

Particularized Analysis of AIA's Expeditious Mechanisms for Administering Claims and Disputes

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Abstract: Contract conditions governing the administration of construction claims and disputes play a critical role concerning the efficiency and speed with which their resolutions can be concluded. Available standard conditions offer a variety of timeline spectrums along which the resolution of such claims and disputes can be pursued. A detailed analysis of the relevant stipulations offered by the latest standard conditions recently issued by the American Institute of Architects (AIA) is presented, with the goal of addressing their particular merits and the corresponding performance requirements expected of contract administration professionals acting on behalf of the parties to the construction contract. The methodology involved highlighting the properties that are conducive to expeditious administration of claims and disputes and pinpointing those other characteristics that may provide room for claims and disputes to undesirably drag beyond what is inherently implied by these conditions. Multiple findings are summarized along with numerous examined timeline aspects, including the significance of issuing an initial decision, the ability of triggering resolution closures, and the ability of enforcing settlements reached within mediation. Particularized timeline scenarios are constructed, along with a flow diagram embedding all possible claim/dispute tracking paths that are likely to evolve, which can be of crucial guidance to concerned practicing contract administrators. DOI: [10.1061/\(ASCE\)LA.1943-4170.0000262](https://doi.org/10.1061/(ASCE)LA.1943-4170.0000262). © 2018 American Society of Civil Engineers.

Introduction

Delivering construction projects successfully, on time and within budget, serves the interests of both parties to the construction contract, the owner and the contractor. Critical to such desired success is having effective communication between the contracting parties (Gorse and Emmitt 2003). As such, an acceptable level of communication must be established and maintained throughout the contract period, which can be achieved through the use of a well-prepared and drafted contract (Kennedy et al. 1997). It is argued that such effective preparation of contracts affects the efficiency of the construction processes governed by them (Podvezko et al. 2010). In addition, owing to the increased complexity of projects, there is a need to develop more comprehensive contracts addressing various financial, technical, and legal aspects of the project in question (Bubshait and Almohawis 1994). As a result, the need for specialized knowledge and skills is seen as core to the drafting of such complex contracts (Podvezko et al. 2010), and, as such, professional bodies have developed standardized forms of general conditions that are being used widely in the construction industry (Bubshait and Almohawis 1994).

The conditions of contracts specify the mechanisms to be followed throughout the execution the contract's works. Among various addressed mechanisms, claims/disputes administration ones tend to receive considerable attention, as claims are becoming an indispensable part of the construction contract system (Vidogah and Ndekugri 1997). The encountering of claims is reported to be inevitable (Bradley and Langford 1987), and their extensive presence on construction projects has been clearly confirmed (Pinnell 1998, Abdul-Malak et al. 2002). Therefore, contract administrators need to be knowledgeable about today's contemporary, multistep claims/dispute processes, to be able to fulfill the stringent requirements of the various gated stages/phases involved (Abdul-Malak and Abdulhai 2017). In fact, such multistep processes have been devised under different national and international standard conditions for the construction contract, including those by the American Institute of Architects (AIA), the Engineers Joint Contract Documents Committee (EJCDC), the ConsensusDocs, the International Federation of Consulting Engineers (FIDIC), the World Bank, the New Engineering Contract (NEC), and the Joint Contracts Tribunal (JCT).

Such standard conditions have been gaining wider acceptance on the basis that they offer best practices for the allocation of risks between the contracting parties. The efficiency of their inherent mechanisms has been the focus of several recent studies. To this end, El-adaway et al. (2013) examined the AIA conditions with the goal of highlighting the rights and responsibilities of the project participants named in the contract and the corresponding allocation of risks and generating guidelines for contract administrators working on projects adopting these conditions. Comparative examinations have also been carried out on more specific provisions that are included under various national and international standard conditions, including those provisions related to change orders, extension of time, and payments. In the change order study, the relevant provisions set forth in different standards were studied, based on three dimensions: the authority for instructing a change order, its execution and the underlying mechanism, and the adjustments to contract price and time, if any (El-adaway et al. 2016a).

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Concerning the extension of time provision, the issues examined pertained to the conditions justifying entitlement, the underlying operative mechanism, and the consequences of non-compliance (El-adaway et al. 2016b). As for the payment provisions, three dimensions were of interests: the process for requesting payments, the time limits for a payment to be rewarded, and the corresponding remedies at the disposal of the contractor in the case of delayed payments (El-adaway et al. 2017).

On the front of standard provisions addressing claims and disputes resolution, the progression of claims/disputes and the evolution of their documentation along the resolution timeline have recently been conceptualized (Abdul-Malak and Abdulhai 2017), using the relevant provisions of the FIDIC standard conditions as a multistep resolution platform of reference (FIDIC 1999). No comparative-type studies have been encountered, which could shed light on the relative efficiency with which claims and disputes progress under the various standard conditions in use nowadays.

Research Scope and Methodology

As stated above, the reliance on standard conditions for the construction contract seems to continue to rise, and the interest in assessing the efficiencies of such conditions is likely to increase. The present work is part of a comprehensive research study to model the progression of claims and disputes along the timelines corresponding to six sets of standard contract conditions. As such, this paper focuses on the claim/dispute mechanism that underlies the AIA's conditions pertaining to the administration of claims and disputes raised by either party during construction. The spectrum of scenarios that are likely to be encountered within the application of the AIA's prescribed claim/dispute process is identified, and a guide map that models the possible paths emanating from the underlying claim/dispute mechanism is developed. The followed methodology involved (1) reviewing AIA A201 2017's "Article 15 Claims and Disputes" that prescribes the process adopted for administering and resolving claims and disputes (AIA 2017), (2) extracting the schematic timeline of the underlying mechanism and highlighting its main modules, (3) summarizing the properties of each stage/module, and (4) developing all the scenarios that may possibly be encountered within each of the timeline's modules. A thorough analysis of the findings is then offered, addressing: (1) the initial decision maker's role, as compared to other initial-judgment roles prescribed under other national and standard contract conditions; (2) the expeditious properties of the involved process; (3) the road for reaching agreement through mediation; and (4) the path through the timeline thought to represent the worst-case scenario that may possibly be encountered in reality. Finally, a comparison between the latest previous conditions and the newly released conditions was made to highlight the differences between their corresponding claims/disputes administration and resolution mechanisms.

Underlying Claim Mechanism

Conflicts arising between the contracting parties during the construction contract adopting the AIA standard conditions shall be resolved pursuant to "Article 15 Claims and Disputes." A close inspection of the terms and requirements included under this article resulted in developing a schematic claim/dispute timeline along with a tabulated summary of the stages corresponding to the process inherent in these provisions, as shown in Fig. 1 and Table 1, respectively.

To initiate a claim, the claimant, be it the owner or contractor, shall submit a notice of claim to the other party and to the initial decision maker. The initial decision maker is a third-party entity (or individual), named in the contract based on mutual agreement of the parties (AIA Document Commentary 2007). The role required of this initial decision maker is to give an initial decision in respect of matters contended as part of submitted claims. By default, the architect serves the role of this initial decision maker, unless the parties agree to name another third party. If the architect is not asked to act as the initial decision maker, he shall nevertheless be copied on the notice of claim issued by the claimant. Claims shall be initiated pursuant to §15.1.3.1 upon the recognition of a condition or the occurrence of an event giving rise to the claim. An initial decision shall be given by the initial decision maker in regard of each raised claim. In case the condition giving rise to a claim is recognized after the expiry of the correction period of the works, the claim shall be submitted directly to the other party, and no decision by the initial decision maker shall then be required. Prior to rendering an initial decision, the initial decision maker shall review the claim and entertain taking one or more of several actions that may potentially be warranted. For example, one of the possible actions is to request of the claimant to submit additional supporting data, which, in turn, shall be submitted pursuant to §15.2.4. Following the fulfillment of these stages, the initial decision shall render an initial decision that is condition precedent to the triggering of the succeeding mediation phase of the timeline. Initial decisions rendered, pursuant to §15.2.5, are born as final and binding with the possibility of being revoked upon invoking the mediation and, if failing to achieve agreement therein, binding dispute resolution phases. Mediation is invoked upon filing a request to mediation that could be either (a) filed directly by either party or (b) filed as a result of one of the parties placing a demand for the other party to file for mediation. Placing such a demand shall cause the demanded party to file for mediation within the corresponding time window.

On the other hand, not placing such a demand does not preclude the possibility of filing for mediation, by either party, at any time. In either case, mediation will be initiated once the "request to mediation" is filed. Successful mediation results in reaching an agreement that is likely to be "enforced as a settlement agreement in any court having jurisdiction thereof." Alternatively, ending mediation

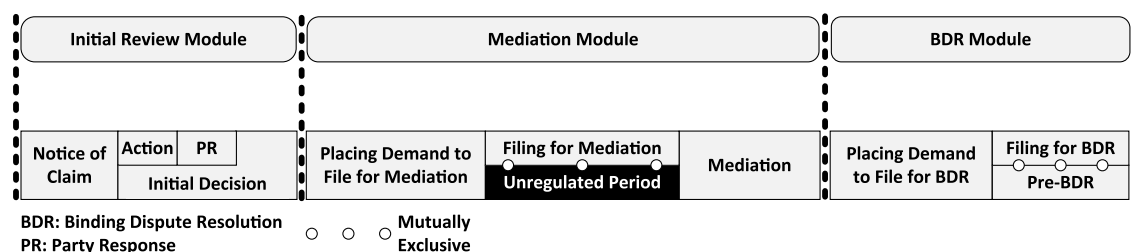


Fig. 1. Extracted schematic claim/dispute timeline.

Table 1. Claim process stages

Stage	Time bar (days)	Triggered by	Parties involved	Actions	Corresponding clause
Notice of claim	21	Event	Claimant: contractor or owner	Initiating a claim by a written notice to other party and IDM, with a copy to architect if architect is not the IDM	15.1.3.1
Action	10	Receiving the notice of claim from claimant	IDM: initial decision maker IDM, claimant, and other party	(1) Requesting additional supporting data from claimant, (2) requesting a response with supporting data from the other party, (3) rejecting the claim in whole or in part, (4) approving the claim, (5) suggesting a compromise, or (6) advising that IDM is unable to resolve the claim	15.2.2
Party response	10	Receiving a request from IDM	Party requested and IDM	(1) Provide a response on the requested supporting data, (2) advise IDM when response or supporting data will be furnished, or (3) advise IDM that no supporting data will be furnished	15.2.4
Initial decision	30	Receiving the notice of claim from claimant, or receiving of requested response	IDM, claimant, other party	(1) Rejecting the claim in whole or in part, (2) approving the claim, or (3) advising that IDM is unable to resolve the claim	15.2.5
Placing demand to file for mediation	30	Rendering a decision by IDM	Claimant and other party	Demanding other party to file for mediation	15.2.6.1
Filing for mediation	30	Placing demand for other party to file for mediation	Demanded party: claimant or other party	Filing a request for mediation within 30 days from the day the demand to file for mediation was made	15.2.6.1
Unregulated period	Unregulated	Not placing a demand for other party to file for mediation	Triggering: contractor or owner Ending: contractor or owner	Filing a request for mediation at any time	15.2.6
Mediation	60	Filing a request for mediation	Mediator, claimant, and other party	Endeavoring parties to resolve claim by mediation	15.3.2
Placing demand to file for binding dispute resolution	30	Conclusion of mediation	Demanded party: claimant or other party	Demanding other party to file for binding dispute resolution	15.3.3
Filing for binding dispute resolution	60	Placing a demand for other party to file for binding dispute resolution	Demanded party: claimant or other party	Filing for binding dispute resolution within 60 days from the day the demand to file for binding dispute resolution was made	15.3.3
Pre-binding dispute resolution	Statute of limitations	Not placing a demand for other party to file for binding dispute resolution	Claimant, other party	Filing for binding dispute resolution by either party	15.4.1.1

without achieving a settlement triggers the binding dispute resolution (BDR) procedures. Similar to the procedure used under the mediation stage, either party can place a demand for the other party to file for BDR, and to do so within a stipulated time bar. Placing this demand has the effect of regulating the period that could be exhausted before the filing for BDR effectively takes place.

Detailed Analysis

As illustrated in Fig. 1, the schematic claim/dispute timeline can be divided into three modules: initial review, mediation, and binding dispute resolution. Particularized scenarios applicable to each module were constructed to explore the claim/dispute progression possibilities likely to prevail in each.

Module A: Initial Review

The initial review module forms the first part of the claim/dispute process, spanning from the initiation of a claim to the rendering of an initial decision. Within this module, three scenarios were generated, as presented in Fig. 2. In all scenarios, the notice of claim is submitted within 21 days from the day of occurrence of the event

giving rise to the claim, pursuant to §15.1.3.1. Instead of opting to take an (interim) action upon receiving the claim, as discussed previously, the initial decision maker can directly render an initial decision, as shown in scenario A.1. §15.2.5 specifies that the initial decision maker can either (1) approve or reject the claim in whole or in part, or (2) advise that he is unable to resolve the claim. Moreover, the initial decision has to be made in writing accompanied with the justifying reasons. Prior to rendering decisions, the initial decision maker may consult with both parties and/or receive help from owner's maintained resources. The initial decision is condition precedent to the filing for mediation, unless it is not rendered within 30 days from the day of receipt of the notice of claim (Scenario A.2). Contrary to the two scenarios described previously, Scenario A.3 presents the case where the initial decision maker opts to first take an (interim) action prior to rendering a decision, as further explained subsequently.

Fig. 3 summarizes all the possibilities for actions that may be taken in preparation to the subsequent rendering of initial decisions. §15.2.2 states that the initial decision maker can take one or more of the following actions within 10 days of the receipt of the claim notice: (1) request supporting data from the claimant (RSD); (2) request a response with supporting data from the other party (RR);

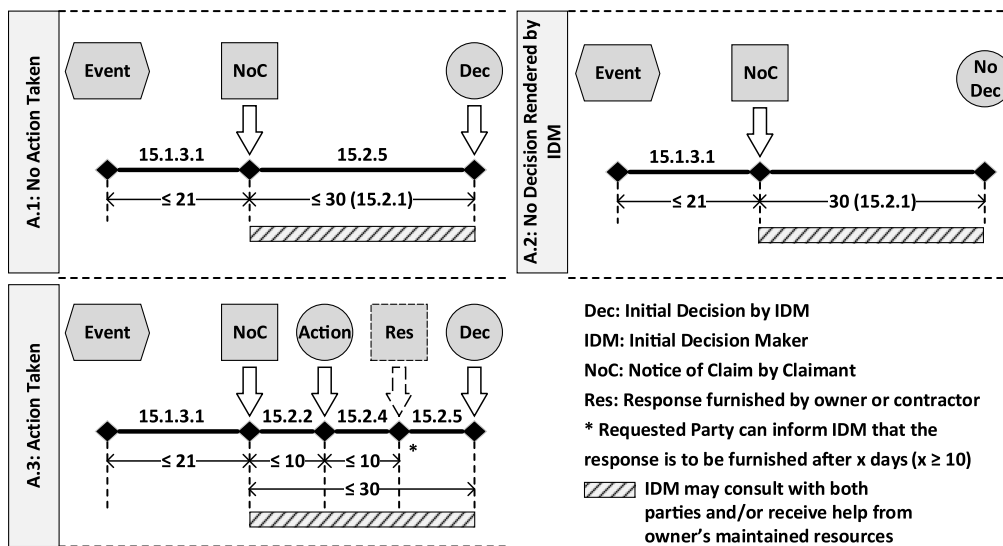


Fig. 2. Initial review module.

(3) reject the claim in whole (RW); (4) reject the claim in part (RP); (5) approve the claim in whole (AW); (6) suggest a compromise (SC); (7) advise that the initial decision maker is unable to resolve the claim because of the lack of sufficient information (UR1); or (8) advise that it is inappropriate for the initial decision maker to resolve the claim (UR2). Although these actions are stated with seemingly equal chances of being taken, the order and likelihood of their individual applicability are worth examining. To this end, the AIA Document Commentary states that the “notice of claim need not to contain all information pertaining to the claim” (AIA Document Commentary 2007); in other words, the claimant does not have to furnish all information that supports the claim

upon its initiation. Therefore, it is reasonable to expect the initial decision maker to first consider the possibility of taking the RSD and/or RR action(s). If any such request is made, the requested party shall, within 10 days, (1) furnish additional supporting data, (2) notify the initial decision maker that the requested data will be furnished within “X” days, or (3) notify the initial decision maker that no additional data will be furnished.

On the other hand, actions including rejecting the claim in whole (RW), rejecting the claim partially (RP), accepting the claim in whole (AW), or suggesting a compromise (SC) may be taken *only* based on sufficiently furnished information, to enable deciding not only on the eligibility side (principle) of the claim but also on

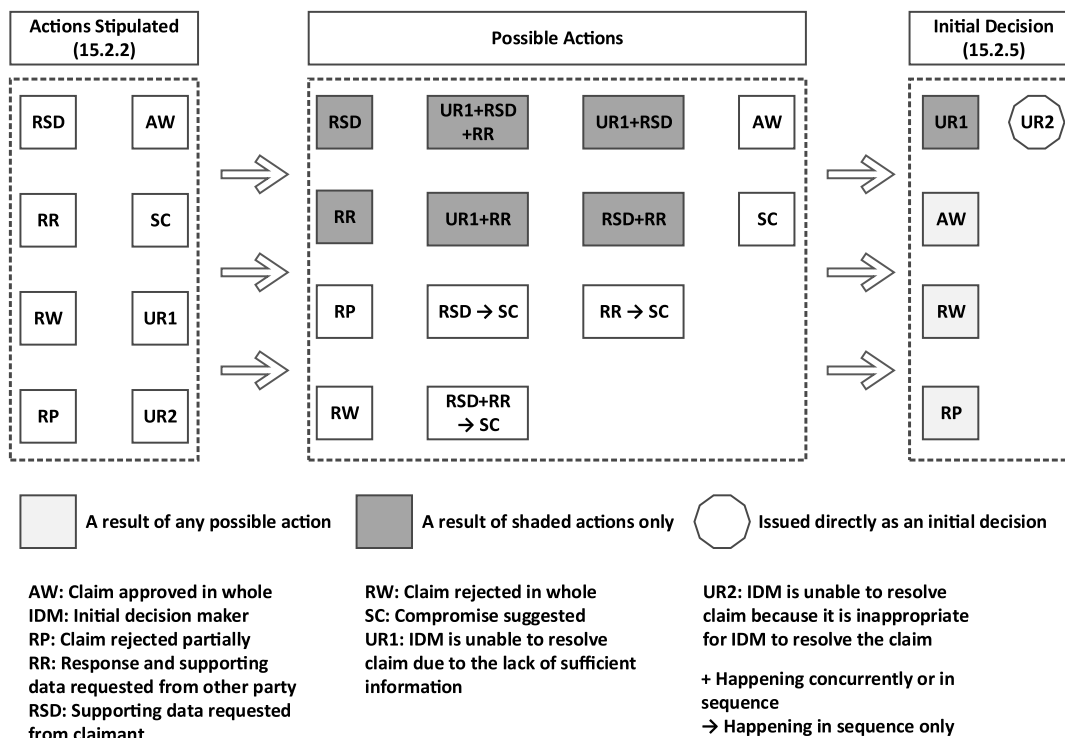


Fig. 3. Possible actions taken versus initial decision rendered.

the claim's quantum. If initially submitted information is deemed insufficient, and the requested information has been furnished prior to the expiry of the first 10-day window, the initial decision maker may then take any of the RW, RP, AW, or SC actions, thereby ending in exercising two actions, in total, taken in sequence within this same first 10-day window. In other words, the likelihood of these actions to be taken by the initial decision maker during this window seems to be unlikely if the initially furnished claim information has been found insufficient to judge the merit of the case, thereby warranting requesting additional supporting data or response from the respective concerned parties. The actions, RW, RP, AW, and SC, fall under the class of actions that seems to allow the initial decision maker to formulate his initial decision based on prior consultation with both parties. On the other hand, it seems impracticable to assume that the initial decision maker declares his inability to resolve the claim due to lack of sufficient information (UR1), for he has at his disposal the exercising of the RSD and/or RR option(s). Consequently, the UR1 action shall be accompanied with RSD and/or RR. Similarly, it is inappropriate for UR2 to be rendered as an action pursuant to §15.2.2; that is, if, within the first 10 days, it is seen as inappropriate for the initial decision maker to be the one to resolve the claim, this condition shall be expected to continue to prevail during the next period up to the end of the overall 30-day period. Therefore, it goes without saying that the UR2 option shall be rendered as an "initial decision" directly, pursuant to §15.2.5, and not as an action under §15.2.2. Besides, it shall be expected that such an initial UR2 decision to be given rather expeditiously, because it will be unprofessional to allow the full exhaustion of the 30-day period only to render such an inappropriateness-based decision.

Following the possible exercising of action(s) under §15.2.2, as the case may warrant, the initial decision maker will still need to document his final opinion on the matter in the form of an initial decision, which he has to render pursuant to §15.2.5. Although the initial decision maker can render AW, RW, RP, UR1, or UR2 as

initial decisions, not all decisions are to be expected to be compatible with the actions (if any) already taken. For illustration, UR1 can be a rendered initial decision only in cases where the actions already taken are either "RSD and/or RR" or "UR1 followed by RSD and/or RR." In those cases, the furnished supporting data and/or response, if any, are also deemed insufficient for the initial decision maker to render an initial decision. Consequently, the initial decision maker will not be able to resolve the claim. Moreover, when requesting supporting data and/or response by way of developing the ability to assess the eligibility as well as the quantum of the claim, it naturally follows that it will be appropriate for the initial decision maker to review the claim submitted. Therefore, when any such action is taken pursuant to §15.2.2, it cannot be followed by a UR2 decision under §15.2.5. On the other hand, any previously taken action may be followed with AW, RW, or RP being the basis of the opinion documented in the form of an initial decision, based on additionally provided supporting data and/or consultations that may have taken place with both parties.

Module B: Mediation

Whenever an initial decision is rendered, the claim moves to the mediation module where one of the scenarios presented in Fig. 4 is to transpire. Following the issuance of such a decision, either party may file for mediation at any time. However, AIA conditions provide a mechanism to expedite the mediation process. Within 30 days from the date of rendering the initial decision, either party may place a demand for the other party to file for mediation. Once placed, the demanded party has 30 days to file a request for mediation. However, the failure of either party to trigger the expeditious mechanism keeps the window of filing for mediation *unregulated*.

In both cases, mediation is initiated once a request is filed, and the parties thereafter shall endeavor to reach agreement regarding the matter in dispute. If agreement is not reached or mediation is not concluded within 60 days from its initiation, either party may then place a demand for the other party to file for binding dispute

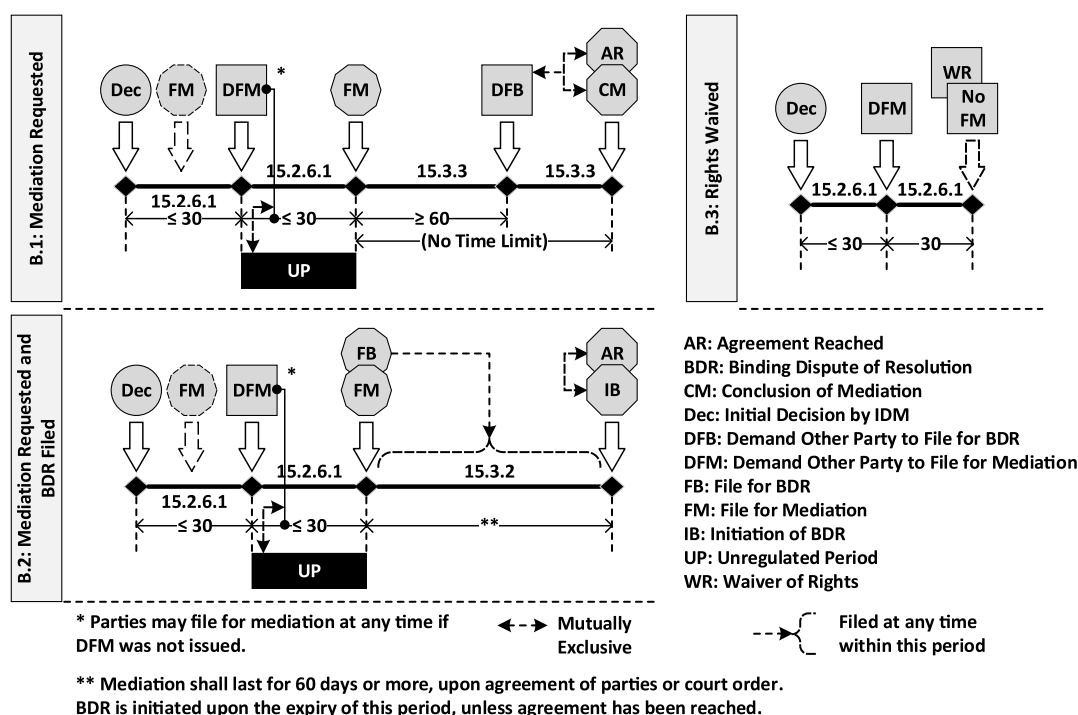


Fig. 4. Mediation module with initial decision being rendered.

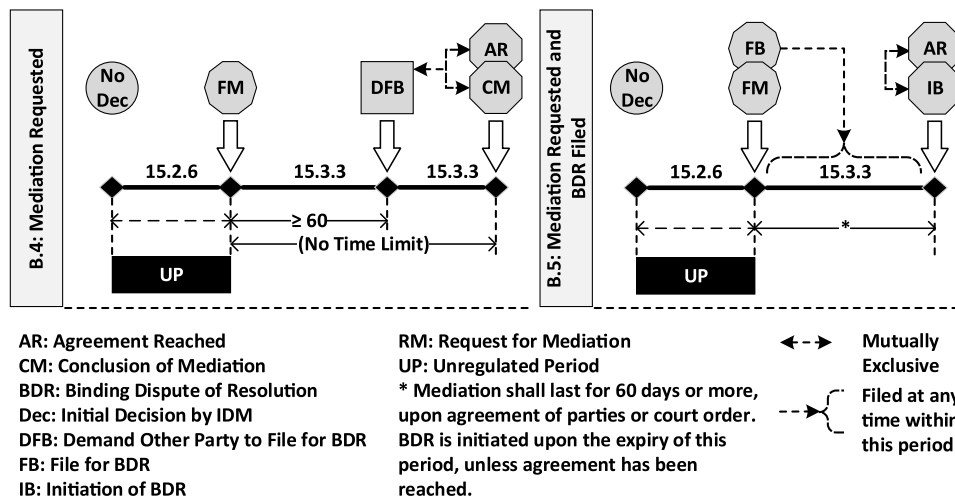


Fig. 5. Mediation module with no initial decision being rendered.

resolution (BDR). Concluding mediation or placing a demand for the other party to file for BDR concludes Scenario B.1, shown in Fig. 4. Claims falling under Scenario B.2 progress in a manner similar to that of Scenario B.1, such that the party, filing for mediation, also files for BDR concurrently with the filing for mediation or at any time within the mediation’s period. In that case, the BDR process is stayed for a period of 60 days from the day on which mediation is initiated. Upon the agreement of both parties, or by a court order, the BDR process can be made to stay for a longer period. Unless agreement has been reached prior to the expiry of this period, the BDR process is then initiated. On the other hand, if a demand for the other party to file for mediation is placed, and no request is as such filed within 30 days, both parties then end up waiving their rights to pursue mediation or BDR (Scenario B.3).

As mentioned earlier, the initial decision is condition precedent to mediation, unless it is not rendered within the specified 30-day time bar. Consequently, the expiry of this 30-day period while giving no decision triggers the second set of scenarios of the mediation module, as presented in Fig. 5. In the absence of an initial decision, the mechanism’s inherently expeditious property no longer prevails. Either party can file for mediation at any time pursuant to §15.2.6. Once a request for mediation is filed, Scenario B.4 proceeds in a way similar to that of B.1, whereby mediation can end upon (1) reaching agreement, (2) being concluded by the mediator, or (3) placing a demand for the other party to file for BDR. Moreover, Scenario B.5 resembles Scenario B.2 in that BDR is filed concurrently with the filing for mediation or at any time within the mediation’s period. Claims, progressing in accordance with Scenario B.5, can be resolved either upon reaching agreement through mediation or referral to BDR.

In summary, claims exit the mediation module in four different ways: (1) reaching agreement through mediation, (2) initiation of BDR directly, (3) conclusion of mediation with no agreement reached, or (4) placing a demand for the other party to file for BDR. Exiting through “Exit 1” ends the claim/dispute process, while exiting through “Exit 2” has the effect of skipping the BDR module to initiate BDR directly. However, “Exits 3 and 4” trigger the BDR module, in which disputes proceed as discussed in the next section.

Module C: Binding Dispute Resolution

Claims reaching the BDR module proceed under one of the scenarios illustrated in Fig. 6. Conclusion of mediation triggers a

mechanism, similar to that used under the mediation module, which can expedite the BDR process. Either party, within 30 days of conclusion of mediation, may place a demand for the other party to file for BDR. Subsequently, the demanded party has a 60-day period to file for BDR. On the contrary, not placing this demand triggers the possibility of either party to file for BDR within such a time window as may be allowed by the statute of limitations of the governing laws, as depicted in Scenario C.1. On the other hand, Scenario C.3 shows the case of placing a demand for the other party to file for BDR, coupled with the failure of the other party to file for BDR within the prescribed period. Consequently, both parties waive their rights to pursue BDR at any later time. Alternatively, if the mediation module has ended with a demand for the other party to file for BDR, the demanded party then has 60 days to file for BDR (Scenario C.2); else, both parties waive their rights to pursuing BDR (Scenario C.4).

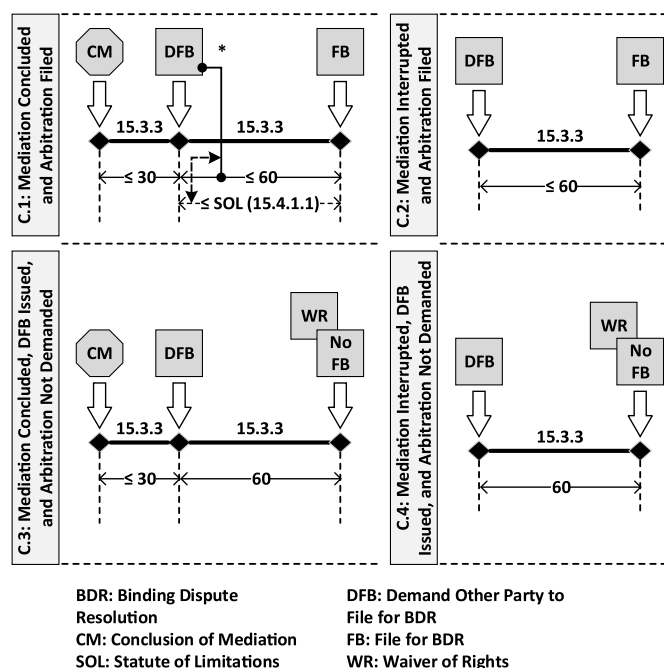


Fig. 6. Binding dispute resolution module.

furnishing of additional data or notifying the initial decision maker that no additional data will be furnished. On the other hand, claims under at the *Placing DFM* stage can be shifted (1) to the *Unregulated Period* stage upon the expiry of the stipulated 30-day period or (2) to the *Mediation* stage upon filing a request for mediation. In cases where a demand for the other party to file for mediation has been placed (DFM), claims will be shifted to the *Mediation* stage upon filing for mediation. However, the elapsing of 30 days after placing a DFM shifts the claim to the *Waiver of Rights* endpoint.

Moreover, claims within the *Unregulated Period* stage stay there until either party file a request for mediation, thereby shifting the claim to the *Mediation* stage. Once entering the mediation's loop, claims can (1) reach the "*Settlement enforced*" endpoint upon reaching agreement, (2) move to the *Placing DFB* stage upon concluding mediation, (3) enter the loop of filing for BDR upon placing a demand for the other party to file for BDR (DFB), or (4) reach the *BDR Initiation* endpoint upon filing for BDR, but not earlier than filing for mediation. Claims under the *Placing DFB* stage enter the loop of filing for BDR upon placing a DFB. Conversely, the absence of a DFB allows claims to reach the *BDR Initiation* endpoint at any time, upon filing for BDR. Finally, filing for BDR within 60 days cause claims within the loop of filing for BDR to reach the *BDR Initiation* endpoint. Otherwise, claims reach the *Waiver of Rights* endpoint in the absence of filing for BDR.

Discussion

The above analysis revealed an array of possibilities along which the progression of claims/disputes may take place. This section highlights a number of observations pertaining to the role played by the initial decision maker and to other aspects and properties of the examined claim/dispute resolution process, which are worthy of drawing the attention of contract administration professionals.

Initial Decision Maker

The role exercised by the initial decision maker can be seen as comparable to that of the engineer under the FIDIC standard conditions for the construction contract (FIDIC 1999). In fact, both roles represent the first-judgment role exercised for the purpose of rendering an initial opinion in regard to submitted claims. These roles can be compared based on the decision maker's capacity and duty and the property of judgment expected of him. First, the initial decision maker under the AIA conditions shall not show partiality to either party when exercising its role. However, the ability to act impartially could be questioned when the architect, an entity appointed by the owner only, happens to be serving as the initial decision maker. On other hand, the engineer under the FIDIC conditions is considered to be part of the owner's personnel, and he as such is not required to act impartially (FIDIC 1999). Second, the FIDIC engineer is under an obligation to consult with each party in endeavoring to reach agreement, failing of which would demand a determination of him (FIDIC 1999), whereas the AIA initial decision maker may, but shall not be obliged to, consult with either party before rendering an initial decision. Third, this initial decision, under the AIA conditions, is born as final and binding with a possibility of being revoked upon invoking mediation. In the FIDIC conditions case, if no agreement is reached upon carrying out consultations, the engineer has to render a determination that is born as binding but with no possibility of turning final (FIDIC 1999). Finally, it shall be noted that no similar roles exist under the EJCDC or ConsensusDocs conditions, under which the claimant communicates concerning a raised claim with the other party directly (EJCDC 2013; ConsensusDocs 2017).

Expeditious Mechanism

A major highlight of the AIA conditions, as opposed to other standard conditions, is one that allows the triggering of an expeditious mechanism at the levels of the mediation and binding dispute resolution modules. That is, both parties are afforded the chance to demand the other party to file for mediation or binding dispute resolution. This mechanism causes the other party either (1) to file a request within a definite period of time (30 days) or (2) to waive the rights of both parties to pursue mediation or binding dispute resolution. The implementation of these mechanisms has the clear effect of expediting the process and regulating it in a way that does not allow things to drag. Consequently, if a party is satisfied with the initial decision maker's decision and wishes to close the case expeditiously, that party can readily place the specified demand, thereby effectuating a quicker decision on the part of the other party in respect of either accepting the resolution offered in the initial decision or moving the claim forward to the succeeding mediation phase. A similar efficient process can be initiated by either party at the juncture between the mediation and binding dispute resolution phases.

Mediation Process

Under the AIA conditions, the prescription of *mediation* is explicit and made obligatory before the parties possibly electing to move the dispute forward to the BDR phase. On the other hand, the FIDIC conditions stay the commencement of arbitration for a period of 55 days, during which the parties may attempt to amicably settle the dispute on hand (FIDIC 1999). Several alternative dispute resolution (ADR) techniques, at the discretion of the parties, maybe adopted for attempting such a resolution, including direct negotiation or a third-party-assisted ADR method such as facilitation, conciliation, or mediation. Moreover, parties under the ConsensusDocs conditions have the option of referring the claim to mitigation rather than to mediation (ConsensusDocs 2017), whereas mediation under the EJCDC conditions is initiated upon the mutual agreement of both parties (EJCDC 2013). Therefore, it can be clearly deduced that, although all the aforementioned standard conditions integrate, whether directly or indirectly, the mediation process within the claim/dispute mechanism, the AIA ones allow the process to be initiated unilaterally by either party, a property that is likely to secure a faster progression of the claim/dispute along the resolution timeline.

Dragging Effect

Although the AIA's underlying claim administration process embodies steps that can be used to expeditiously close the case or allow it to move forward to the subsequent phases. However, there are circumstances that may cause a slower claim progression, possibly dragging its resolution over a rather undesirably long period. Nevertheless, this could not be as problematic as compared to the case of not having a binding initial decision rendered, as further explained subsequently.

Fig. 8 shows a hypothetical scenario under which the initial review module is concluded with (1) no decision having been rendered, (2) the claim being rejected in whole, or (3) the initial decision maker advising that he is unable to resolve the claim. In all cases, the claimant ends up not having on hand a binding decision that could be implemented in the interim to partially reimburse him for the additional costs incurred and/or to extend the time for completion of the construction contract, in turn, to avoid having liquidated damages levied by the owner. Consequently, the claimant may opt to file a request for mediation as an attempt to

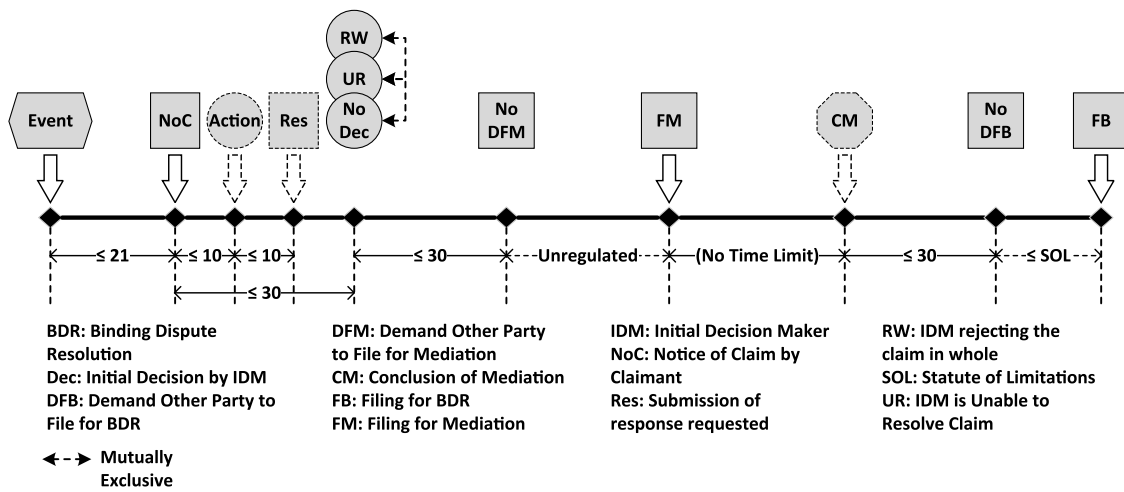


Fig. 8. Worst-case scenario.

reach a settlement. If it is in the other party’s interest to keep things dragging, the other party may not cooperate causing mediation to be concluded. Eventually, the claimant may file for binding dispute resolution to get a final and binding judgement. However, it may not be regarded as being feasible to initiate mediation and/or binding dispute resolution for every claim arising. As a result, this worst-case scenario can practically be viewed to stand a high likelihood of causing claims to pile up within the *unregulated* period, prior to—at a later stage in the construction period or even beyond it—filing a request for mediation.

AIA Conditions 2007 versus AIA Conditions 2017

Upon the release of the new edition of the AIA standard conditions, a comparison with the latest previous edition revealed that two major changes were introduced along the underlying claim/dispute resolution process. As such, Figs. 9 and 10 show these respective differences that were found to be related to the mediation and binding dispute resolution modules. In the case where a

demand is placed for the other party to file for mediation, the demanded party used to be allotted 60 days from the rendering of the initial decision to file for mediation, according to the latest previous conditions (AIA 2007b). As shown in Fig. 9, the 30 days assigned for placing a DFM are nested within the 60 days that are available for the demanded party to file for mediation. Consequently, this stage can drag up to a maximum of 60 days. However, the 2017 version of the conditions adjusted this mechanism to have sequential time bars governing the placing of a DFM and filing for mediation. To expedite the process, the DFM can be placed by the concerned party directly after the decision has been rendered, while the demanded party may consume all the shortened period of 30 days prior to filing for mediation. As a result, the overall expedited duration for having mediation filed for may

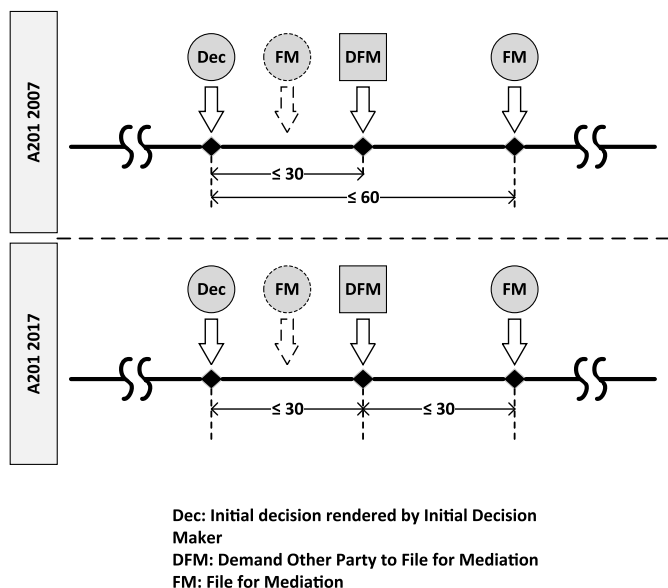


Fig. 9. Mediation’s mechanism: AIA (2007a) versus AIA (2017).

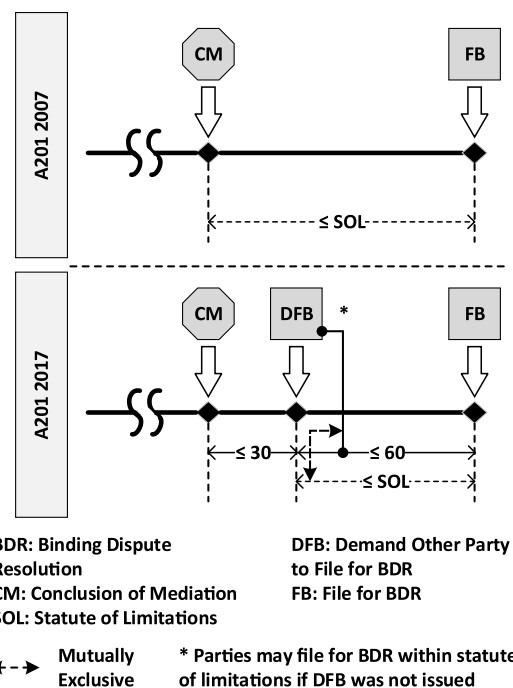


Fig. 10. Binding dispute resolution’s mechanism: AIA (2007a) versus AIA (2017).

go up to slightly above 30 days, as opposed to 60 days in the 2007 edition.

From another dimension, the major modification presented in the newly released edition was the introduction of an expeditious binding dispute resolution mechanism, as shown in Fig. 10. Previously, both parties were able to file for binding dispute resolution within such a period as it may be allowed by the statute of limitations of the laws governing the contract. However, the new edition now allows either party, within 30 days from the conclusion of mediation, to place a demand for the other party to file for binding dispute resolution, a process that is similar to that prescribed in connection with the mediation module.

In effect, under this new mechanism, the statute of limitations window can be closed, by allowing either party to force the other party to select between moving expeditiously (within 60 days) into the binding dispute resolution process, on the one hand, and accepting to waive its right for pursuing such a process at any later time, on the other hand. Whether such waiver eventually takes place or not depends on the laws under which the contract is to be construed or interpreted. Yet, this newly introduced mechanism can be viewed realistically, from a contract administration perspective, as a further enabler of the expeditious property of the AIA standard conditions, as it has been argued for in this paper.

Summary and Conclusions

The work presented in this paper focused on examining the efficiency with which claims and disputes progress along the AIA's underlying resolution mechanism. The performed particularized analysis, pertaining to each of the three modules found to constitute the overall resolution timeline, revealed numerous possibilities of progression paths. These were synthesized in such a way that guides the contract administration professionals in understanding the steps involved and potentially tracking the claims/disputes statuses throughout their administration process. A number of conclusions have been made, as follows:

- The content analysis pertaining to the actions that are supposed to be taken by the initial decision maker, pursuant to §15.2.2, exposed a number of different scenarios, under which any one or more of the prescribed action(s) may be taken within 10 days from the date of receipt of the claim notice. It is believed that the clarity in this said section can be improved; this can be done through synchronizing (or coordinating) these prescribed actions, and their intents, with what it entails to have the initial decision rendered pursuant to §15.2.5.
- The ability of the decision maker to give an initial decision was found to be critical, as in the absence of such a decision there will be no binding reference (be it time and/or money) to rely upon, or to get a relief from, until agreement is achieved through mediation or the dispute finally settled through the BDR phase.
- The process' proclaimed expeditious property is tied highly to the discretion available to either party to unilaterally trigger the mediation and BDR mechanisms. This expeditiousness has been enhanced by (a) removing the nesting of the time bars (under AIA 2007a) pertaining to requesting the other party to file for mediation and the filing of request for mediation by this demanded party and (b) introducing a mechanism, similar to that of the mediation module, allowing the unilateral triggering of the BDR module, despite stipulating a longer period (60 days) within which the demanded party is to file for BDR.
- This constructed worst-case scenario showed the likelihood of claims to pile up within an *unregulated period* prior to the filing of a request for mediation. Such filing stands the chance of

taking place at a late stage into the construction period, or even beyond it, owing to unreasonableness of initiating mediation and/or binding dispute resolution with every arisen claim.

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References

Works Cited

- Abdul-Malak, M. A. U., and T. A. Abdulhai. 2017. "Conceptualization of the contractor's project management group dynamics in claims initiation and documentation evolution." *J. Leg. Aff. Dispute Resolut. Eng. Constr.* 9 (3): 04517014. [https://doi.org/10.1061/\(ASCE\)LA.1943-4170.0000229](https://doi.org/10.1061/(ASCE)LA.1943-4170.0000229).
- Abdul-Malak, M. A. U., M. M. El-Saadi, and M. G. Abou-Zeid. 2002. "Process model for administrating construction claims." *J. Manage. Eng.* 18 (2): 84–94. [https://doi.org/10.1061/\(ASCE\)0742-597X\(2002\)18:2\(84\)](https://doi.org/10.1061/(ASCE)0742-597X(2002)18:2(84)).
- AIA (American Institute of Architects). 2007a. *American Institute of Architects document A201: General conditions of the contract for construction*. Washington, DC: AIA.
- AIA (American Institute of Architects). 2007b. *American Institute of Architects document commentary: A201: General conditions of the contract for construction*. Washington, DC: AIA.
- AIA (American Institute of Architects). 2017. *American Institute of Architects document A201: General conditions of the contract for construction*. Washington, DC: AIA.
- Bradley, S., and D. A. Langford. 1987. "Contractor's claims." In *Building Technology and Management*, 20–23.
- Bubshait, A. A., and S. A. Almohawis. 1994. "Evaluating the general conditions of a construction contract." *Int. J. Project Manage.* 12 (3): 133–136. [https://doi.org/10.1016/0263-7863\(94\)90027-2](https://doi.org/10.1016/0263-7863(94)90027-2).
- ConsensusDocs. 2017. *Standard agreement and general conditions between owner and contractor*. ConsensusDocs 200. Arlington, VA: ConsensusDocs.
- EJCDC (Engineers Joint Contract Documents Committee). 2013. *Standard general conditions of the construction contract*. EJCDC C-700. Alexandria, VA: National Society of Professional Engineers for EJCDC.
- El-adaway, I., S. Fawzy, T. Allard, and A. Runnels. 2016a. "Change order provisions under national and international standard forms of contract." *J. Leg. Aff. Dispute Resolut. Eng. Constr.* 8 (3): 03716001. [https://doi.org/10.1061/\(ASCE\)LA.1943-4170.0000187](https://doi.org/10.1061/(ASCE)LA.1943-4170.0000187).
- El-adaway, I., S. Fawzy, H. Burrell, and N. Akroush. 2017. "Studying payment provisions under national and international standard forms of contracts." *J. Leg. Aff. Dispute Resolut. Eng. Constr.* 9 (2): 04516011. [https://doi.org/10.1061/\(ASCE\)LA.1943-4170.0000200](https://doi.org/10.1061/(ASCE)LA.1943-4170.0000200).
- El-adaway, I., F. Salwa, A. Muaz, and W. Rob. 2016b. "Administering extension of time under national and international standard forms of contracts: A contractor's perspective." *J. Leg. Aff. Dispute Resolut. Eng. Constr.* 8 (2): 04516001. [https://doi.org/10.1061/\(ASCE\)LA.1943-4170.0000182](https://doi.org/10.1061/(ASCE)LA.1943-4170.0000182).
- El-adaway, I. H., S. A. Fawzy, K. Cody, S. Fast, G. Spencer, D. Bond, D. Cushman, and T. Stieffel. 2013. "Contract administration guidelines for contractors working under AIA A201-2007 contract for construction." *J. Leg. Aff. Dispute Resolut. Eng. Constr.* 6 (1): 03013002. [https://doi.org/10.1061/\(ASCE\)LA.1943-4170.0000131](https://doi.org/10.1061/(ASCE)LA.1943-4170.0000131).
- FIDIC (International Federation for Consulting Engineers). 1999. *Conditions of contract for construction*. 1st ed. Geneva, Switzerland: FIDIC.
- Gorse, C. A., and S. Emmitt. 2003. "Investigating interpersonal communication during construction progress meetings: Challenges and opportunities." *Eng. Constr. Archit. Manage.* 10 (4): 234–244. <https://doi.org/10.1108/09699980310489942>.

Kennedy, P., A. Morrison, and D. O. Milne. 1997. "Resolution of disputes arising from set-off clauses between main contractors and subcontractors." *Constr. Manage. Econ.* 15 (6): 527–537. <https://doi.org/10.1080/014461997372737>.

Pinnell, S. 1998. *How to get paid for construction changes*. New York: McGraw-Hill.

Podvezko, V., S. Mitkus, and E. Trinkūniene. 2010. "Complex evaluation of contracts for construction." *J. Civ. Eng. Manage.* 16 (2): 287–297. <https://doi.org/10.3846/jcem.2010.33>.

Vidogah, W., and I. Ndekugri. 1997. "Improving management of claims: Contractors' perspective." *J. Manage. Eng.* 13 (5): 37–44. [https://doi.org/10.1061/\(ASCE\)0742-597X\(1997\)13:5\(37\)](https://doi.org/10.1061/(ASCE)0742-597X(1997)13:5(37)).