



Technical

Global Claims Article 1 – What are Global Claims?

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Introduction

1. Claims commonly arise on Construction Contracts. These can be caused by numerous reasons including; delays, changes, unforeseen circumstances and insufficient information etc. Claims can include loss and expense, extension of time, liquidated damages, as well as disputes over variations/compensation events. Contracts set out what can constitute a claim and how it should be dealt with.
2. Construction projects are complex and there is not always a straightforward relationship between one particular breach and one specific effect. When disruption and prolongation disputes occur you will often see the term “*global claim*” being used. We are often asked “*What is a global claim?*” and “*Can we (Contractor or Sub-Contractor or even Employer) make a global claim?*”.
3. In a forthcoming series of Articles we will be covering the following issues with regard to global claims:
 - What are Global Claims?
 - Causation and Global Claims.
 - De-Globalising Global Claims.

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Why should Global Claims be allowed?

4. Proponents of global claims argue that a party (i.e. the Contractor/Employer) should not be able to benefit from delays it has caused simply because the Claimant cannot fully particularise its claim. They argue the fact that the causal links cannot be determined and should not prevent a claim for delay cost from succeeding. It is also contended that the delays caused by the other party not only delayed the project but also made analysis far more difficult; this is the reason that the claim is global in the first instance.

Defining Global Claims

5. A global claim is sometimes described as being something that you will “*know it when you see it*”, but this is far from helpful. It seems straightforward to give a general description of a global claim but providing a precise definition is far more difficult. There have been a number of attempts over the years by highly regarded Authorities in Construction Law to give a precise definition of global claims. Some of the definitions suggested include

- Keating on Construction Contracts:

“A global claim...is one that provides an inadequate explanation of the causal nexus between the breaches of contract or relevant events/matters relied upon and the alleged loss and damage or delay that relief is claimed for.”
(Furst, S. and Ramsey, V. 2012. p. 338)

- The Society of Construction Law (SCL) 2nd Edition Delay and Disruption Protocol defines global claims as:

“A global claim is one in which the Contractor seeks compensation for a group of Employer Risk Events but does not or cannot demonstrate a direct link between the loss incurred and the individual Employer Risk Events.”

6. Other terms are often mentioned alongside global claims, such as “*composite claims*”, “*rolled up claims*” and “*total cost claims*”. Often these terms get used interchangeably with the term “*global claim*”.
7. There is a difference and this was summarised well by Daniel Atkinson in *Causation in Construction Law* (2007):

“The term “Total Cost Claim” is a claim where a single sum is claimed which is the difference between the total actual cost and the contract price or variation of the work.

The terms “Composite Claim” and “Rolled-Up Claim” are claims where there are a number of events and only some are presented as a group in a Global Claim. In this type of claim, separate sums are claimed for particular events and a single sum is claimed for the remaining group of events that are not so particularised.” (paragraph 6.28.)

8. The definitions above have all been produced following consideration of the Case Law at the time.
9. There are two distinct types of global claim. There is a global claim which addresses the issue of Time (Extension of Time, Acts of Prevention etc.) and global claims which deal with the issue of Compensation (Direct Loss and/or Expense, Damages etc.).
10. A global claim focused on the issue of time will ordinarily identify numerous delay events and establish periods of delay. However, they will fail to show a direct link between the cause (the delay event) and the effect (the actual delay recorded). The reasons that this link is not commonly shown are that either the number of delay events makes such a detailed analysis impractical, or the records are lacking or the original programme is too broad to allow detailed analysis.
11. A global claim for Compensation will often be presented when the delays have not been established in detail and the Claimant cannot extract costs and link them directly to periods of delay. The compensation claim will often comprise, in the main, prolongation costs and there is a belief that detailed particularisation is unnecessary once entitlement to time has been established.

Previous Case Law

12. An important recent case which addressed (amongst a myriad of other issues) global claims is that of *Walter Lilly & Company Ltd v Mackay & Anor (2012)*. The Judge in this case, Mr Justice Akenhead, summarised the prior Case Law at length (paragraphs 474 to 483) of his Judgement. He considered the following cases and principles that have been derived from them:

- *Crosby (J) & Sons Ltd v Portland Urban District Council (1967)*
– Paragraph 474

Mr Justice Donaldson said:

“...individual awards for those items which can be dealt with in insolation, and a supplementary award in respect of the remainder of these as a composite whole”.

Introducing global claims.

- *London Borough of Merton v Stanley Hugh Leach Ltd (1985)*
– Paragraph 475

Judge Vinelott said:

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

This supported the notion of global claims introduced in Crosby.

- *Wharf Properties Ltd v Eric Cumine Associates (no 2) (1991)*

Then followed a strike out case heard by the Privy Council. In this judgement it stated,

“...the obligation of a plaintiff to plead his case with such particularity as is sufficient to alert the opposite party to the case which is going to be made against him at the trial”.

- *John Holland Construction & Engineering Pty Ltd v Kvaerner RJ Bown Pty Ltd (1996)*

“...the causal nexus between the wrongful acts or omissions of the defendant and the loss of the plaintiff, must be addressed...the court should be assiduous in pressing the plaintiff to set out this nexus with sufficient particularity to enable the defendant to know exactly what is the case it is required to meet...”

- *Bernhard’s Rugby Landscapes Ltd v Stockley Park Consortium Ltd (1997)*

“...the causal connection between the matters complained of and their consequences, whether in terms of time or money, are not fully spelt out, but, implicitly, could and should be spelled out.”

- *John Doyle Construction Ltd v Laing Management (2002)*

It was found that a global claim was acceptable where:

- The party against whom the global claim is made legally responsible for ALL the disrupting events.
- The Claimant was not responsible for the increased cost in respect of the global claim.
- The Defendant was responsible for all the causal factors that contributed to the increased cost.

The case also allowed apportionment.

- *Petromec Inc v Petroleo Brasileiro SA Petrobras & Ors (2007)*

Mr Mackay’s Counsel sought to rely on this case but Mr Justice Akenhead dismissed it stating:

“...it assists little as none of the global cost cases feature, let alone are mentioned, in the judgements and it seems to have involved specific contract interpretation issues”.

13. The underlying principle in many of these cases was that of evidencing/demonstrating causation. These principles potentially need to be revisited following the Decision in *Walter Lilly & Company Ltd v Mackay & Anor (2012)* where a more common sense approach to quantification of loss in relation to global claims by Contractors or indeed Sub-Contractors was advocated by the Judge.

Summary

14. A “*global claim*” is not easy to define with any great certainty. Fundamentally, a claim may be viewed as being global if it fails to adequately demonstrate causation (the link between cause and effect) whether that is the link between causes of delay and the resultant delay (effect) or the link between a delay and the loss attributable to the delay in question.
15. Practically though, the issue is often regarding the application of a common sense approach when presenting and dealing with global claims. The case of *Walter Lilly & Company Ltd v Mackay & Anor (2012)* brought much of the previous Case Law on this matter together and is seen to give a common sense approach to quantification of loss in global claims. However, the application of common sense can often be interpreted as an unwillingness or inability to fully particularise a claim because the claim is actually unsustainable.
16. Causation is a major underlying legal principle and the next Article will look at causation and global claims.
17. Our advice is always

“avoid global claims if you can, particularise your claim as much as possible and demonstrate causation whenever you are able to”.

Note: This Article is based on the authors own experience and research.

[Click here for Global Claims Article 2 – Causation and Global Claims](#)

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