Disruption and prolongation construction claims between Canada and the UK

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In the construction industry, disputes often arise due to delays and disruptions, leading to claims for additional time or costs. This article discusses the distinction between disruption and prolongation claims in the United Kingdom (UK) and Canada, with a focus on the application of formulas considering the basis of production, productivity, and efficiency in the pricing of construction work.

Disruption Claims

Disruption claims arise when a contractor experiences disturbances or hindrances in the construction process, leading to a loss of productivity and efficiency. These claims focus on the additional costs incurred due to the need for extra resources or altered work methods resulting from the disruption.

In both the UK and Canada, disruption claims often rely on the "Measured Mile" approach to quantify losses. This approach compares the contractor's productivity during an unaffected period (the "measured mile") to the productivity during the disrupted period. By doing so, it calculates the loss of efficiency and translates it into financial terms.

In the UK, the Hudson Formula is sometimes used as an alternative or supplement to the Measured Mile approach. The Hudson Formula calculates the loss of productivity by comparing the planned output to the actual output and multiplying the difference by the agreed rate per unit of output.

Canadian courts may consider the concept of “cumulative impact,” where multiple disruptions accumulate and cause a more significant overall effect on the project. This approach recognizes that individual disruptions may not be significant in isolation, but their combined effect can have a substantial impact on the efficiency of the project.

Prolongation Claims

Prolongation claims pertain to the extension of time required to complete the project and the additional costs incurred by the contractor due to the delay. These claims focus on the financial consequences of the extended project duration, such as increased overheads and financing costs.

In both the UK and Canada, prolongation claims often rely on the Emden Formula or the Eichleay Formula to calculate the additional costs incurred.

The Emden Formula calculates the additional overhead costs by dividing the total overhead costs by the original contract period and multiplying the result by the number of days of delay.

The Eichleay Formula, a more complex method, allocates the contractor’s overhead costs to the project on a pro-rata basis, considering the project’s share of the contractor’s total business during the delay period.

Key Distinctions

While the approaches in the UK and Canada treat both claims similarly, the formulas used to calculate losses may vary. The Measured Mile approach is common for disruption claims in both jurisdictions, while the Hudson Formula is more prevalent in the UK. For prolongation claims, the Emden and Eichleay formulas are commonly used in both jurisdictions.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com