

Progression Analysis of the EJCDC's Underlying Claim and Dispute Resolution Mechanism

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Abstract: Direct negotiation is the most common approach used for cost-effective resolution of construction claims and disputes. From among the several available standard conditions of contract, those issued by the Engineers Joint Contract Documents Committee (EJCDC) call for a direct review and resolution process to be initiated immediately following the submission of a claim and supporting data by the claimant. To this effect, this paper tackles the examination of the claim process evolution under these conditions, starting with this rather long, time-barred stipulation. The used methodology relied on presenting the overall claim and dispute timeline then dissecting it in accordance with the possibilities prevailing at each of the timeline stages and their corresponding gates. Four different scenarios were identified, and their analysis revealed interesting observations along a number of characteristics. These mainly include: (1) the placement of the project owner at the forefront in deciding on actions pertaining to a contractor's submitted claims; (2) the staging of mediation as an alternative dispute resolution means early on in the timeline as an intermittent step that can possibly be taken in lieu of, and having the effect of suspending, the direct negotiation step; and (3) the advantage given to the action by the opposing party, on one hand, and to the denial of claim by the claimant, on the other hand, in triggering expeditious closure of or in moving forward with a case on hand, respectively. DOI: [10.1061/\(ASCE\)LA.1943-4170.0000263](https://doi.org/10.1061/(ASCE)LA.1943-4170.0000263). © 2018 American Society of Civil Engineers.

Background

The unstructured and dynamic nature of construction projects and the on-site work complexities have inevitably led to claims. Accordingly, there has been a need for lengthy and well-prepared contracts that can precisely and comprehensively describe the different technical, financial, and legal aspects of a project (Bubshait and Almohawis 1994) as well as account for all possible contingencies that might occur throughout its course (Cheung and Pang 2012). However, these latter new measures tend to cause more disputes due to misconception and misinterpretation of contracts' provisions (Iyer et al. 2008). As such, the preparation of contracts has become a complicated process that requires special knowledge and skills (Podvezko et al. 2010). As a matter of fact, a well-prepared contract needs to (1) ensure a smooth flow of the works within a construction project to create an acceptable level of communication (Rameezdeen and Rodrigo 2013), (2) lessen business risks, and (3) increase the effectiveness of construction processes (Podvezko et al. 2010). A proper contract execution can

thereby allow the successful delivery of constructions projects (Rameezdeen and Rodrigo 2013), which, in turn, can directly impact the economic success of the contractual parties (Podvezko et al. 2010). Therefore, it was found that the aforementioned can be best achieved by having parties adopt standardized forms of general conditions of construction contracts that are developed by professional bodies (Bubshait and Almohawis 1994), such as the Engineers Joint Contract Documents Committee (EJCDC).

Several provisions of EJCDC standard conditions were compared against those of other standardized forms. For instance, El-Adaway et al. (2016a) studied the extension of time clauses under the EJCDC, the American Institute of Architects (AIA), ConsensusDocs, the World Bank, the International Federation of Consulting Engineers (FIDIC), the New Engineering Contract (NEC), and the Joint Contracts Tribunal (JCT) standard conditions. The objective of their study was to illustrate the corresponding process with the aim of visualizing and properly administering the studied provisions. Within the same series of comparative studies, El-Adaway et al. (2016b) studied the change order provisions to highlight similarities and differences among different standardized forms. The change order processes were actually compared with respect to the execution of the underlying mechanism, the power and authority of making a change order, and the corresponding adjustments to contract price and time. Similarly, Syal and Bora (2016) studied change order clauses under AIA, EJCDC, ConsensusDocs, and the Canadian Construction Documents Committee (CCDC)/Canadian Construction Association (CCA). Their study highlighted the inconsistency in guidelines used to price change orders, and their goal was achieved through identifying direct and indirect cost categories that are typically used in pricing change orders (Syal and Bora 2016). Furthermore, in a recent research effort by El-Adaway et al. (2017), various payment provisions from several investigated contracts were extracted and studied under EJCDC, AIA, ConsensusDocs, World Bank, FIDIC, NEC, and JCT standard conditions. In this case, the corresponding underlying mechanisms were examined, and a comparative analysis was performed. More specifically, the authors extracted

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Fig. 1. Schematic claim/dispute timeline.

schematic timelines pertaining to the payment process in order to highlight the stages with their time-bars and help contractors remedy the situation in case of delayed payments. Another recent study, by Abdul-Malak and Abdulhai (2017), was concerned with the conceptualization of the progression of claims and disputes and the evolution of their documentation along the staged resolution timeline of the FIDIC standard conditions for the construction contract (FIDIC 1999). They pointed to the leading role by the contract administration staff being considerably related to the need to act in strict observance of the clocks governing such a complex, gated process.

Research Gaps and Contributions

Although previous research efforts have primarily focused on comparing various standard conditions against each other with respect to several aspects, none of them, however, have meticulously studied the claim/dispute settling mechanism under the widely accepted EJCDC standard conditions in particular. Therefore, this paper aims at diligently studying the underlying claim progression mechanism under the EJCDC standard conditions with the aim of formulating all possible scenarios that are likely to be encountered and ultimately developing a comprehensive guide map to aid owners and contractors in administering the claim process. Other contributions lie in (1) offering a thorough analysis of the findings vis-à-vis several aspects that include, but are not limited to, owner-contractor communication, mediation process characteristics, rooms for resolving claims, receiving party action, etc., and (2) devising recommendations to clarify ambiguities present within the language of the EJCDC claim-related article.

Research Methodology

In order to achieve the aforementioned objectives, the research addresses issues in three specific task areas: (1) examining Article 12, "CLAIMS," under the EJCDC standard conditions (EJCDC 2013), developing the underlying schematic claim/dispute timeline, and summarizing the different stipulated properties of its stages; (2) conducting a detailed analysis of the claim timeline and identifying a gamut of scenarios depicting different possibilities of claim progression along the corresponding timeline; and (3) designing a comprehensive and cohesive framework to illustrate the overall claim process evolution.

Underlying Claim Progression Mechanism

Several types of conflicts can possibly arise between the owner and contractor during the course of a construction project. For instance, under Article 12, "Claims," Clause 12.01.A, EJCDC specifies that the following conflict types are typically submitted to the claim process: (1) "appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals, (2) Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents, and (3) disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters." This article was further examined and an overall claim timeline together with its corresponding stages were extracted as depicted in Fig. 1 and Table 1, respectively.

When facing one of the aforementioned conflicts, the claimant, either the owner or contractor, shall trigger the claim mechanism

Table 1. EJCDC claim process stages

Stage	Time bar (days)	Triggered by	Parties involved	Actions	Corresponding clause
Submittal of claim	30	Event	Claimant: contractor or owner Receiving party: owner or contractor	Submit the claim and the supporting data to receiving party directly	12.01.B
Review and resolution	x	Receiving claim and supporting data from the claimant	Owner and contractor directly	Exchange of information and direct negotiation Issue an action (by receiving party)	12.01.C 12.01.E
Mediation	$y \leq 60$	Mutual agreement of both parties to mediate	Owner, contractor, and mediator	Mediate to reach an agreement	12.01.D
Review and resolution	$90 - y - x$	End of mediation	Owner and contractor directly	Exchange of information and direct negotiation Issue an action (by receiving party)	12.01.C 12.01.E
Unregulated period	Unregulated	End of mediation End of review and resolution stage with no action being issued	Party triggering: receiving party Party ending this period: contractor or owner	Issue a denial-of-claim letter to the other party Issue an action (by receiving party)	12.01.F 12.01.E
Pre-final resolution of dispute	30	Action taken	Claimant	Invoke final resolution of dispute under Article 17	17

by submitting a claim, including supporting data, to the other party. Additionally, the claimant shall furnish a copy of the claim to the engineer for its information only. As mentioned in Clause 12.01.B and illustrated in Fig. 1 and Table 1, the claim shall be submitted within 30 days from the start of the event, or from the day the decision was rendered, if the claim deals with change proposal appeals. In the case of a contractor claiming for additional time or money, the contractor shall state that “(1) the claim is made in good faith, (2) the supporting data are accurate and complete, and (3) to the best of Contractor’s knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.”

Once the claim is submitted, the review and resolution stage is triggered. According to Clause 12.01.C, the parties shall exchange information and negotiate directly as an attempt to resolve the claim. As inferred from Clause 12.01.F, the review and resolution stage can span up to 90 days. However, parties may mutually agree on extending the duration of this stage to increase the chances of resolving a claim on hand. In this case, at any time within the review and resolution stage (i.e., after x days), both parties may mutually agree to mediate. According to Clause 12.01.D.2, mediation can last up to 60 days (i.e., $y \leq 60$), beyond which either party can terminate it. Moreover, the mediator can conclude mediation at any time if it is deemed unsuccessful. Once mediation ends, $90 - x - y$ days remain from the review and resolution stage (Table 1). Within the second part of the review and resolution stage, the receiving party is to render an action [i.e., receiving party action (RPA)],

which is born as final and binding, as long as this stage is ongoing (12.01.E). As such, the receiving party can approve the claim in whole, approve it in part and deny it in part, or deny it in whole. Once an action is rendered, the claimant can invoke the final resolution of dispute procedure set forth in Article 17, “Final Resolutions of Disputes” to revoke the property of this action.

If the receiving party does not issue an action within 90 days, the claim falls into an unregulated period that can be ended by either of the parties submitting a denial-of-claim (DoC) letter, or the receiving party rendering an action (i.e., RPA). Given any of the two actions, the claimant has 30 days to invoke final resolution of dispute in order to revoke the action’s final and binding property. Failure to trigger the final resolution of dispute stage confirms the finality of action taken by the receiving party, whereby neither party has the option to open again the dossier of the claim.

Detailed Analysis of the Claim Timeline

In this section, the overall claim timeline presented previously is further dissected to elaborate on the possibilities prevailing at each of the timeline stages and their corresponding gates. To this end, four different scenarios transpired and are discussed in the following subsections.

Scenario A

This scenario assumes that parties do not resort to mediation and instead communicate directly to resolve the claim (Fig. 2). This is

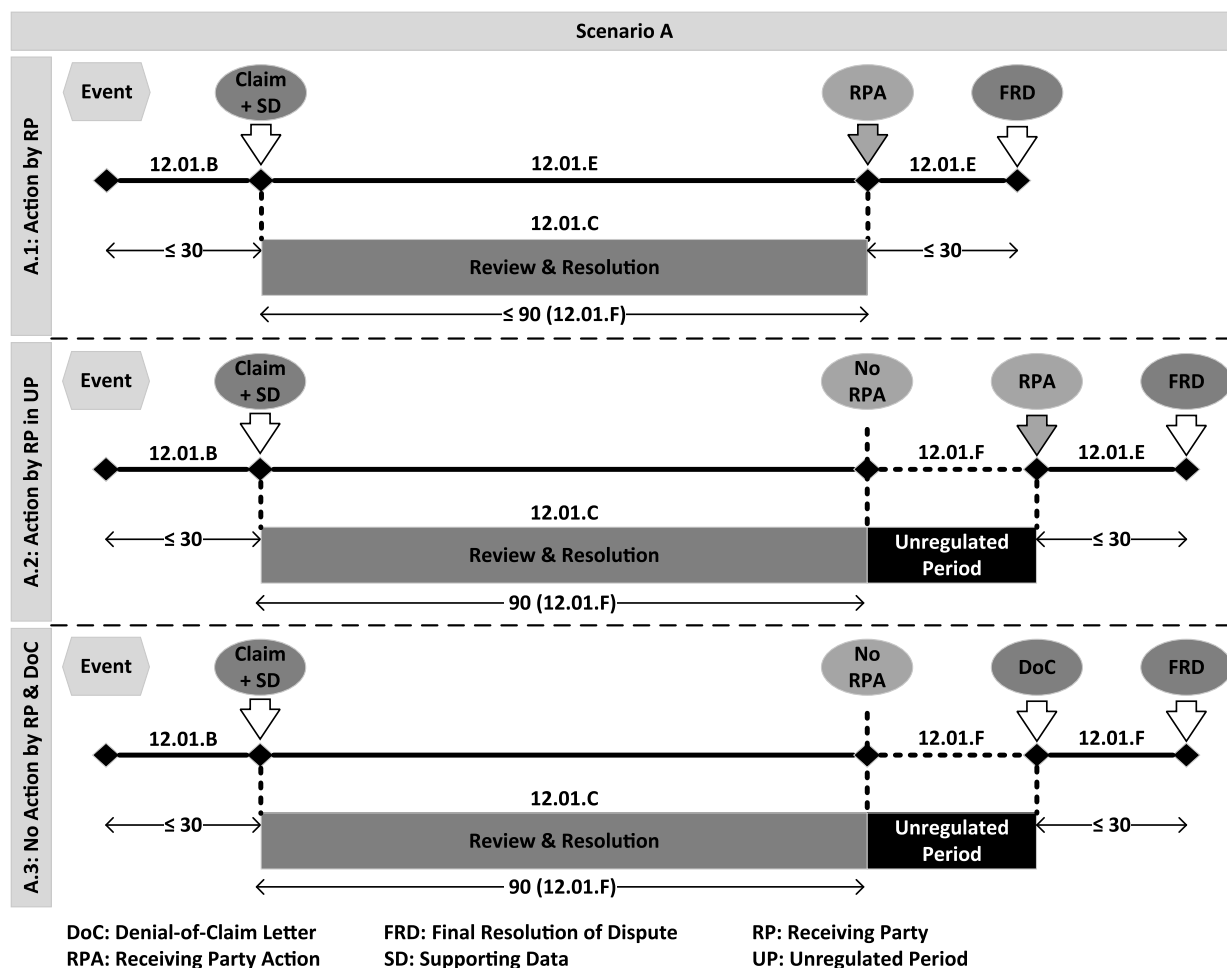


Fig. 2. No mediation conducted.

actually valid because the EJCDC conditions offer both the owner and contractor the option to mutually agree to mediation and does not impose it. Consequently, once the claim dossier is submitted within 30 days, the review and resolution stage is triggered and the claim remains at this stage for a span of 90 days that is extendable upon the parties' mutual agreement. More specifically, Scenario A.1 illustrates that at any time within the review and resolution stage, the receiving party is eligible to issue an action stating whether the claim is approved, partially approved, or denied. With reference to Clause 12.01.E, the rendered action triggers the 30-day pre-final resolution of dispute stage during which the claimant can express his dissatisfaction vis-à-vis the issued action. If dissatisfied, the claimant has to invoke the final resolution of dispute within that period in order to revoke the final and binding property of the rendered action.

On the other hand, Scenarios A.2 and A.3 depict the case of inaction on the claim by the receiving party within the 90-day review and resolution period and hence the initiation of the unregulated period (Fig. 2). Under Scenario A.2, the claimant's use of the unregulated period can be viewed as a window during which the claimant may exercise further patience, thereby allowing the receiving party more time to render an action (i.e., RPA). Similar to the other cases, the receiving party action can be approval, partial approval, or denial after which the contractor has 30 days to act upon the rendered action. Under Scenario A.3, and with reference to Clause 12.01.F, either the owner or contractor can at any time within the unregulated period submit a denial-of-claim (DoC) letter to the other party, thereby commencing the time for appeal of the denial. This gated mechanism is crucial for both the owner and contractor. On one side, the owner benefits from not allowing claims to stall and from driving the contractor to act within 30 days in regard to the claim's denial. On the other side, it might be in the interest of the contractor to have the claim proceed until final resolution of dispute.

Scenario B

This scenario, as opposed to Scenario A, illustrates the case of resolving the claim through mediation (Fig. 3). With reference

to the Clause 12.01.D.1, the owner and contractor may mutually agree to mediation during the review and resolution stage. Upon referring the matter in dispute to mediation, a third party is appointed as a mediator who shall act impartially in attempting to have the parties reach agreement. In this case, agreement can be either reached (1) prior to the expiry of the review and resolution period (ERR) as shown in Scenario B.1, or (2) beyond the expiry of the review and resolution stage as illustrated in Scenario B.2. This scenario shows that both parties are being cooperative and, as such, the mediator does not conclude mediation until agreement is reached. At this juncture, and with reference to the Clause 12.01.G, the agreement shall be incorporated in a change order indicating its effect on contract's time, contract's price, and/or the works.

Scenario C

This scenario depicts the case of mediation that ends prior to the expiry of the review and resolution period with no agreement reached (Fig. 4). In this case, according to the Clause 12.01.D.2, the mediator can conclude mediation at any time if the parties were not being cooperative and hindering the mediation process. On the other hand, the same clause stipulates that either of the parties can terminate the mediation process after 60 days from agreement to mediation. Once mediation ends, the review and resolution stage shall resume. Beyond this stage, the claim mechanism proceeds in a manner similar to that under Scenario A, whereby either (1) the receiving party issues an action prior to the expiry of review and resolution stage (Scenario C.1), (2) the receiving party renders an action during the unregulated period (Scenario C.2), or (3) the owner or contractor issues a denial-of-claim letter due to the inaction of the receiving party (Scenario C.3). Once any of the aforementioned options is exercised, the claimant has 30 days to invoke the final resolution of dispute or else the action is incorporated in a change order.

Scenario D

This scenario depicts the case of mediation that ends after the expiry of the review and resolution period with no agreement reached

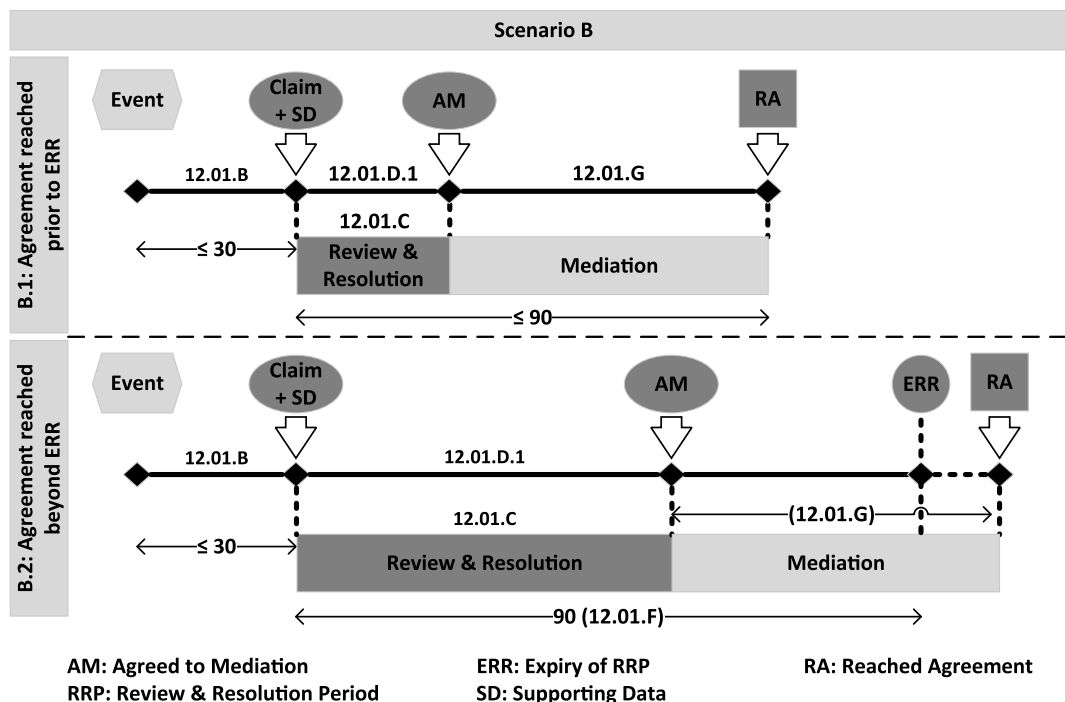


Fig. 3. Mediation conducted and agreement reached.

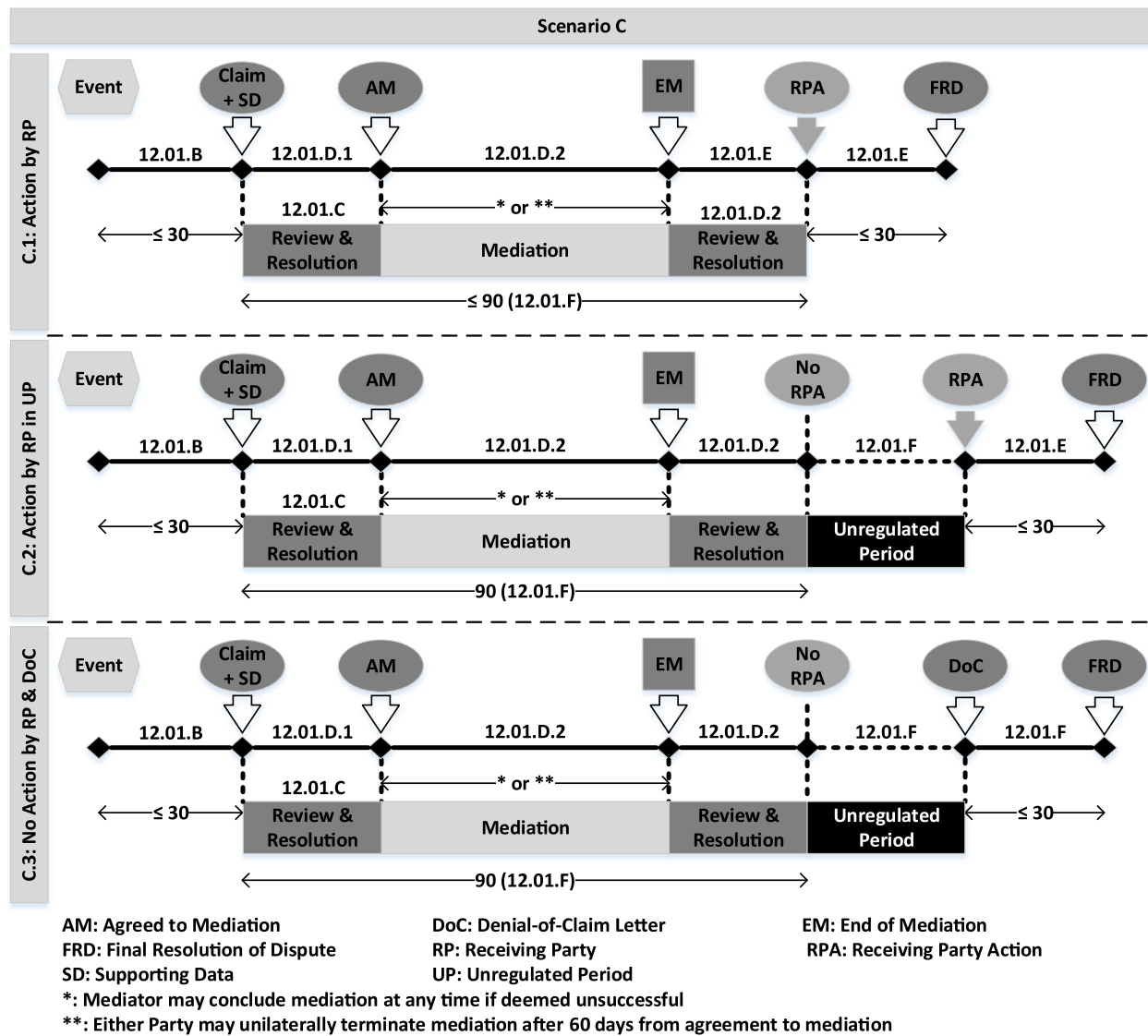


Fig. 4. Mediation ended prior to the expiry of review and resolution stage—no agreement reached.

(Fig. 5). This can happen under two instances: (1) the parties mutually agree to mediate toward the end of the review and resolution stage, and as such, the 60-day period of mediation, if not concluded by the mediator, can go beyond the 90-day period of review and resolution; and (2) the ongoing mediation process that was neither concluded by the mediator nor terminated by either party within the 60-day period can stretch beyond the 90-day review and resolution stage.

As mediation is concluded by the mediator or terminated by either party after the expiry of the review and resolution stage with no agreement reached, the claim thereby falls directly in the unregulated period. Consequently, the receiving party can issue an action at any time thereafter (Scenario D.1) unless and until either the owner or contractor issues a denial-of-claim letter (Scenario D.2). In this case and similar to all other scenarios, the claimant has 30 days to invoke the final resolution of dispute.

It is worth mentioning that the scenario of ongoing mediation happening after the expiry of the 90-day review and resolution stage can be misinterpreted by triggering the unregulated period as shown in Fig. 6. In this latter case, it is assumed that the parties can directly interrupt mediation by issuing a denial-of-claim letter. However, this is not valid because Clause 12.01.D.2 explicitly

states that upon ending mediation “the Claim submittal and decision process shall resume.” Therefore, the claim and review process cannot overlap with that of mediation, and the former gets suspended until the latter ends.

Flowchart of Claim Process Evolution

In order to further help practitioners and contract administrators working on projects under the EJCDC standard conditions, this section summarizes all four scenarios through a flowchart depicting the full claim process evolution (Fig. 7). Under the claim and supporting data submittal stage, a gate of submitting the claim dossier within 30 days exists. Satisfying this requirement moves the claim to the review and resolution stage within the claim process and decision’s loop. The first gate under the review and resolution stage checks for the expiry of the stage’s time-bar, whether it be the 90-day period or the extended duration mutually agreed upon. As long as the duration of the review and resolution stage does not expire, the claim can proceed to the second action gate, which is “agreement to mediate.” In this case, if the parties do not agree to mediate, the claim moves to the receiving party action gate, in which such party, in turn, can opt to render a decision directly

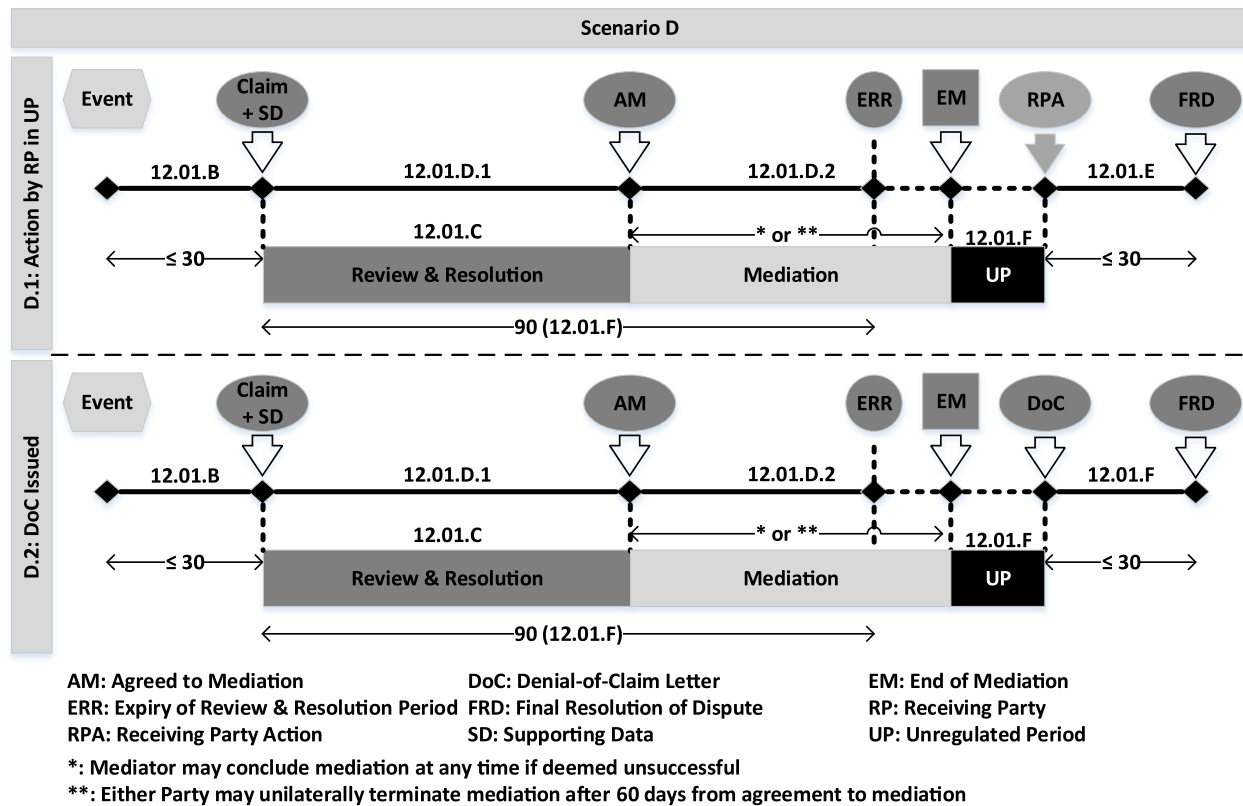


Fig. 5. Mediation ended after the expiry of review and resolution stage—no agreement reached.

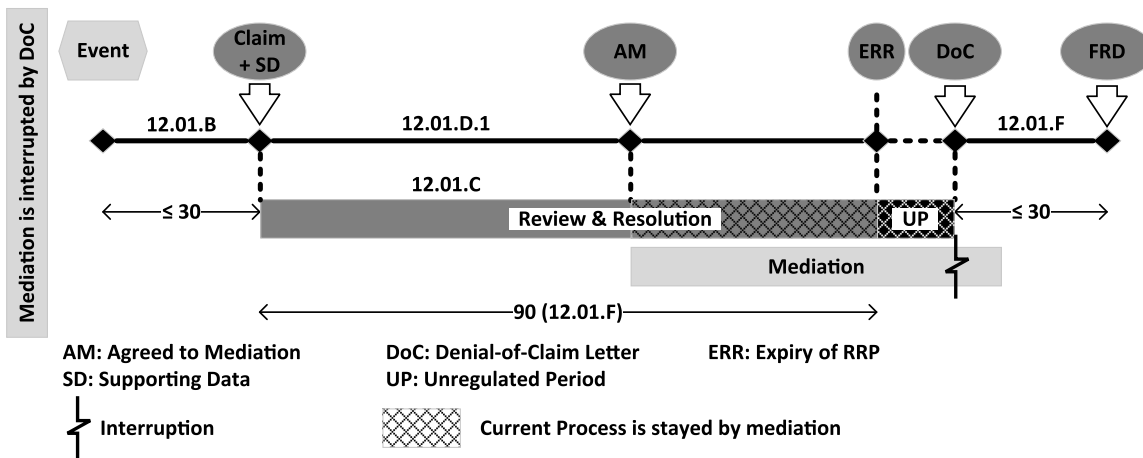


Fig. 6. Misinterpretation of interaction between mediation and decision process.

without referring the matter to mediation. However, if the 90-day or extended duration gate expires with no action rendered, then the claim falls in the unregulated period and cannot exit it unless a denial-of-claim letter is issued by either party or an action is rendered by the receiving party. In both cases, Scenario A occurs and the claim then moves to the pre-final resolution of dispute stage whereby a gate of invoking the final dispute resolution procedure within 30 days from issuing the action exists. Once this requirement is satisfied, the procedure of final resolution of dispute as set forth in Article 17 gets triggered. However, failure to invoke Article 17 within 30 days leads to incorporating the final and binding action in a change order.

On the other hand, the *agreement to mediate* gate was placed before the receiving party action gate because as stated in the Clause 12.01.D.1, “mediation shall stay the claim submittal and response process.” In other words, the claim process gets suspended, and the receiving party is not allowed to respond while mediation is ongoing. Thus, the parties’ agreement to mediate shifts the claim from the claim process and decision’s loop to the mediation’s loop. Once in the mediation’s loop, the claim stays there until: (1) agreement is reached, (2) mediator concludes mediation, or (3) either party terminates mediation upon the expiry of 60 days. These three exits of the mediation’s loop are presented as action gates under the mediation stage. Furthermore, since parties can

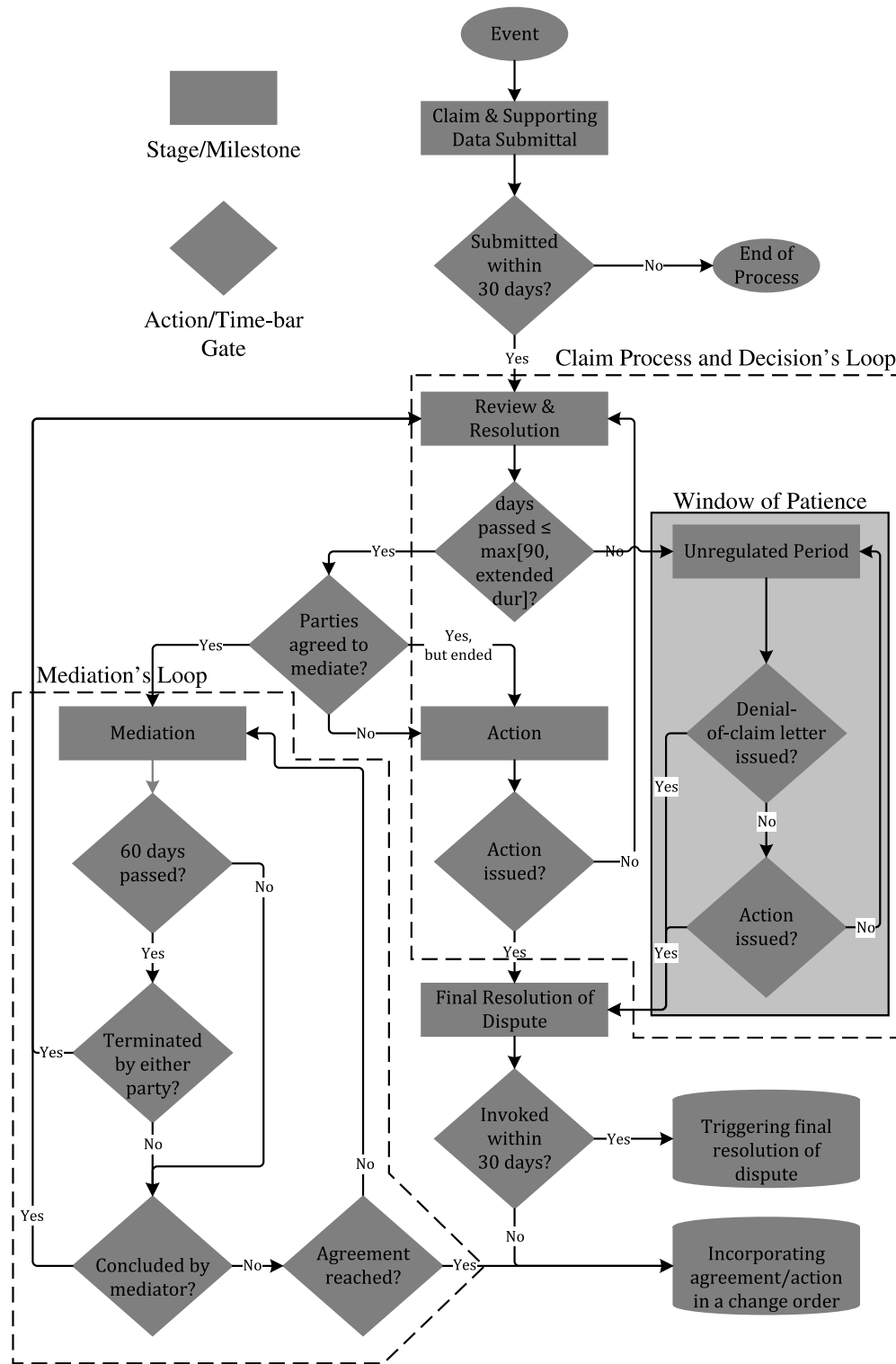


Fig. 7. Flowchart of claim process evolution.

only terminate mediation after 60 days from agreeing to mediate, a 60-day time-bar gate was added to satisfy the time-constraint termination gate. Exiting the mediation's loop through the first gate represents Scenario B, under which agreement reached is incorporated in a change order. On the other hand, exiting the mediation's loop through the second or third gate (i.e., mediator concluding mediation or either party terminating mediation) moves the claim back to the review and resolution stage within the claim process and

decision's loop. In this latter case, if the 90-day or the extended period is not expired, then the claim ends up in Scenario C. As mentioned previously, a receiving party action rendered prior to the expiry of review and resolution stage, a denial-of-claim letter issued within the unregulated period, or a receiving party action rendered within the unregulated period moves the claim to the pre-final resolution of dispute stage that triggers the procedure set forth in Article 17, if invoked within 30 days. However, exiting

the mediation's loop after the expiry of review and resolution stage duration, with no agreement reached, triggers Scenario D. Consequently, the claim moves directly to the unregulated period in which either one of the parties issues a denial-of-claim letter, or the receiving party renders an action. The claim then moves to the pre-final resolution of dispute stage in which the process proceeds in a manner similar to that mentioned in Scenarios A and C.

It is worth noting that the mediation's loop and the claim process and decision's loop, shown in the process flowchart (Fig. 7), are mutually exclusive whereby a claim can only be in one of the loops at a time. This is due to the fact that mediation stays the claim submittal and response process, which in turn resumes only after mediation ends. In other words, once the claim proceeds to the mediation's loop, it cannot exit it until mediation is over. This further clarifies the misinterpretation that was presented in Fig. 6 and justifies how a claim only moves to the unregulated period when (1) the review and resolution stage expires *and* (2) the mediation process ends.

Discussion

After analyzing, in detail, the underlying claim progression mechanism under the EJCDC standard contract conditions and presenting all possible scenarios, this section discusses the various findings and interprets them with regard to different aspects, namely: (1) owner-contractor communication, (2) rooms for resolving claims, (3) review and resolution stage's underlying properties, (4) mediation process characteristics, (5) receiving party action, and (6) dispute closure/final resolution.

Owner-Contractor Communication

The claim progression analysis showed, under all scenarios, that the project owner communicates directly with the contractor throughout the claim process. This starts by the contractor addressing the owner directly upon submitting claims, and then both negotiate within the review and resolution period to reach agreement. The project owner is then placed at the forefront of the process by having to decide on actions pertaining to the contractor's submitted claims. To this end, the owner is in charge of communicating with the contractor at almost all stages of the claim process.

It is worth noting that this direct communication between the owner and contractor under EJCDC standard conditions is witnessed as well under other standard conditions in different forms. For instance, the contractor, under ConsensusDocs standard conditions, when filing the claim communicates upfront with the project owner who, in turn, has to issue a response. The contractor communicates as well with the project owner within the direct discussion phase, which is similar to the review and resolution stage under EJCDC (ConsensusDocs 2017). On the other hand, direct communication between the contractor and owner under the AIA standard conditions happens only following the receipt of the initial decision from the initial decision maker (AIA 2017). This happens even later in the claim process under FIDIC standard conditions (FIDIC 1999). In this case, the contractor addresses the engineer first to get a determination pertaining to the submitted claim. Next, a dissatisfied contractor refers the dispute to the dispute adjudication board for decision rendering. If dissatisfied, the contractor then communicates directly with the owner by sending a notice of dissatisfaction in regard to the rendered decision. As such, the fact that the project owner has to ultimately deal with any unresolved dispute, this upfront direct communication, and negotiation for up to 90 days with the contractor, as prescribed under the EJCDC standard conditions, can rather be regarded as conducive to giving any

such claims a higher likelihood of being resolved early on along the resolution mechanism timeline.

Rooms for Resolving Claims

It was noted that the EJCDC standard conditions urge the parties to reach mutual agreement regarding matters in dispute and facilitate that by opening three rooms to resolve claims, namely (1) direct negotiation, (2) mediation, and (3) other alternative resolution methods (Article 12.01.G). The parties shall first endeavor to reach agreement within the review and resolution stage through direct negotiation and exchange of information. The period of the review and resolution stage can be extended upon mutual agreement to give more room for negotiations. Furthermore, the EJCDC conditions allow the parties to opt for mediation while negotiating in an attempt to reach agreement. Besides mediation, the parties can adopt any other alternative dispute resolution technique to reach agreement, which can be used within the review and resolution period or at any other point within the claim process in order to facilitate the resolution of claims.

Review and Resolution Stage's Underlying Properties

The 90-day period of the review and resolution stage can be interpreted from different angles. On one hand, it can be viewed as a long time-barred stage when compared to periods given for rendering the first judgment under other standard conditions. For example, in comparison to this EJCDC 90-day review and resolution period, the owner has up to 14 days to render a response pertaining to the submitted claim under the ConsensusDocs standard conditions (ConsensusDocs 2017), the initial decision maker has up to 30 days to issue an initial decision under the AIA standard conditions (AIA 2017), and the engineer has up to 42 days to render a determination under the FIDIC standard conditions (FIDIC 1999).

On the other hand, this 90-day period allows the parties to negotiate directly and exchange information and even opt for mediation, as mentioned earlier, in an attempt to reach agreement. These multi-resolution attempts, under the EJCDC standard conditions, increase the chances of resolving claims and reaching a settlement early on.

Mediation Process Characteristics

It was observed that mediation, under EJCDC standard conditions, can be implemented before the receiving party issues an action, which is not the case under other standard conditions, under which the alternative dispute resolution techniques are adopted later in the claim process after rendering the first judgment/opinion in respect to the claim on hand (AIA 2017; ConsensusDocs 2017; FIDIC 1999). This early attempt of conflict resolution is believed to have the effect of increasing the chances of reaching agreement, thereby resolving claims amicably, and consequently helping maintain a less-strained relationship between the contracting parties.

Another point worth noting is that the initiation of mediation stays the claim and response process, while the ending of mediation resumes the claim and decision process. More specifically, once the parties mutually agree to mediation within the review and resolution stage, the claim process gets suspended and the owner/receiving party is denied the right to respond to the submitted claim (Clause 12.01.D.1). Once mediation ends with no agreement reached, the claim and decision process resumes and, in this case, not only the receiving party is now able to render an action but either party also has the option of issuing a denial-of-claim letter if the claim falls into the unregulated period (Clause 12.01.D.2). Furthermore, it is worth mentioning that although mediation stays the claim process; either party can (1) still indirectly incite the

mediator to conclude mediation by not cooperating within 60 days or (2) unilaterally terminate mediation after 60 days from agreement to mediation.

Furthermore, the mediation process can be at times tricky because the parties might agree to mediate at the end of the review and resolution period, hence dragging the 90-day period up to 150 days (i.e., possibly adding 60 days toward the end of the 90-day period). In this case, as mentioned earlier, it is until mediation is concluded by the mediator or terminated by either party due to an unreach agreement that an action can be rendered by the receiving party or a denial-of-claim letter can be issued by either party, thereby unreasonably elongating the overall claim process duration.

Receiving Party Action

Another point worth also discussing is the action that may be taken by the receiving party. This action has the property of being final and binding immediately upon its issuance by the receiving party, and such a property can be revoked by the claimant through invoking the final resolution of dispute stage. The unfavorable situation emanates from the scenario in which the action taken by the receiving party is to the effect of rejecting the claim on hand or in which no action at all is taken. Under such a condition, the claimant (e.g., contractor) is deprived the opportunity to receive any reimbursement or extension, not even a partial one, in connection with the claimed additional money or time, respectively. Accordingly, the contractor shall wait for the award of final resolution of dispute (i.e., approval or partial approval) to receive any additional monetary and/or time extension award(s). Such late effectuations of binding and final awards, if any, are likely to take place after the contractor has been exhausted financially, inclusive of having possibly endured the levying of liquidated damages by the owner.

Dispute Closure/Final Resolution

One of the ultimate problems that owners typically face throughout the claim process is a delayed closure, whereby contractors do not often refer matters in dispute to arbitration expeditiously. However, inherent to the EJCDC standard conditions is the ability to control this potential dragging effect by giving either party the right to trigger an expeditious closure/final resolution of dispute in many ways. On the one hand, the receiving party can render an action, which is viewed as condition precedent for the pre-final resolution of dispute phase. On the other hand, the receiving party inaction shifts disputes into the unregulated period. Nevertheless, the EJCDC standard conditions allow the receiving party to still render an action (i.e., approval, partial approval, or denial in whole) at any time within the unregulated period until and unless a denial-of-claim letter has been issued, thereby denying the claim or considering the claim to have been denied. In this case, whether it is a denial-of-claim letter or an action that is issued, the 30-day time-bar of the pre-final dispute resolution stage gets triggered. In other words, the claimant has only 30 days to invoke the final resolution of dispute in order to revoke the rendered action or the denial-of-claim letter.

This is actually not the case for other standard conditions, in which it is likely that the referral to arbitration can be as late as it may be allowed by the statute of limitations of the laws governing the contract. For example, under the AIA standard conditions, when mediation ends with no agreement reached in respect to a submitted claim, the owner has 30 days to demand the contractor to file for arbitration (AIA 2017). If this demand is filed within the stated period, the contractor then has 60 days to file for arbitration. However, if the owner fails to file for the said demand, the lengthy

effect of the statute of limitations gets triggered. On the other hand, under the FIDIC standard conditions, once the contractor issues, within 28 days, a notice of dissatisfaction vis-à-vis the rendered dispute adjudication board's decision, the prearbitration phase gets triggered during which the referral of a dispute on hand to arbitration can take place on or after the 56th day from the date of issuance of the board's decision, but within the constraint imposed by the governing statute of limitations (FIDIC 1999). Similarly, under the ConsensusDocs standard conditions, the dispute can be referred for arbitration within the relevant statute-of-limitations period upon the completion of either the mitigation or the mediation stage (ConsensusDocs 2017).

Recommendations

Based on the preceding detailed analysis and discussion, and to the best knowledge of the authors, this section recommends clarifications to the current language of some of the claim article's clauses under the EJCDC standard conditions. For instance, it is not clear whether mediation only stays the claim submittal and response process or it suspends the review and resolution stage clock as well. As such, it seems worthy of advising that Clause 12.01.D be clarified such that it clearly states whether, upon the parties agreeing to mediation during the review and resolution stage, the 60-day mediation period has the effect of depleting the 90-day review and resolution stage or not.

Moreover, Clause 12.01.F mentions that "If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial." In this case, it is recommended to clarify that either party cannot issue a denial-of-claim letter when mediation is still ongoing, albeit outside the review and resolution period.

Furthermore, it is believed that the language of Clause 12.01.E is not lucid and does not clearly state all the courses of action a receiving party can take, in particular when the 90-day review and resolution stage elapses. In fact, in the same way a denial-of-claim letter can possibly be issued by the receiving party as a result of inaction within 90 days, an action (i.e., approval or partial approval) can alternatively be rendered by this same party. Hence, it is suggested to clarify, under Article 12.01.E, that the receiving party, upon receiving the claim, can render an action at any time unless mediation is still ongoing or either party has submitted a denial-of-claim letter.

Conclusion

This paper examined in detail Article 12 of the EJCDC standard conditions (i.e., Claims) and delineated the underlying claim/dispute progression mechanism, together with various deduced scenarios depicting all possible encountered situations. Furthermore, a comprehensive flowchart, mapping all scenarios developed, was devised to help guide contract administrators and other practitioners throughout the claim process. The findings from the various scenarios revealed that (1) the owner communicates right up front with the contractor and continuously throughout the claim process; (2) different windows for resolving claims are made available to facilitate attempting the achievement of mutual agreement between the parties; (3) multiple attempts are offered within the 90-day review and resolution period to increase the chances of resolving claims early on; (4) the mediation, as an alternative dispute resolution method, is adopted as a possible part of the first

stage in the claim resolution process, before the receiving party renders an action; (5) the receiving party's rendered action is final and binding unless the claimant invokes final resolution of dispute; and (6) the dispute closure or final resolution can be invoked expeditiously to revoke the rendered action or to appeal the claim denial. Finally, some recommendations were suggested to clarify the ambiguities in the language used in some of the clauses within Article 12. These include clarifying the staying property of the mediation process, the ability of either party to issue a denial-of-claim letter after the mediation ends and the review and resolution period expires, and the capability of the receiving party to render an action beyond the 90-day period of the review and resolution stage in case a denial-of-claim letter was not placed.

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