



# VDOT CONSTRUCTION CONTRACT CLAIMS

CLAIMS PROCESS & LESSONS LEARNED

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# CLAIMS STATISTICS

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- 2018 Calendar Year
  - Over 200 Active Construction and Maintenance Projects worth approx. \$2.9 Billion
  - 57 Projects with Notices of Intent to File a Claim (NOIs)
    - Approx. 25% of VDOT's Projects
    - TOTAL No. of NOIs: 132
      - 29 NOIs resolved by Change Order or otherwise withdrawn by Contractor before final acceptance
      - 103 NOIs unresolved

# CLAIMS STATISTICS

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- **In CY 2018, 16 Claims submitted:**
  - 6 claims resolved by State Construction Engineer [Step 1 in 2-Step Claims Process]
  - 3 claims resolved by Deputy Commissioner [Step 2 in Claims Process]
  - 7 claims unresolved – Possible Litigation
- Total of Claims: \$11,033,578.41 [  $\approx$  0.4% of total contract value]
- Range in Dollar Amount of Claims: from \$3,222 to \$4.3 Million
- 10 Claims Included Request for Refund of Liquidated Damages -Total Amount: \$1,001,490
- Biggest Delta: Claim Amnt. \$3.4 Million vs. Settlement Amnt. \$72,987
  
- 1 lawsuit pending - from 2017 claim

# CLAIMS - Procedures

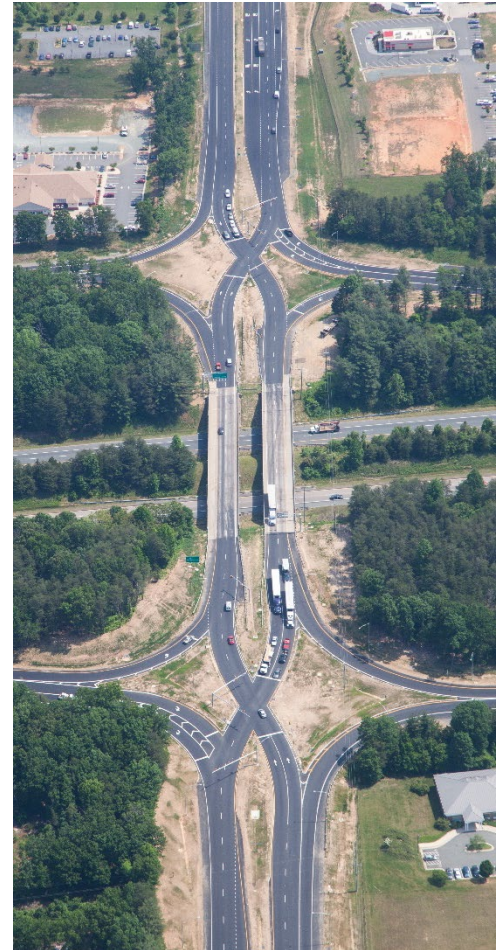
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## ➤ Statutory –

*Code of Virginia* provides a basic process for submittal and consideration of contractor claims

## ➤ Contractual –

*VDOT Road & Bridge Specifications* follow the statutory process and provide additional terms and conditions to implement that process



# CLAIMS PROCESS – DURING THE PROJECT

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- “Notice of Intent to File a Claim” or “NOI” given at:
  - (1) Time of the Occurrence, or
  - (2) Before beginning of the work on which the claim is based
  
- Contractor required to:
  - Provide list of materials, equipment and labor for which additional compensation will be requested, and facilities for Department to keep actual cost records
  - Compare and reconcile records with Department each day
  - Only actual costs are considered

# CLAIMS PROCESS – AFTER THE PROJECT

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## ➤ Administrative Claim Process

- **Claim** - Contractor must submit certified claim within 60 days after Final Estimate
- **Step 1** – Department’s Decision by State Construction Engineer
  - 90-day period to review & analyze
  - Informal meeting to discuss claim; attorneys & consultants allowed
  - No record
- **Step 2** – Commissioner’s Decision by Deputy Commissioner
  - 45-day period to review & analyze
  - Informal appearance to discuss claim; attorneys & consultants allowed
  - Audio recording, but no record i.e., no testimony or evidence presented

# CLAIMS PROCESS – LITIGATION

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## ➤ **Litigation –**

- Circuit Court (hears all civil cases for more than \$25,000)
- No jury
- Legal action is start of new process - not an appeal from administrative decision

## ➤ **Alternative Dispute Resolution**

- Non-Binding Mediation allowed and frequently used
- Binding Arbitration prohibited by law



# CLAIMS PROCESS – IN COURT

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- **The Virginia Supreme Court strictly enforces the statutory claims procedures**
  - The VDOT claims statutes detail the proper form and procedure for submitting a claim and, therefore, compliance with the requirements is mandatory, and part of the substantive cause of action authorized
  
- **Virginia Courts *routinely* dismiss claims when the Contractor fails to satisfy the claims requirements**
  - Failure to submit a timely written NOI or Claim is fatal
  - *Not* actual notice, verbal notice, or meeting minutes
  - *Not* invoices or letters submitted after work / services performed

# CLAIMS - LESSONS LEARNED *Pre-NOI*

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- COs / IGEs – for changes (unilateral if necessary)
- Monthly Progress Schedules & SIAs – monitor progress and analyze delays
- DWRs - record FACTS, such as weather conditions, site conditions, labor and equipment on site, materials used, test reports, and where work is or isn't being prosecuted
- Progress Meetings - Minutes of meetings may be the only record of Department's or Contractor's statements, actions, and plans
- Photos / Plan Grid – Periodic photos documenting progress and conditions

# CLAIMS - LESSONS LEARNED *POST-NOI*

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- Document everything! *“If it is not documented, it did not happen”*
- Diaries / DWRs – track labor, materials and equipment involved in claim
- Meetings - discuss the disputed items, the issues involved, and expectations of records to be maintained and how they are to be compared / reconciled - keep and circulate meeting minutes
- Photos / Plan Grid – show the work in dispute and the project as a whole

# CLAIMS - LESSONS LEARNED

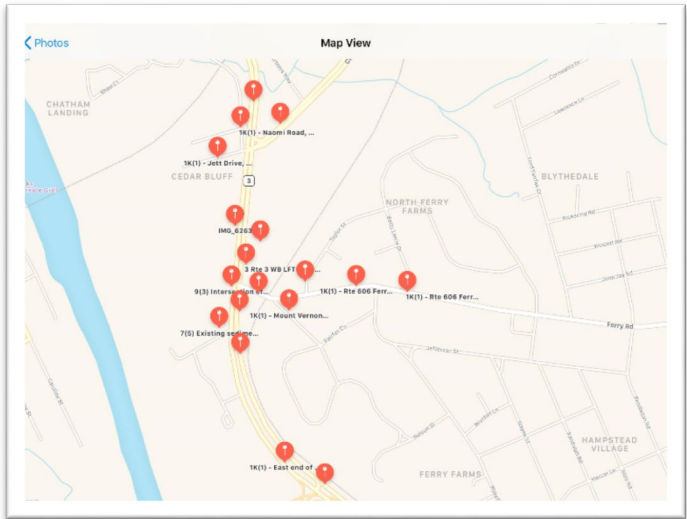


Photo Locations on Map

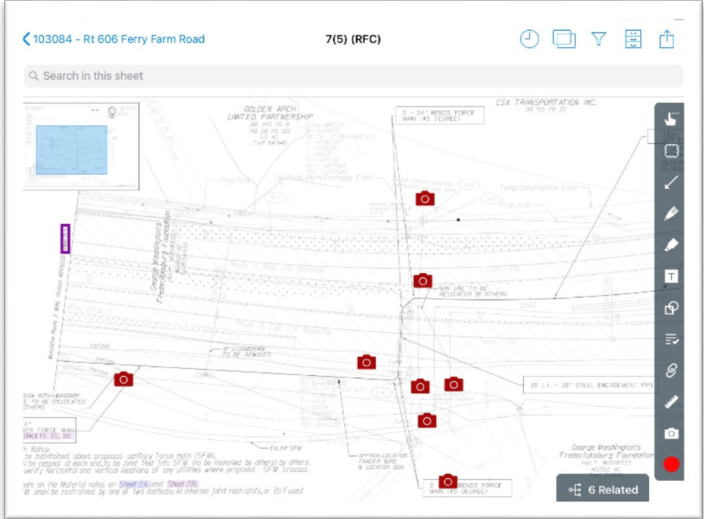


Photo Locations on Plans

Quantitative Results	
Overall Results	Inspectors
How many more hours are you spending on the jobsite as a result of using PlanGrid?	4.29
How much time (in hours) does PlanGrid save you in a typical week?	4.82
How many more pictures are you taking in a given week as a result of using PlanGrid?	16.18

# CLAIMS - LESSONS LEARNED

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## ➤ Training –

- NHI / FHWA Claims Course
- Change Order Training

## ➤ Contract Administration

- Enforce the Contract Requirements
- Change Order Support
- NOI / Claims Support

# CLAIMS - LESSONS LEARNED

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## ➤ Revise Contract Documents

- Revise specifications to help avoid or manage claims
  - 2016 Specifications added method for calculating delay costs, Differing Site Conditions, Termination for Convenience
  - Supplement Specifications annually, replace every 4 - 5 years
- Revise contracts based on court decisions and legislation
  - Compensation for Changes, Additional Quantities, Extra Work

# CLAIMS - LESSONS LEARNED

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- Administer contract issues ASAP - keep ball in Contractor's court
  - Responses to Shop Drawings, RFIs, Notices of Delay, NOIs
  - Rejection of Unacceptable work - reject without delay + tell Contractor in writing what is being rejected and why + request corrective action plan
  - Resolution of changes with Change Orders – Bilateral if possible - Unilateral if necessary.