

Are Construction Claims Inevitable?



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Are Your Change Orders Larger Than Your Contract?



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Change is Inevitable in Construction

- Even successful projects have changes and/or claims
- Parties are typically islands of self interest
- Best way to handle claims is to proactively anticipate them
- Risks can be mitigated

Construction Risk Issues

Contract Risks

- construction as a risky business
- risk is a key aspect of all construction and engineering contracts:
 - ✓ many different entities involved
 - ✓ Complexity of Projects
 - ✓ high degree of inter-activity between purchaser and supplier
 - ✓ expectation of, and provision for, substantial levels of change to the specified scope of work
 - ✓ complexity of sequencing of activities, and dependencies on other activities/supplies
 - ✓ site specificity
 - ✓ interaction with neighboring infrastructure
 - ✓ exposure to, and dependence on, weather conditions

Changes in the Contract

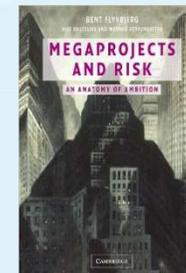
- Practical reality is that few projects are finished without unforeseen problems developing
- Constraints of time, money, environment and engineering complexity inevitably lead to changes
- Mega projects are particularly prone to Changes
- Contractors who competitively bid have little margin for extras
- Owners generally don't expect to be paying for extras

Changes in the Contract

MEGA projects in particular have a strikingly poor track record in limiting changes as reflected by their large cost overruns.

Table 1: Examples of construction cost overruns in large Transport projects

Project	Cost Overrun (%)
Boston's artery/tunnel	196
Humber Bridge, UK	175
Boston-Washington-New York rail, USA	130
Great Belt rail tunnel, Denmark	110
A6 Motorway Chapel-en-le-Frith/Whaley Bypass, UK	100
Shinkansen Joetsu rail line, Japan	100
Washington Metro, USA	85
Channel tunnel, UK, France	80
Karlsruhe-Bretten light rail, Germany	80
Oresund access links, Denmark	70
Mexico City metro line	60
Paris-Auber-Nanterre rail line	60
Tyne and Wear Metro, UK	55
Great Belt link, Denmark	54
Oresund coast-to-coast link	26



*Flyvbjerg B., Bruzelius
N., Rothengatter
W., Megaprojects and
Risk, Cambridge University
Press p 14 of Ref. [1].*

Construction Risks

Construction Industry Institute

- Disputes on Construction Contracts Endemic
- Many Variables – Must be able to Recognize, Defend and Resolve Early and Professionally
- Company EPC Contracts of Major Size and Have Major Potential Liability
- Project and Site Personnel on the Front Line
- Must Understand Both Contractor and Company Rights and Obligations Regarding Claims

Claim - Definition

- ..demand or assertion by one of the parties seeking as a matter of right, ...
- adjustment or interpretation of contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract...
- also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract.

Claims and Risk

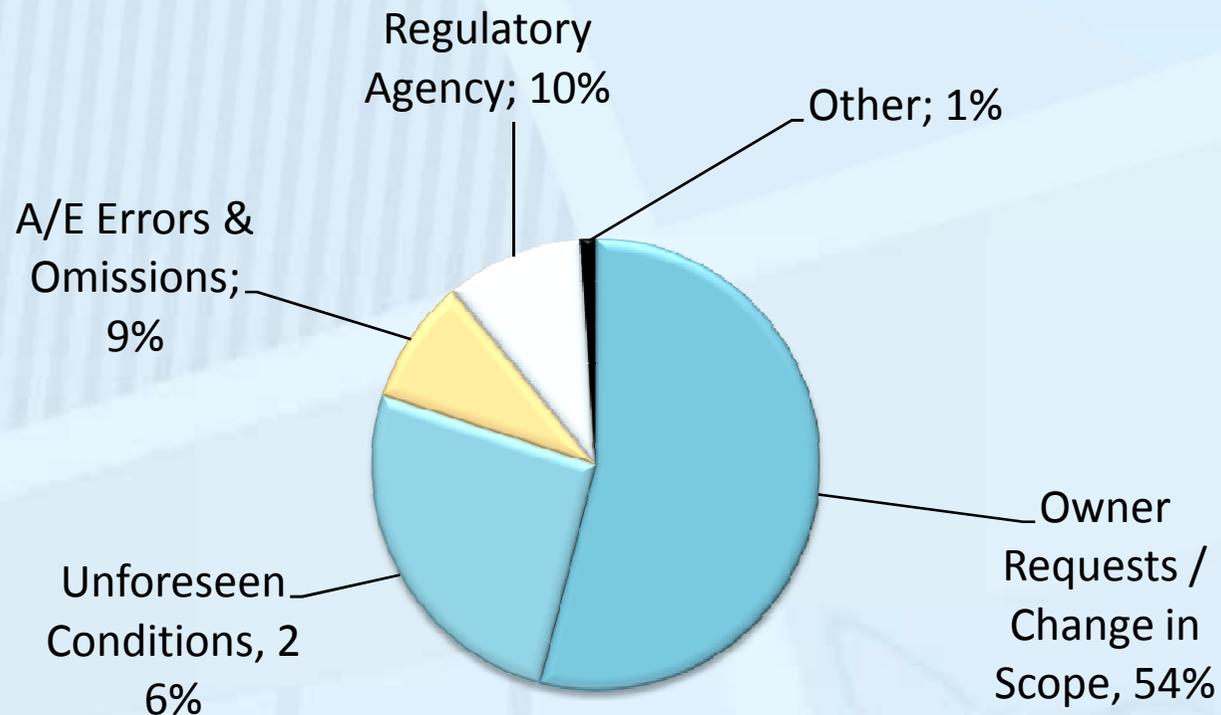
- Claims (& changes) are *construction risks* that were not prevented from coming to fruition, or mitigated early - causing cost or schedule impacts:
- How do you manage risks & avoid claims?

Common Causes of Claims

- Contractor:
 - Differing Site Conditions
 - Errors and Omissions
 - Ambiguous Specifications
 - Force Majeure
 - Delayed Performance
- Owner:
 - Defective Work
 - Delayed Performance
 - Default

State of the Industry

Source of Change Orders



Construction Risk Management

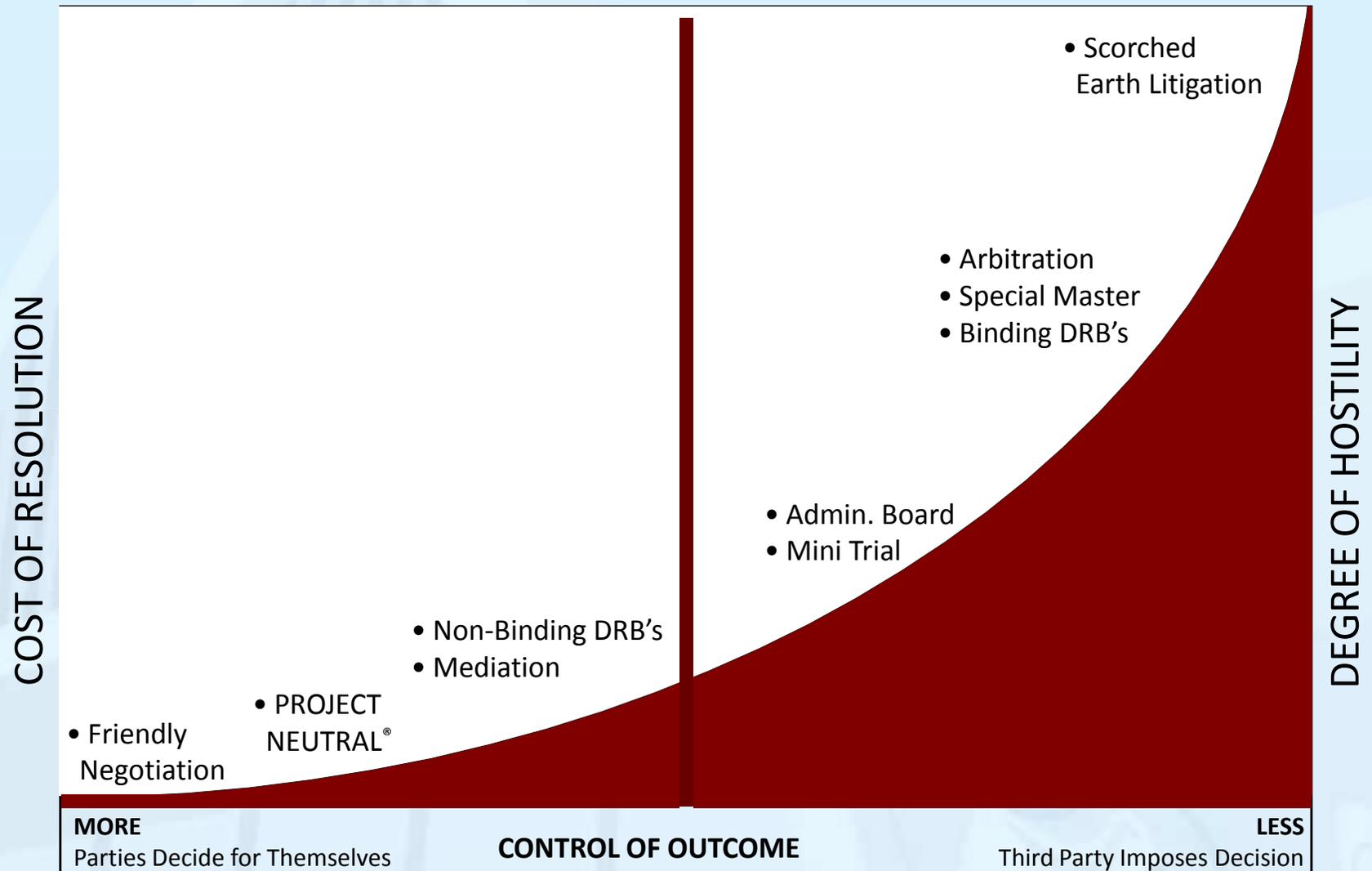
Dealing with risk

Channel tunnel, Great Belt, Oresund and other projects

In a World Bank study of ninety-two projects, only a handful was found to contain 'thoughtful' risk analysis showing 'good practice'.

Bent Flyvbjerg, Nils Bruzelius, and Werner Rothengatter, Megaprojects and Risk (Cambridge University Press) p 76.

DISPUTE RESOLUTION CONTINUUM



Construction Risk Management

EXECUTIVES AND PROJECT MANAGERS AGREE:
COMMUNICATION IS CRITICAL

PMI's 2013 *Pulse of the Profession™* report revealed that US\$135 million is at risk for every US\$1 billion spent on a project. **Further research on the importance of effective communications uncovers that a startling 56 percent (US\$75 million of that US\$135 million) is at risk due to ineffective communications.** (See Figure 1)



“The High Cost of Low Performance: The Essential Role of Communications”, PMI’s Pulse of the Profession In-Depth Report, Project Management Institute, May 2013

Construction Risk Management



“The High Cost of Low Performance: The Essential Role of Communications”, PMI’s Pulse of the Profession In-Depth Report, Project Management Institute, May 2013



Construction Risk Management

A key ingredient in all successful construction projects is clear, efficient and effective communication between all participants. Good communication does not automatically occur on construction projects, but must be nurtured from project inception through close-out.

"Guidelines for a Successful Construction Project", The Associated General Contractors of America/American Subcontractors Association, Inc. 2003

Changes will happen... deal with them!



Thank You!!!

Questions?



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