
Claims

Global Claims

It is often time consuming and costly to properly quantify a claim arising out of a building and construction dispute. Courts expect parties to plead their cases properly and this almost always involves painstakingly analysing vast numbers of invoices and other documents in an attempt to quantify the loss.

With contract claims, the claimant must point to the breach of contract having occurred, determine that the breach *caused* its loss and then quantify that loss.

In his famous speech in *Monarch Steamship v Karlsharins Olje-Fabriker*[1949] AC 169; Lord Wright said:

“If a man is too late to catch a train, because his car broke down on the way to the station, we should all naturally say, that he lost the train because of the car breaking down. We recognise that the two things or events are causally connected. Causation is a mental concept, generally based on inference or induction from uniformity of sequence as between two events that there is a causal connection between them.”

However, under certain limited circumstances, a global claim may be pleaded where it is impractical or impossible to accurately relate the event which caused the loss to the amount of the loss.

Global claims may be made for both money and time lost, usually as a result of delays. Such claims are reasonably well established in the United States where they are known as “*total cost claims*”.

In *Wharf Properties Ltd v Eric Cumine Associates*(1984) 29 BLR 106), global claims were defined as ones where the connection between the matters complained of and their consequences whether in terms of time or money are not fully spelled out. In that case, which involved the construction of a wharf in Hong Kong, the claimant set out its loss, in general terms, in a 400-page statement of claim. The Privy Council struck out the pleading on the basis that it would embarrass or delay the fair trial of the action and not on the basis that it disclosed no reasonable cause of action.

Cases following *Wharf Properties* have not always taken such a pessimistic view of global claims. In *Nauru Phosphate Royalties Trust v Matthew Hall Electrical Engineers Pty Ltd* (unreported, Victorian Supreme Court, Appeal Division, 27 August 1992) the Supreme Court of Victoria held that global claims were available under certain limited circumstances where the link between the actual claim and the amount claimed is impossible to define and where it would be impossible or impracticable to pursue any other form of pleading.

Pricing a global claim

It has been suggested by Justice Byrne of the Victorian Supreme Court that in assessing a global claim a court will look to the following factors:

- whether the contract price is realistic and represents a reasonable price for performing the work had the events complained of not occurred;
- whether the total cost claimed is reasonable in view of the additional work required to complete the project; and
- whether any factors other than the compensable event resulted in the difference between the actual reasonable cost and the initial contract price.

Theoretically, the claimant must show that it bears no responsibility for the overrun. Of course, in reality this will rarely be the case. In practice, however, the contractor will be required to show that the overrun is the contractual responsibility of the contractor insofar as the overrun relates to compensable events.

Determining the quantum of a global claim will require the Court or tribunal to make an estimate after having taken into account the contingencies, probabilities and chances involved in the project. The obligation is to prove the claim on the balance of probabilities.

Conclusion

Global claims will be allowed only in very limited circumstances where the complexity of the case and the multiplicity of events during performance of the contract have combined to make it virtually impossible for the claimant to calculate the loss with certainty. Global claims can be used as a device to mask a weak case. Of course, this does not mean that those who fail to keep good records may use such claims to advantage. Unfortunately, a defendant presented with a global claim will tend to regard such claims with scepticism. However, as a means of reducing the costs involved in particularising losses, global claims in the right circumstances are a unique possibility.

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Editorial Note

Those interested in a detailed exposition of global claims should refer to The Honourable Mr Justice Byrne's excellent article “Total Costs and Global Claims” in the December 1995 issue of BCL.