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CLAIMS: IMAGE FROM AN OWNER'S POINT OF VIEW

by

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HOW FDOT ANALYZES A CLAIM

I. NOTICE PROVISIONS

- A. FDOT Standard Specifications require written notice of:
 - 1. Unanticipated delay - within ten days of its occurrence.
 - 2. Changed condition - before work in affected area is begun so that Engineer can make determination.
 - 3. Extra work - before work in affected area is begun so that Engineer can keep accurate records.
 - 4. Intent to file a claim - when any problem occurs which will, or may, become a claim.
- B. Historically FDOT did not require strict adherence to the written notice provision. However, with the tremendous increase of claims disputes and of time extension requests, written notice has become a true contract requirement.

II. INITIAL FDOT REVIEW

- A. Usually at Project Engineer level.
- B. Resident Engineer usually makes field decision.
- C. Resident Engineer seeks approval from District Construction Engineer of the field personnel's decision.

III. CLAIMS IN WHICH FDOT AND CONTRACTOR AGREE ON ISSUES

- A. Compensation, or method of compensation, is determined by parties. Often a most difficult determination.
- B. Funds for Supplemental Agreement are approved in Tallahassee.
 - 1. State Construction Office reviews the facts and approves (or denies) request for funds approval.
 - 2. Secretary's designate gives approval (or denial).
 - 3. Legal Office review.
 - 4. Central Fiscal Office approves funds expenditure.

- C. After Fund expenditure is approved, contractor is authorized to do work.
- D. Supplemental Agreement is drafted, finalized and signed by all parties. Money paid in next estimate.
- E. Supplemental Agreement must provide for all types of compensation, including delay, and is often difficult to insure contractor is completely compensated, and to define extent of agreement.

IV. CLAIMS IN WHICH FDOT AND CONTRACTOR DISAGREE

- A. In some cases, FDOT personnel do not recognize the need for time extensions or extra compensation. In those cases, FDOT gives contractor written direction to resume the work.
- B. In some cases, FDOT agrees that extra work is required, but cannot agree on price. In those cases, force account records are kept.
- C. In some cases, FDOT agrees that contractor has encountered a changed condition, but cannot agree on price. In those cases, FDOT directs contractor to proceed with work, allowing contractor to file his claim.

V. FORMAL CLAIMS PROCESS

- A. Usually, a contractor presents a single claim package at the end of the job.
- B. Formal claims are reviewed by Resident Engineer, District Construction Engineer, State Construction Engineer and, in some cases, Director of Construction.
- C. If it has not already done so, FDOT seeks legal input.
- D. Claim is negotiated, or finally denied, either through the Legal Office or through the State Construction Engineer's Office. In the event of approval, Supplemental Agreement is drafted and finalized.

VI. ARBITRATION - Mandatory for claims of less than \$100,000

VII. CONSTRUCTION CLAIM LITIGATION

- A. Extensive discovery.
- B. Numerous expert witnesses.
- C. Lengthy delays.
- D. Day-to-day dealing with attorneys.
- E. Resolution.
 - 1. Through trial, where judge or jury decides.
 - 2. Through negotiated settlement.