

THIRD
EDITION

CONSTRUCTION CLAIMS AND RESPONSES

EFFECTIVE WRITING AND PRESENTATION

ANDY HEWITT

WILEY Blackwell

Construction Claims and Responses

Construction Claims and Responses

**Effective Writing
and Presentation**

ANDY HEWITT

Third Edition

WILEY Blackwell

This edition first published 2025
© 2025 John Wiley & Sons Ltd.

Edition History

John Wiley & Sons, Ltd. (2e, 2016; 1e, 2011).

All rights reserved, including rights for text and data mining and training of artificial intelligence technologies or similar technologies. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, except as permitted by law. Advice on how to obtain permission to reuse material from this title is available at <http://www.wiley.com/go/permissions>.

The right of Andy Hewitt to be identified as the author of this work has been asserted in accordance with law.

Registered Offices

John Wiley & Sons, Inc., 111 River Street, Hoboken, NJ 07030, USA

John Wiley & Sons Ltd, New Era House, 8 Oldlands Way, Bognor Regis, West Sussex, PO22 9NQ, UK

For details of our global editorial offices, customer services, and more information about Wiley products visit us at www.wiley.com.

The manufacturer's authorized representative according to the EU General Product Safety Regulation is Wiley-VCH GmbH, Boschstr. 12, 69469 Weinheim, Germany, e-mail: Product_Safety@wiley.com.

Wiley also publishes its books in a variety of electronic formats and by print-on-demand. Some content that appears in standard print versions of this book may not be available in other formats.

Trademarks: Wiley and the Wiley logo are trademarks or registered trademarks of John Wiley & Sons, Inc. and/or its affiliates in the United States and other countries and may not be used without written permission. All other trademarks are the property of their respective owners. John Wiley & Sons, Inc. is not associated with any product or vendor mentioned in this book.

Limit of Liability/Disclaimer of Warranty

While the publisher and authors have used their best efforts in preparing this work, they make no representations or warranties with respect to the accuracy or completeness of the contents of this work and specifically disclaim all warranties, including without limitation any implied warranties of merchantability or fitness for a particular purpose. No warranty may be created or extended by sales representatives, written sales materials or promotional statements for this work. This work is sold with the understanding that the publisher is not engaged in rendering professional services. The advice and strategies contained herein may not be suitable for your situation. You should consult with a specialist where appropriate. The fact that an organization, website, or product is referred to in this work as a citation and/or potential source of further information does not mean that the publisher and authors endorse the information or services the organization, website, or product may provide or recommendations it may make. Further, readers should be aware that websites listed in this work may have changed or disappeared between when this work was written and when it is read. Neither the publisher nor authors shall be liable for any loss of profit or any other commercial damages, including but not limited to special, incidental, consequential, or other damages.

Library of Congress Cataloging-in-Publication Data

Paperback ISBN: 9781394263684

Cover Design: Wiley

Cover Image: © mfto/Getty Images

Set in 10/12pt STIXTwoText by Straive, Chennai, India

This book is dedicated to Kim, Nik and Nina.

Contents

About the Author	xi
Foreword	xiii
Institute of Construction Claims Practitioners	xv
Claims Class	xvii
Acknowledgements	xix
CHAPTER 1	
Introduction	1
Why Is It Necessary to Produce a Fully Detailed and Professionally Presented Claim or Response?	1
The Purpose of the Book	3
Things to Be Considered Before Writing the Claim	5
The Form of Contract Used in the Examples	8
Definitions	9
The Example Projects	10
CHAPTER 2	
Contract Administration for Claims and Claims Avoidance	11
Introduction	11
The Contract Documents	11
Programmes and Planning	15
Good Records, Good Records, Good Records	17
Chronology and Database	19
Notices	22
Dispute Adjudication Boards and the Like	24
Procedures	25
And Finally ...	26
	vii

CHAPTER 3	
Types of Claim	27
Claims for Variations	27
Claims for Extensions of Time	32
Claims for Additional Payment Due to Prolongation	34
Acceleration and Disruption Claims	35
Claims for Damages Under Law	36
Interim and Final Claims	38
 CHAPTER 4	
Presentation	41
Presentation of the Submission or Review Document	41
Writing Style	42
Key Points for Claim Presentation	46
Making the Document User-Friendly	47
Making the Submission or Review a Stand-Alone Document	48
Do Not Assume That the Reviewer Has Prior Knowledge of the Project or Circumstances	49
Superfluous and Irrelevant Information	49
The Importance of Leading the Reviewer to a Logical Conclusion	50
Explanations, Summaries and Conclusions	51
Use of the Narrative to Explain Other Documents	51
Substantiation by the Use of Exhibits and Additional Documents	52
Compilation of the Document	54
Summary of the Principles Covered in this Chapter	55
 CHAPTER 5	
Essential Elements of a Successful Claim	57
Introduction	57
<i>Cause</i>	58
<i>Effect</i>	59
<i>Entitlement</i>	63
<i>Substantiation</i>	67
Summary of the Principles Covered in this Chapter	79
 CHAPTER 6	
The Preliminaries to the Claim	81
Introduction	81
<i>The Front Cover</i>	82

<i>Formatting of the Document</i>	85
<i>The Contents</i>	86
<i>The Executive Summary</i>	87
<i>The Statement of Claim</i>	88
<i>Definitions, Abbreviations and Clarifications</i>	90
<i>The Contract Particulars</i>	92
CHAPTER 7	
The Claim	99
Cause and Effect	100
The Extension of Time	102
The Additional Payment	113
Calculations	125
Entitlement	129
CHAPTER 8	
The Appendices and Editing	135
Arrangement of the Appendices	135
Editing and Review	138
CHAPTER 9	
Claim Responses and Determinations	141
CHAPTER 10	
A Note on Dispute Boards	167
Information Sources	173
Index	175

About the Author

Andy Hewitt is a construction contracts and claims consultant who has many years' experience in the construction industry in the United Kingdom, Africa and in the Middle East. In addition to many projects in the United Kingdom, he has worked on projects in Nigeria, Sudan, Bahrain, Saudi Arabia, Jordan, Oman, Pakistan, Tanzania, the United Arab Emirates and Tajikistan.

Andy has held senior commercial and project-management positions with contractors, subcontractors and consultants, including several years operating his own consultancy practice in the United Kingdom, which provided quantity surveying, estimating and project-management services. He has been involved in a wide variety of construction projects including super high-rise, airports, hospitals, residential, hotels, shopping malls, industrial buildings, heavy civil engineering, marine works, process plants, pipelines, desalination plants and royal palaces.

One of the most enjoyable periods of Andy's career was when he was employed as a claims and contracts consultant by J.R. Knowles, one of the most prestigious international consultants in this field. During this period he discovered that his background on both the contractor's and the client's 'side of the fence' in commercial, contracts and project-management positions gave him the ability to look at the issues objectively and to manage and to resolve the often adversarial nature of claims in a proactive manner to achieve resolutions acceptable to the parties. During this period he was involved in several iconic projects in the United Arab Emirates including the world-famous Burj Al Arab hotel in Dubai.

Andy was later employed in positions as project director, contracts manager and commercial manager on many prestigious projects in the Middle East. In these roles he has had the responsibility of both preparing and determining many claims. The often-poor quality of the claims and determinations that have come across his desk during this time, many of which have exhibited a lack of understanding of many basic concepts and requirements of the subject, inspired him to share his experience on the subject with the industry by way of this publication.

Following feedback from the first edition of this book and after several invitations from companies to provide training on claims related issues, Andy realised that there was a significant gap in the market for education and training on the subject. This led him to develop a tutor-assisted distance learning course on construction claims and several training courses on subjects relating to claims. These courses are marketed internationally under the banner of Claim Class who now offer training through tutor-assisted e-courses, online and in-person training to individuals and companies.

Although Andy is now semi-retired, he still dedicates time to his passion of training and education.

Foreword

I was pleased to be asked by Andy Hewitt, a former colleague, to write the Foreword to his book.

The first thing that strikes one, having read the first few pages, is the easy style Andy has adopted, which made my task a pleasure. It is also obvious from the outset that the author has had a great deal of hands-on experience of preparing and responding to claims, and this oozes from the pages.

First and foremost this book is international in its outlook and will be useful for those involved in claims on a worldwide basis. In the early part of the book, Andy recounts his need when preparing his first claim for a 'Claims for Dummies' type of book which he couldn't find. This is not a book for dummies, but is essential reading for anyone who is preparing a claim for the first time. For those of us with experience aplenty, the book provides an excellent aide memoire and will ensure that nothing is missed.

The book is without a doubt fully comprehensive and goes through the preparation of a claim from A to Z. In each chapter Andy tells the reader of matters which he intends to cover, then provides the detail and ends up reviewing what had been written. In any campaign – and the preparation submission and negotiation of a claim is something of a campaign – it is essential to have a strategy, and this is dealt with at the outset.

Claims may relate to variations, delays caused by the employer and neutral events which could involve extensions of time, prolongation costs, acceleration and disruption, all of which are fully explained.

Claims are nearly always prepared by reference to the conditions of contract. The book refers to the FIDIC conditions, but this should not put off those who are involved with contracts where other standard conditions apply. The comprehensive nature of the book would easily enable the reader to slot the advice provided on its pages into other standard conditions of contract. The book leaves nothing to chance when referring to the conditions that are applicable when preparing a claim.

The need for a stand-alone claim, accompanied by all documents referred to therein, is stressed as being essential if the claim is to be taken seriously and to result in a satisfactory settlement. Nobody who has the task of reviewing a claim has the appetite for wading through mountains of files to find

documents that relate to the claim. The claim must be user friendly and be in more than one volume to ensure that when reading the claim it is easy to follow documents to which the claim relates. These may seem fairly basic matters, but I would say that in excess of half the claims prepared fail to follow this simple procedure.

Andy goes on to deal with what he considers to be the essentials of a successful claim CEES – Cause, Effect, Entitlement and Substantiation. By way of illustration the book provides in detail the CEES of a delay and disruption claim on an 84-dwelling project where six of the houses are delayed and disrupted by the work undertaken on behalf of the employer on the access road. There is also an example claim of an extension of time and additional payment for prolongation arising from a variation related to the redesign of the foundations on a project.

The style and formatting of the claim document is dealt with down to such detail as the content and layout of the cover to the claim. Finally, Andy deals, from his experience, with how a response to a claim should be undertaken in a professional manner.

I like the book and have no hesitation in recommending it to students, beginners, those involved on a day-to-day basis with time and cost on projects, as well as the seasoned claims consultants.

It will certainly have a place on my bookshelf to allow me, having prepared a claim, to ensure that I haven't missed anything.

— Roger Knowles



INSTITUTE OF CONSTRUCTION CLAIMS PRACTITIONERS

OVERVIEW

People who deal with claims within the construction industry inevitably do so after qualifying in some other profession, usually engineering, design, commercial management, contracts management or project management. Launched in 2015, the Institute of Construction Claims Practitioners (ICCP) recognises that in order to properly prepare, respond to or manage claims, a level of professional expertise must have been achieved within a specialist sector of the industry.

Claims and subsequent disputes can run into huge sums of money, and it is considered that the owners of such sums should be afforded a level of confidence that those responsible for dealing with such matters on their behalf, whether employees or consultants, are suitably qualified and experienced.

The ICCP's mission is to maintain a professional institute, whereby suitably qualified and experienced professionals are awarded a recognised qualification related to the claims discipline.

PROFESSIONAL STANDARDS

The institute sets professional standards for its members to ensure that institute members are suitably qualified and experienced at the specific membership level awarded.

The institute also encourages and assists members to constantly improve their professional standards and knowledge and to strive to achieve membership at the next level within the institute.

INFORMATION SHARING

The claims profession, especially when compared to other professions within the construction industry, is in its infancy. Consequently, research and reference material is often in short supply. The institute maintains a knowledge

centre of information where papers, case studies, articles and presentations are made available to the members for reference. Members also have access to information on relevant books and higher education and training courses. A members' magazine is also published, which contains information relevant to this sector of the industry, regular member webinars are held and the institute holds an annual conference which is available to members and non-members.

CRITERIA FOR MEMBERSHIP

There are three grades of membership within the institute:

Associate (AICCP)

Member (MICCP)

Fellow (FICCP)

The level of membership is dependent on qualifications in other industry disciplines, together with specific and verifiable experience within the claims sector of the industry.

FURTHER INFORMATION

Institute of Construction Claims Practitioners

Email: hello@instituteccp.com

www: <http://instituteccp.com>



After the first edition of *Construction Claims & Responses* was published, I was pleasantly surprised at how well it was received and by the fact that many readers took the trouble to contact me to say how useful that they had found my book. In many instances, people also inquired if I could recommend any educational or training courses to further enhance their knowledge of the subject. At the time, I was obliged to advise that, while there were several university degrees and training courses on construction or contract law, as far as I was aware, there was nothing that provided education or training specifically on the practical aspects of claim and response preparation as is covered in this book. The realisation that there was a significant gap in the market and that there was a need for education and training on the subject inspired me to take the subject of the book to the next level and consequently, Claims Class was born.

COURSES

Claims Class now offers various education and training courses on matters associated with construction claims and contractual matters. Courses currently available are:

- Construction Claims
- The Perfect Claim
- Understanding Claims Under FIDIC 1999
- Understanding Claims Under FIDIC 2017
- Practical Use of the FIDIC Contracts 1999
- Practical Use of the FIDIC Contracts 2017
- Delay Analysis
- Principles of Contract Management

COURSE DELIVERY

We recognise that people have different learning requirements, so our courses are available through various methods of delivery.

E-Courses

These tutor-assisted courses include video tutorials for each learning module together with additional study material. At the end of each module, students are required to submit assignments to their tutor who will grade them and provide feedback and comments together with model answers for future reference. The assigned tutors are available to provide help and advice throughout the course.

E-course students may complete the courses at their own pace and even take a break if life gets in the way of studying.

Live Online

Claims Class provide regular online courses on various subjects. Typically, these consist of six or seven one to one-and-a-half hour tutorials with question-and-answer sessions delivered over a six- or seven-week period.

In-House Training

When companies have a requirement for training, it is sometimes more convenient and economical for Claims Class to go to them, either in-person or online. Claims Class can offer either an existing training course to be delivered to employees, or tailor-make a bespoke course to cover the specific requirements of the client.

FURTHER INFORMATION

Claims Class

Hewitt Construction Consultancy

Contact: hello@constructionclaimsclass.com

Website: constructionclaimsclass.com