

Global Claims

Construction Law Terms: A to Z

By Huw Wilkins

G is for Global Claims

What is a global claim?

Keating on Construction Contracts describes a global claim as a claim 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".¹

The SCL's Delay and Disruption Protocol (2nd edition) provides an alternative definition of a global claim, being "one in which the contractor seeks compensation for a group of Employer Risk Events [i.e. something which under the contract is at the risk and responsibility of the Employer] but does not or cannot demonstrate a direct link between the loss incurred and the Individual Employer Risk Events."

Courts' approach to global claims

Those opposed to global claims argue that they contravene the generally accepted legal position that a party must prove a causal link between the sums it claims and individual events (in the context of contractors' claims being either events under the contract entitling the contractor to loss and expense, or breaches of contract entitling the contractor to claim damages). This is why, historically, the courts have not looked favourably on global claims. In *Wharf Properties -v- Eric Cumine Associates (No.2)*², faced with a global claim, Lord Oliver described the pleading as "hopelessly embarrassing" and referred to the claimant's obligation "to alert the opposite party to the case which is going to be made against him at trial".

However, more recently, the courts have taken a more lenient approach when considering global claims. By way of example, in the case of *Walter Lilly & Co Ltd v DMW Developments Ltd*³, although Mr Justice Akenhead concluded that the claim before him was not a global claim, he did consider (obiter) that "in principle, unless the contract dictates that a global cost claim is not permissible if certain hurdles are not overcome, such a claim may be permissible on the facts and subject to proof."

1. Keating on Construction Contracts, 11th edition, paragraph 9-064
2. [1991] 52 B.L.R 503
3. [2012] EWHC 1773 (TCC)

Mr Justice Akenhead also set out the following requirements with regards to global claims:

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- the contractor must prove its case as a matter of fact on the balance of probabilities;
- the contractor must satisfy any contractual requirements (e.g. conditions precedent), or the claim will be disqualified;
- it is open to a party to prove its claim with whatever evidence will satisfy the tribunal and meet the requisite standard of proof;
- although there is nothing “wrong” with a global claim, there are evidential difficulties to overcome – to establish that the loss incurred would not have been incurred in any event (i.e. causation);
- the fact that one or a series of events or factors, which are either unpleaded or the risk/fault of the contractor, caused or contributed to the total or global loss, does not necessarily mean that the contractor can recover nothing – it depends on what the impact of those events/factors is, such that the global claim would simply be reduced by the loss resulting from that event/factor;
- there is no need for the tribunal to go down the global claim route if the actual cost attributable to an event can be readily determined (although note that he did acknowledge that in such circumstances, whilst the global cost claim should not be rejected out of hand, the tribunal will be more sceptical about the global cost claim);
- a global claim should not be rejected just because the contractor (i.e. the party making the claim) has caused the impossibility of disentanglement.

A contractor may seek to advance a global claim if it is impractical or impossible to demonstrate causal links between specific events and losses such that a global claim is the only way for the contractor to advance its claim.

Whilst a global claim may, on its face, be relatively quick and inexpensive to formulate, a contractor will need to meet the requirements set out by Mr Justice Akenhead in the *Walter Lilly* case. Contractors should also note the comments of Mrs Justice Carr in the more recent case of *John Sisk & Son Ltd v Carmel Building Services*,⁴ that for a party endeavouring to prove a global or total costs claim, “[t]here are added evidential difficulties in proving a global or total costs claim.”

Although the Court’s approach to global claims appears to have softened in recent times, it will be easier for an employer to undermine a global cost claim. This means that, whilst it might be quicker and less expensive for a contractor to put forward a global claim, a contractor will be far better placed if it can present an itemised claim, demonstrating causal links between its losses and the employer’s actions (or issues that are at the employer’s risk).

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4. [2016] EWHC 806 (TCC)

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