				Length of dispute (months)			
	2010	2011	2012	2013	2010	2011	2012	2013
Middle East	56.3	112.5	65	40.9	8.3	9	14.6	13.9
Asia	64.5	53.1	39.7	41.9	11.4	12.4	14.3	14
US	64.5	10.5	9	34.3	11.4	14.4	11.9	13.7
UK	7.5	10.2	27	27.9	6.8	8.7	12.9	7.9
Continental Europe	33.3	35.1	25	27.5	10	11.7	6	6.5
Global Average	35.1	32.2	31.7	32.1	9.1	10.6	12.8	11.8

ARCADIS - GLOBAL CONSTRUCTION - DISPUTES 2014 - Getting the basics right



Some stats

Causes of dispute - Global

2013 Rank	Cause	2012 Rank
1	Failure to properly administer the contract	3
2	Failure to understand and/ or comply with its contractual obligations by the Employer/ Contractor/Subcontractor	2
3	Incomplete design information or Employer requirements	New
4	Failure to make interim awards on extensions of time and compensation	4
5	Poorly drafted or incomplete and unsubstantiated claims	1

Causes of dispute - US

2013 Rank	Cause	2012 Rank
1	Errors and/or omissions in the Contract Document	2
2	Failure to make interim awards on extensions of time and compensation	5
3	Differing site conditions	4
4	Incomplete design information or Employer requirements (for D&B/D&C)	-
5	A failure to properly administer the contract	-



Why avoiding or minimizing claims

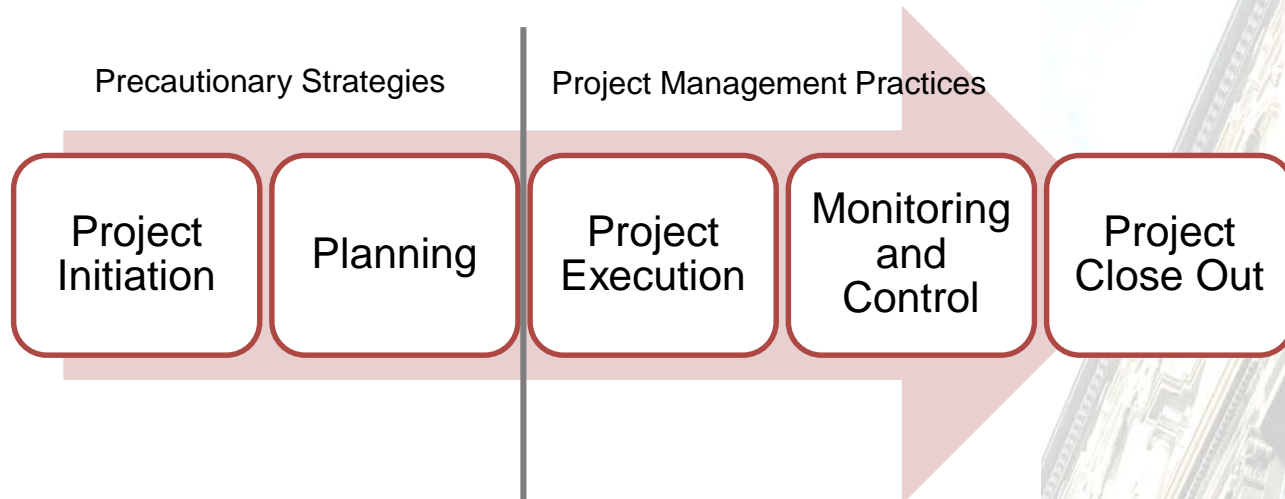
- Costly
- Time consuming
- Legal procedures
- Image/Reputation



How to avoid or minimize claims

Two key elements:

- ❑ Precautionary Strategies
- ❑ Project Management Practices



Precautionary strategies

- ❑ Clear definition of project scope
- ❑ Inclusion and understanding of key contract clauses
- ❑ Clear definition of roles and responsibilities
- ❑ Thorough planning of the project



Precautionary strategies

- ❑ Clear definition of project scope
 - Clear communication of Owner's needs and intent to Professionals
 - Complete and comprehensive bidding package
 - Contract language clearly reflects project scope

Will result in:

- More accurate estimates
- Less changes
- Less dispute



Precautionary strategies

□ Inclusion and understanding of key contract clauses

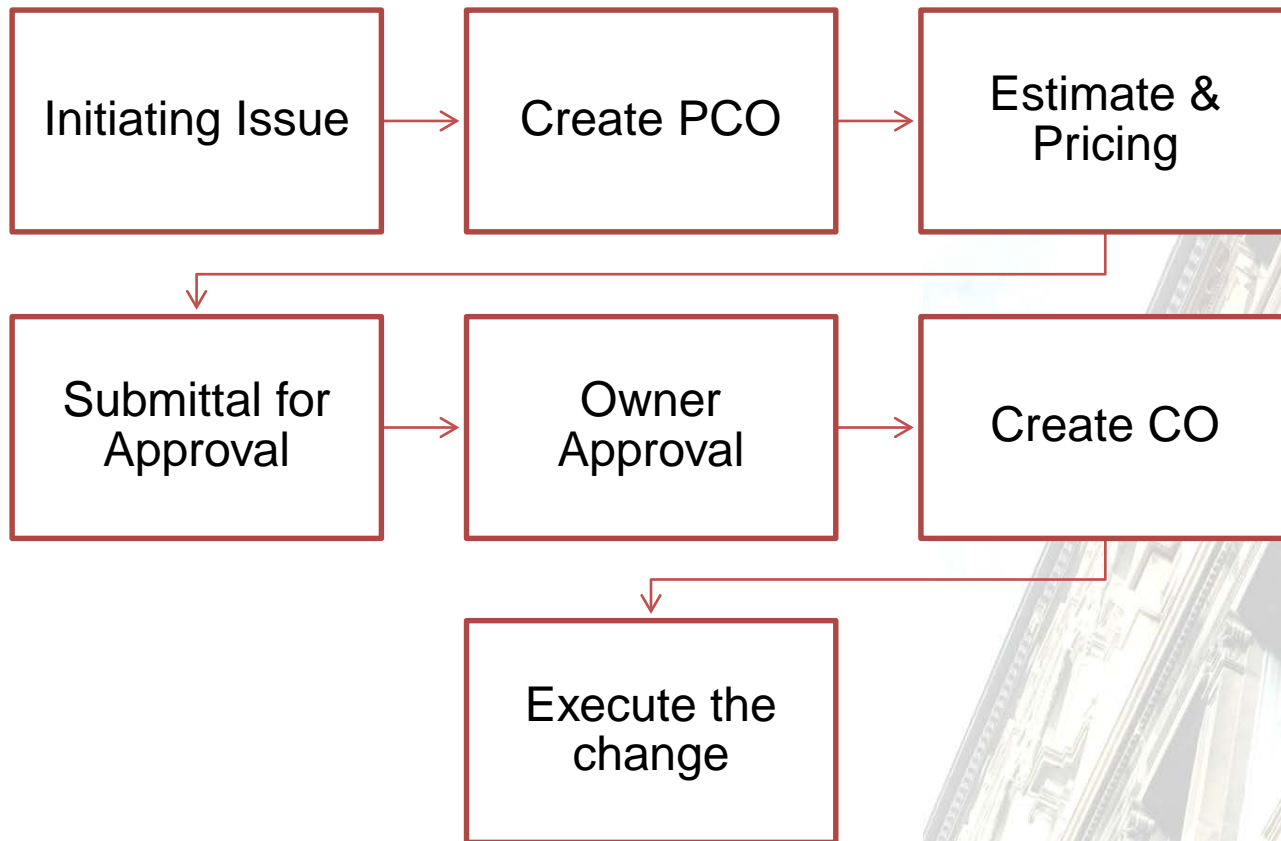
Understanding the terms and conditions of the contract at the start of the project has a major contribution in minimizing or avoiding disputes down the road:

- Changes Clause
- Scheduling Clause
- Time Extension Clause
- Dispute Resolution Clause
- Force Majeure Clause



Precautionary strategies

❑ Changes Clauses



Precautionary strategies

Changes Clauses

To consider:

- The scope of the change
- The amount of the adjustment, if any, in the Contract Sum
- The extent of the adjustment, if any, in the Contract Time
- The level of authority for approval depending of the amount of adjustment



Precautionary strategies

Scheduling Clause

Scheduling contract clauses are among the least standardized of all contract clauses and, therefore, require special attention. The value of schedule is often only recognized once a contractor has a claim.

As such, the following elements should be addressed in a scheduling clause:

- Scheduling method
- Scope of work (WBS)
- Level of details
- Milestones and project completion dates
- Progress reporting
- Schedule update frequency

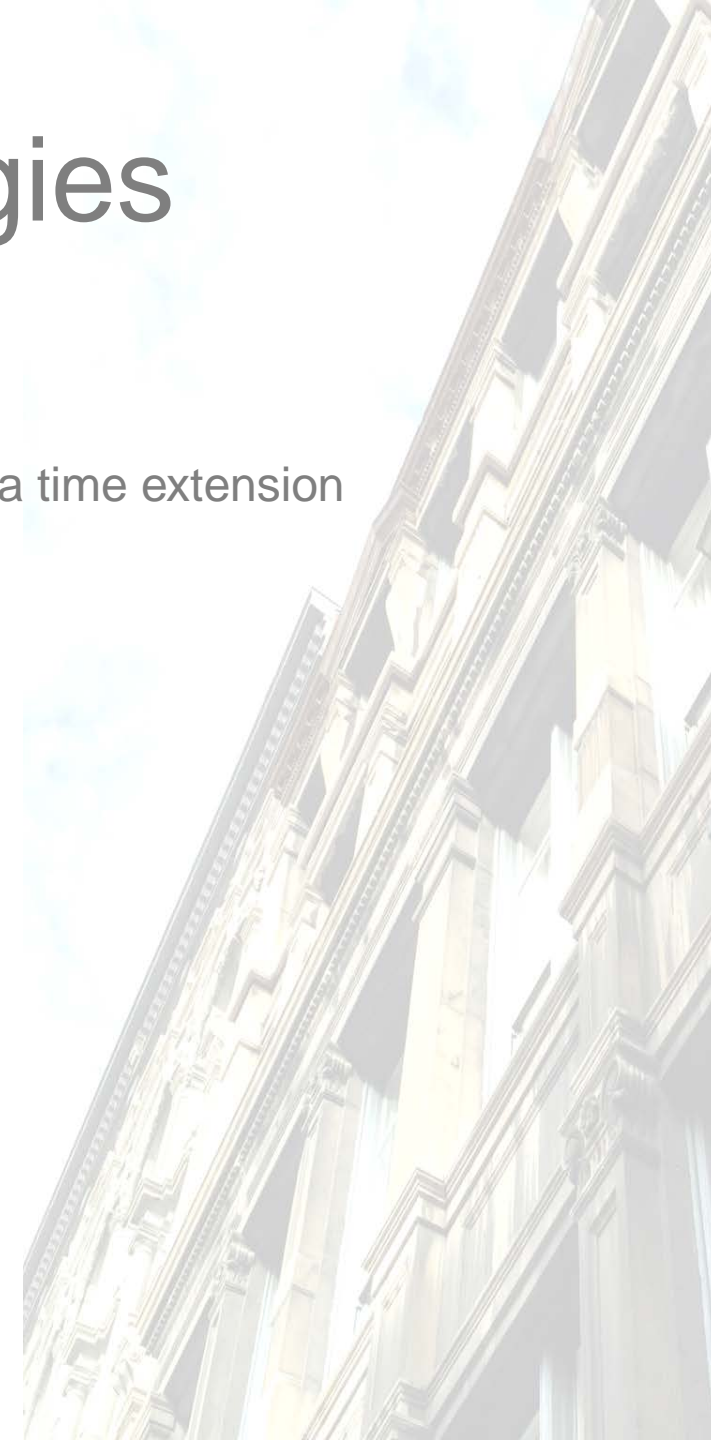


Precautionary strategies

Time Extension Clause

The following elements should be addressed in a time extension clause:

- Notice of delay
- Notice of delay claims
- Substantiation
- Liquidated damages

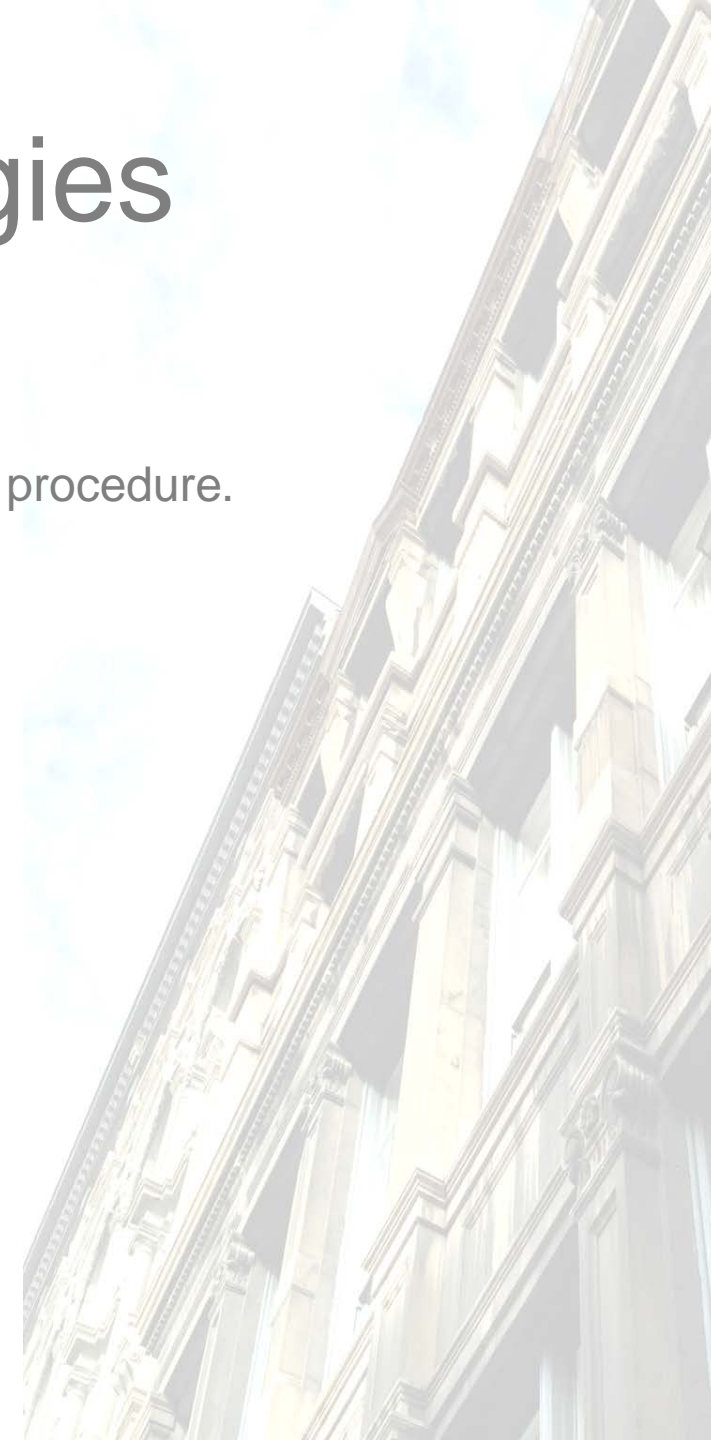


Precautionary strategies

- Dispute Resolution Clause

The contract should state the dispute resolution procedure.

- Notification
- Negotiation (project team)
- Neutral third party (DRB)
- Mediation
- Arbitration
- Litigation



Precautionary strategies

Force Majeure Clause

In the absence of a force majeure clause in the contract, parties are left to the mercy of the complex and lengthy common law doctrines.

As such, the following elements should be addressed in a force majeure clause:

- Definition of force majeure events (fire, war, riots...)
- What happens when an event occurs
- Who can suspend the work
- What happens if the force majeure event continues for more than a specified period of time



Precautionary strategies

□ Clear definition of roles and responsibilities

Defines who has the power to:

- Order changes
- Approve changes, grant time extension, make decisions
- Resolve disputes

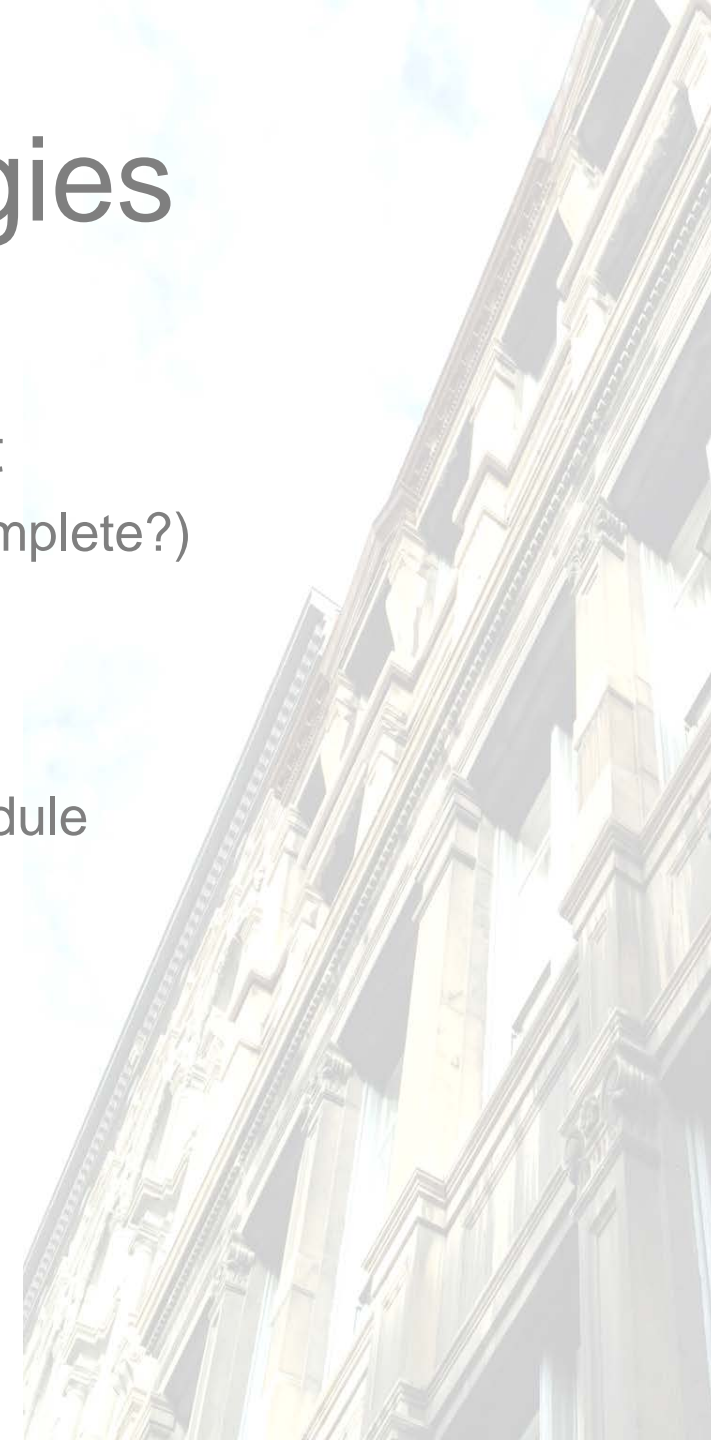
Will result in:

- Lean chain of processing and approvals
- Saves time, money and avoids dispute



Precautionary strategies

- ❑ Thorough planning of the project
 - A detailed design (What is the % complete?)
 - Qualified professionals
 - Drawings
 - Specs
 - A realistic, logical and detailed schedule
 - Level of detail
 - WBS
 - Logic
 - Link to estimate
 - Agreed upon project estimate



Project Management Practices

- ❑ Early warning signs
- ❑ Change order management
- ❑ Schedule management
- ❑ Documentation
- ❑ Communication
- ❑ Coordination



Project Management Practices

□ Early warning signs

Claims can be avoided or minimized by proactively identifying and recognizing signal indicators:

- Milestones are missed
- Significant number of change orders
- Tensions between parties develop at the project site creating an unhappy work environment
- RFIs are not answered in a timely manner
- Project changes aren't dealt with promptly
- Change in the work sequence



Project Management Practices

- ❑ Change Order management
 - Follow contract provisions for Change Order process
 - Clearly identify the scope of the change
 - Prepare a detailed estimate
 - Assess impact on schedule and budget
 - Process, approve, and execute Change Orders in a timely manner to avoid disputes and claims
 - Document and track Change Orders in a registry form
 - Do not proceed with the work for Change Orders without authorization (avoid verbal authorization)



Project Management Practices

□ Schedule management

The lack of a schedule provides no source of information or communication between participants and increases the likelihood of conflict and subsequently claims.

- A single accepted project schedule creates a source of information for all participants, which is reliable and consistent
- Follow contract provisions for Scheduling
- Have a good baseline schedule in place
- Regularly update the schedule following good practices (changes, change in sequence, logic, etc)
- Document delays and update the schedule accordingly



Project Management Practices

□ Documentation

Documentation supports good management practices that confirm conditions encountered, directions received, expressed objections, and action required, contemplated, taken. Documentation maintained during the project can facilitate claim avoidance by supporting the resolution of disputes.

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Project Management Practices

- ❑ Documentation (cont'd)
 - Non compliance with the requirements of notification of the contract
 - Proceeding with extra work and changes without written authorization
 - Failure to document delays and their impacts
 - Failure to request for time extensions
 - Failure to request additional cost of extended duration or of acceleration measures
 - Failure to respond to owner formal complaints



Project Management Practices

□ Communication

Lack of communication, incomplete communication, unclear communication, and miscommunications that include not listening, not speaking, and not writing things down are nearly universal problems with construction. Nearly every claim, at its base, involves some form of communication problem.

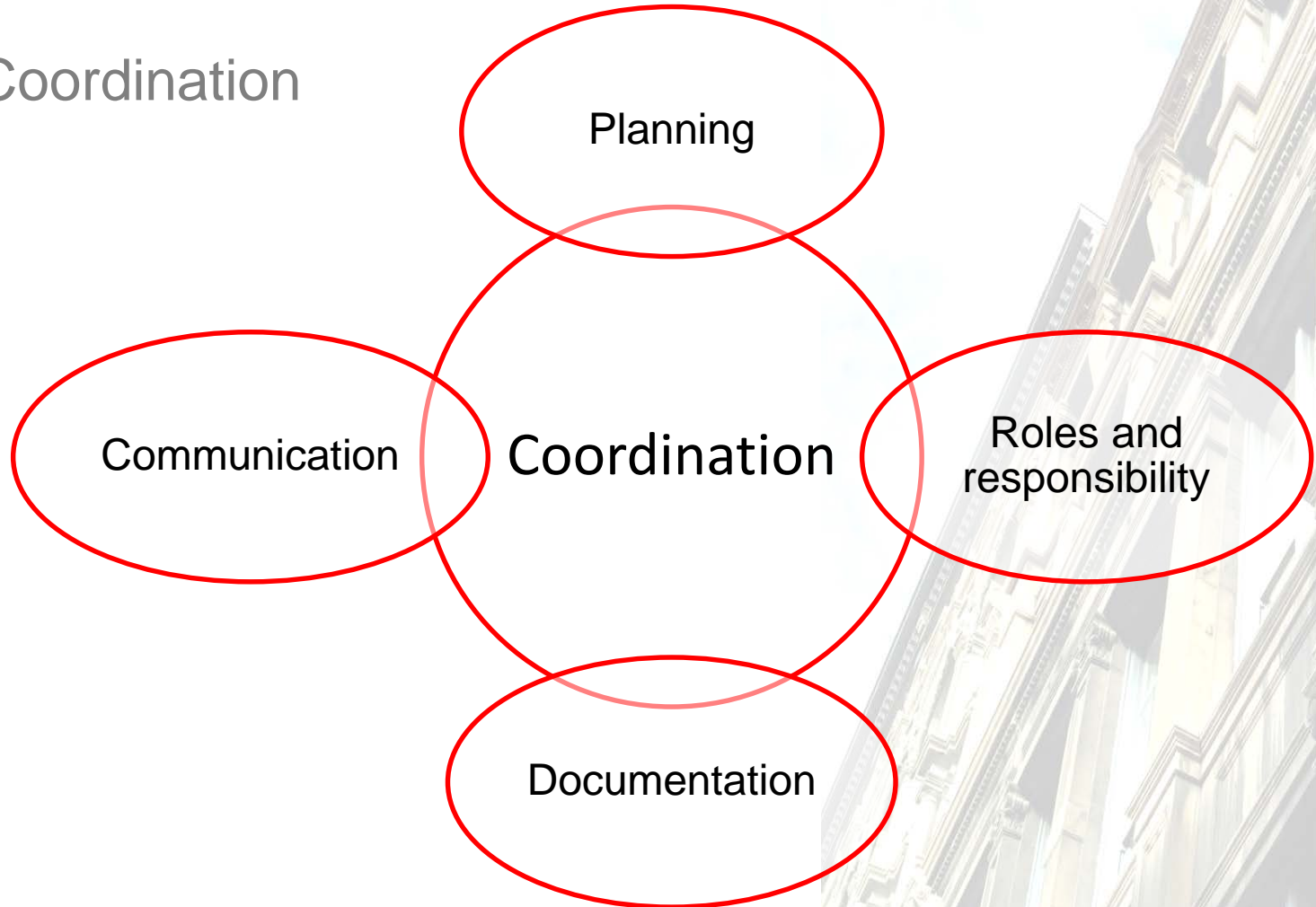
- In an effort to minimize problems and ultimately claims, more formal methods of communication should be maximized.
- Avoid verbal!

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Project Management Practices

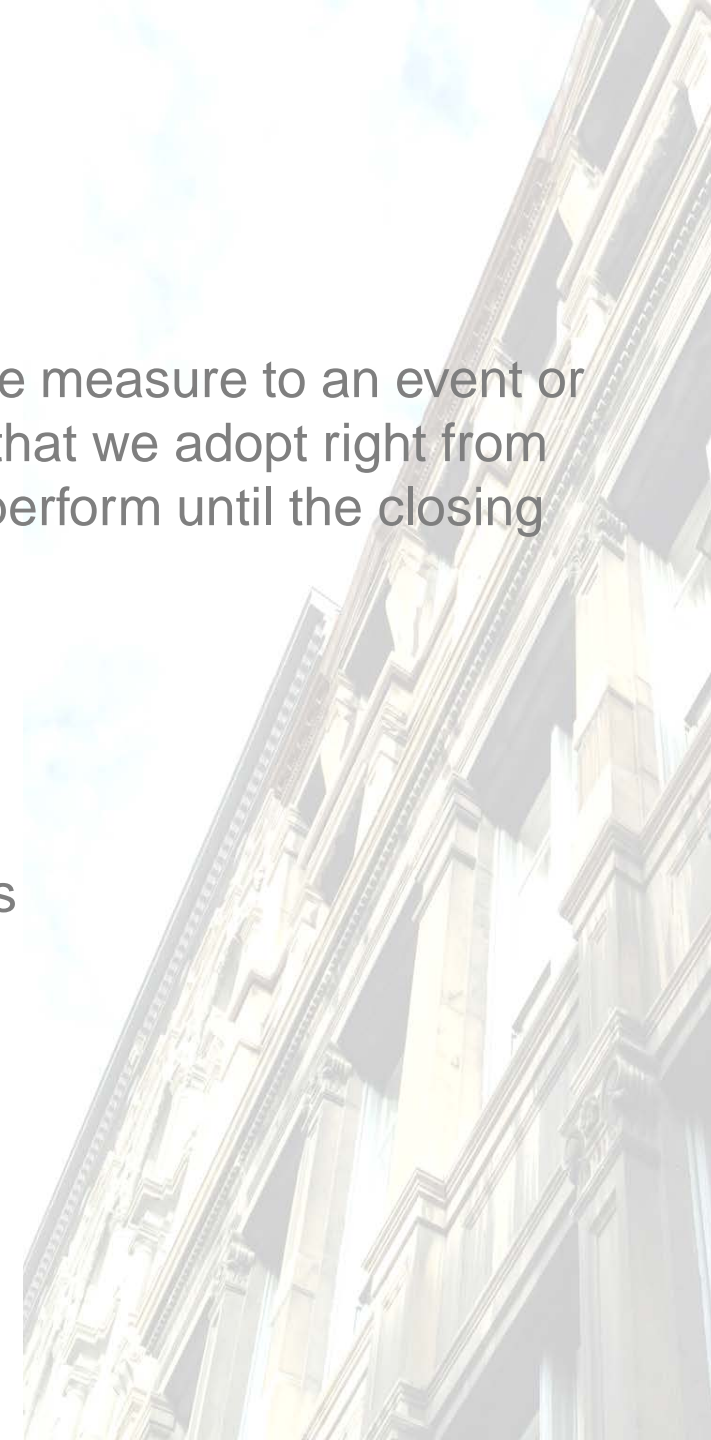
□ Coordination



Conclusion

Avoiding or minimizing claims is not a reactive measure to an event or a problem, its a practice and a state of mind that we adopt right from the beginning of the project and continue to perform until the closing of the project.

- Clear project scope
- Key contract clauses
- Clear definition of roles and responsibilities
- Thorough planning of the project
- Responding to early warning signs
- Effective coordination and communication
- Complete and thorough documentation



Questions

