

Legal Reinforcement

Proving damages can be difficult

Proving damages in a construction delay claim is never as straightforward as it may first appear.

Many delay claims start as reasonably small affairs, but then morph into enormous entanglements which often founder on the complexity of proving a delay to the critical path of the project, and the linking of damages to that delay.

Claimants often hold the view that since a specific activity was delayed by, say, two weeks, that gives rise to an entitlement to two weeks of their extra costs. In reality, it is far more complex.

To recover damages for delay, the party advancing the claim must establish to the satisfaction of a court that: the cause of the delay is an event under the contract that entitles it to compensation; the cause delayed the work under the contract by a quantifiable amount of time; and

the damages were actually caused by the delay.

A failure to establish any one of these critical elements will result in the dismissal of a delay claim.

In addition, however, there are a number of factors which add complexity to the delay analysis. Those factors include:

Float - the slack in overall duration of a sequence of related and necessary activities measured against the critical path of the project.

If an activity has float, it can be extended or postponed (to the extent of the float) without affecting project completion.

The ownership of the float

needs to be considered. It is not always the case that you are entitled to its use.

Acceleration - occurs when a contractor mobilizes resources or incurs expenses beyond the original contractual expectation to meet the project schedule.

This happens when a contractor provides additional manpower, works overtime, or works more than one shift.

The contractor may have been late by two weeks in performing a certain aspect of the work, but the contractor's work in relation to other activities may have been accelerated.

A specific delay causing event cannot therefore be

looked at in isolation.

Concurrent delays - delays are not the responsibility of solely one party, but shared amongst several parties. To be successful in your claim, you'll need to segregate out the various causes of a particular delay.

With this in mind, it is clearly important to commence a delay claim with a full appreciation of the potential evidentiary issues to a successful claim, and an understanding of the legal risks and costs. Wading naively into a delay claim without careful consideration can give rise to a long and nasty legal headache.

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