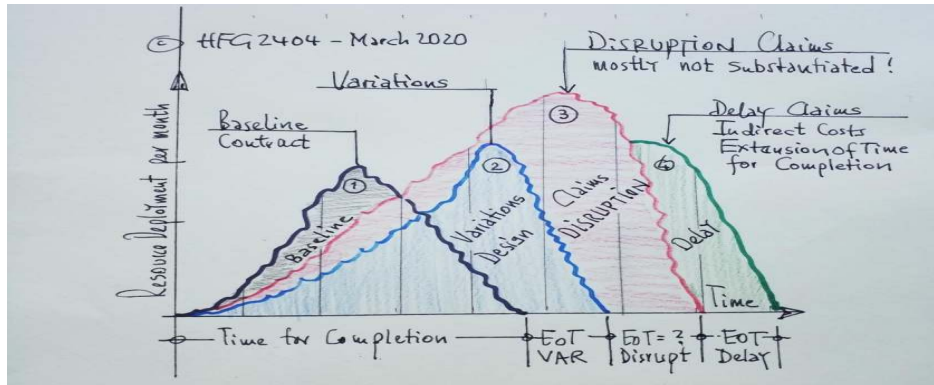


Disruption Claims



Here an interesting Publication of the EAY (eay@eayglobal.com)

“The early identification of disruption and a well-presented disruption claim improve the probability of recovery without a lengthy dispute resolution.”

Disruption refers to a scenario in which the Contractor experiences “a loss of productivity”. That “loss of productivity” brings **additional costs**.

Disruption is **difficult to establish**. Proving the link between the disruptive event and the disruption suffered is mostly challenging.

Disruption Claim is the way of recovering **additional costs incurred** or the **losses suffered** as a result of **disruptive events**.

In this document you will find the **process** related to **preparing a robust disruption claim**.

1 Identifying the Disruptive Event

A Contractor may experience various types of disruptive events.

1.1 Non-Compensable Disruptions

If the disruptive event is **foreseeable** and the Contractor can **anticipate**, this is a **non-compensable disruption**.

Disruptions **caused by the Contractor’s own actions** are non-compensable disruptions such as;

► **Improper scheduling** ► **Inefficient material provision** ► **The failure of a subcontractor or supplier to perform ...** The Contractor **cannot complain** when its disrupted performance is based on **unreasonable assumptions**. It should be considered that even though a disruption **may not be compensable monetarily**, it may entitle the Contractor to a time extension.

1.2 Compensable Disruptions for Contractors

Two basic types of recovery regarding compensable disruptions are; A. Recovery under a specific contract provision. B. Recovery under general principles of contract law.

2 Contractual / Legal Entitlement

In this section, Disruption Claim should be linked to an entitlement under the contract.

The Contractor considering bringing a disruption claim should first **determine** whether there is any **contractual/legal basis** for a disruption claim to be made.

A. The **terms of the Contract** should be **reviewed** and the **rights of the Contractor** under the Contract **should be identified**. **B.** **Loss and expense clauses** which **provide compensation** for disruption **should be identified**.

C. It should be kept in mind that **more than one clause of the Contract** may be at the root of **entitlement** (changes, differing site conditions or other sources of disruptions).

3 Notice of Disruption Claim

The Contractor should understand and comply with the **Notice requirements** under the Contract, such as;

1. Timing of the Notice. **2.** The information it should contain. **3.** To whom it should be sent. **4.** The proper manner of providing Notice.

4 Factual Evidence

In this section, the evidence and analysis to prove the link between the disruptive event and the disruption suffered should be demonstrated.

A. The case of **Walter Lilly & Company Limited v (1) Giles Patrick Cyril Mackay (2) DMW Developments Limited** puts forward three items regarding the issue of bringing a disruption claim.

The Contractor has to demonstrate on a balance of probabilities that **[1]**;

► Events occurred which entitle it to loss and expense. ► Those events caused disruption. ► Such disruption caused it to incur loss and/or expense (or loss and damages the case may be).

B. A claim’s credibility is **negatively affected** if there is a **lack of contemporaneous evidence**.

The recording of contemporaneous evidence regarding the disruptive events and its effects on productivity is critical.

5 Quantification of the Disruption Claim

In this section, the cost that is experienced due to the disruption should be valued.

A. The Incremental Direct Costs related to the additional scope or tasks required by the disrupted activities should be valued. By focusing on additional quantities and performance, this type of costs can be valued.

B. Costs related with the Loss of Efficiency

in performing the original scope of work in a disrupted manner should be valued.

Unlike direct costs, both causation and entitlement regarding the recovery of lost productivity can be difficult to establish. There are numerous ways to calculate the lost productivity.

C. All the evaluations, analyses, methods and assumptions regarding the evaluation must be transparent and clearly explained.

5.1 Methods of Calculation

The Society of Construction Law/Delay and Disruption Protocol divides methods of calculation into two categories [2].

Productivity-Based Methods rely on actual or theoretical measurements of comparative productivity.

5.12 Cost-Based Methods rely on analysis of planned and actual expenditure of resources or costs.

Productivity-Based

1. Project-Specific Studies:

(a) Measured Mile Analysis

(b) Earned Value Analysis

(c) Programme Analysis

(d) Work or Trade Sampling

(e) System Dynamics Modelling

2. Project-Comparison Studies

3. Industry Studies

Cost-Based

1. Estimated v Incurred Labour

2. Estimated v Used Cost

FOOTNOTES of EAY

1. The same Paragraph letters are used as in Paragraph 486 of the case *Walter Lilly & Company Limited v (1) Giles Patrick Cyril Mackay (2) DMW Developments Limited [2012] EWHC 1773 (TCC)*.

2. The same Sub-Paragraph letters are used as in Paragraphs 18.12/18.13 of the *Society of Construction Law Delay and Disruption Protocol 2nd Edition*.

This information is provided for your convenience and does not constitute any "Legal Advice". This document is prepared for the general information of the interested persons. This should not be acted upon in any specific situation without appropriate legal advice.

This information may not be reproduced or translated without the prior written permission of eayglobal.com

For further information please contact eay@eayglobal.com

Comments from PPE61, Sierra Leone / Emma@PPE61.de

We are the Claim Specialists with time, resource and cost planning, too.

We do not know only, THAT a disruption Claim works.

We do know, HOW the issue will be successful processed:

We identify the causes (www.ppe61.de/03.5+ClaimSC.pdf), analyse and evaluate the effects (suffered delay + incurred costs plus profit) in context with the contemporaneous, regularly revised Work Programmes (SC08.3 + SC08.6) with the adjusted Time for Completion (a TfC)

www.ppe61.de/HUB123.pdf