

CONTEMPORANEOUS RECORDS IN CONSTRUCTION CLAIM

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DEDICATION

Special thanks to my parents, my supervisor, my beloved, my sisters, my brother, and friends for their endless helps, support and understandings.

Thanks for Everything.

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ABSTRACT

A claim is a proposition or protestation of the right, without regard to whether rightfully or wrongfully, employed by the party in either a contract or at position of law, for the compensation upon the infringement of the right. However, disputes always arisen from the devoid of the information submitted in claims or mismanagement of the information. A contemporaneous record might be useful in the claim preparation or substantiation. In local context, the onus of keeping the contemporaneous records is not expressly provided in the standard form of contract, such as PAM 2006 or PWD 2010. In an earlier case, keeping of contemporaneous record had been indicated as a precedent condition in FIDIC Red Book 1987 whereas it had been redefined in release of FIDIC Red Book 1999. A total of eleven previous court cases were analysed in order to identify the various requirements of contemporaneous record or documentation under the construction claim. The two oversea leading court cases were used as supporting cases to the local cases. Claims could be categorized into two, but merely cost claim requires contemporaneous record in court. The courts had emphasized in their decisions on several contemporaneous records which could be summarized as correspondence letter and notification for claim, contract documents (including Bills of Quantities, Letter of Acceptance, Drawings, Specification), endorsed Variation Order, Site Records, Progress Reports, Photographs, Invoices, and List of Defects. The documents referred by the court deemed to be timeously recorded, sufficient information indicating the instruction or direction, and acknowledge received by the parties. It is worth noting that the contemporaneous records in claim shall not merely be originated from the contractors, the records or the substantiation shall rely on the records or knowledge of contractors and consultants, as well as the employer.

ABSTRAK

Tuntutan adalah sebagai bantahan tanpa mengambil kira ketepatan betul atau salah yang digunakan oleh pihak bagi pampasan atas pencerobohan sesuatu hak. Tuntutan boleh diwujudkan bersandarkan di atas hak dalam kontrak atau dalam undang-undang yang mentadbir. Walaubagaimanapun, pertikaian itu selalu timbul daripada tuntutan disebabkan kekurangan maklumat yang dikemukakan atau kesalahan maklumat yang diserahkan dengan tuntutan. Rekod semasa berupaya untuk mengelakkan masalah tersebut. Walaupun penyimpanan rekod semasa bukan sesuatu peruntukan atau syarat dalam kontrak borang seragam, seperti PAM 2006 atau PWD 2010, tetapi rekod semasa berupaya menjayakan tuntutan dengan cekap dan cepat. Dalam kes lama, rekod semasa adalah sesuatu kewajiban dalam FIDIC Red Book 1987, tetapi ianya telah ditakrif semula dalam FIDIC Red Book 1999. Sebelas kes mahkamah telah dikutip and dianalisa untuk mengenal pasti pelbagai keperluan rekod atau dokumentasi semasa di bawah tuntutan dalam pembinaan. Dua kes mahkamah dari luar negara telah dipakai sebagai kes penyokong bagi analisa keseluruhan. Secara ringkas, rekod semasa hanya diperlu atau ditekan oleh mahkamah semasa tuntutan kewangan. Mahkamah memberi perhatian kepada beberapa rekod, iaitu surat-menyurat dan notis pemberitahuan untuk keinginan menuntut, dokumen kontrak (merangkumi Bill Kuantiti, Surat Penerimaan, Lukisan-lukisan, Spesifikasi Pembinaan), Perintah Perubahan yang telah mengesah, Rekod Tapak, Laporan Kemajuan daripada kontraktor, gambar-gambar yang menunjukkan status atau sebagai bukti tuntutan, Invois, and Senarai Kecacatan. Dokumen-dokumen yang dirujuk oleh mahkamah harus direkod dengan semasa semasa peristiwa-peristiwa telah berlaku. Rekod perlu merangkumi maklumat mencukupi dan telah mengesah oleh pihak berkuasa. Akhirnya, rekod-rekod yang digunapakai dalam tuntutan tidak hanya bergantung kepada kontraktor, tetapi hal ini juga memerlukan kerjasama daripada juruperunding dan majikan.

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Pertubuhan Akitek Malaysia (PAM) Condition of Contract 2006	PAM 2006
JKR Public Works Department 203/203A Condition of Contract (Revision 2010)	PWD 2010
Construction Industry Development Board Condition of Contract 2000	CIDB 2000
Construction Industry Payment and Adjudication Act 2012	CIPAA 2012
MLJ	Malayan Law Journal
MLJU	Malayan Law Journal (Unreported)
BLR	Business Law Reports
ConLR	Construction Law Reports
All ER	All England Law Reports
Ct C1	Court of Claims Reports
WLR	Weekly Law Reports
EWHC QB	England & Wales High Court (Queen's Bench Division)
EWCA Civ	England & Wales Court of Appeal (Civil Division)
CLD	Construction Law Digest
UKPC	United Kingdom Privy Council
SLR	Singapore Law Reports
AMR	All Malaysia Reports
Beav	Beavan

CHAPTER 1

INTRODUCTION

1.1 Introduction

Typically, a claim is a proposition or protestation towards a right, without regard to whether rightfully or wrongfully, employed by the party in either a contract or at legal aspect, for the compensation or for the infringement of the right. Hence, the application of the claim shall have consisted the elaboration on their relationship in between the course of the event and the impact of that event. Despite of that, the relations must be substantiated with the statements and the entitled amount as the remedy (Rajoo & Singh, 2012).

Claims provisions are laid down in order to satisfy three aims of employers namely, first, to maintain the contract validity towards whatever eventualities maybe arise; second, to enable the right of the employer to make changes; third, to enable breach of contract to be dealt with by internally administered remedies (Powell-Smith & Sims, 1987).

Thus, the purpose of claim provision is to verify on the balance of probabilities which the entitlement under either under contract provision or at law perspective. In

order to accomplish the claim submitted, the claim must be within the extent of the contract and presented in logical sequence. In contrast, if the flaw found, the claim would be reprobated or disapproved or disputed. In short, the proof of the causal link, and substantiation is relatively vital to an effective and relevant claim (Rajoo & Singh, 2012).

Claims may be stem from the causes of, disputes over quantities, new items, specification interpretation, access to site, delay during the work, disruption, awaiting drawings, weather conditions, nominated subcontractor, variation orders, acceleration, suspension, and delay in payment (Wood, 1986).

Claims primarily can be classified in accordance with the legal categories, namely:

1. *Contractual claims;*
2. *Common law claims;*
3. *Quantum-meruit claims; and*
4. *Ex-gratia claims.*

Sources: (Chappell, 2011)

The claims also be classified by subject, where consisted of, claims concerning the formation of the contract, contract documentation, the execution of the work, payment, prolongation arisen from the delay and disruption, default, determination, forfeiture, and other relevant subjects.

1. Contractual claims

Contractual claims, basically, the claims arose from the original contractual provisions which may be enshrined of the extra cost, direct loss and/or expense in circumstances expressly provided, timeously claim as the compensation upon the occurrence of contingency or unexpected condition (Chappell, 2011).

2. Common law claims

This type of claim sometimes so called extra-contractual claim, which arose from the causes or events which are not circumstanced expressly in the contract provision. It basically relates to the breached of the contract either implied condition or express provision. For an instance, the late possession of site due to late submission of the planning permission by the principal submission person on behalf of the employer, the liability would be on the employer side as the employer is responsible to give the site possession without hindering him from completing the contractual works as promised according to the contract law. However, this circumstance has been input in the standard form of contract nowadays where it commonly happens on site, such as clause 23.8 (f) of PAM 2006 (Chappell, 2011).

3. Quantum meruit claims

A remedy where the works executed under the instruction issued after the formation of the contract which then falls outside the ambit of the contractual works. This entails no price basis has been established previously. Therefore, the new rate shall be negotiated and formed may be for replaced the improper rate as previously stated in the contract or even non-existence in the original contract (Chappell, 2011).

4. Ex-gratia claims

Ex-gratia claim is a non-legal claim where it has no legal liability to pay where the hardship or works executed. It merely established on the ground of equity or the mercy given to the contractor. It initiated by the moral liability where sometimes so called sympathy remedy. It would be useful as to smoothen the progress of work and contribute to the completion of the works (Chappell, 2011).

In the context of FIDIC contractual cost claims, they can be categorized into three which are, “with profit” (Sub-clause 1.9 *Delayed drawings or instructions*); “without profit” (Sub-clause 4.12 *unforeseeable physical conditions*); and, “only additional payment” (Sub-clause 20.1 *contractor’s claims*). “*Claims are simply the means available to the parties to the contract to be able to adjust the contractual & economic relationship between them to meet changing conditions.*” (Verma, 2015).

In evaluation of the claim, clause 53.4 of Old FIDIC Red Book 4th edition states that “*if the Contractor fails to comply with any of the provisions of the clause in respect of any claim which he seeks to make, his entitlement to payment in respect thereof shall not exceed such amount as the engineer or any arbitrator or arbitrators appointed assessing the claim considers to be verified by contemporary records (whether or not such records were brought to the engineer’s notice as required under Sub-Clauses 53.2 and 53.3 of Old FIDIC Red Book 4th Edition*”. This clause entails the significant of the contemporary records which to be necessarily be provided in assisting the engineer or arbitrator for the evaluation process.

In settlement of a dispute, the dispute shall be referred to engineer, and engineer shall then to give Notice of Decision to Employer and Contractor within 84 days (Subject to Sub-clause 67.1). If party dissatisfies on the decision made, he/she may serve the Notice of Arbitration to the other party within 70 days. The parties may come into an amicable settlement within 56 days (Sub-clause 67.2 FIDIC Red Book). Unless otherwise, the Arbitration may be started by virtue of Sub-clause 67.3.

The obligation of engineer is, first, encourage notices of claims where that is not the same thing as encouraging the making ill-founded claims; second, keep himself informed of any event which is happening or has occurred and be implicated the possibility of additional loss or expense; and third, in some cases, the engineer may be able to take remedial action of avoiding or mitigating action (Chow, 2012).

In most circumstances, the anecdotal evidence becomes an initial starting point for the contract administrator or employer to looks into the claims submitted. Many times, the claims submitted may be overlooked or brushed aside by the administrator. The point might be escalated into dispute henceforth. In practice, the employer will employ the project manager to control and manage those deficiencies for employer to abstain the situation snowball into substantial claim which then constitutes unnecessary tussles and endanger the employer (Rajoo & Singh, 2012).

The mismanaged by the employer would be large drawback whereas the shortcomings would also be originated from the mishandling of sub-contractors’ claim by the main contractor. In some cases, the professional consultants have to tackle on

these potential shortcomings to prevent the unwanted consequences or dispute arisen thereafter (Rajoo & Singh, 2012).

In summary, whether there is snowballed substantial claims or neglected tiny claims submitted by the contractors, the anecdotal evidence brew up a matter that is the factual backgrounds for the claims instead of the hearsay evidence for such claims.

1.2 Background Study

Principally, the burden of the claimant is to prove his case on the balance of probabilities. Consequently, the contractor must justify that the events have actually occurred, possibly also the timing of the events and the compliance of the provisions in the contract within the terms of notices and submissions (Hewitt, 2016). If the claimant has no such records, he will have a tough task to prove the claim.

Furthermore, the records may consist of the transmittals, minutes meeting, daily and/or weekly and monthly reports, letters, memos, programs and notices or other pertinent documents corresponding to the claim. As highlighted by Hewitt (2016), the vital contemporaneous supplementary evidence to the claim including, *“the tender documents and contract documents, site progress data whether weekly or daily basis, periodic progress reports, daily staff, labour and plant records, material deliveries to site, drawing register showing issue dates and revision numbers, contract program, as-built program, progress records to show activities started, in progress, on hold, suspended or completed, variation orders or the like, correspondences, meeting minutes, notices, site diaries, site memos and instructions, photographs with date records, site measurement records, day work records (whether or not this will be the eventual means of evaluating additional works), purchase orders and invoices.”* (Rajoo & Singh, 2012)

Practically, the contractor will be entitled to an extension of time (as provided in clause 23.0 of PAM 2006). However, the contractor may not be entitled to the additional cost or prolongation cost incurred due to such events as under clause 24.0 of PAM 2006. However, instead of the basis of entitlement, most of the standard forms, including PAM 2006 and PWD 2010, states the process for progress claims submission and the required notices, act as a critical path in claim procedure. If the contractor does not comply with the stipulated procedures, the claim may be considered as incomplete or even rejected due to undue lack of procedural compliance (Hewitt, 2016). In tandem with the enactment of the CIPAA 2012, the procedure as aforementioned has been modified which is reluctant criticality in the failure of the claim but it will still affect the amount of payment, which largely depends on the ground of evidence and supporting documents submitted (Rajoo, 2016).

The initiative for preparing or rebutting claims is to review the changes made towards the contract or any variation orders to determine the planned and varied scope of work. Variation orders are intended to filing and elaborate agreed-upon changes to the contract. In common practice, standard construction form of contract will specify the requirements for the contemporary records submitted to the owner or the main contractor for documentation supporting the claim. Therefore, the failure to comply with such term may bar the contractor or sub-contractors from recovery of some or whole claims (Overman, et al., 2013).

Hewitt (2016) deduces that the limit or extent of a claim, in fact, largely depends on the contractor or claimant capability to substantiate the claim to a reasonable extent, including the causal link of the claimable event. Hence, a good record keeping is extremely essential.

“Original or primary documents, or copies thereof, produced or prepared at or about time giving rise to a claim, whether by or for the contractor or the employer.” This is the interpretation of sub-clause 53.4 Old FIDIC Red Book 1987 (4th edition) which has been made by the judges in *Attorney General for the Falkland Islands v Gordon Forbes Construction (Falklands) Ltd [2003] BLR 280*.

“With respect to contemporary records all clause 20.1 requires is that the contractor keeps and have available for inspection by the Engineer these records. The clause, in my opinion, is clear, a failure by a contractor to keep such records does not prevent recovery on the claim but is to be taken into account in its assessment insofar as it may have prejudiced or prevented a proper investigation of the claim.” interpreted sub-clause 20.1 of FIDIC Form 1999 by Judge Jones in case ***National Insurance Property Development Co. Ltd v NH International (Caribbean) Ltd*** [2015] UKPC 37.

However, in some of the standard forms of contract, there is an absence of the “contemporaneous/contemporary” phrase or word, where it merely requires for the records. For instances, clause 52.2 and 52.3 of NEC3 Engineering Construction Contract (Rowlinson, 2011), or PWD 2010 (Clause 44.2 of PWD 2010 provides merely the basis to substantiate the claim), the absence of the word “contemporaneous/contemporary”; JCT 2011(SBC Clause 4.23 and 4.24; DB Clause 4.20 and 4.21; IC/ICD Clause 4.17 and 4.18 of JCT Standard Building Contract 2011) provides that the contract administrator empowered to instruct the contractor for keeping those records for further additional payment as consequences of the event (Chappell, 2012); however, the absence of the claim for loss and expense in Singapore Institute of Architect standard form does not require the “contemporary records” at all. It relies on the site valuation performed by the Quantity Surveyor or the Project Manager and contract administrator (Lip & Quek, 2011).

Depending upon the terms of the contract between the parties, whereas, for the purposes of relief from liquidated damages, it may be acceptable to demonstrate entitlement to an extension of time by reference to the likely effect of an event on completion, it has been clearly acknowledged by the courts and tribunals in most common-law countries that financial compensation must be related to a loss, or expense actually incurred as a result of an event which to defendant’s risk to cost. Where that loss or expense is time-related, it shall be calculated by reference to the delay to progress or disruption, or prolongation of the works, which actually happens as a result of the delay to progress caused by defendant’s risk (Burr, 2016).

1.3 Problem Statement

In determining whether the contemporary records are vital for the contractor to keep as such an effort, the definition first needs to be identified. As nailed down in the Collins dictionary, “contemporary” is “living or occurring in the same period of time”. Then, the definition of “records” is “an account in permanent form especially in writing, preserving knowledge or information about facts or events” (MDA Consulting, 2015).

In practice, there will always be happened that the contractor does not own a good record keeping habits which then lead to various difficulties for the contract administrator in assessing the entitlements of the contractor in such claim. However, it is highlighted that the contract administrator cannot refuse to make payment merely relies on the grounds that the lack of information or records kept by the contractor in the submission of the claim (Chappell, 2014).

It has been discussed that the objective and the true intention for wording “contemporary records” was to establish in accordance with the FIDIC contract, in the *National Insurance Property Development Co Ltd v NH International (Caribbean) Ltd [2015] UKPC 37*. When the word “contemporary” and “records” read as a whole, it can be construed and understood as that, the “contemporary records” are the “*written or permanent form of actual information which deemed to be recorded contemporaneously with the events giving rise to the claim*”. As a summary, there shall be achieving the definition or the true objective underlying for the “contemporaneity” entailing that, there has to be sufficient connection between the information and the events to which it relates (MDA Consulting, 2015).

The contemporaneous records constitute a crucial path to a strong ground to be examined in assessing the actual entitlement within the extent of contract or to negate some of the untrue assertions under both the processes namely, contractual process and the dispute resolving processes such as adjudication, arbitration, and litigation. The

contemporary records keeping relatively beneficial to both contractors and employers' agents, usually engineers or quantity surveyor in proving the ground for valuing the progress claim (MDA Consulting, 2015).

In fact, the administrative works occupied the relative majority of the construction contract, usually by a contractor during preparing a genuine contractual claim for extra time and loss or expense incurred. On the other hand, it also is the burden of the engineer or employer, and the arbitrator or judge in the decision making and award or denial of the entitlements claimed as it has prevented the assessment of those claims. In common practice, contractors' entitlements for application extension of time and additional costs are always the matter refer to arbitration and litigation (Kerur & Marshall, 2010).

The contractor has imposed a wide range of responsibilities as according to Sub-Clause 20.1 of the FIDIC Red Book 1999 provided that "without any specific instruction from the Engineer to keep those contemporary records which may be necessary to substantiate his claim. The contemporary records must be, kept on Site or any other location acceptable to the Engineer; available for inspection by the Engineer; and original documents created at or around the time of the event or circumstance".

With authorization from the sub-clause, the engineer may seek for additional records kept and also he is empowered to examine and access on the contemporary records from time to time. In determining the extent contemporary records that are necessary to be provided, the contractor shall have considered what materials or particulars to substantiate the grounds of claim (Ehrlich, 2011).

Therefore, the contractor shall keep those contemporary records possibly be required to prove or to substantiate the claims and also ensure the records accessible for inspection by the engineer. As mentioned by the Eugene Lip (2012) in the FIDIC talk, a fully particularized claim shall be submitted within 42 days by the contractor which to make contract administrator or employer notified the occurrence of the relevant event to the engineer in FIDIC Red Book Condition of Contract 1999 (5th

edition). This statement also indicates that the importance of contemporary records in facilitating the claim.

Furthermore, the engineer is authorized a unilateral power and the responsibility to examine and determine the contractor's claim of additional payment regardless of whether the contractor has failed to comply with any part of the claims procedure as set out in sub-clause 53.4 of old FIDIC Condition of Contract 1987 it will be tempered merely to the limit that the claim can be verified by contemporary records (Bunni, 2005).

A question arose which the extent of the information required in the claim. It will question that which is the extent of the contemporary records and what is the mean of fully particularized claim?

The contractor shall notify the engineer and attach a particularized claim within stipulated period (42 days) from the "event or circumstance" by virtue of the sub-clause. However, practically, the claim is complex or if the resources are short in the context of the contract program, it tends to be harsh for the contractor to comply such duty within the stipulated time. The sub-clause 20.1 of FIDIC Red Book 1999 (5th edition) also entitle a cross reference which the contractor may propose or request an extension for a more precise claim submission and the engineer is also entitled to approve a revised time period for the submission.

The precise claim enshrined of the "full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed". Basically, the detailed claim shall consist of (Ehrlich, 2011): -

1. *“Details of the “event or circumstance”;*
2. *A summary of those Red Book clauses on which the contractor is relying;*
3. *The legal basis of the claim;*
4. *A clear and rational explanation as to why the claim gives rise to the monetary amount and/or extension of time; and,*
5. *All supporting documents (including contemporary records).”*

Sources: (Ehrlich, 2011)

The notable point here is that, if the detailed claim submission failed as the time specified in the contract term or to preserve the contemporary records for inspection or to furnish detailed updates or to comply with the express terms in the standard form to enable the contract administrator to cater all of the information and whole situation when deciding the entitlement of additional time or the additional cost incurred including the failure of particulars submission lead to “prevented or prejudiced proper investigation” of a claim (Ehrlich, 2011). The prevention or prejudiced proper investigation would be the hurdle for the contract administrator to evaluate on the claim entitlements.

The contract administrator is empowered to seek for “*any necessary further particulars*”, from the contractor, but the contract administrator’s response shall be presented within the prescribed time period. Similarly, as to the condition of submission of the particularized claim, the contract administrator can request for the extension of time in giving the decision and the contractor entitled to allow such extension of time.

The allowance, in fact, used to abstain the unreasonable delaying the decision reach to a claim or requesting nonsensical information or details which may then lead to unwanted conflict or dispute. However, the failure to reply or giving the decision within timely manner has no express sanction and, in practice, this is often a controversial issue which will be raised by the contractor.

In case *Attorney General for the Falklands Islands v Gordon Forbes Construction (Falklands) Limited*, the court was asked to decide whether or not a witness statement prepared for formal dispute resolution proceedings which obviously after the event giving rise to the claim, can be used to prove a claim under an old FIDIC Red Book contract. However, there were no contemporary records found, which was a breach of clause 53.2 old FIDIC Red Book 1987, namely, to keep all the necessary contemporary records available for the assessment made by the engineer. Judge Sanders considered that definition of “contemporary records” were the “original or primary documents, or copies thereof, produced or prepared at or about the time giving rise to a claim, whether by or for the contractor or the employer.” The court then held that “contemporary records” does not include witness statements which then produced after the event, and such documents cannot be declared to be original or primary documents prepared at the time the occurrence of the event.

The important point highlighted here is that contemporary records shall be in the timely manner of the occurrence of the event. It was highlighted that the “instantaneous” of the records needed to be kept, either at the time of, or around the time, of the claim submission. The witness statement shall not merely be produced after the event for substituting the original contractual requirement as to keep the contemporary records for the substantiation. The witness statement would have enshrined the information from those who were related in those circumstances, however, it shall not be used to supersede the contractual requirement as to keep the contemporary records generated at the time the events happened.

However, with reference to *National Insurance Property Development Co Ltd v NH International (Caribbean) Ltd* [2015] UKPC 37, it was held that in regarding to the ‘contemporary records’ in sub-clause 20.1 of FIDIC Red Book 1999 (5th edition) which is distinct from clause 53.4 of old FIDIC Red Book 1987 in the *Falklands’* case. The requirement for verification of the contemporary records has been removed. In the aspect of the requirement for “contemporary records”, all such clause concerning is that the availability of the records kept for the assessment to be done by the contract administrator. However, these records deemed not to be the reason for the failure of honouring the payment or the ground for rejecting the progress claim, the absence of the “contemporary records” merely will be taken into account in determining the

amount of time and cost, which has been prejudiced or prevented by the reluctance of the information or records. Hence, it can be concluded that the true construction of “contemporary records” in the clause does not imply the claim to be rejected when such claim submission the ‘contemporary records’ is absent.

In summary, the good contemporaneous record is not merely a concern of good administration by complying the term. The level of detail provided will markedly and considerable influence on whether the contractor entitled to such claim, at all, including the amount of cost and extension of time allowed for reimbursement (Ehrlich, 2011). However, the parties always fail to keep the corresponding records at the time of claim. It can lead to a loss of trust where the employer would refrain from accepting the position of a contractor due to it has no faith in its record keeping.

The sub-clause 53.2, FIDIC Red Book 1987 provides that where the contractor is to give a notice of the claim, he is required to keep those contemporary records as be necessary to prove the claim. The engineer is authorized to monitor the contractor’s records-keeping and/or instruct the contractor to keep additional contemporary records.

Under FIDIC Red Book, there are obligations upon the contractor to provide detailed monthly reports with information on progress as well as the use of staff, labour and equipment, whereas under the PAM Contract 2006, or even JCT Standard Building Contract, these forms do not directly impose those kinds of obligations. Nevertheless, a claim for more time or additional cost under the contract would need the contemporaneous records and information will be important, since the contractor is required to “*supply such further information as the Architect may at any time reasonably require.*” as in JCT Standard Building Contract, or “*submit a payment application at the Interim Claim Interval... with complete details and particulars as required by the Architect and Quantity Surveyor...*” as provided in clause 30.1, PAM Contract 2006.

1.4 Research Question

The research question is, what are the contemporaneous records in claim preparation?

1.5 Research Objective

The research objective consisted of to identify the of contemporaneous records in claim preparation.

1.6 Significance of Study

The research result may be used to draft or improve the current claim provisions in our Malaysian standard forms or the practitioner in claim preparation.

1.7 Research Scope

In research scope, there are thirteen (13) cases in Malaysian Law Journal and other law reports found. These cases majority from Malaysian as now would be selected for analysis in order to achieve the objective of the study.

1.8 Research Methodology

The literature review has been done through internet, law, construction journals. By referring to the research, collective data on claim management, applicable legal principles, the provisions in the contract related to claim preparation and the importance level of contemporary records in the industry in verification of claim will be synthesized.

This study has been divided into few steps mainly identifying the research issues, literature review, data collection, research analysis, conclusion, and recommendation. This approach is to ensure that the collection of information and the process of analysing the data are precise and commendable.

The research as an exploratory research which will give a preliminary understanding the importance and effect of the contemporary records in preparation of the claim. The clause may be specified in the standard form of contract which might help to expedite the claim process and ease the claim verification and management process in the construction industry by imposing the condition into the construction contract.

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