

I See Claims...

Executive Summary: Construction is a litigious business. Often times the signs were right in front of you from day one. Pay attention and look for the behaviors of the parties that often indicate inevitable dispute and possibly a claim at the end of the job.

See 20/20 today. Too many construction professionals look back in the rear view mirror and see why a claim occurred (the "hindsight is 20/20" saying). Flip the script on that and like Haley Joel Osment in *The Sixth Sense*, you should be saying "I see claims" (QR). Well, he didn't say exactly that, but if it was a construction movie, that would have been his line! You should be able to see the future.



Here comes a dispute. There's several signs which point to rough waters ahead. Here are some of the most common indicators:

- Poor Contract Documents – this is the most common problem. If the documents are not complete and there are a lot of questions prior to bid and during your initial review, it's going to be a project wrought with changes and/or disputes. If the owner is known to pay for their changes, this is a gold mine for you, if the owner is tight with budget, this may be disaster.
- Asshole management – are your guys on the front line constantly fighting with the project manager or superintendent. There is such a thing as fair treatment, and if they are going to use you, there needs to be some level of give and take. Or just don't work for them. Remember they won this job with your help or made a decision to hire you.
- Project Manager transfer – it's an actual practice. Project Manager A takes the project to 90% completion and then gets replaced by Project Manager B, or just gets transferred off the job. It's inefficient for closeout for the Owner or General Contractor, but makes it easy to say "Well, Project Manager A is gone and you're stuck with me. I wasn't around when you made that deal, so let's just get it settled."
- Construction Claims Monthly – this is great publication for claim and case law education, but I've seen some of the same contractors in here more than once. If they've got a history of going to Court, you better have a large wallet to go fight them.
- Short on Project Funds – if the pre-bid meeting was all about the owner not having the money, then you know change orders will be hard to win, whether you're right or not.





- Track your costs, we'll submit it to the owner – if you look in the dictionary, this clause is defined as do the work now, let me get all my leverage over you (because I now have an installed product), and then beg me for 50 cents on the dollar later. You've been warned. Everyone's good friends until it's time to pay.
- Poor contract administration – does your client know the contract? When you submit things timely are they, in turn, submitting them timely? Because even if they're not following the contract and you're not being taken care of, you'll likely spend thousands of dollars to prove their incompetence. You're better to babysit, babysit, babysit and reconsider this client next time around. By the way this extends to more than financial requests – can they even process a simple RFI?
- Stubborn Engineer – is the Engineer or Architect humble and approachable and practical? These are outstanding qualities in a design professional (or Owner's representative). You're hereby reminded that at the end of the day, you have to convince the designer that (s)he made mistake and needs to pay you in money or time. Both make her/him look bad.

My story. One of the best compliments I ever received in my career was less than a year ago over a cup of coffee at a Zippy's in Honolulu. My potential client was talking about how he wanted to hire me because I could see the future. He said I



could see what was coming based on my experience. This article is written based on twenty-five years of disputes from a dollar to \$20 million and knowing that if you're seeing the signs discussed above, you may have a claim coming. Be ready and protect yourself, because on one cares more about you than you.

I once worked for an owner who put an architect in the Contracting Officer role on a dam job. At the beginning of the job he told me he knew nothing about earthwork. Then he later called me a liar and a cheater. Yeah, we had issues.

Bonus Tip. Review with your attorney what your risk is for walking off the job. Will it really affect your reputation? That's what you're thinking. Are you better off to walk off financially whole, and let them pursue you, or do you need to ride this sinking ship to the bottom of the sea? If you ever want a lesson on walking off, Vince Vaughn shows you here on the movie called Wedding Crashers, one of my favorites (the how to lesson starts at 0:47)(QR).

