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Assessment of Professional Negligence in the Nigerian Construction Industry

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Abstract

Professional negligence involves neglecting professional duty of care as to render the professional responsible for the act, error or omission of neglect, liable in law to a client or some third party who sustains loss by reason of that neglect. This study investigates the effects of professional negligence in construction industry, with a view to proffering means of minimizing it. The objective is to identify the causes of professional negligence in the construction industry; to assess the effect of professional negligence in the construction industry and to investigate how professional negligence in construction industry can be minimized. A total number of 100 questionnaire were administered to the professionals in Oyo State which is the study area. The data were analyzed using frequency, Descriptive and Ranking to check the level of the effects of professional negligence in construction industry. In conclusion the major causes of professional negligence is inadequately flow of communication, inadequate standard of the company and professional negligence has a far reaching effect; some of the effects are exposure to high risk, low quality, client dissatisfaction, delay in project delivery, financial loss and reputation of the industry. It was recommended that adequate flow of information should be put in place and also there should be mandatory condition that must be obeyed at all times, violation of a rule should be ground for disciplinary action by the professionals and the site should not be handled by inexperience contractor. The required solution to professional negligence in the construction industry is Effective professional regulatory monitoring, Monitoring by Regulatory Authority, Site Meeting and Compulsory continuous professional development.

Keywords: Building Projects, Contractors, Construction Industry, Negligence, Professionals,

Introduction

The nature of construction industry is complex and dynamic. Besides, the industry is fragmented and thereby requires the involvement of various professionals and specialists that work together to achieve a common goal (Gray 2000; Gido, Kerzner and Meredith, 2003). The construction of a building project of any kind involves the services of many people, directly, who design, construct and maintain it from inception to completion. (Muʻazu, 2002). The nature of construction industry is complex and dynamic. Besides, the industry is fragmented and thereby requires the involvement of various professionals and specialists that work together to achieve a common goal (Gray 2000; Gido, Kerzner and Meredith, 2003). The construction of a building project of any kind involves the services of many people, directly, who design, construct and maintain it from inception to completion, and to terminal demolition (Muʻazu, 2002).

Construction industry plays a substantial role in a country's economy, irrespective of the country's levels of economic development (Zantanidis, 2009). The construction sector in a country's economy is an important employer of a nation's workforce as it employs between 2 to 10% of total workforce of most countries (Abdul-Rashid *et al.*, 2005).

Professionalism can be described as the professional standard that involves the skill, competence, or character expected of a member of a highly trained profession. Professionals have always been linked with the notion of "service" so that a professional is described as a group of people organized to serve a body of specialized knowledge in the society based on the perceived relationship. (Idrus, *et al*., 2002), (Vee and Skitmore 2011) Professionals are those groups that undergo certain academic training and are qualified to offer professional advice to an intending client. (Abdul-Rahman *et al.*, 2010).There are lots of professionals noticeable in our environment. These are Accountants, Bankers, Architects, Lawyers, Engineers, Doctors, Builders, Farmers, and Quantity Surveyors to mention a few. However, the professionals in the construction industry are those professionals that undergo academic training and are qualified to offer advice in the field of construction (Nadeem, 2009). These professionals are: Architects, Land Surveyors, and Estate Surveyors and valuers, Engineers (Mechanical, Services, and Structural), Builders, Town and Regional planners and Quantity Surveyors (Oladapo, 2006).

On the other hand, negligence is referred to the imposition of liability in damages for harm caused by fault. The fault can either be as a result of; a breach of a legal duty to take care which results into damages undesirable by the defendant to the plaintiff or conduct that falls below the standards of behavior established by law for the protection of others against unreasonable risk of harm or the failure to exercise that degree of cares that, in the circumstances, the law requires for the protection of other persons or those interests of other persons that may be injuriously affected by the want of such care. Aje and Awodele (2006) mentioned that the primary aim of every profession is to serve the public. This commitment means that true professional places the public good before mere financial reward. Professional negligence can be defined as neglect of professional duty of care as to render the professional committing the act, error or omission of neglect, liable in law to a client or some third party who sustains loss by reason of that neglect. (Greenhalgh, 1997)

Construction industry professional negligence claims are not for the fainthearted. Establishing negligence against one party will necessarily involve a consideration of the potential scope for liability in negligence of anyone else who may have been involved in the project. As such, these cases are potentially complex, high risk and very expensive to run. (Bokinni, 2002). In construction, many expert or professional involved in construction which they have a duty of care towards their client and sometimes toward third parties. They have to be responsible to this duty and if there is breached of this duty, it is will resulting in loss or personal injury that can result in claim against the negligence. In construction negligence, it may occur because of the negligence by the parties involved in the construction process which that contractors, architects, quantity surveyors, engineers, project managers is the person usually accountable for that negligence claims.

Professional's negligence is a subset of the general rules on negligence to cover the situation in which the defendant has represented him or herself as having more than average skills and ability. Thus when a professional man holds himself qualified in a particular professional discipline in the construction industry, he is competent to render his services to the required degree of skills and expertise. Hence the public has entitled to expect from him the usual degree of skill habitual to the average person practicing the said profession. Failure to meet his performance criteria which brings about any loss renders the professional, liable for breach of contract or negligence.

Hence the need for the assessment of negligence by professional in the construction industry is needed. When proper assessment is done the cause of negligence would be identified and stated so that professional in the industry would be able to identify various cause of negligence. This research

work would also investigate the procedures used by develop countries in tackling negligence in their various construction industries and how these procedures can be integrated in the Nigerian construction industry. Further the penalties which develop countries assign to professional negligence and how the Nigerian construction industry regulators and stakeholders can integrate those system to improve our construction industry in general. This research work also would be able to identify the type of negligence contained furthermore the various forms in which negligence occurs either through directed negligence from the professional or indirect negligence from staffs foremen, artisans working with the professional's etc.

In light of these this work would also help proffers solutions to these problem of professional negligence in the construction industry. The solutions and recommendations from this work would assist both contractors, government agencies, stakeholders, construction regulators and manufacturers in reducing or minimizing all forms of negligence in the construction industry in Nigeria.

Negligence is a very serious phenomenon in the construction industry.it has cause chaos, conflict, loss of jobs, loss of capital, withdraw of licenses and certificate etc. to various parties whom have been in or fall victims to negligence in the industry either by professionals or otherwise. This therefore means that phenomenon negligence by professional needs more attentions by all stake holders in the construction industry.

Most building projects will require the input of a number of professionals, each of whom have a different role to play in the process, from design to construction. Each professional has a duty of skill and care.

However, the process will necessarily involve the input of non-professionals such as building contractors, each of whom will have an important role to play in getting the building project from design stage to completion of the finished build. At each and every stage of the process, there is a risk that something may go wrong, as a result of the negligence of one or more of those involved, leading to financial loss and the headache of putting the damage right – if that can be achieved.

In those circumstances, establishing who is to blame and to what extent can be a minefield, and one that is very likely to be further complicated by arguments between professional and non-professional defendants about contribution and contributory fault.

Research Methodology

The method used for data collection in this study for generating data was based on survey method of research, which is in form of Oral Interview and Questionnaires administration to the professional to assess negligence in the construction industry. These was used to obtain quantitative and qualitative information from the population. The instrument was a well-structured questionnaire of which was disserted and designed to obtain data on the basis of the stated objectives of the study. The questionnaire focused on four sections; section A deals with the basic information about the respondents, section B deals with the causes of professional negligence in construction industry, section C deals with the effects of negligence in construction industry, while section D deals with how professional negligence can be minimized in construction industry. The study area of this research was Oyo State, in the South Western region of Nigeria. The study area was selected due to its strategic location, where there is high concentration of construction activities.

The population of this study consists of the professional in the construction industry in Oyo State. The total number was estimated to be 376 registered professionals (Architect, Builders, Quantity Surveyor and Engineers) in the above mentions fields in Oyo state. The selection of population (respondents) was limited only to Project Consultancy Firms and or Agencies as well as Building Contractors. Construction professionals comprised of Quantity Surveyors, Estate Managers, Builders, Civil Engineers, Structural Engineers, Project Managers and Architects. The choice of this class of building contractors was made on the basis that they were well established firms which engage the services of these professionals. Consultancy Firms included public institutions like the Ministries, Departments and Agencies responsible for infrastructural project.

Sampling techniques of this study was random selection due to large area and population in South Western part Nigeria, Oyo State. Non-probability sampling technique was used in study. In probability sampling, the decision as to whether a particular element is included in the sample or not, is governed by chance alone. The technique allows each individual to be chosen randomly by chance. Purposive sampling which is an example of the non-probability sampling technique was used in identifying the key respondents who were professionals in these projects Organizations; Contractors, Agencies and Consultants. This was because the researcher required certain categories of respondents who had been involved in a construction projects and therefore had more experience with pattern of communication system on constructional project to answer the questionnaires.

Data Collection

The data for this research work was collected with the use of a structured questionnaires, A total of One hundred (100) questionnaires were administered to the respondent while 80 questionnaires were returned. The questionnaires consist of three sections in which the respondents are expected to give answers to questions. The first section deals with Basic Information, and the other parts deals with the variables which enable the researcher to know the opinion of the respondents. A questionnaire was developed to obtain an extensive, as practicable, from these project professionals. A questionnaire was therefore prepared and self-administered to the various respondents. The questionnaire consisted of closed ended questions. For the purpose of the study, the questions were grouped under three categories. The first series of questions related to respondent's profile. This was intended to find out the background and experience of respondents. In the second group of questions A 5-point ranking system and a five-level scale were utilized where the respondents were asked to indicate from the list.

Research Variable

The research variables were placed on the level of Likert scale 1-5 from the respondent to rate the variable based on their opinions. The first is used to find the causes of professional negligence in construction industry.

The first variable targeted the causes of professional negligence in construction industry. The second variables considered the effect of professional negligence in the construction industry. The third variable considered how professional negligence in construction industry are been minimized.

Results and Discussion

Table 1 shows the response obtained from the questionnaires survey. Introduction of primary requirement used for the purpose of this study was collection of data, frequency, mean and ranking was used to analyze the data and the graphs were plotted. A total number of 100 questionnaires were administered through personal contact with some selected professionals in the selected states. Only 80 questionnaires representing 80% as shown in the table below were returned and analyzed.

Table 1. Summary of Survey

Questionnaire	Number	Response rate (%)
Questionnaire Distributed	100	100%
Questionnaire Returned	80	80%

The questions answered by the respondent are of scale between 1-5 to check the level between each response related to the questions been asked. The data was analyzed using frequency ranking. Table 2 show the type of academic qualification of the respondents. The result revealed that 35.0 % are holders of Higher National Diploma (HND), 31.3 % are holders of Masters of Science Degree (MSc), and 21.3 % are holders of Bachelor degree (BSc), 35.5 % are holders of National Diploma (ND) while 5.0 % are Ph.D. holders. This implies that most of the respondents are HND holders. This indicated that the respondents have the required academic qualifications that could assist to provide a meaningful data from which inferences could be drawn for the study.

Table 2. Academic Qualification of respondents

Educational Qualification	Frequency	Percent
ND	6	7.5
HND	28	35.0
B.Sc	17	21.3
M.Sc	25	31.3
Ph.D	4	5.0
Total	80	100.0

Table.3 shows that most of the respondents are NIA, with the percentage of 40.0%, NIOB are 27.5 %, 16.3 % are NIQS, 2.5 % are NSE while others are 13.8%, This implies that most of the respondents are members of NIA. This implied that the respondents have adequate professional experiences to supply required information for this study.

Table 3. Professional Affiliation of Respondent

Professional Affiliation of Respondent	Frequency	Percent
Others	11	13.8
NIA	32	40.0
NIOB	27.5	22
NIQS	13	16.3
NSE	2	2.5
Total	80	100.0

Source: Field Survey, 2018

Table 4. presents the year of working experience of the respondent, most of the respondents are between the age of 15- 30 years of experience with the highest percentage of 56.3% while those between 10-15 years are 31.3%, the respondent above 30 years are 10.0% and the respondent between 5-10 are 2.5%. This implies that the highest respondents are between 15-30 years of working experience.

Table 4. Respondents Years of Working Experience

Years of Experience	Frequency	Percent
Above 30 years	8	10.0
15-30 Years	45	56.3
10 - 15 Years	25	31.3
5-10 Years	2	2.5
Total	80	100

From Table 5, it can be deduced that most of the respondents are Govt. Official with the highest percentage of 51.3% while the Sub-Contractor has 22.5%, the Consultant has 18.8% while the Client and Contractor has a percentage of 3.8%. This implies that most of the professional involved are Govt. Official.

Table 5. Roles in the construction industry

Roles in Construction	Frequency	Percent
Govt. Official	41	51.3
Sub-Contractor	18	22.5
Client	3	3.8
Consultant	15	18.8
Contractor	3	3.8
Total	80	100.0

Causes of professional negligence in construction industry

Table 6 shows the analysis of identified causes of professional negligence in the construction industry. From the analysis above it can be deduced that the major causes of professional negligence in construction industry is inadequate flow of information having the mean score of 2.48, Inadequate standard has a mean score of 2.35, Inadequate communication channel has a mean score of 2.21, and the least of the variable is Inadequate skill having a mean score of 1.98.

Table 6. Causes of Professional Negligence in Construction Industry

Variables	No	Mean score	Rank of Variable
Inadequate flow of information	80	2.487	1
Inadequate standard	80	2.350	2
Inappropriate Communication channel	80	2.213	3
Inadequate collaboration between professionals	80	2.050	4
Inadequate project planning and control	80	2.025	5
Inadequate professional compliance	80	2.00	6
Inadequate skill	80	1.98	7

From the analysis it was observed that inadequate flow of information is one of the causes of professional negligence, in which if all professional are not working hand in hand to actualize the stated goal of the project the forecast and planned stated for such project will not be actualized, also inadequate standard of professional in the construction industry has a negative effect on the construction sector, by which adequate professional advice will be lacking if effective communication channel is missing in the chain of the professional involved in the construction.

Analysis of data on effect of professional negligence in the construction industry

From Table 7 the effect of professional negligence in the construction industry was observed. The instance of ranking are followed based on how important each of the variables are, with respect to the effect of professional negligence. It was observed that exposure to high risk is considered highest, due to the fact that when adequate collaboration between the health and safety management and the professional is neglected it will result in high risk, because adequate safety precaution will not be provided and effective safety guideline will be missing from the project planning stage, due to inappropriate professional negligence in compliance to work section.

Table 7. The Effect of Professional Negligence in the Construction Industry.

Variable name	Mean score	Ranking of Variables	Variables
Exposure to high risk	2.76	1	9
Low quality	2.60	2	9
Client dissatisfaction	2.60	2	9
Delay in project delivery	2.58	4	9
Financial loss	2.55	5	9
Reputation of the industry	2.53	6	9
Public conferences	2.38	7	9
Dispute among professionals	2.35	8	9
Project abandonment	2.33	9	9

Likewise, Low quality of the work section is expected to be seen, due to the fact that adequate communication channel and effective work section in each element of the building will be missing in actualizing the goal of the project to be executed by the professionals. Furthermore, client dissatisfaction in compliance with the set standard will result in work section, inappropriate professional advice, which will result to breakdown of stated project success.

Analysis of Data on Solution to Professional Negligence in Construction Industry

Table 8 shows the analysis of solution to professional negligence in the construction industry. From the analysis above it can be deduced that the major method of minimizing professional negligence is Effective professional regulatory monitoring having a mean score of 2.55, Monitoring by Regulatory Authority has a mean score of 2.51, also the least was Evaluation of Project Performance is having a mean score of 2.33.

Table 8: Solution to Professional Negligence in Construction Industry

Variables	No	Mean score	Rank of Variable
Effective professional regulatory monitoring	80	2.55	1
Monitoring by Regulatory Authority	80	2.51	2
Site Meeting	80	2.48	3
Compulsory continuous professional development	80	2.41	4
Evaluation of Project Performance	80	2.33	5
Provision of adequate regulatory body	80	2.28	6

From the analysis, professional negligence can be minimized based on effective professional regulatory monitoring, this has to do with professionals guiding and inspecting the performance of the professionals involved in each project that are being executed, when adequate monitory policy is being put in place it will reduce the negligence and non-compliance to the stated work section as planned by regulatory authority, site meeting is essentially needed to check list the level of each professionals involved in the building project, and likewise ensure that each responsibility of the professionals are assigned to each professional that are capable of executing such project to eradicate negligence of work during the project or not meeting up to standard of work expected from each professional in the construction industry.

Discussion of Findings

It can be deduced that the major causes of professional negligence in construction industry is inadequate flow of information, Inadequate standard, Inadequate collaboration between professionals and variable Inappropriate communication channel having a mean score of 2.48, 2.35, 2.21 respectively. From the analysis it was observed that inadequate flow of information is one of the main causes of professional negligence within the construction industry. If all professional are not working hand in hand and effectively to actualize the stated goal of the project the forecast and planned stated for such project will not be actualized, also inadequate standard of professional in the construction industry has a negative effect it plays in the construction sector, by which adequate professional advice will be lacking if effective communication channel is missing in the chain of

the professional involved in the construction. Inadequate collaborations between professionals are also seen as the major factors that causes professional negligence, in this regard when each professional is working in isolation, the possibility of actualizing the set goals will be restricted and reduces the rate at which the projects forecast is expected to be achieved. Hence, adequate collaborations are essentially needed to fast track the project goals.

It was observed through the analysis that effect of professional negligence within the construction industry leads to project abandonment, likewise the exposure to high risk is considered highest due to the fact that when adequate collaboration between the health and safety management and the professional is neglected it will result in high risk because adequate safety precaution will be provided and effective safety guideline will be missing from the project planning stage due to inappropriate professional negligence in compliance to work section. Inadequate compliance to set standard is also rampant due to fact that client decision will be used to supersede the work section and inappropriate professional advice will result to breakdown of stated project success. Lastly, low quality of the work section is expected to be seen due to fact that adequate communication channel and effective work section in each element of the building will be missing in actualizing the goal of the project too be executed by the professional. When negative effects of professionals are involved in project, no matter how effective the project is the project is expected not to be accomplished at the stated time frame. So, each professional is expected to have a positive mindset in helping meeting the project deadline as expected. Cost of financial stability of the company is expected to be affected when project is delayed, the running cost of any project are expected to be calculated form the onset of the project and breach of communication channel among professional, abandonment of project due to professional negligence will result in project cost increase. In view of this, when any company, given a project to be executed failed to actualize the set goal of the project, the level at which such company will be rated will definitely reduce and cause the company to lose any future project/business and potentially damage the company reputation.

From the analysis, professional negligence can be minimized based on effective professional regulatory monitoring this has to do with professional bodies guiding and inspecting the performance of the professional involved in each project that are being executed, when adequate monitory policy is being put in place it will reduce the negligence and non-compliance to the stated work section as planned and monitoring by regulatory authority and site meeting is essentially needed to check list the level of each professional involved in the building project and likewise ensure that each responsibility of the professional are assigned to each professional that are capable of executing such project to eradicate negligence of work during the project or not meeting up to standard of work expected from each professional in the construction industry. Finally, all professionals should be allowed to continue within their professional field throughout their carrier, to ensure provision of opportunity of the professional development of those under the supervision.

Conclusion

Construction industry is fragmented in that design and construction are usually undertaken separately, the former by firms of professional; architect, Quantity surveyor, Engineers usually working independently, then latter by contractor supported by a large numbers of specialist subcontractor. At each and every stage of the process, there is a risk that something may go wrong, as a result of the negligence of one or more of the professional involved, leading to financial loss and the headache of putting the damages right if that can be achieved.

i. It was concluded that the major causes of professional negligence is inadequately flow of communication. This is because construction industry is fragmented and each participant

belongs to different organization. At tender stage in particular, there is need for clear and complete information. Additionally, during the design and construction. There is need for continuous information to be passed quickly and reliable between organizations. Inadequate communication link can lead to professional negligence.

ii. The inadequate standard of the company can lead to professional negligence. If there is no adequate standard being set aside by the construction company, any work that are beyond their standard can lead them to neglect the project which can lead to professional negligence. The inadequate collaboration between professional is one of the causes of professional negligence in construction industry. In the construction industry there is need for each party/professional to work collectively, neglecting this factor by the professional are actually bound for professional negligence to occur.

iii. The professional negligence has a far reaching effect; some of the effects are exposure to high risk, low quality, client dissatisfaction, delay in project delivery, financial loss and reputation of the industry.

iv. The required solution to professional negligence in the construction industry is Effective professional regulatory monitoring, Monitoring by Regulatory Authority, Site Meeting and Compulsory continuous professional development.

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