

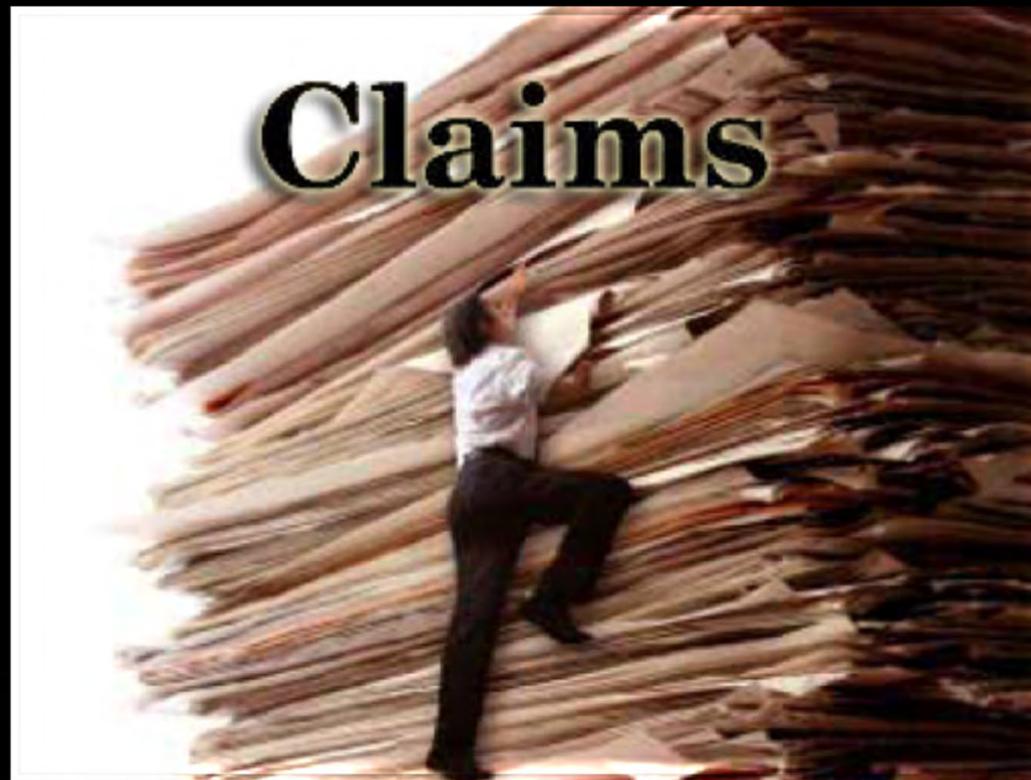
2014 DBE / SMALL BUSINESS  
DEVELOPMENT CONFERENCE

Understanding the MDOT Claims  
Process

April 2, 2014

Michigan Department of Transportation

# MDOT Claims Overview



# Why Discuss Claims?

- What is a Claim?
- If you do have to file a formal Claim on an MDOT project, What happens? How do you Start? How Long will it Take?
- How can you avoid claims?

# Claims

- Fundamentally a claim is a disagreement between parties.
- Most claims stem from lack of communication or one party making assumptions.
- Resolving claims before they start is the cheapest, fastest and best long term solution.
- Disagreements may be between other parties than the owner. (Sub vs Prime, utility company, etc)
- Litigation in court will always be expensive



# Root Causes of Most Claims

- Lack of Communication
- Misinterpretation of plans, specs or directions
- Plan errors / Poorly coordinated contract drawings
- Poor Project Management
- Lack of Familiarity with Specifications
- Impacts of Third parties (damage to your work, delays, utilities, etc)
- Changes in work scope
- Unknown / Differing Site Conditions
- Work Interruptions (Loss of Productivity)
- Project Acceleration / Delay

# False Claims

- Be Aware that filing a False Claim on an MDOT project with FHWA funding involved is considered a Federal Crime.
- FHWA Required Jobsite Poster:
- "Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or the cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction of any highway or related project submitted for approval to the Secretary of Transportation; or
- "Whoever knowingly makes any false statement, false representation, false report, or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or
- "Whoever knowingly makes any false statement or false representation as to a material fact in any statement, certificate, or report submitted pursuant to the provisions of the Federal-Aid Road Act approved July 11, 1916 (39 Stat. 355), as amended and supplemented,
- "Shall be fined under this title or imprisoned not more than five years, or both."



# The MDOT Claim Process

- If you have to file a claim on an MDOT project
  1. Claim must be coordinated through prime contractor. MDOT only has a contract with the prime.
  2. The MDOT administrative rules & claim process must be completed before the issue can be escalated to the court system.
  3. The MDOT claim process involves three separate levels of appeal hearings *(more details next few slides)*
  4. The MDOT claim system takes an average of 300+ days to complete

# MDOT Claim Process

- Prime Contractor must file a written "Contractor Notice of Intent to Claim" form.
  - Failure to file Notice of Intent forfeits any later right to file a claim
  - Notice must be filed within time limits in the spec book. In general this means before or during the work that will be claimed.
  - Review Specifications Sections 104.09 or 104.10 for more specific information to your exact circumstance.
  - You will receive a written response from the engineer

# MDOT Claim Process - TSC

- If both parties disagree on the Notice of Intent, the next step is the TSC Claim Review.
  - Meeting usually held at TSC office
  - Informal meeting
  - TSC Manager or other Engineers will often join meeting to help resolve issues.
  - This step of claim process may be waived by engineer under some circumstances and proceed directly to the Region Claim Review.
  - You will receive a written response from the engineer



# MDOT Claim Process - TSC

- TSC Claim Review Meeting will Require Contractor to Provide the Following:
  - Factual details related to the claim
  - Timeline of events leading up to and through the claim
  - Any/All Documents substantiating the claim
  - Citation of Spec Book or Special Provision that claim is based
  - Detailed breakdown of all costs related to claim
  - Any extension of time requests filed or other schedule documentation to support claim.
- You will receive a written response from the engineer



# MDOT Claim Process - ROR

- If the Contractor disagrees with the TSC Claim Review, the next step is the Region Office Review (ROR)
  - Formal Notice from Contractor Required (60 days)
  - Meeting held at Region Office
  - A more Formal Claim hearing with a Panel
  - ROR Panel will be other Engineers from Region that had no involvement in the project.
  - Both sides (Contractor and Engineer) will present their claim information, documentation, and present their cases.
  - Legal Representation is allowed to attend this hearing for both parties.
  - ROR Panel will deliberate and respond with a formal written response within 30 days of the hearing.

# MDOT Claim Process - COR

- If the contractor disagrees on the ROR Claim Decision the next step is the Central Office Review (COR)
  - Meeting held at Central Office, CFS in Lansing
  - A more Formal Claim hearing with a Panel
  - COR Panel will be other Engineers from other Regions around the state
  - COR Panel will have a Region Engineer Executive on panel as chairman
  - Both sides (Contractor and Engineer) will present their claim information, documentation, and present their cases.
  - Legal Representation is allowed to attend this hearing for both parties.
  - COR Panel will deliberate and respond with a formal written response within 60 days of the hearing.

# MDOT Claim Process - COR

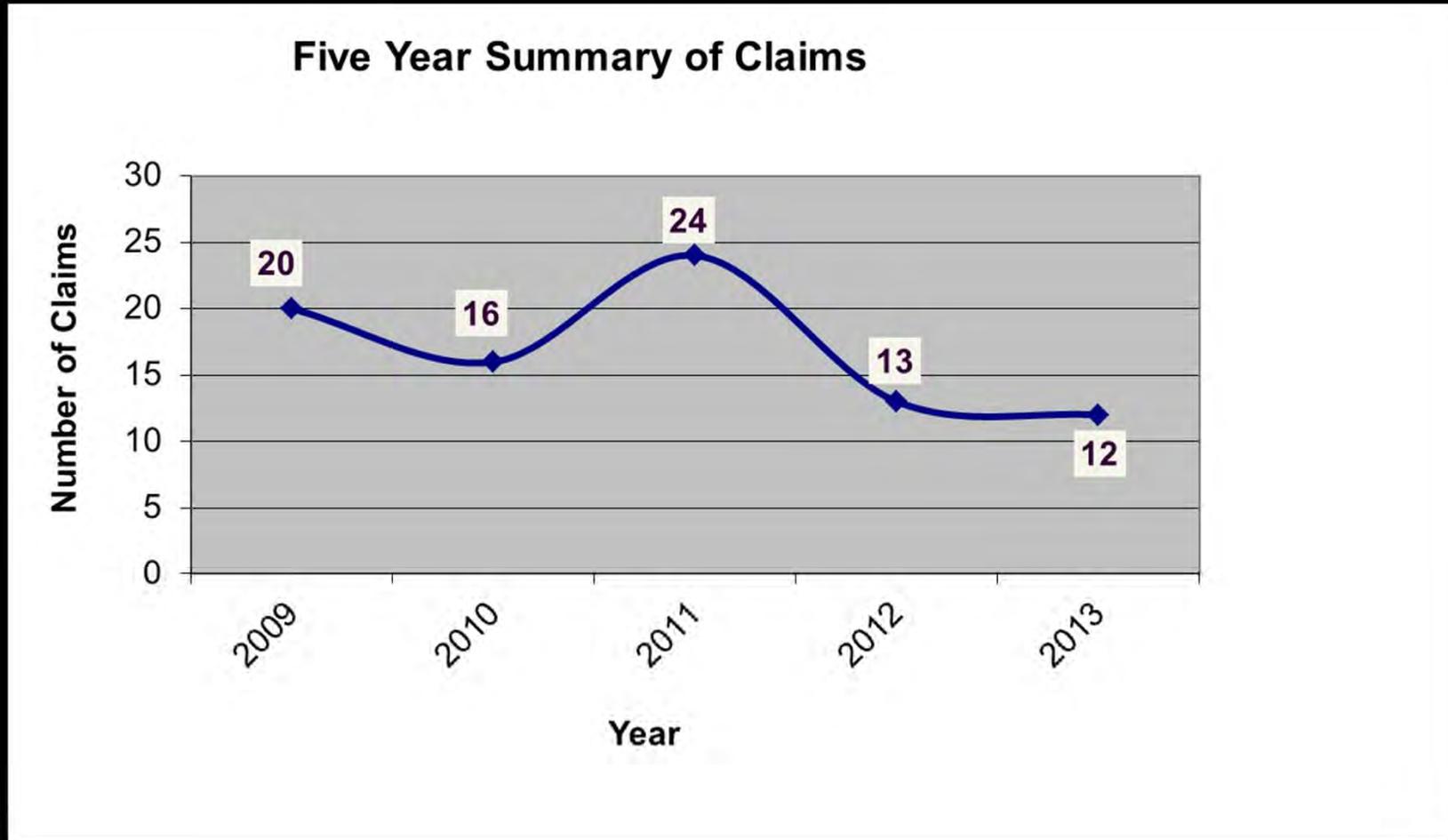
- COR Hearing is the last and highest level of administrative claim process.
- If the contractor disagrees with COR decision, the only remaining recourse is to go to Court.
- ROR decisions have historically resolved claims almost 40% of time
- Claims resolved at TSC level often have more favorable results for contractor
- Higher level hearings (ROR/COR) will involve additional review by outside parties including Auditors at Office of Commission Audit that often reduce the claim amount through audits/reviews.
- The entire MDOT claim process can take up to 455 days to complete (most quicker)
- During this entire time, obviously you have not been paid for the work, thus why it is recommended to avoid claims if possible.

# MDOT Claim Process - COURT

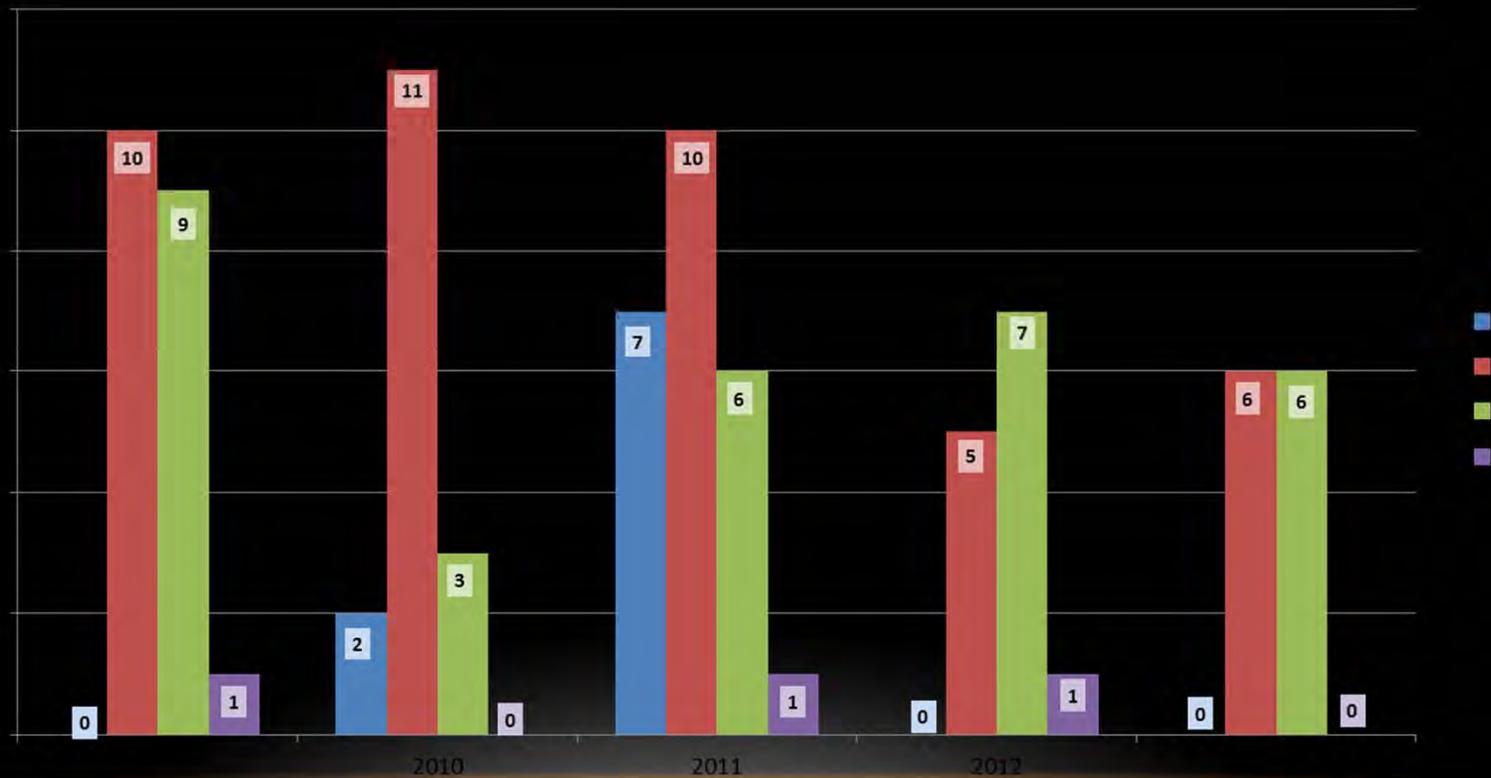
- If you choose to continue the claim process in the court system please note the following:
  - MDOT will be represented by the Michigan Attorney Generals Office *(thus it is highly recommended that you hire professional legal representation)*
  - Amounts or items claimed have to go through the administrative process first
  - Attorney Fees, or other court costs are not eligible for reimbursement.
  - Timelines for contractor claim court cases often exceed 15-18 months.



# Five Year Summary of Claims



# Claims by Approval Level



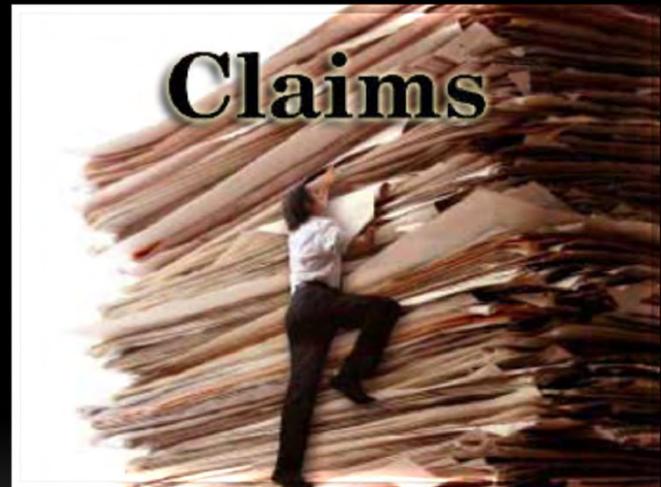
# Alternative Claim Processes

- MDOT is Piloting Dispute Resolution Boards (DRB) on some projects.
  - DRB is a Panel of three members:
    - One chosen by Contractor,
    - One chosen by Engineer
    - Chair chosen by two panel members
  - To file a claim under DRB, Contractor has to pre-pay panel members 50% of the cost
  - MDOT pays 50% (*This is typ \$3500 for each party*)
  - DRB Panel meets quickly (90 days) for claim hearing
  - DRB decision is somewhat binding, either party can still litigate, but DRB decision will be used as evidence by other party.



# Summary

- Claims are expensive for all parties
- Claims can take a very long time to resolve
- Avoiding claims from the beginning is a much smarter way to run your company
  - Communication is critical



# Root Causes of Most Claims

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# Steps to Avoid Claims

1. Thoroughly Review Your Contract / Plans
2. Properly Plan / Manage your Project
  - Including detailed schedules with critical dates, constraints and critical tasks
  - Be able to show how you planned to do work, equipment needed, manhours, etc
3. Track your own work Progress
  - Are you On Schedule, ahead, or already behind, etc?
  - Have you documented any delays/impacts to your schedule?

# Steps to Avoid Claims

## 4. Keep Good Records

- Document, Document, Document
- Photos, time logs, foreman reports, engineers' inspection records, etc

## 5. Constant Communication

- Confirm things in writing, respond to communication promptly (one way or the other)
- Never Assume things when it comes to contract work
- Ask questions before starting extra work, confirm scope and payment in writing.

## 6. Always attempt to Resolve Disputes Early

- Average time to resolve a claim is often over 15 months.

# Questions

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