

SDI Claims Support & Best Practices

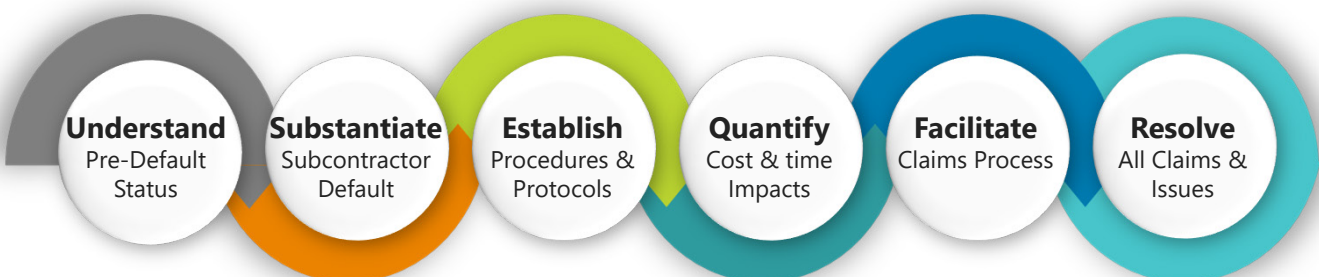
Coronavirus (COVID-19) is expected to cause widespread delays, disruptions, and added costs to construction projects. General contractors have increasing concerns about subcontractor defaults, including the unique challenges that will come when quantifying default delays and completion costs. Subcontract Default Insurance (SDI) may provide a path to recover. Imperium's construction experts specialize in helping contractors evaluate and quantify SDI claims and contract claims, helping clients expedite financial loss recovery while they focus on finishing projects.

Imperium will provide Clients with an initial claim review, or other assistance for any SDI claim that Clients determine may benefit from a third-party expert's experience.

Summary Considerations

- » Contrary to a Surety Claim – the Insured Determines the Course of Action
- » There is Immediate Policy Response for a Subcontractor Default
- » Following a Proper POL – Cost Overruns are Funded Within 30 Days
- » GC Controls the Default and Manages the Resolution Process
- » Insurer has Strict Procedures that Must be Followed
- » Similar to a Surety Bond – Contractors Must Be Familiar with Policy Language and Terms

Claims Process



1. Understand Pre-Default Status. The contractor needs to be intimately familiar with their insurance policies and subcontract agreements, as well as their owner contract agreements. Additionally, it is critical that the contractor maintain proper project controls, including accurate schedule, change, cost, and payment status.

- » Know your Contracts, Subcontracts, and Insurance Policies
 - Identify Notice Requirements and Other Critical Procedures

- » Be Aware of Early Warning Signs of Default (Non-Performance)
 - Schedule slippage/delays
 - Poor management performance
 - Late submittals/lack of coordination/non-response to changes
 - Inexperience, Absenteeism of key personnel
 - Financial red flags
 - Notice of non-payment from lower tier subs/vendors
 - Late payments to workforce
 - Overbillings/requests for advance payments
 - Excessive change orders/claims
 - Poor quality/defective work
 - Diminished workforce
- » Evaluate and Preserve the Status of the Project Immediately Prior to Default
- » Schedule
- » Costs and Billings
- » Change Orders
- » Pending Changes and Open Issues

2. Substantiate Subcontractor Default. A critical component for seeking reimbursement under an SDI policy is that an actual default occurred. This includes satisfying all requisite notice requirements and subcontract obligations.

- » Just Having an SDI Policy Does Not Mean Automatic Recovery
 - There Must be a Default
- » The Insurer Will Look to Subrogate Later
- » Verify Compliance with Contract Default and Insurance Requirements
 - Especially Notice Provisions
 - Seek advice from counsel
- » Verify Application of Policy
 - Loss ROM v. Deductibles/Co-Payments and Policy Limits/Sub-limits
- » Develop a Systematic Approach to Identify, Outline and Document the Default
 - Develop narratives, compile photos, mark-up plans/specs, identify applicable activities and verify schedule impact

3. Establish Procedures & Protocol. In order to help expedite processing of an SDI claim, it is beneficial that a collaborative process be established between the contractor and the insurer, with clearly defined procedures and communication channels.

- » Identify Point of Contact and Establish Communication Protocols with Insurer
- » Establish a Loss Measurement Team
- » Understand Carrier's POL Requirements, Templates, and Procedures
 - Meet and collaborate as early as possible with Insurer and their claim consultant
- » Develop an action plan to manage and complete the defaulted scope of work
 - Use defaulted subcontractor
 - Engage supervision and labor
 - Supplement labor force

- Replace defaulted subcontractor
 - Negotiate a new lump sum
 - Agree on T&M procedures
 - Verify new scope compared to original scope
 - » Create Segregated Cost Coding and Instruct Project Team
 - » Establish Document Recording and Management Procedures
 - Strictly Adhere to All Record Keeping Procedures
 - Carefully Track and Monitor T&M Work
 - » Analyze potential schedule impacts
 - Quantify ROM for damages
 - Define forensic CPM schedule delay analysis methodology
 - » Follow Prudent Decision-Making Processes
 - “If you were paying for the loss – would you take the action?”
 - Be Prepared to Justify and Explain Decisions
 - i.e.: OT, Acceleration, etc.
- 4. Quantify Cost & Time Impacts.** It is essential that the contractor accurately and contemporaneously monitor and document their cost and schedule impacts.
- » Review Claim Categories with Project Team – Consistent with POL Requirements
 - » Promptly Validate Defaulted Subcontractor’s Accounting and Payment Status
 - » Contemporaneously Document Completion Costs
 - Labor, Materials, Equipment, Subcontractors
 - Maintain detailed cost records and substantiation
 - Verify Consistency of Replacement Scope v. Original Scope
 - » Identify Defaulted Subcontractor’s Unpaid Vendors
 - » Monitor Legal and Professional Fees
 - » Determine Indirects and Time-Related Impacts
 - Understand Policy and Possible Limits
 - Initiate Schedule Analysis to Determine Delay
 - Verify ROMs as Quickly as Possible
- 5. Facilitate Claim Process.** Prompt submission of supporting documentation along with adherence to timelines and action items will help promote and facilitate prompt processing of the claim.
- » Maintain Collaborative Dialogue with Insurer and their claim consultant
 - » Establish Action Items, Priorities, and Timelines
 - » Strictly Adhere to Insurer’s POL Requirements
 - Follow Previously Established Procedures and Protocols
 - » Understand the RFI Process
 - Provide complete responses
 - Project Team must keep up with providing documentation
 - » Understand Proof of Payment (PoP) Requirements
 - » Documentation Must be Complete, Thorough, and Organized
 - » Monitor the Project Status and the Claim Development Status

- 6. Resolve All Claims & Issues.** Consistency and maintenance of an open dialogue with the Insurer will bring resolution to the claim process.
- » Maintain dialogue with claim reviewers
 - » Monitor the project status and the Claim Development Status (may be multiple Proof of Loss Submissions)
 - » Arrange, coordinate and lead settlement meetings with key decision makers
 - » Follow the pre-established action plan

Imperium is a nationally recognized leader in SDI claims preparation. Our experts average 28 years of construction and claims experience. Our approach is customized so that we align the way our clients manage projects and document delays and costs with the requirements of an SDI claim process. We help streamline and expedite the recovery of direct and indirect/delay-related costs through our expertise in forensic scheduling, job cost accounting, financial accounting, and claims quantification methodologies. We have helped contractors document some of the largest SDI claim recoveries to-date and we are available to help you.

For more information, please email info@imperiumcg.com or visit www.ImperiumCG.com. Imperium is available to provide an initial consultation at no cost to help clients make the best decisions possible now.

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Imperium Consulting Group, LLC, is a specialized advisory business that works with clients to better manage commercial risks as well as resolve complex claims and disputes. Employing a multi-disciplined approach with engineers, forensic schedulers and accountants, Imperium has vast expertise in construction, project auditing, government contracts, FEMA and commercial contract disputes. Imperium also provides insurance claims preparation services and recovery strategies related to Builder's risk, property damage, business interruption, surety, subcontractor default, and delay-in-start-up.