



Digging Deeper and Untangling Quantum & Delay Claims

When drafting a quantum and/or delay claim based on several events, claimants commonly use inference rather than causation to build their arguments. This approach is sometimes used by claimants as they tend to focus on the monetary amounts lost and/or the delays they have incurred, rather than identifying causation.

These types of claims can be known as “Global” or “Total Cost Claims”. Global claims are where the claimant does not provide evidence to prove a causal link between its losses and the actions of the respondent. The claimant puts forward a collection of events and a total amount of loss (monetary and time) incurred and argues that the events in their totality have caused the loss.

Global claims are allowed so long as several prerequisites are met, such as:

- All preconditions for making a claim set out in the contract must be satisfied.
- Sufficient particulars to enable the respondent to identify the case against it.
- Where there are matters that the respondent is not responsible for that are significant to the delay claimed, these must be accounted for in the claim (CONCURRENCY).
- Any part of the claim capable of separation and for which a causative link can be identified should not form part of the global claim.
- As a matter of course, the claimant must provide sufficient evidence to support the losses claimed.

The above list is in no way exhaustive but does provide high-level guidance from a pragmatic and logical point of view. If a claimant cannot meet all the points listed above; a global claim will generally fail.

Often a claim submitted as “global” does not meet the general requirements outlined previously and is not deemed a global claim but an ambit, lazy, or just a “bad claim”. There are occasions from a strategic point of view where a claimant may put together such a claim. The claimant may choose to submit a such a claim due to either lack of time, information, or ability. In most case the respondent easily rebuts these types of claims.

To avoid rebuttals and achieve success, claims need to be untangled, and you need to dig deeper to identify the causation.





Untangling the Claims

The first step in building a claim is to separate the arguments (identify the heads of claim) and then split the variation and delay claims. The variations should be investigated first with the right to claim under the contract defined, and the quantum broke down.

At this stage, only entitlement under the contract should be discussed. The investigation is not limited to the general, or special conditions and a focus on the scope, specifications and the drawings is required.

Whilst a quantum expert is working on the variations; a delay expert should be investigating and auditing the baseline program and the monthly updated programs. The baseline programs logic links, leads, lags and milestones need to be forensically analysed to ensure they are correct and where applicable errors fixed and recorded.

Once an error-free baseline is available, a delay analysis can take place using an appropriate method.

The benefit of investigating and demonstrating the variations first is that the quantum (cost) can be separately identified from the delay costs. The variations may also provide causation for a delay claim.

Once any variations are determined as contributing delay events, other delaying events (such as site access and lack of

design inputs from the respondent) that are not deemed as variations can be included in the delay analysis.

When all the respondent culpable delay events are identified, any concurrent claimant events should be demonstrated in the delay analysis.

The final part of the claim is the quantum expert needs to determine the delay costs, which in most cases will be indirect costs such as insurances, site accommodation, project management staff, bonds etc.

There may be direct costs incurred that are not included in the variations. If this is the case, they should be identified within the specific window of time the delay occurred.

Once a quantum and delay expert untangle the heads of claims, lawyers can introduce legal arguments, prepare witness statements, and prepare the statement of claim.

The experts should write in plain English and avoid where possible verbose sentences.



Digging Deeper

To build good foundations, it is generally considered you need to “dig deeper” to find solid ground. The same can be said when constructing arguments around causation and avoiding inference.

Accura Consulting does not get involved in the legal arguments and leaves that aspect of a claim to the legal experts. What we do is dig deeper into the whole contract and forensically assess the scope of work, the specification and the drawings.

We will untangle the rights and obligations of each party, and pay attention to matters concerning deliverables, battery limits and scope etc.

We consider the defined terms within the contract and how specifically defined terms can provide clarity on aspects of the scope and specification which on the face of it appears unclear.

We don't stop there; we dig deeper to understand the technical requirements detailed within the contract and

compare them to the as built or current matters in dispute. We then put forward reasoned technical arguments based on facts and evidence.

Our team stick to what we are good at and create robust, technical, and factual arguments which produce precise quantum and delay claims.



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