# Global Claims - The Current Position

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The correct manner of presenting a claim is to link the cause with the effect. For example, if the Architect varies the Works by instructing the construction of an additional pile (cause) the date for completion of the Work may, as a consequence, be delayed by 4 weeks (effect). However this is not always easy, especially when the claim is a disruption claim rather than a prolongation claim.

To counter such difficulties, contractors have, in recent times, attempted to short cut the need to link cause and effect by use of the global claim.

A **global claim** is a claim where the plaintiff does not seek to attribute loss to specific breaches of contract, but rather alleges a composite loss as a result of all the alleged breaches. The composite loss is then often prepared as a **total cost claim**, i.e. a claim where the quantification of loss is achieved by subtracting the tender cost of the works from the final cost.

The justification for such claims came from two legal cases. Firstly, in J Crosby and Sons Ltd v. Portland Urban and District Council (1977) 5 BLR 121, the arbitrator said:

"**The delay and disorganisation which ultimately resulted was cumulative and attributable to the combined effect of al1 these matters. It is therefore impracticable, if not impossible, to assess the additional expense caused by delay and disorganisation due to any one of these matters in isolation from the other matters**".

and secondly in London Borough of Merton v. Stanley Hugh Leach (1985) 32 BLR 51 Vinelott J said:

"**The loss or expense attributable to each head of claim cannot in reality be separated**".

These two cases caused a proliferation of global claims as contractors the world over argued that the events which occurred on their contract were so complicated as to make it impracticable, if not impossible, to assess the additional expense caused by delay and disorganisation due to any one of the events in isolation from the other events.

This position worried employers because the problem with global claims is that they actually prove nothing. Whilst the contractor may be able to provide a list of numerous events which may have caused disruption to his works, the global claim does not prove what the effects of such disruptive events really was to the works. There can be many reasons why a contractor's final costs are more than his tendered costs, he may simply have tendered too low in the first place, but a global claim makes the huge assumption that all the additional time and costs were caused by the disruptive events.

Employer's therefore breathed a sigh of relief following the Hong Kong case of Wharf Properties Ltd and Another v. Eric Cumine Associates and Others, (1991) 52 BLR 1. In this case the Privy Council struck out the case of the plaintiff who made no attempt to link the cause with the effect in respect of a claim by the Employer against his Architect for failure properly to manage, control, co-ordinate, supervise and administer the work of the contractors as a result of which the project was delayed.

Employers have since used this case as justification for totally rejecting any claims based on a global approach.

However, comments of judges in a variety of cases since Wharf, seem to suggest that the courts did not intend Wharf to dictate that there can never be situations where a global claim is acceptable.

Recently in the case of Bernhard's Rugby Landscapes Ltd. v Stockley Park Consortium Ltd. (QBD 1997) (82 BLR 81), the court considered all the major cases concerning global claims and as a result have produced a good summary of the current position:

- Whilst a court will approach a global claim or a total cost claim with caution, such claims are not necessarily bad and in some circumstances it may be the only way in which a plaintiff can establish its loss.

- A global claim is permissible where it is impractical to disentangle that part of the loss attributable to each head of claim, and the situation has not been brought about by delay or other conduct on the part of the plaintiff. In such circumstances the court infers that the defendant's breaches caused the extra cost or cost overrun and the causal nexus was inferred rather than demonstrated.

- The power of the court to strike out is very limited and should only be used where the claim is so evidently untenable that it would be a waste of resources for this to be demonstrated only after a trial, or where the pleading is likely to prejudice, embarrass or delay the fair trial of the action.

- The question whether a pleading in any given case based upon a global claim, a total costs claim or some variant of this, is likely to or may prejudice, embarrass or delay the fair trial of the action must depend upon an examination of the pleading itself and the claim which it makes.

- The fundamental concern of the court is that the dispute between the parties should be determined expeditiously and economically and, above all, fairly, and whilst a plaintiff is entitled to present its claim as it thinks fit, on the other hand a defendant is entitled to know the case which it has to meet with as much certainty and particularity as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which the damage is done Ratcliffe v Evans [1892] 2QB 524.

It appears therefore that a global claim may still be acceptable, but only in situations where it is impractical to disentangle that part of the loss attributable to each head of claim, and most importantly only in situation where the party making the claim has not caused some of the delay and/or additional expenditure to be incurred itself. Therefore if a contractor has suffered a variety of delaying events, some caused by the employer and some by himself, a global claim will not be acceptable.

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